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STATUTORY INSTRUMENTS

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**1991 No. 1405 (L.18)**

**MAGISTRATES' COURTS**

**The Family Proceedings Courts (Constitution) Rules 1991**

*Made - - - - 11th June 1991*

*Laid before Parliament 28th June 1991*

*Coming into force in accordance with article 1*

The Lord Chancellor, in exercise of the powers conferred on him by section 144 of the Magistrates' Courts Act 1980, (1) after consultation with the Rule Committee appointed under the said section 144, hereby makes the following Rules:

**Citation, commencement, revocations and savings**

1.—(1) These Rules may be cited as the Family Proceedings Courts (Constitution) Rules 1991 and shall come into force on 14th October 1991, except that for the purposes of rules 4(1), 8, 11(2) and 12(1), these Rules shall come into force on 12th August 1991.

(2) Subject to paragraph (3), the Rules mentioned in the Schedule to these Rules are hereby revoked.

(3) Nothing in these Rules shall affect any proceedings which are pending (within the meaning of paragraph 1 of Schedule 14 to the Act of 1989) immediately before these Rules come into force.

**Interpretation**

2.—(1) In these Rules, unless a contrary intention appears—

any reference to a rule shall be construed as a reference to a rule contained in these Rules and any reference in a rule to a paragraph shall be construed as a reference to a paragraph of that rule;

“commission area” has the meaning assigned to it by section 1 of the Act of 1979 but does not include the inner London area or the City of London;

“inner London area” has the meaning assigned to it by section 2(1)(a) of the Act of 1979;

“panel” means “family panel”, within the meaning of section 92 of the Act of 1989;

“petty sessions area” has the meaning assigned to it by section 4 of the Act of 1979 but does not include the inner London area or any petty sessional division thereof, or the City of London;

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(1) 1980 c. 43, as extended by section 67 of that Act. Section 67 was amended by paragraph 8 of Schedule 11 to the Children Act 1989.

“stipendiary magistrate” means a magistrate appointed under section 13 of the Act of 1979;

“the Act of 1979” means the Justices of the Peace Act 1979 (2);

“the Act of 1989” means the Children Act 1989 (3).

(2) Any reference in these Rules to a justice for a petty sessions area shall be construed as a reference to a justice who ordinarily acts in and for that area.

### **Extent**

3. These Rules do not apply in the inner London area or in the City of London.

### **Appointments and formation of panel**

4.—(1) The justices for each petty sessions area shall, at a meeting held in October 1991, and before 14th October 1991, of which seven days' notice shall be given to each justice for that area, appoint, in accordance with the provisions of these Rules, justices to form a panel for that area who shall, subject to rule 5(4), serve thereon for a term commencing on 14th October 1991 and expiring on 31st December 1993.

(2) The justices for each petty sessions area shall, at the meeting held in October 1993 in accordance with rules made under section 18 of the Act of 1979 for the purpose of electing a chairman of the justices, and thereafter at the said meeting in every third year, appoint, in accordance with the provisions of these Rules, justices to form a panel for that area who shall, subject to rule 5(4), serve thereon for a term of three years commencing on 1st January in the following year.

(3) The number of justices appointed to the panel for a petty sessions area shall be such as the justices for that area at the time of appointment think sufficient for family proceedings courts in the area.

(4) Nominations shall be permitted but where voting is necessary it shall be by secret ballot.

(5) The justices for a petty sessions area may at any time, subject to rule 5(1), appoint one or more additional members of the panel who shall serve thereon until the end of the period for which the other members of the panel were appointed.

### **Eligibility and removal**

5.—(1) A justice shall not be appointed to a panel unless—

- (a) he is a justice of the petty sessions area for which the panel is being formed;
- (b) he has acted as a justice for a minimum period of one year;
- (c) he has indicated that he is willing to serve as a member of the panel; and
- (d) where he is appointed under rule 4(1), he will not attain the age of 70 years during the term of his appointment and has undertaken that he intends to serve as a member of the panel for the full term of the appointment.

(2) A justice shall be eligible for appointment to a panel whether or not he—

- (a) has been a member of that panel before, or
- (b) is, or has been, a member of any other panel.

(3) A stipendiary magistrate who has been nominated by the Lord Chancellor to hear family proceedings shall be a member of any panel for a petty sessions area or areas which is situated in the commission area or areas to which he is appointed and every such nomination shall be for a specified period and shall be revocable by the Lord Chancellor.

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(2) 1979 c. 55.

(3) 1989 c. 41.

