

2001 No. 818 (L. 15)

MAGISTRATES' COURTS, ENGLAND AND WALES

**The Family Proceedings Courts (Children Act 1989)
(Amendment) Rules 2001**

<i>Made</i> - - - - -	<i>6th March 2001</i>
<i>Laid before Parliament</i>	<i>9th March 2000</i>
<i>Coming into force</i> - -	<i>1st April 2001</i>

The Lord Chancellor, in exercise of the powers conferred upon 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 Family Proceedings Courts (Children Act 1989) (Amendment) Rules 2001 and shall come into force on 1st April 2001.

2. The Family Proceedings Courts (Children Act 1989) Rules 1991(b) ("the 1991 Rules") shall be amended in accordance with the following provisions of these Rules and, in those provisions, any reference to a rule or Schedule by number alone shall be construed as a reference to the rule or Schedule so numbered in the 1991 Rules.

3. In rule 1(2)—

(a) at the appropriate places, insert—

(i) "“children and family reporter” means an officer of the service who has been asked to prepare a welfare report under section 7(1)(a)(c);”;

(ii) "“children’s guardian”—

(a) means an officer of the service appointed under section 41(d) for the child with respect to whom the proceedings are brought; but

(b) does not include such an officer appointed in relation to proceedings specified by rule 21A;”;

(iii) "“officer of the service” has the same meaning as in the Criminal Justice and Court Services Act 2000(e);”;

(b) omit the definition of “guardian ad litem”; and

(c) in the definition of “welfare officer”, for section 7” substitute “section 7(1)(b)”.

4. In the remaining provisions of the 1991 Rules—

(a) except in rules 21E and 21J, for “guardian ad litem”, wherever it appears, substitute “children’s guardian”; and

(a) 1980 c. 43; section 144 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 25 and by the Access to Justice Act 1999 (c. 22), Schedule 11, paragraphs 26 and 29.

(b) S.I. 1991/1395. The relevant amending instruments are S.I. 1991/1991; 1992/2068; 1994/2166 and 3056 and 1997/1895.

(c) The Children Act 1989 (c. 41); section 7 is amended by the Criminal Justice and Court Services Act 2000 (c. 43), Schedule 7, Part II, paragraphs 87 and 88.

(d) 1989 c. 41; section 41 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 16, paragraph 17 and is amended by the Criminal Justice and Court Services Act 2000 (c. 43), Schedule 7, Part II, paragraphs 87 and 91 and Schedule 8.

(e) 2000 c. 43.

(b) except in rule 13, for “welfare officer” substitute “welfare officer or children and family reporter”.

5. In rule 10—

(a) after paragraph (4) insert—

“(4A) The justices’ chief executive or the court may, in specified proceedings, appoint more than one children’s guardian in respect of the same child.”; and

(b) for paragraph (7) substitute—

“(7) A children’s guardian appointed by the justices’ chief executive or by the court under this rule shall not—

(a) be a member, officer or servant of a local authority which, or an authorised person (within the meaning of section 31(9)) who, is a party to the proceedings;

(b) be, or have been, a member, officer or servant of a local authority or voluntary organisation (within the meaning of section 105(1)) who has been directly concerned in that capacity in arrangements relating to the care, accommodation or welfare of the child during the five years prior to the commencement of the proceedings; or

(c) be a serving probation officer who has, in that capacity, been previously concerned with the child or his family.”.

6. For rule 11 substitute—

“Powers and duties of officers of the service

11.—(1) In carrying out his duty under section 7(1)(a) or section 41(2), the officer of the service shall have regard to the principle set out in section 1(2) and the matters set out in section 1(3)(a) to (f) as if for the word “court” in that section there were substituted the words “officer of the service”.

(2) The officer of the service shall make such investigations as may be necessary for him to carry out his duties and shall, in particular—

(a) contact or seek to interview such persons as he thinks appropriate or as the court directs;

(b) obtain such professional assistance as is available to him which he thinks appropriate or which the justices’ clerk or the court directs him to obtain.

(3) In addition to his duties, under other paragraphs of this rule, or rules 11A or 11B, the officer of the service shall provide to the justices’ chief executive, the justices’ clerk and the court such other assistance as he or it may require.

(4) A party may question the officer of the service about oral or written advice tendered by him to the justices’ chief executive, the justices’ clerk or the court.”.

