

1985 No. 1695 (L. 13)**MAGISTRATES' COURTS****The Magistrates' Courts (Custodianship Orders) Rules 1985**

<i>Made - - - -</i>	<i>28th October 1985</i>
<i>Laid before Parliament</i>	<i>8th November 1985</i>
<i>Coming into Operation</i>	<i>1st December 1985</i>

The Lord Chancellor, in exercise of the powers conferred on him by section 144 of the Magistrates' Courts Act 1980^(a), after consultation with the Rule Committee appointed under that section, hereby makes the following Rules:—

Citation and commencement

1. These Rules may be cited as the Magistrates' Courts (Custodianship Orders) Rules 1985 and shall come into operation on 1st December 1985.

Interpretation

2.—(1) In these Rules, unless the context otherwise requires—

“the 1973 Act” means the Guardianship Act 1973^(b);

“the 1975 Act” means the Children Act 1975^(c);

“child” means a person under 18 who is the subject of an application to which these Rules apply or of a custodianship order;

“court” means a magistrates' court; and

“the Rules of 1981” means the Magistrates' Courts Rules 1981^(d).

(2) In these Rules, a reference to a provision of the 1973 Act is a reference to that provision as applied by section 34(5)^(e) or 36(6)^(f) of the 1975 Act.

(3) In these Rules, a form referred to by number means the form so numbered in the Schedule to these Rules.

Extent

3. These Rules shall apply only to proceedings before a magistrates' court under Part II of the 1975 Act or under any enactment applied by that Part.

(a) 1980 c. 43; section 144 is extended by section 145 of that Act, by section 3(4) of the Guardianship Act 1973 (c.29) (as amended by the Magistrates' Courts Act 1980, Schedule 7, paragraph 116) and by section 46(2) and (4) of the Children Act 1975 (c.72); section 46(4) of the 1975 Act was amended by the Magistrates' Courts Act 1980, Schedule 7, paragraph 138.

(b) 1973 c.29.

(c) 1975 c.72.

(d) S.I. 1981/552, as amended by S.I. 1982/245, 1983/523.

(e) Section 34 was substituted by the Domestic Proceedings and Magistrates' Courts Act 1978 (c.22), section 64.

(f) Section 36(6) was amended by the Domestic Proceedings and Magistrates' Courts Act 1978, Schedule 2, paragraph 46.

Applications for custodianship orders etc.

4.—(1) Except as provided in Rule 6 of these Rules, an application under any provision of Part II of the 1975 Act shall be made by way of complaint.

(2) In the case of an application for a custodianship order the complaint shall be in Form 1.

(3) In the case of an application for a custodianship order the complainant shall supply to the justices' clerk—

- (a) medical certificates by a registered medical practitioner made not more than 3 months before the date on which the complaint is made on the health of the child and, save where the complainant is a step-parent of the child, on the complainant, which shall be in Form 2;
- (b) the consent to the application, where it is required by section 33(3)(a) or (b) of the 1975 Act, of the person with sole legal custody or of at least one of the persons with joint legal custody of the child.

(4) The complainant shall give notice of an application for a custodianship order to the local authority in whose area the child resides in the form annexed to Form 1, and shall supply the completed form to the justices' clerk for onward transmission.

Defendants

5.—(1) The persons who are to be made defendants to a complaint under section 33(1) of the 1975 Act for a custodianship order shall be—

- (a) the mother and father, or guardian (not being the complainant), of the child,
- (b) any local authority—
 - (i) having the powers and duties of a parent or guardian of the child by virtue of section 10 of the Child Care Act 1980 (a), or
 - (ii) in which the parental rights and duties in respect of the child are vested, whether jointly or not, by virtue of section 3 of the said Act of 1980 (b), or
 - (iii) which has received the child into its care under section 2 of the said Act of 1980, or
 - (iv) which has the child in its care by virtue of any other enactment, or
 - (v) in whose area the child resides,
- (c) any voluntary organisation in which the parental rights and duties in respect of the child are vested, whether jointly or not, by virtue of section 64 of the said Act of 1980 (c),
- (d) any person liable by virtue of any order of any court or agreement to contribute to the maintenance of the child, and

(a) 1980 c.5; section 10 was amended by the Criminal Justice Act 1982 (c.48), Schedule 14, paragraph 44, and the Health and Social Services and Social Security Adjudications Act 1983 (c.41), Schedule 2, paragraph 47, and Schedule 10, Part I.