(4) The Lord Chancellor may remove from a panel any justice who, in the Lord Chancellor's opinion, is unsuitable to serve on a family proceedings court.

#### **Vacancies in membership of panel**

6. If a vacancy occurs in the membership of a panel for a petty sessions area, the justices for that area shall, as soon as practicable, unless they consider that it is not necessary, and subject to rule 5, appoint a justice to fill the vacancy who shall serve on the panel until the end of the period for which the other members were appointed.

#### **Temporary transfer of justices between panels**

7.—(1) Subject to paragraph (4), the justices' clerk for one petty sessions area ("the first area") may make a request to the justices' clerk for another petty sessions area ("the second area") for the temporary transfer of one or more justices from the panel for the second area to the panel for the first area for the purpose of hearing family proceedings specified in the request.

(2) The justices' clerk for the second area shall grant a request under paragraph (1) where he considers that the better administration of justice will be served by such a transfer, and the justice or justices who are to be nominated by him for the transfer agree to be transferred.

(3) A justices' clerk who grants a request under paragraph (1) shall do so in writing.

(4) Where the first area falls within a different commission area to the second area, a justice or justices shall only be transferred under this rule where the Lord Chancellor appoints the justice or justices who are nominated for the transfer to the commission area within which the first area falls for the purpose of the proceedings specified in the request.

(5) The transfer of a justice or justices under this rule shall not prevent the justice or justices transferred from sitting in a family proceedings court in the second area.

#### **Chairman and deputy chairmen of panel**

8.—(1) The members of each panel shall, in accordance with the provisions of this rule and rule 9, on the occasion of their appointment or as soon as practicable thereafter, meet and elect from amongst their number a chairman and as many deputy chairmen as will ensure, subject to rule 10(3), that each family proceedings court sits under the chairmanship of a person so elected.

(2) Nominations for chairman and one or more deputy chairmen may be made by the members of the panel to the justices' clerk but, where voting is necessary, it shall be by secret ballot.

(3) If a vacancy occurs in the chairmanship or deputy chairmanship, the members of the panel shall, as soon as practicable, elect by secret ballot a chairman or, as the case may be, deputy chairman, to hold office for the remainder of the period for which the members serve.

#### **Conduct of ballots generally**

9.—(1) Where, under a ballot conducted under any provision of these Rules, there is an equality of votes between any candidates, and the addition of a vote would entitle one of them to be elected, the justices' clerk shall forthwith decide between those candidates by lot.

(2) Where, under a ballot conducted under any provision of these Rules, a ballot paper is returned unmarked or it is marked in such a manner that there is a doubt as to the identity of the justice or justices for whom the vote is cast, the ballot paper or the vote, as the case may be, shall be rejected when the votes are counted.

### Composition of family proceedings courts

10.—(1) The members of a panel shall meet as often as may be necessary but not less than twice a year to make arrangements connected with the sitting of family proceedings courts and to discuss questions connected with the work of those courts.

(2) The justices to sit in each family proceedings court shall be chosen from the panel in such manner as the panel may determine so as to ensure that section 66(1) of the Magistrates' Courts Act 1980(4)(which requires a family proceedings court to be composed of not more than three justices of the peace, including, so far as practicable, both a man and a woman), is complied with.

(3) Except as is provided by paragraph (4), where a stipendiary magistrate is chosen to sit in a family proceedings court under paragraph (2) he shall preside, but where a stipendiary magistrate is not so chosen, the court shall sit under the chairmanship of the chairman or a deputy chairman elected under rule 8.

(4) If, at any sitting of a family proceedings court, a stipendiary magistrate, the chairman or a deputy chairman who was chosen to sit as a member of the court cannot do so owing to circumstances unforeseen when the justices to sit were chosen under paragraph (2), the members of that court shall choose one of their number to preside.

### Combined panels

11.—(1) Where, immediately before 14th October 1991, there exists a combined domestic court panel (“the first panel”) in respect of two or more petty sessions areas there shall, with effect from 14th October 1991, be a combined family panel (“the second panel”) for those areas and in relation to the second panel these Rules shall have effect as if—

- (a) a direction for its formation had, before 14th October 1991, been made under paragraph (2) by the magistrates' courts committee for the areas in question, save that paragraphs (4) and (5) shall not apply, and
- (b) the direction stated under paragraph (6) that the number of justices to serve as members, and the number of members to be provided by each area, were to be the same as for the first panel.