7. After rule 11, insert new rules as follows—

“Additional powers and duties of children’s guardian

11A.—(1) The children’s guardian shall—

(a) appoint a solicitor to represent the child unless such a solicitor has already been appointed; and

(b) give such advice to the child as is appropriate having regard to his understanding and, subject to rule 12(1)(a), instruct the solicitor representing the child on all matters relevant to the interests of the child including possibilities for appeal, arising in the course of proceedings.

(2) Where it appears to the children’s guardian that the child—

(a) is instructing his solicitor direct; or

(b) intends to conduct and is capable of conducting the proceedings on his own behalf,

he shall inform the court through the justices’ chief executive and from then he—

(i) shall perform all of his duties set out in rule 11 and this rule, other than those duties under paragraph (1)(a) of this rule, and such other duties as the justices’ clerk or the court may direct;

- (ii) shall take such part in the proceedings as the justices' clerk or the court may direct; and
- (iii) may, with the leave of the justices' clerk or the court, have legal representation in the conduct of those duties.

(3) Unless excused by the justices' clerk or the court, the children's guardian shall attend all directions appointments in and hearings of the proceedings and shall advise the court on the following matters—

- (a) whether the child is of sufficient understanding for any purpose including the child's refusal to submit to a medical or psychiatric examination or other assessment that the court has the power to require, direct or order;
- (b) the wishes of the child in respect of any matter relevant to the proceedings including his attendance at court;
- (c) the appropriate forum for the proceedings;
- (d) the appropriate timing of the proceedings or any part of them;
- (e) the options available to it in respect of the child and the suitability of each such option including what order should be made in determining the application; and
- (f) any other matter concerning which the justices' chief executive, the justices' clerk or the court seeks his advice or concerning which he considers that the justices' chief executive, the justices' clerk or the court should be informed.

(4) The advice given under paragraph (3) may, subject to any order of the court, be given orally or in writing; and if the advice be given orally, a note of it shall be taken by the justices' clerk or the court.

(5) The children's guardian shall, where practicable, notify any person whose joinder as a party to those proceedings would be likely, in the opinion of the officer of the service, to safeguard the interests of the child of that person's right to apply to be joined under rule 7(2) and shall inform the justices' chief executive or the court—

- (a) of any such notification given;
- (b) of anyone whom he attempted to notify under this paragraph but was unable to contact; and
- (c) of anyone whom he believes may wish to be joined to the proceedings.

(6) The children's guardian shall, unless the justices' clerk or the court otherwise directs, not less than 14 days before the date fixed for the final hearing of the proceedings—

- (a) file a written report advising on the interests of the child;
- (b) serve a copy of the filed report on the other parties.

(7) The children's guardian shall serve and accept service of documents on behalf of the child in accordance with rule 8(3)(b) and (4)(b) and, where the child has not himself been served, and has sufficient understanding, advise the child of the contents of any document so served.

(8) If the children's guardian inspects records of the kinds referred to in section 42(a), he shall bring to the attention of—

- (a) the court, through the justices' chief executive; and
- (b) unless the court or the justices' clerk otherwise directs, the other parties to the proceedings,

all records and documents which may, in his opinion, assist in the proper determination of the proceedings.

(9) The children's guardian shall ensure that, in relation to a decision made by the justices' clerk or the court in the proceedings—

- (a) if he considers it appropriate to the age and understanding of the child, the child is notified of that decision; and
- (b) if the child is notified of the decision, it is explained to the child in a manner appropriate to his age and understanding.

(a) 1989 c. 41; section 42 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 16, paragraph 18 and Schedule 20 and is amended by the Criminal Justice and Court Services Act 2000 (c. 43), Schedule 7, Part II, paragraphs 87 and 92 and by the Local Government Act 2000 (c. 22), Schedule 5, paragraph 20.

Additional powers and duties of a children and family reporter

11B.—(1) In addition to his duties under rule 11, the children and family reporter shall—

- (a) notify the child of such contents of his report (if any) as he considers appropriate to the age and understanding of the child, including any reference to the child's own views on the application and the recommendation of the children and family reporter; and
- (b) if he does notify the child of any contents of his report, explain them to the child in a manner appropriate to his age and understanding.

(2) Where the court has—

- (a) directed that a written report be made by a children and family reporter; and
- (b) notified the children and family reporter that his report is to be considered at a hearing,

the children and family reporter shall—

- (i) file his report; and
- (ii) serve a copy on the other parties and on the children's guardian (if any),

by such time as the court may direct and if no direction is given, not less than 14 days before that hearing.

(3) The court may direct that the children and family reporter attend any hearing at which his report is to be considered.

(4) The children and family reporter shall advise the court if he considers that the joinder of a person as a party to the proceedings would be likely to safeguard the interests of the child.