(b) Section 3 was amended by the Mental Health Act 1983 (c.20), Schedule 4, paragraph 50(a) and the Health and Social Services and Social Security Adjudications Act 1983, Schedule 2, paragraph 46.

(c) Section 64 was amended by the Health and Social Services and Social Security Adjudications Act 1983, Schedule 1, paragraph 2.

(e) any other person (not being the complainant) who has actual or legal custody of the child.

(2) The persons who are to be made defendants to the complaint in the case of an application under section 34(1)(a) or (d) of the 1975 Act shall be—

(a) where the application is made pending the hearing and determination of a complaint for an order under section 33(1) of that Act, the complainant who made that complaint, and

(b) where a custodianship order is in force, the custodian.

(3) The person who is to be made defendant to the complaint in the case of an application under section 34(1)(b) or (c) of the 1975 Act shall be the mother or father of the child.

(4) The persons who are to be made defendants to the complaint in the case of an application under section 34(1)(e) of the 1975 Act shall be—

(a) where the applicant is the mother or father of the child, the complainant for a custodianship order or the custodian, and

(b) where the applicant is the complainant for a custodianship order or the custodian, the mother or father.

(5) The persons who are to be made defendants to the complaint in the case of an application under section 35(1) of the 1975 Act for the revocation of a custodianship order shall be—

(a) any person or body (not being the applicant) who would be a defendant to a complaint for an order under section 33(1) of that Act,

(b) the person who would have legal custody of the child if the custodianship order were revoked, where he is not the applicant, and

(c) the custodian, where he is not the applicant.

(6) The person who is to be made defendant to the complaint in the case of an application under section 35(3) (a) of the 1975 Act shall be the mother or father or grandparent against whom or in favour of whom the order sought to be revoked or varied was made.

(7) The person who is to be made defendant to the complaint in the case of an application under section 35(4) (b) of the 1975 Act shall be the custodian.

(8) The person who is to be made defendant to the complaint in the case of an application under section 35(4A) (c) of the 1975 Act shall be the mother or father against whom the order sought to be varied was made.

(9) The persons who are to be made defendants to the complaint in the case of an application under section 35(10) (d) of the 1975 Act shall be—

(a) where the application is to revive or vary an order made under section 34(1)(b) of that Act, the mother or father against whom the order was made, and

(a) Section 35(3) was amended by section 66 of the Domestic Proceedings and Magistrates' Courts Act 1978 (c.22).

(b) Section 35(4) was amended by section 66 of the Act referred to in footnote (a) above.

(c) Section 35(4A) was inserted by section 66 of the Act referred to in footnote (a) above.

(d) Section 35(10) was inserted by section 66 of the Act referred to in footnote (a) above.

(b) where the application is to vary or revoke an order made under section 34(1)(b) of that Act which has been revived, the person in whose favour the order was made.

(10) The person who is to be made defendant to the complaint in the case of an application under section 38 of the 1975 Act for the resolution of a dispute between joint custodians shall be the other joint custodian.

(11) The persons who are to be made defendants to the complaint in the case of an application under section 41 (a) of the 1975 Act for leave to remove a child from the actual custody of the applicant shall be the complainant for an order under section 33(1) of that Act and the defendants (other than the applicant under the said section 41) to that complaint.

(12) The persons who are to be made defendants to the complaint in the case of an application under section 42(1) (b) of the 1975 Act for the return of a child removed in breach of section 41 shall be the person who has allegedly removed the child and the defendants to the proceedings under section 33(1) of that Act.

(13) The persons who are to be made defendants to the complaint in the case of an application under section 42(2) of the 1975 Act for an order directing a person not to remove a child from the actual custody of the applicant in breach of section 41 shall be the person believed to be intending to remove the child and the defendants to the proceedings under section 33(1) of that Act.

(14) The persons who are to be made defendants to the complaint in the case of an application under section 43A(1) or (2) (c) of the 1975 Act shall be—

- (a) where the applicant is the mother or father of the child, the custodian or the person with custody under an interim order under section 34(5) of that Act; and
- (b) where the applicant is the custodian, the mother and father and guardian of the child.

(15) Subject to paragraph (16), the court may at any time direct that any other person or body be made a defendant to a complaint for an order under Part II of the 1975 Act.

