
STATUTORY INSTRUMENTS

1983 No. 523 (L.5)

MAGISTRATES' COURTS

PROCEDURE

The Magistrates' Courts (Amendment) Rules 1983

<i>Made</i>	- - - -	<i>29th March 1983</i>
<i>Laid before Parliament</i>		<i>12th April 1983</i>
<i>Coming into Operation</i>		<i>24th May 1983</i>

The Lord Chancellor, in exercise of the power conferred on him by section 144 of the Magistrates' Courts Act 1980, as extended by sections 61 and 145 of that Act, after consultation with the Rule Committee appointed under the said section 144, hereby makes the following Rules:—

1. These Rules may be cited as the Magistrates' Courts (Amendment) Rules 1983 and shall come into operation on 24th May 1983.

2.—(1) Subject to paragraph (2), the Magistrates' Courts Rules 1981(1) shall have effect subject to the amendments specified in the Schedule to these Rules.

(2) Paragraph 3 of the Schedule shall not have effect in relation to committal proceedings which began before 24th May 1983.

Dated 29th March 1983

Hailsham of St. Marylebone, C

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SCHEDULE

Rule 2

AMENDMENTS TO MAGISTRATES' COURTS RULES 1981

1. In Rule 6—
 - (a) in paragraph (1) for the words “is represented by counsel or a solicitor” there shall be substituted the words “has a solicitor acting for him in the case (whether present in court or not)”;
 - (b) in paragraph (4) for the words “You may give” there shall be substituted the words “You or your solicitor may give”.
2. At the end of Rule 11(2) there shall be inserted the following sub-paragraphs—
 - “(n) a copy of any legal aid order previously made in the case;
 - (o) a copy of any contribution order previously made in the case under section 7 of the Legal Aid Act 1982(2);
 - (p) a copy of any legal aid application previously made in the case which has been refused;
 - (q) any statement of means already submitted.”.
3. In Rule 13—
 - (a) the words in paragraph (2) “makes an unsworn statement or” shall be omitted;
 - (b) the words in paragraph (4) “and any unsworn statement which the accused may make” shall be omitted.
4. In Rule 17(1)—
 - (a) in sub-paragraph (f) the word “and” in the second place where it occurs shall be omitted; and
 - (b) after sub-paragraph (g) there shall be inserted the following sub-paragraph:—
 - “(h) A copy of any contribution order previously made in the case under section 7 of the Legal Aid Act 1982.”.
5. In Rule 25—
 - (a) in paragraph (1) in sub-paragraph (e) the word “and” shall be omitted;
 - (b) in paragraph (1) after sub-paragraph (e) there shall be inserted the following sub-paragraph—
 - “(ee) a copy of any contribution order previously made in the case under section 7 of the Legal Aid Act 1982;”;
 - (c) in paragraph (1) after paragraph (f) there shall be inserted the following sub-paragraphs—
 - “(g) a statement indicating whether or not the accused has a solicitor acting for him in the case and has consented to the hearing and determination in his absence of any application for his remand on an adjournment of the case under sections 5, 10(1) and 18(4) of the Act of 1980 together with a statement indicating whether or not that consent has been withdrawn;
 - (h) a statement indicating the occasions, if any, on which the accused has been remanded under section 128(3A) of the Act of 1980 without being brought before the first-mentioned court.”.
 - (d) after paragraph (1) there shall be inserted the following paragraph—

(2) 1982 c.44.

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“(1A) Where the first-mentioned court is satisfied as mentioned in section 128(3A) of the Act of 1980, paragraph (1) shall have effect as if for the words “an accused who has been remanded in custody be brought up for any subsequent remands before” there were substituted the words “applications for any subsequent remands of the accused be made to”.”;

- (e) in paragraph (2) in sub-paragraph (e) the word “and” shall be omitted;
- (f) in paragraph (2) after sub-paragraph (e) there shall be inserted the following sub-paragraph—

“(ee) a copy of any contribution order made in the case by the alternate court under section 7 of the Legal Aid Act 1982;”;

- (g) in paragraph (2) after sub-paragraph (f) there shall be inserted the following sub-paragraphs—

“(g) a statement indicating whether or not the accused has a solicitor acting for him in the case and has consented to the hearing and determination in his absence of any application for his remand on an adjournment of the case under sections 5, 10(1) and 18(4) of the Act of 1980 together with a statement indicating whether or not that consent has been withdrawn;

(h) a statement indicating the occasions, if any, on which the accused has been remanded by the alternate court under section 128(3A) of the Act of 1980 without being brought before that court.”;

- (h) after paragraph (2) there shall be inserted the following paragraph—

“(2A) Where the alternate court is satisfied as mentioned in section 128(3A) of the Act of 1980 paragraph (2) shall have effect as if for the words “an accused who has been remanded in custody is brought up for any subsequent remands” there shall be substituted the words “applications for the further remand of the accused are to be made”.”.

- 6. For Rule 35 there shall be substituted the following Rules—

““Time for hearing affiliation summons

35. A summons issued under section 1 of the Affiliation Proceedings Act 1957(3) shall require the defendant to appear on a date after the date on which the birth of the child is expected and on which it is reasonable to expect the complainant to be able to appear in court.

Application for sums under affiliation order to be paid to person having custody of child

35A. An application under section 5(3) of the Affiliation Proceedings Act 1957 shall be by complaint for an order.”.

- 7. Rule 42 shall be omitted.

8. In Rule 54(4) for the words “fifty pounds” in both places where they occur there shall be substituted the words “£150”.