(2) Subject to the provisions of this rule, a magistrates' courts committee may make a direction for the formation or dissolution of a combined panel in respect of two or more petty sessions areas in the same commission area, of which at least one is a petty sessions area for which the committee acts.

(3) A direction under paragraph (2) shall not be made unless the magistrates' courts committee has consulted the justices for each petty sessions area specified in the direction for which it acts.

(4) A direction under paragraph (2) shall be notified forthwith to the justices for each petty sessions area specified in the direction.

(5) If a magistrates' courts committee makes a direction under paragraph (2) which specifies a petty sessions area or petty sessions areas for which it does not act, the direction shall have no effect unless, before the date on which it is to come into effect, a corresponding direction has been made by the magistrates' courts committee or committees for the area or areas in question.

(6) A direction for the formation of a combined panel shall state—

- (a) the number of justices who are to serve as members of the combined panel, which shall be such as the magistrates' courts committee thinks sufficient for family proceedings courts in the petty sessions areas specified in the direction; and
- (b) the number of members thereof to be provided by each area, which shall, as nearly as may be, be the proportion which the number of justices for that area bears to the total number of justices for the petty sessions areas specified in the direction.

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(4) 1980 c. 43.

(7) A direction for the formation or dissolution of a combined panel under paragraph (2) shall have effect—

- (a) where it is a direction for the formation of a combined panel and is made before 14th October 1991, on that date,
- (b) where sub-paragraph (a) does not apply and the direction is consequential upon the making of an order under section 23 of the Act of 1979, on the date on which that order comes into force, and
- (c) in any other case, on 1st January in the year following the next October meeting of the justices for each of the areas concerned held in accordance with rules made under section 18 of the Act of 1979 for the purpose of electing a chairman of the justices.

(8) For the purposes of paragraph (7)(b), a direction is consequential upon the making of an order under the said section 23 if it is made after that order is made (but before it comes into force) and specifies a petty sessions area which is the subject of such an order.

(9) A magistrates' courts committee which has made a direction for the formation of a combined panel may at any time make a further direction to increase the number of justices specified under paragraph (6)(a) and any such further direction shall state the petty sessions area or petty sessions areas by which the additional member or members is or are to be provided.

(10) A further direction in relation to a combined panel under paragraph (9) shall have effect forthwith or, in the case of a direction which specifies a petty sessions area or petty sessions areas for which the magistrates' courts committee does not act, as soon as corresponding further directions have been made under that paragraph by the magistrates' courts committee or committees for the area or areas in question.

(11) A combined panel formed by a direction made under paragraph (2), shall be the panel for the petty sessions areas specified in the direction and, in relation to any such combined panel, subject to rule 12(4), these Rules shall have effect accordingly.

(12) On the coming into effect of a direction made under this rule (other than a further direction under paragraph (9)), any existing panel in respect of any of the petty sessions areas specified in the direction shall dissolve and any appointments thereto shall cease.

### **Appointment of justices to combined panel**

**12.**—(1) Where a magistrates' courts committee has made a direction for the formation of a combined panel under rule 11(2), the justices for each petty sessions area specified in the direction shall, at a meeting of the justices held in accordance with paragraph (2), appoint, subject to paragraph (3), such number of justices from the petty sessions areas in question as is stated in the direction, to serve as members of the combined panel, for a term commencing at the same time as the direction will have effect and expiring at the same time as will end the term of appointment of any justices for the time being appointed under rule 4(1) or, where that term has expired, rule 4(2), to form a panel which is not specified in the direction.

(2) The meeting referred to in paragraph (1) shall be—

- (a) where the direction is made before 14th October 1991, the meeting referred to in rule 4(1);
- (b) where sub-paragraph (a) does not apply and the direction is consequential upon the making of an order under section 23 of the Act of 1979, within the meaning of rule 11(8), a meeting held as soon as practicable after the direction has been made; and
- (c) in any other case, the meeting referred to in rule 11(7)(c).

(3) In relation to the appointment of justices under paragraph (1), rules 4(4), 5(1)(b)–(d), (2) and (3), and 9 of these Rules shall apply as they apply in relation to appointments under rule 4.