(16) The court shall not direct that a child who is the subject of a custodianship order or the subject of an application for a custodianship order be made a defendant to such a complaint except where the child himself has previously made an application for the variation or revival of an order made under section 34(1)(b) of the 1975 Act by virtue of section 35(4A) or (10) of that Act and the complaint relates to the order made under the said section 34(1)(b).

(17) In this Rule—

(a) references to the mother or father of a child in relation to complaints and orders under section 34(1) of the 1975 Act

- (a) Section 41 was amended by the Criminal Justice Act 1982 (c. 48), sections 38 and 46 and the Health and Social Services and Social Security Adjudications Act 1983, Schedule 2, paragraph 60.
- (b) Section 42(1) and (2) was amended by the Health and Social Services and Social Security Adjudications Act 1983, Schedule 2, paragraph 60.
- (c) Section 43A was inserted by the Domestic Proceedings and Magistrates' Courts Act 1978, section 70 and amended by the Health and Social Services and Social Security Adjudications Act 1983, Schedule 2, paragraph 24.

include any person in relation to whom the child was treated as a child of the family as defined in section 52(1) of the Matrimonial Causes Act 1973 (a) ; and

- (b) references to the father of a child do not include the father of a child who is illegitimate unless he has been adjudged by a court to be the father of that child or unless he was a party to proceedings for an order which it is sought to vary or revoke.

Adoption, guardianship or custody applications treated as applications for custodianship orders

6.—(1) Where a court directs under section 37 of the 1975 Act (b) that an application for an adoption order or an application under section 9 of the Guardianship of Minors Act 1971 (c) shall be treated as if it had been made under section 33 of the 1975 Act, or directs under section 8(3) of the Domestic Proceedings and Magistrates' Courts Act 1978 (d) that a person shall be treated as if he had applied for a custodianship order under the said section 33, these Rules and the provisions of Part II of the Magistrates' Courts Act 1980 (e) relating to the hearing of a complaint shall apply to the hearing of the application as if it were made by way of complaint; the defendants shall be the persons (other than the applicant) specified in Rule 5(1) and the court shall cause notice of the proceedings to be served on such of those persons as have not been given notice of the earlier proceedings (unless it is impracticable to do so).

(2) Where an application is made under section 9 of the Guardianship of Minors Act 1971 by the mother or father of a child, and a magistrates' court, being of opinion that legal custody of a minor should be given to a person other than the applicant who is not a party to the proceedings, treats the application as an application for a custodianship order by that other person, the court shall cause notice of the proceedings to be served on that other person.

(3) Where a court directs under section 8(3) of the Domestic Proceedings and Magistrates' Courts Act 1978 that a person shall be treated as if he had applied for a custodianship order under section 33 of the 1975 Act, the court shall cause notice of the proceedings to be served on that person.

(4) For the purposes of this Rule, the requirement to cause notice of the proceedings to be served on a person shall be satisfied, where that person is present in court when the court indicates its intention to treat an application as an application for a custodianship order, by that indication of intention.

(5) Unless otherwise directed, service of a notice under this rule may be effected—

- (a) on a corporation or a body of persons by delivering it at, or sending it by post to, the registered or principal office of the corporation or body of persons;
- (b) on any other person by delivering it to him, or by sending it by post to him at his last known or usual place of abode.

(a) 1973 c.18.

(b) Section 37 was amended by the Domestic Proceedings and Magistrates' Courts Act 1978, section 69 and the Health and Social Services and Social Security Adjudications Act 1983, Schedule 2, paragraph 23.

(c) 1971 c.3; section 9 was amended by the 1973 Act, as set out in Schedule 2, Part II thereof, the 1975 Act, Schedule 3, paragraph 75(1) and the Domestic Proceedings and Magistrates' Courts Act 1978, section 41(2) and Schedule 3.

(d) 1978 c.22. (e) 1980 c.43.

(6) Nothing in the preceding paragraph shall affect the provisions of Rule 99 of the Rules of 1981 about the service of a summons.

Application for leave to remove child from actual custody of applicant for custodianship order

7.—(1) An application under section 41(1) of the 1975 Act for leave to remove a child from the actual custody of the person who has applied to a magistrates' court for a custodianship order in respect of the child shall be made to that court.

