

1989 No. 383 (L.6)

**MAGISTRATES' COURTS**

**The Magistrates' Courts (Custodianship Orders)  
(Amendment) Rules 1989**

<i>Made</i> - - - -	<i>8th March 1989</i>
<i>Laid before Parliament</i>	<i>10th March 1989</i>
<i>Coming into force</i> -	<i>1st April 1989</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:-

1. These Rules may be cited as the Magistrates' Courts (Custodianship Orders) (Amendment) Rules 1989 and shall come into force on 1st April 1989.

2. In these Rules, the "1985 Rules" means the Magistrates' Courts (Custodianship Orders) Rules 1985(b).

3. The 1985 Rules shall have effect subject to the following amendments:-

- (a) in rule 4(3) for the words "In the case of an application" there shall be substituted the words "Where a complaint is made";
- (b) in rule 6(1) for the words which follow the word "complaint;" in the second place where it occurs there shall be substituted the words "the court may direct that any of the persons (other than the applicant) specified in Rule 5(1) be made a defendant and the court shall cause notice of the proceedings to be served on any such defendant."

4. In their application to any proceedings except proceedings in relation to which the Family Law Reform Act 1987(c) does not have effect, the 1985 Rules shall have effect subject to the following amendments:-

- (a) in rule 5(17)(b) for the words "is illegitimate" there shall be substituted the words "was not married to the mother of the child at the time of his birth";
- (b) in Form 1 in the Schedule, in the note on paragraph 3, for the words from the beginning to "he", there shall be substituted the words "If the child's father and mother were not married to each other at the time of his birth, give details of the putative father. If the putative father";
- (c) in Form 4 in the Schedule, in the note on paragraph 4, the words "(excluding the father of an illegitimate child)" shall be omitted.

Dated 8th March 1989

*Mackay of Clashfern, C*

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(a) 1980 c.43; section 144 is extended by section 145 of that Act and by section 46(4) of the Children Act 1975 (c.72) as amended by the said Act of 1980, Schedule 7, paragraph 138.

(b) S.I. 1985/1695.

(c) 1987 c.42; section 33(2) and Schedule 3 provide that applications pending at the time when the provisions of the Family Law Reform Act 1987 come into force are not affected by those provisions.

## EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules amend the Magistrates' Courts (Custodianship Orders) Rules 1985. Paragraph (b) of rule 3 replaces, in relation to adoption, guardianship or custody applications treated as applications for custodianship orders, the requirement that the Court should make a defendant to an application so treated every person who would have been a defendant to a complaint for a custodianship order, by a discretion to make a defendant any such person as the court thinks appropriate. Paragraph (a) of rule 3 clarifies the wording of rule 4 of the 1985 Rules to make it clear that in the case of an application so treated it is not necessary for the person deemed to be an applicant to provide a medical report in relation to the child. Rule 4 deletes references in the 1985 rules to illegitimacy, thereby reflecting the general principle stated in section 1 of the Family Law Reform Act 1987 that references to any relationship between two persons shall be construed without regard to whether the father or mother of either of them have been married to each other at any time.

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