- 9. In Rule 60 for paragraphs (2) and (3) there shall be substituted the following paragraphs:—

“(2) Any sum paid to the clerk of a magistrates' court on any date by a person liable to make payments under 2 or more periodical payments orders which is less than the total sum

(3) 1957 c.55.

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required to be paid on that date to that clerk by that person in respect of those orders (being orders one of which requires payments to be made for the benefit of a child to the person with whom the child has his home and one or more of which requires payments to be made to that person either for his own benefit or for the benefit of another child who has his home with him) shall be apportioned between the orders in proportion to the amounts respectively due under each order over a period of one year and if, as a result of the apportionment, the payments under any such order are no longer in arrears the residue shall be applied to the amount due under the other order or (if there is more than one other order) shall be apportioned as aforesaid between the other orders.

- (3) For the purposes of calculating the apportionment of any sum under paragraph (2)—
 - (a) a month shall be treated as consisting of 4 weeks; and
 - (b) a year shall be treated as consisting of 52 weeks.”.

10. In Rule 65(2) in sub-paragraph (d) at the end there shall be inserted the words—

“including any direction varying the number of instalments payable, the amount of any instalments payable and the date on which any instalment becomes payable;”.

11. In Rule 66—

- (a) in paragraph (3) after the words “any such decisions” there shall be inserted the words “or the particulars of any certificate granted under section 5(6A) of the Bail Act 1976”;
- (b) after paragraph (3) there shall be inserted the following paragraphs—

“(3A) Where, by virtue of subsection (3A) of section 128 of the Act of 1980, an accused gives his consent to the hearing and determination in his absence of any application for his remand on an adjournment of the case under sections 5, 10(1) or 18(4) of that Act, the court shall cause the consent of the accused, and the date on which it was notified to the court, to be entered in the register.

(3B) Where any consent mentioned in paragraph (3A) is withdrawn, the court shall cause the withdrawal of the consent and the date on which it was notified to the court to be entered in the register.”;

- (c) after the words in paragraph (11) “when those proceedings took place” there shall be inserted the words “or, in the case of an entry required by paragraphs (3A) and (3B), where the consent or withdrawal of consent was not given or made (as the case may be) when the accused was present before the court, by the clerk or justice who received the notification.”.

12. In Rule 70—

- (a) in paragraph (2) after the word “notice” there shall be inserted the words “by or on behalf of the prosecutor”;
- (b) for paragraph (5) there shall be substituted the following paragraph—

“(5) If it appears to a magistrates' court that any part of a written statement is inadmissible there shall be written against that part—

- (a) in the case of a written statement tendered in evidence under the said section 102 the words “Treated as inadmissible” together with the signature and name of the examining justice or, where there is more than one examining justice, the signature and name of one of the examining justices by whom the statement is so treated;
- (b) in the case of a written statement tendered in evidence under the said section 9 the words “Ruled inadmissible” together with the signature and name of the

justice or, where there is more than one justice, the signature and name of one of the justices who ruled the statement to be inadmissible.”.

13. For Rule 73 there shall be substituted the following Rule—

““Clerk to have copies of documents sent to accused under s.12(1) of the Act of 1980

73. Where the prosecutor notifies the clerk of the court that the documents mentioned in paragraphs (a) and (b) of section 12(1) of the Act of 1980 have been served upon the accused, the prosecutor shall send to the clerk a copy of the document mentioned in paragraph (b).”.

14. In Rule 90 after the word “included” there shall be inserted the words “and the particulars set out in any certificate granted under subsection (6A) of that section”.

15. In Rule 99(2) for the words “Provided that” to the end there shall be substituted the following words—

“Provided that this paragraph shall not apply to any summons in respect of a summary offence served in the manner authorised by—

- (a) the said sub-paragraph (b); or
- (b) the said sub-paragraph (c) in a registered letter or by recorded delivery service.”.

16. In Rule 107(2) the words “for submission to a justice of the peace” shall be omitted.

EXPLANATORY NOTE

These Rules amend the Magistrates' Courts Rules 1981 in consequence of the following provisions of the Criminal Justice Act 1982 (c. 48) which come into force on 24th May 1983 (S.I. 1983/182) (the rule amended being indicated in brackets)—

Section 51(1) (variation of instalments) (Rule 65);

Section 59 and Schedule 9 (remand in custody in absence of accused) (Rules 25 and 66);

Section 60 (applications to Crown Court for bail by persons remanded in custody) (Rules 66 and 90);

Section 61 (legal representation in cases of committal on written statements) (Rule 6);

Section 72 (abolition of right of accused to make unsworn statement) (Rule 13).

The Rules also make various amendments to the 1981 Rules which are unrelated to the coming into force of the 1982 Act the most important of which are the amendments to Rules 11, 54, 60 and 99. Rule 11 is amended so as to require a justices' clerk to send specified legal aid documents to the Crown Court within 4 days after a person's committal for trial. Rule 54 is amended so that, where a distress warrant is levied against a person who has tools and implements of his trade in excess of £150, only tools and implements as will leave in that person's possession tools and implements to the value of £150 may be taken. The amendment to Rule 60 substitutes a new method for apportioning between two or more periodical payments orders any sum received by the justices' clerk which is less than the total sum due under those orders. Any such sum is to be apportioned between the orders in proportion to the amounts required to be paid under each order. Rule 99(2) is amended so that, if a person summoned fails to appear in a case where service of a summons has been effected by leaving it with some other person at the summoned person's last known or usual place of abode, it is

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no longer necessary to prove that the summons came to the summoned person's knowledge before service is treated as proved.