(5) The children and family reporter shall consider whether it is in the best interests of the child for the child to be made a party to the proceedings.

(6) If the children and family reporter considers the child should be made a party to the proceedings he shall notify the court of his opinion together with the reasons for that opinion.”.

8. In rule 12—

- (a) for “rule 11(2)(a)”, wherever it appears, substitute “rule 11A(1)(a)”; and
- (b) in paragraph (1)(a), for “rule 11(3)” substitute “rule 11A(2)”.

9. In rule 13—

- (a) in paragraph (1), after “welfare officer” insert “in accordance with section 7(1)(b)”; and
- (b) after paragraph (3) insert—
 - “(3A) The welfare officer shall consider whether it is in the best interests of the child for the child to be made a party to the proceedings.
 - (3B) If the welfare officer considers the child should be made a party to the proceedings he shall notify the court of his opinion together with the reasons for that opinion.”.

10. In rule 14(2)(d), omit “whether under section 41 or otherwise”.

11. In rule 21A(1)—

- (a) omit the definition of “guardian ad litem”; and
- (b) at the appropriate place insert—
 - ““parental order reporter” means an officer of the service appointed under section 41 of the Children Act 1989 in relation to proceedings specified by paragraph (2);”.

12. In rule 21B—

- (a) for “11(2)” substitute “11A(1)”; and
- (b) for “11(3)” substitute “11A(2)”.

13. In rule 21E—

- (a) for “guardian ad litem”, wherever it appears, substitute “parental order reporter”; and
- (b) omit paragraph (2); and

(c) in paragraph (3), for “rule 11”, substitute “rules 11 and 11A”.

14. After rule 22 insert—

“Power of court to limit cross-examination

22A. The court may limit the issues on which an officer of the service may be cross-examined.”.

15. In rule 23—

(a) in paragraph (1), after sub-paragraph (e), insert—

“or

(f) an expert whose instruction by a party has been authorised by the court,”;

(b) for paragraph (3) substitute—

“(3) Nothing in this rule shall prevent the disclosure of a document prepared by an officer of the service for the purpose of—

(a) enabling a person to perform functions required under section 62(3A) of the Justices of the Peace Act 1997(a);

(b) assisting an officer of the service who is appointed by the court under any enactment to perform his functions.”; and

(c) after paragraph (3) insert—

“(4) Nothing in this rule shall prevent the disclosure of any document relating to proceedings by an officer of the service to any other officer of the service unless that other officer is involved in the same proceedings but on behalf of a different party.”.

16. In Schedule 1—

(a) for Forms C1 (Application for an order) and C9 (Statement of service), substitute the forms in Schedule 1 to these Rules;

(b) in Form C7 (Acknowledgement), for “Clerk of the Justices” substitute “Chief Executive to the Justices”;

(c) in Form C42 (Family Assistance Order), for “a probation officer” substitute “an officer of the service”;

(d) in Form C47 (Order), wherever it appears, and in form C48 (Order), for “guardian ad litem” substitute “children’s guardian”.

17. Where—

(a) before the coming into force of these Rules a person has been appointed as guardian ad litem under section 41 of the Children Act 1989; and

(b) the proceedings in which he was appointed are still continuing;

that person shall, for the purposes of the application of the 1991 Rules, be treated as if he had been appointed—

(i) children’s guardian; or

(ii) parental order reporter,

as the case may be.

18. Where—

(a) before the coming into force of these rules a person had been requested to prepare a welfare report in accordance with section 7(1)(a) of the Children Act 1989; and

(b) the proceedings in which the report was requested are still continuing.

that person shall, for the purposes of the application of the 1991 Rules, be treated as the children and family reporter in those proceedings.

6th March 2001

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(a) 1997 c. 25; section 62(3A) is inserted by the Criminal Justice and Court Services Act 2000 (c. 43), section 17(1).