- (4) Subject to rule 13, after the first appointments to a combined panel have been made in accordance with paragraph (1), these Rules shall have effect in relation to the combined panel as if—
- (a) in rule 4:
    - (i) references to appointments to a panel in paragraph (2) of that rule were references to appointments to the combined panel of such number of justices from the petty sessions area as is stated in the direction; and
    - (ii) paragraphs (3) and (5) thereof were omitted;
  - (b) for paragraph (1)(a) of rule 5 there were substituted the following paragraph—

“(1) The members of a combined panel provided by each petty sessions area for which the panel is formed shall be appointed from amongst the justices for that area.”;
  - (c) for rule 6 there were substituted the following rule—

“6. If a vacancy occurs in the number of justices forming a combined panel or if a further direction is made under rule 11(9), the justices for the appropriate petty sessions area shall as soon as practicable appoint such a justice or justices as might have been appointed to the panel under rule 5.”;
  - (d) in rule 7, where the first area or the second area is one of the petty sessions areas for which the combined panel has been formed, the references to those areas included the other petty sessions areas in respect of which the combined panel has been formed.

#### **Appointments of justices to a panel as a consequence of a dissolution of a combined panel**

**13.**—(1) Where a magistrates' courts committee makes a direction under rule 11(2), for the dissolution of a combined panel, the justices for each petty sessions area specified in the direction shall (unless the petty sessions area is also specified in a direction for the formation of a combined panel), at a meeting of the justices held in accordance with paragraph (2), appoint, subject to paragraph (3), justices to form a panel for that area for a term commencing at the same time as the direction will have effect and expiring at the same time as will end the term of appointment of any justices for the time being appointed under rule 4(1) or, where that term has expired, rule 4(2), to form a panel which is not specified in the direction.

- (2) The meeting referred to in paragraph (1) shall be—
  - (a) where the direction is consequential upon the making of an order under section 23 of the 1979 Act, within the meaning of rule 11(8), a meeting held as soon as practicable after the direction has been made; and
  - (b) in any other case, the meeting of the justices referred to in rule 11(7)(c).
- (3) In relation to the appointment of justices under paragraph (1), rules 4(3), (4) and (5), 5(1), (2) and (3) and 9 shall apply as they apply in relation to appointments under rule 4.

Dated 11th June 1991

*Mackay of Clashfern, C.*

SCHEDULE

Rule 1(2)

REVOCATIONS

Rules revoked	References
The Domestic Courts (Constitution) Rules 1979	S.I. <a href="#">1979/757</a>
The Domestic Courts (Constitution) (Amendment) Rules 1983	S.I. <a href="#">1983/676</a>
The Domestic Courts (Constitution) (Amendment) Rules 1988	S.I. <a href="#">1988/868</a>

**EXPLANATORY NOTE**

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

These Rules, which do not apply in the inner London area or in the City of London, are made as a consequence of the introduction, by the Children Act 1989 (c. 41), of family proceedings in magistrates' courts which, from 14th October 1991, replace domestic proceedings and thereby create a need for family panels to be constituted in place of domestic court panels.

Rule 4 provides that justices for each petty sessions area shall, at a meeting held in the first two weeks of October 1991, appoint justices to form a family panel, and specifies the term of their appointment and future appointments.

Rule 5 sets out the eligibility requirements for appointment to a family panel and enables the Lord Chancellor to remove any unsuitable justice from such a panel.

Rule 7 enables a justice, in certain circumstances, to be temporarily transferred from one family panel to another within the same commission area, or to another commission area where he has first been appointed to that area by the Lord Chancellor.

Rule 8 provides that the members of each family panel shall elect a chairman and deputy chairman or chairmen who, in accordance with rule 10(3), will normally preside at a sitting of the family proceedings court.

Rule 11(1) provides that where, immediately before 14th October 1991, a domestic court panel was combined for two or more petty sessions areas, these Rules shall apply as if the magistrates' courts committee for the areas in question had, before that date, made a direction for the formation of a combined family panel for those areas. Rule 11 also provides for the circumstances in which a magistrates' courts committee may make a direction for the formation or dissolution of a combined family panel and when such a direction is to take effect. The effect of such a direction is to dissolve any existing family panel in respect of the petty sessions areas specified in the direction.

Rules 12 and 13 provide that where a magistrates' courts committee has made a direction for the formation or dissolution of a combined family panel, justices must be appointed to serve as members of any panel which is constituted as a result of the direction, and specify when such appointments shall be made and the terms of such appointments.

These Rules revoke the Domestic Courts (Constitution) Rules 1979 and relevant amending statutory instruments. Nothing in these Rules affects any proceedings which are pending (within the meaning

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of paragraph 1 of Schedule 14 to the Act of 1989) immediately before these Rules come into force. These Rules shall come into force on 14th October 1991 except that for the purposes of rules 4(1), 8, 11(2) and 12(1), they shall come into force on 12th August 1991.