

## 1974 No. 706 (L.13)

## MAGISTRATES' COURTS

## The Magistrates' Courts (Guardianship of Minors) Rules 1974

*Made* - - - 11th April 1974

*Laid before Parliament* 24th April 1974

*Coming into Operation* 8th May 1974

The Lord Chancellor, in exercise of the powers conferred on him by section 3 of the Marriage Act 1949(a) and by section 15 of the Justices of the Peace Act 1949(b), as extended by section 122 of the Magistrates' Courts Act 1952(c), section 16(5) of the Guardianship of Minors Act 1971(d) and that section as applied by sections 1(6), 3(3) and 4(3) of the Guardianship Act 1973(e), and section 3(4) of the said Act of 1973, after consultation with the Rule Committee appointed under the said section 15, hereby makes the following Rules:—

*Citation and commencement*

1. These Rules may be cited as the Magistrates' Courts (Guardianship of Minors) Rules 1974 and shall come into operation on 8th May 1974.

*Interpretation*

2.—(1) In these Rules, the following expressions have the meanings hereby respectively assigned to them, that is to say:—

“the Act of 1949” means the Marriage Act 1949;

“the Act of 1971” means the Guardianship of Minors Act 1971;

“the Act of 1973” means the Guardianship Act 1973;

“court” means a magistrates' court;

“the Rules of 1968” means the Magistrates' Courts Rules 1968(f), as amended(g);

“supervision order” means an order made by a magistrates' court under section 2(2)(a) of the Act of 1973 providing for the supervision of a minor by a probation officer or local authority.

(2) In these Rules, unless the context otherwise requires, any reference to a rule or to the Schedule shall be construed as a reference to a rule contained in these Rules or to the Schedule thereto; and any reference in a rule to a paragraph shall be construed as a reference to a paragraph of that rule.

(3) In these Rules, any reference to a form in the Schedule shall be construed as including a reference to a form to the like effect with such variations as the circumstances may require.

(a) 1949 c. 76.

(b) 1949 c. 101.

(c) 1952 c. 55.

(d) 1971 c. 3.

(e) 1973 c. 29.

(f) S.I. 1968/1920 (1968 III, p. 5175).

(g) The relevant amending instrument is S.I. 1973/790 (1973 I, p. 2500).

(4) In these Rules, unless the context otherwise requires, any reference to any enactment shall be construed as a reference to that enactment as amended, extended or applied by any subsequent enactment.

(5) The Interpretation Act 1889(a) shall apply for the interpretation of these Rules as it applies for the interpretation of an Act of Parliament.

*Revocation*

3. The Guardianship of Infants (Summary Jurisdiction) Rules 1925(b) and the Guardianship of Infants (Summary Jurisdiction) Rules 1944(c) are hereby revoked.

*Applications under Guardianship of Minors Acts 1971 and 1973 to be by complaint*

4. Except as provided in rule 8, an application to a court under any provision of the Act of 1971 or the Act of 1973 shall be made by way of complaint.

*Procedure for applications for consent to marriage*

5.—(1) An application for the consent of the court to the marriage of a minor under section 3 of the Act of 1949 (marriages of persons under 18) may be made, either orally or in writing, to a justice of the peace having jurisdiction in the place where the applicant or any respondent resides.

(2) Upon receiving such an application as is referred to in paragraph (1) the justice shall, where the application was in consequence of a refusal to give consent to the marriage, give to any person whose consent is required and who has refused consent a notice of the application and of the date, time and place appointed for the hearing thereof.

(3) Rule 82 of the Rules of 1968 (service of summons, etc.) shall apply in relation to the service of a notice given in accordance with paragraph (2) as it applies in relation to the service of a summons issued on a person other than a corporation.

(4) The provisions of Part II of the Magistrates' Courts Act 1952 relating to the hearing of a complaint and of rule 14 of the Rules of 1968 (order of evidence and speeches) shall apply to the hearing of such an application as is referred to in paragraph (1) as if it were made by way of complaint but as if for any reference therein to the complainant, the complaint, the defendant and his defence there were substituted references, respectively, to the applicant, the application, the respondent and his case.

*Provisions for certain hearings to be in camera*

6. If a court which hears an application under section 3 of the Act of 1949 or any provision of the Act of 1971 considers it expedient in the interests of the minor, it may decide to hear the proceedings *in camera*.

*Notice to local authority of proposal to commit minor to its care*

7. Where, on an application under section 9 of the Act of 1971 (orders for custody and maintenance), the court proposes to commit a minor to the care of a local authority under section 2(2)(b) of the Act of 1973, the court shall, at least ten days before making the order, cause a notice in the form numbered 1 in the Schedule to be delivered or sent by post to that authority.

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(a) 1889 c. 63.

(b) S. R. & O. 1925/960 (Rev. XIII, p. 245: 1925 p. 512).

(c) S. R. & O. 1944/1206 (Rev. XIII, p. 245: 1944 I, p. 327).

*Substitution of new supervisor for minor*

8.—(1) Where a supervision order is in force and the court is of the opinion, upon representations made to it orally or in writing—

- (a) in the case of an order providing for the supervision of the minor by a probation officer appointed or assigned to a petty sessions area, by or on behalf of any probation officer appointed for or assigned to that area, or
- (b) in the case of an order providing for the supervision of the minor by a local authority, by or on behalf of that authority,

that the child is or will be resident in a different petty sessions area or, as the case may be, in the area of another local authority, the court may vary the order by substituting a probation officer appointed for or assigned to the other petty sessions area or, as the case may be, by substituting the other local authority.