3 Other cases which concern the child(ren)

If there have ever been, or there are pending, any court cases which concern

- *a child whose name you have put in paragraph 2*
- *a full, half or step brother or sister of a child whose name you have put in paragraph 2*
- *a person in this case who is or has been, involved in caring for a child whose name you have put in paragraph 2*

attach a copy of the relevant order and give

- *the name of the court*
- *the name and contact address (if known) of the children's guardian, if appointed*
- *the name and contact address (if known) of the children and family reporter, if appointed*
- *the name and contact address (if known) of the welfare officer, if appointed*
- *the name and contact address (if known) of the solicitor appointed for the child(ren).*

4 The respondent(s)

Appendix 3 Family Proceedings Rules 1991; Schedule 2 Family Proceedings Courts (Children Act 1989) Rules 1991

- For each respondent state*
- *the title, full name and address*
 - *the date of birth (if known) or the age*
 - *the relationship to each child.*

5 Others to whom notice is to be given

Appendix 3 Family Proceedings Rules 1991; Schedule 2 Family Proceedings Courts (Children Act 1989) Rules 1991

- For each person state*
- *the title, full name and address*
 - *the date of birth (if known) or age*
 - *the relationship to each child.*

6 The care of the child(ren)

For each child in paragraph 2 state

- *the child's current address and how long the child has lived there*
- *whether it is the child's usual address and who cares for the child there*
- *the child's relationship to the other children (if any).*

7 Social Services

For each child in paragraph 2 state

- *whether the child is known to the Social Services*
If so, give the name of the social worker and the address of the Social Services department.
- *whether the child is, or has been, on the Child Protection Register. If so, give the date of registration.*

8 The education and health of the child(ren)

- For each child state*
- *the name of the school, college or place of training which the child attends*
 - *whether the child is in good health. Give details of any serious disabilities or ill health.*
 - *whether the child has any special needs.*

9 The parents of the child(ren)

- For each child state*
- *the full name of the child's mother and father*
 - *whether the parents are, or have been, married to each other*
 - *whether the parents live together. If so, where.*
 - *whether, to your knowledge, either of the parents have been involved in a court case concerning a child. If so, give the date and the name of the court.*

10 The family of the child(ren) (other children)

- For any other child not already mentioned in the family (for example, a brother or a half sister) state*
- *the full name and address*
 - *the date of birth (if known) or age*
 - *the relationship of the child to you.*

11 Other adults

- State
- *the full name of any other adults (for example, lodgers) who live at the same address as any child named in paragraph 2*
 - *whether they live there all the time*
 - *whether, to your knowledge, the adult has been involved in a court case concerning a child. If so, give the date and the name of the court.*

12 Your reason(s) for applying and any plans for the child(ren)

State briefly your reasons for applying and what you want the court to order.

- **Do not** give a full statement if you are applying for an order under Section 8 of Children Act 1989. You may be asked to provide a full statement later.
- **Do not** complete this section if this form is accompanied by a prescribed supplement.

13 At the court

- State
- *whether you will need an interpreter at court (parties are responsible for providing their own). If so, specify the language.*
 - *whether disabled facilities will be needed at court.*

Signed
(Applicant)

Date

C1

Statement of Service

Form C9

Family Proceedings Rules 1991 Rule 4.8

Family Proceeding Courts (Children Act 1989) Rules 1991 Rule 8

The Court

Case Number

The full name(s) of the child(ren)

Child(ren)'s number(s)

-
- You must
- give details of service of the application on each of the other parties
 - give details of service on persons to whom notice has to be given
 - file this form with the court on or before the first Directions Appointment or Hearing of the proceedings
- You should
- if the person's solicitor was served, give his or her name and address
 - if the children's guardian was served on behalf of the child, give his or her name and **contact** address.
- You must indicate
- the manner, date, time and place of service,
 - or** • where service was effected by post, the date, time and place of posting.
-

Name and address of person served	How, when and where served	Prescribed forms served

I have served the [application] [Notice of Proceedings] as stated above.

I am the [applicant] [solicitor for the applicant] [other (state)]

Signed

Date

C9

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Family Proceedings Courts (Children Act 1989) Rules 1991 following the establishment of the Children and Family Court Advisory and Support Service ('CAFCASS') by the Criminal Justice and Court Services Act 2000 (c. 43). The term 'guardian ad litem' is replaced in proceedings under Children Act 1989 (c. 41) by 'children's guardian', and in proceedings for a parental order under section 30 of the Human Fertilisation and Embryology Act 1990 (c. 37) by 'parental order reporter'. An officer of the service who is appointed under section 7(1)(a) of the Children Act 1989 (c.41) is called a 'children and family reporter'. A person appointed by a local authority under section 7(1)(b) of that Act will continue to be known as a welfare officer.

The Rules permit more than one children's guardian to be appointed if the court considers it appropriate. They set out clearly the powers and duties of officers of the service. The provisions relating to disclosure of documents have been amended to facilitate inspection of CAFCASS and also to allow disclosure where this would assist an officer of the service to perform any of his functions. They also permit disclosure within CAFCASS save where a conflict of interest arises and disclosure without the leave of the court to an expert whose instruction by a party has been authorised by the court.

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