(2) Where an application for leave under the said section 41(1) is granted, the court may thereupon treat the hearing of the application as the hearing of the application for a custodianship order and refuse a custodianship order accordingly.

Application for order for return of child removed in breach of section 41 of the 1975 Act

8. Where an application under section 42(1) or (2) of the 1975 Act for an order directing the return of a child removed in breach of section 41 of that Act or prohibiting such removal is refused, the court may thereupon treat the hearing of the application as the hearing of the application for a custodianship order and refuse a custodianship order accordingly.

Notice to local authority of proposal to commit child to its care

9. Before the court may make an order under section 36(2) or (3)(a) of the 1975 Act or under section 2(2)(b) of the 1973 Act committing the care of a child to a specified local authority, the authority (whether or not it is a party) may make representations to the court either—

- (a) when the court indicates that it proposes to make such an order, or
- (b) at a date and time fixed for a further hearing by the court by the justices' clerk who shall, not less than 14 days before the date so fixed send notice of the further hearing in Form 3 to the authority.

Application for variation or discharge of order under section 2 of the 1973 Act

10.—(1) An application for the variation or discharge of an order under section 2(2)(a) or (b) or (3) of the 1973 Act shall be made by way of complaint.

(2) Where an application is made under section 3(3) of the 1973 Act for the variation or discharge of a supervision order, the persons to be made defendants shall (with the exception of the person who is the complainant) be—

- (a) the custodian of the child,
- (b) the parent or parents of the child,
- (c) any guardian of the child, and
- (d) the probation officer or local authority under whose supervision the child is.

(3) Where an application is made under section 4(3A) of the 1973 Act (a) for the variation or discharge of an order under section 2(2)(b) of the 1973

(a) Subsection (3A) was inserted by the 1975 Act, Schedule 3, paragraph 80.

Act committing a child to the care of a local authority, the persons to be made defendants shall (with the exception of the person who is the complainant) be—

- (a) the parent or parents of the child,
- (b) any guardian of the child, and
- (c) the local authority to whose care the child has been committed.

(4) Where an application is made for the variation or discharge of an order under section 2(3) of the 1973 Act requiring payments to the local authority to whose care the child has been committed by an order under section 2(2)(b) of that Act, the persons to be made defendants shall (with the exception of the person who is the complainant) be—

- (a) the person or persons by whom payment is required to be made, and
- (b) the local authority to whose care the child has been committed.

Notices

11. Where a court makes an order under any provision of Part II of the 1975 Act relating to a child who is the subject of a custodianship order made by another court (whether or not a magistrates' court), the court shall cause notice to be given to that other court by delivering or by sending by post to that other court a copy of its order.

Access by grandparents

12. Where at any time while a custodianship order made under section 33 of the 1975 Act is in force, an application is made under section 34(1)(a) of that Act by a grandparent of the child for an order requiring access to that child to be given to that grandparent, the clerk of the court shall send to that grandparent a certified copy of an extract from the court's register containing the particulars of the custodianship order made under the said section 33.

Parties to applications made in pending proceedings

13. A party to an application under Part II of the 1975 Act which is made in any pending proceeding who is not a party to that proceeding shall not, unless the court otherwise orders, be made a party to the pending proceeding.

Evidence of consent to application

14.—(1) A document signifying the consent of a person to an application for a custodianship order may be in Form 4.

(2) Such a document shall be sufficiently witnessed for the purposes of section 102 of the 1975 Act if it is witnessed—

- (a) if the document is executed in England or Wales, by—
 - (i) a justice of the peace, or
 - (ii) an officer of a county court appointed for the purposes of section 58 of the County Courts Act 1984 (a), or
 - (iii) a justices' clerk;
- (b) if the document is executed in Scotland, by—
 - (i) a justice of the peace, or
 - (ii) a sheriff;

(a) 1984 c.28.

- (c) if the document is executed in Northern Ireland, by a justice of the peace;
- (d) if the document is executed outside the United Kingdom, by—
- (i) any person for the time being authorised by law in the place where the document is executed to administer an oath for any judicial or other legal purpose, or
 - (ii) a British Consular officer, or
 - (iii) a notary public, or
 - (iv) if the person executing the document is serving in any of the regular armed forces of the Crown, an officer holding a Commission in any of those forces.

Reports by local authorities and probation officers

15.—(1) Where a complaint is made under section 33(1) of the 1975 Act for a custodianship order in respect of a child, the clerk to the justices shall cause to be sent to the local authority in whose area the child resides a copy of the complaint and of any documents supplied in accordance with Rule 4(3) and (4), together with notice of the date and time fixed for the hearing of the complaint.

(2) The local authority in whose area the child resides shall, before the date fixed for the hearing of the complaint and in any case within 6 weeks of receipt of the copy of the complaint and other documents, lodge with the clerk to the justices a report in accordance with section 40 of the 1975 Act.

(3) Where the court requests a local authority or probation officer to make to the court a report under section 36(4) of the 1975 Act on the desirability of the child returning to the legal custody of any individual or under section 39 of that Act on any matter specified by the court, the local authority or probation officer, as the case may be, shall make such report to the court or lodge such report with the clerk to the justices within 6 weeks of the request.

(4) The clerk to the justices shall, on the making of a request mentioned in paragraph (3), send to the local authority or probation officer copies of any document supplied in accordance with Rule 4(3).

Representation of local authority

16. In proceedings under Part II of the 1975 Act a local authority may be represented by its director of social services or other officer employed by it for the purposes of its social services functions under the Local Authority Social Services Act 1970(a).

Forms

17.—(1) The Forms contained in the Schedule to these Rules or forms to the like effect may be used in connection with proceedings to which these Rules apply, and any such form may be used with such variation as the circumstances may require.

(2) A custodianship order shall be in Form 5.

(3) A search warrant issued by a justice of the peace under section 42(4) of the 1975 Act (which relates to premises specified in an information to which an order made under section 42(1) of that Act relates, authorising a constable to search the said premises and if he finds the child to return the child to the

(a) 1970 c.42.

person on whose application the said order was made) shall be in Form 10 of the Magistrates' Courts (Children and Young Persons) Rules 1970 (a) (warrant to search for or remove a child) or a form to the like effect.

Miscellaneous amendments

18.—(1) The Rules of 1981 shall have effect subject to the following amendments.

(2) In Rule 36, there shall be inserted in paragraph (4)(b)(i), after the words "the Guardianship of Minors Act 1971" the words "or section 33, 34 or 37 of the Children Act 1975".

(3) In Rule 51, there shall be inserted after the words "the Act of 1978", the words "section 35A(5) of the Children Act 1975,".

Hailsham of St Marylebone, C.

Dated 28th October 1985.

(a) S.I. 1970/1792, amended by S.I. 1976/1769, 1978/869, 1983/526, 1793, 1984/567.

SCHEDULE

Rule 17(1)

FORMS

FORM 1

Rule 4(2)

COMPLAINT FOR CUSTODIANSHIP ORDER (*Children Act 1975, s.33*)

.....Magistrates' Court (*Code*)

Date:

Matter of complaint: an application for a custodianship order under section 33(1) of the Children Act 1975.
[an application for maintenance payments if a custodianship order is made.]
[an application for variation of a maintenance order made at (*specify court*) on (*date*)
in the amount of
payable to .]

1. *Particulars of complainant(s)*

Name:

Address:

Date of birth:

Occupation:

Relationship (if any) to the child in respect of whom the custodianship order is sought:

[Name of joint complainant.

Address:

Date of birth:

Occupation:

Relationship (if any) to the child in respect of whom custodianship order is sought:

Note

Enter the address where the complainant has his/her home, and the place (if different) where documents may be received.]

2. *Particulars of child*

Name:

Sex:

Date of birth:

3. *Parentage*

The child is the child of:

of: *(address)*

[or deceased]

[and;

of: *(address)*

[or deceased]

].

4. *Guardian*

The guardian(s) of the child (other than the mother or father of the child) is/are:

of: *(address)*

[and:

of:

].

5*(a) Consent of person having legal custody

.....
of.....
[and
of.....]

consent to the making of a custodianship order in my/our favour.

*(b) No-one has legal custody of the child.

*(c) I, _____, have legal custody of the child.

*(d) The person who has legal custody of the child cannot be found.

[6. *Care*

The child is in the care of
(who has/have the powers and duties of a parent or guardian of the child) (or
has/have parental rights and duties in respect of the child.)

[7. *Local Authority*

The name and address of the local authority in whose area the child resides is
of .]

[8. *Maintenance*

Under a court order made on the.....day of.....19.....
at.....
(or by an agreement dated the day of 19.....)
.....
of.....
.....
is obliged to pay maintenance for the child.]

Notes

Paragraph 3—If the child is illegitimate give details of the putative father. If he has legal custody of the child by virtue of a court order give details of that order under paragraph 10.

Paragraph 4—Cross out this paragraph if the child has no guardian. Do not include the person who has custody of the child only.

Paragraph 5—*Cross out the paragraphs which do not apply.
No consent is required where:

- (a) the child has lived with the applicant(s) for a period or periods which amount to 3 years including the 3 months before the application is made or
- (b) the applicant is either a relative or step-parent with whom the child has lived for 3 months before the application is made, or a person with whom the child has lived for a period or periods which amount to 1 year including the 3 months before the application is made AND (in both cases) no person has legal custody of the child, the applicant has legal custody of the child or the person having legal custody of the child cannot be found.

Paragraph 6—Cross out this paragraph unless the child is in the care of a local authority or a voluntary organisation.

Paragraph 7—If paragraph 6 is crossed out, this paragraph must be completed.

Paragraph 8—Cross out this paragraph unless some person or body has to pay maintenance for the child under a court order or agreement.

General particulars

- 9. The child has lived with me/us continuously since the day of 19...../for the following periods and has therefore lived with me/us for months/years including the three months immediately before the making of this application.

- 10. No proceedings wholly or partially relating to the child have been commenced or completed in any court in England and Wales or elsewhere (except

)

The complaint of the above-named complainant

Taken [and sworn] before me

Justice of the Peace
[Justices' Clerk]

ANNEX

You should complete the tear-off slip below and submit it to the justices' clerk so that he may send it within 7 days after the making of your complaint (or such extended period as the court or local authority may allow) to the local authority in whose area the child resides. The local authority is required to arrange for an officer of the authority to make a report to the court in connection with your application for a custodianship order; you should give the names and addresses of two referees whom the officer of the local authority may approach.

NOTICE OF AN APPLICATION FOR A CUSTODIANSHIP ORDER

Date:

To the Council.

Notice is hereby given that a complaint has been made by me/us on (date) to a justice of the peace acting for (petty sessions area) for a custodianship order in relation to (name of child) of (address).

Name of complainant(s):

Address (if different from that above):

For the purpose of this application reference may be made to—

Name of first referee:

Address:

Name of second referee:

Address:

FORM 2

Rule 4(3)

MEDICAL CERTIFICATE FOR CHILD OR COMPLAINANT IN APPLICATION FOR
CUSTODIANSHIP ORDER

I examined (the above-mentioned child) (the complainant.....)

on day of 19 .

I have formed the opinion that he/she is not suffering from any ill-health, disability or abnormality

or

He/she is suffering from.....

Signed

Date

Qualifications

Address

Note Where the person being examined is suffering from any ill-health, disability or abnormality give details of its nature and extent and its likely prognosis.

Rule 9

FORM 3

NOTICE TO LOCAL AUTHORITY OF PROPOSAL TO COMMIT CHILD TO CARE

(Children Act 1975, s.36(2), (3)(a); Guardianship Act 1973, s.2(2)(b)).....Magistrates' Court (*Code*)

Date:

To the Council.

Proceedings are pending [under section 35 of the Children Act 1975 for the revocation of a custodianship order] [under section 9 of the Guardianship of Minors Act 1971] before this court between (*applicant*) , of (*address*)

and (*defendant*) , of (*address*)

Notice is hereby given that the court intends, by virtue of section [[36(2)] [36(3)(a)] of the Children Act 1975] [2(2)(b) of the Guardianship Act 1973] to commit the care of the following child to the Council, namely:—

If the Council wishes to make any representations in this matter, including representations about payments to the council for the maintenance of the said child, the court will hear such representations on (*date*) at (*time*) at .

It will be helpful to know in advance of the hearing if representations are to be made.

Justices' Clerk

FORM 4

Rule 14(1)

CONSENT TO AN APPLICATION FOR A CUSTODIANSHIP ORDER (*Children Act 1975, s.33(3)*)

You are strongly advised to obtain legal advice before signing this form. Depending on your income and capital a solicitor's advice may be free. You may also get help from a Citizens Advice Bureau or Law Centre.

Whereas an application is to be/has been made by _____, a child:
for a custodianship order in relation to (*name of child*)

I, the undersigned,
of (*address*)

[being a parent/guardian of the child]

[an authorised officer of which has legal custody of the child]

hereby state as follows:

1. I understand that if an order is made in favour of the applicant(s) he/she/they will have transferred to him/her/them all the rights and duties in respect of the child that by law a mother and father have in relation to a legitimate child, until he/she attains the age of 18 years or until the court revokes the order if this happens before the child's 18th birthday, except the right to arrange for his/her emigration from the United Kingdom, to withhold agreement to the child's adoption, to administer the child's property, to change the child's name and to change the child's religion.

2. [I understand that I may apply to the court for an order for access to the child.]

3. I understand that the court cannot make a custodianship order without my consent.

4. I understand that the court would have power to order me to pay to the custodian for the benefit of the child or to the child such periodical payments or lump sum as the court might specify.

5. I understand that when the application for a custodianship order is heard this document may be used as evidence of my agreement unless I inform the court on or before the hearing of the application that I no longer agree.

6. I consent to the application of _____ for a custodianship order in respect of the child.

Signature:

This form, duly completed, was signed by the said _____ before me at
on the _____ day of _____ 19 .

Signature:

Address:

Description:

Notes

Introduction—Insert either the name of the parent or guardian, or the name of the authorised officer of the local authority or voluntary body in whose care the child is.

Paragraph 1—“Rights and duties” includes making decisions about the child’s care and upbringing and about the place and manner in which the child’s time is spent.

Paragraph 2—Cross out this paragraph if the person giving consent is not a parent or guardian. An application for access may be made by complaint under section 34 (1)(a) of the 1975 Act.

Paragraph 3—The consent of a person having legal custody of the child to an application for a custodianship order is required where the person making the application is

(a) a relative or step-parent of the child with whom the child has had his home for the 3 months preceding the making of the application;
or

(b) any person with whom the child has had his home for a period or periods before the making of the application which amount to at least 12 months and include the 3 months preceding the making of the application.

Such consent is not required where the application is made by any person with whom the child has had his home for a period or periods before the making of the application which amount to at least 3 years and include the 3 months preceding the making of the application.

Paragraph 4—Only the child’s parents (excluding the father of an illegitimate child) may be ordered to make periodical payments or pay a lump sum under custodianship provisions.

Paragraph 5—A summons indicating the time, date and place of hearing will be sent to you.

Witness Statement

In England and Wales, the document should be witnessed by a justice of the peace, an officer of a county court or a justices’ clerk. In Scotland, it should be witnessed by a justice of the peace or a sheriff, and in Northern Ireland, by a justice of the peace. Outside the United Kingdom, it should be witnessed by a person authorised by law in the place where the document is signed to administer an oath for any judicial or legal purpose, a British Consular officer, a notary public, or, if the person executing the document is serving in the regular armed forces of the Crown, an officer holding a Commission in any of those forces.

FORM 5

Rule 17(2)

CUSTODIANSHIP ORDER (*Children Act 1975, s.33*)

.....Magistrates' Court (*Code*)

Whereas [a complaint has been made under section 33 of the Children Act 1975] [an application made under (*specify statute and nature of application*) has been treated as an application under section 33 of the Children Act 1975] by of [and] for a custodianship order in respect of , a child of the sex, the child of [and];

It is adjudged that the complaint is true and it is ordered that the legal custody of the child be vested in the applicant(s).

[And whereas it appears to the court that there are exceptional circumstances making it desirable that the child should be under the supervision of an independent person, it is ordered that the child shall be under the supervision of a probation officer for the petty sessions area [or of the Council].]

[And whereas an application has been made by of , it is ordered that the custodian should give access to the child as follows:—

.]

[And whereas an application has been made by the custodian, it is ordered that (*the child's mother/father*) should pay to the custodian for the benefit of the child [or to the child] the following payments:— (*specify periodical/lump sum payments*) .]

[And whereas an application has been made by , it is ordered that an order dated made by court requiring (*the child's mother/father*) to contribute towards the child's maintenance, be revoked/varied as follows:— .]

Dated this day of 19

Justice of the Peace
[or By order of the court
Clerk of the Court]

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules lay down the procedure to be followed in magistrates' courts upon applications for or in relation to custodianship orders, to take account of the coming into force on 1st December 1985 (S.I. 1985/779) of Part II of the Children Act 1975.

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