(2) Where the court varies a supervision order in accordance with this rule, the court shall cause a notice in the form numbered 2 in the Schedule to be delivered or sent by post—

- (a) to the person who has for the time being the custody of the minor by virtue of an order under section 9 of the Act of 1971; and
- (b) in duplicate, to the clerk to the justices for the petty sessions area or, as the case may be, the local authority substituted by the order made under this rule,

and shall cause the probation officer or local authority by or on whose behalf the representations were made to be informed that the order has been so varied.

*Defendants to application for variation or discharge of order*

9.—(1) The following paragraphs of this rule shall have effect for the purpose of making provision as to the persons (not being the applicant) who shall be made defendants on an application under the provisions of the Act of 1971 and the Act of 1973 therein mentioned.

(2) Where the application is made under section 1(5) of the Act of 1973 for the variation or discharge of an order under section 1(3) of that Act the persons to be made defendants shall be—

- (a) the parent or parents of the minor;
- (b) any person having the custody of the minor;
- (c) where, under an order giving custody, the minor is for the time being under the supervision of a probation officer or local authority, that probation officer or, as the case may be, that authority;
- (d) where, after the death of either of the parents, any guardian has been appointed or is acting under the Act of 1971, that guardian.

(3) Where the application is made under section 9 of the Act of 1971 for the variation or discharge of an order giving the custody of a minor to a person other than one of the parents the persons to be made defendants shall be—

- (a) the persons specified in sub-paragraphs (a) and (d) of paragraph (2);
- (b) the person for the time being having the custody of the minor by virtue of the order;
- (c) where, under the order, the minor is for the time being under the supervision of a probation officer or local authority, that probation officer or, as the case may be, that authority.

The father of a minor who is illegitimate shall not be treated as a parent of that minor for the purposes of sub-paragraph (a) of this paragraph unless he has been adjudged by a court to be the father of that minor or unless he was a party to the proceedings in which the order was made.

(4) Where the application is made under section 3(3) of the Act of 1973 for the variation or discharge of a supervision order the persons to be made defendants shall be—

- (a) the persons specified in sub-paragraphs (a) to (c) of paragraph (3); and
- (b) if the application is for the variation of the order, any probation officer or local authority whom it is sought to substitute for the officer or local authority under whose supervision the minor is.

(5) Where the application is made under section 9 of the Act of 1971, as applied by section 4(3) of the Act of 1973, for the discharge of an order under section 2(2)(b) of the Act of 1973 committing a minor to the care of a local authority, the persons to be made defendants shall be—

- (a) the persons specified in sub-paragraph (a) of paragraph (3); and
- (b) the local authority to whose care the minor has been committed.

(6) Where the application is made for the variation or discharge of an order under section 9(2) of the Act of 1971 in a case where custody has been given by an order under sub-section (1) thereof to a person other than one of the parents the persons to be made defendants shall be—

- (a) the person or persons by whom payment is required to be made under the order; and
- (b) the person to whom payment falls to be made.

(7) Where the application is made for the variation or discharge of an order under section 2(3) of the Act of 1973 requiring payments to be made to the local authority to whom the care of the minor was committed by an order under section 2(2)(b) of that Act, the persons to be made defendants shall be—

- (a) the person or persons by whom payment is required to be made; and
- (b) the local authority to whose care the minor was committed.

*Notice to defendant outside United Kingdom of complaint for revocation etc. of order*

**10.**—(1) Where a complaint is made for the revocation, revival or variation of an order for the payment of sums towards the maintenance of a minor under section 9, 10 or 11 of the Act of 1971 and—

- (a) the defendant does not appear at the time and place appointed for the hearing of the complaint, and
- (b) the court is satisfied that there is reason to believe that the defendant has been outside the United Kingdom during the whole of the period beginning one month before the making of the complaint and ending with the date of the hearing,

the court may, subject to paragraph (2), if it thinks it reasonable in all the circumstances to do so, proceed to hear and determine the complaint at the time and place appointed for the hearing or for any adjourned hearing in like manner as if the defendant had appeared at that time and place if it has been proved to the satisfaction of the court that the complainant has taken any of the following steps to give notice to the defendant of the making of the complaint and of the time and place aforesaid, that is to say:—

(a) has caused a notice in the form numbered 3 in the Schedule to be delivered to the defendant or sent by post addressed to the defendant at his last known or usual place of abode or at his place of business or at such other address at which there is ground for believing that it will reach him; or

(b) has caused a notice summarising the matters dealt with in the form referred to in sub-paragraph (a) of this paragraph to be inserted in one or more newspapers on one or more occasions.

(2) Where it is proposed to take any of the steps referred to in paragraph (1) other than delivering the notice to the defendant, the complainant shall apply for directions to a justice of the peace acting for the same petty sessions area as that of the court by which the complaint is to be heard, and the taking of such steps shall be effective for the purposes of this rule only if they were taken in accordance with the directions given by the said justice.

(3) Rule 55(1) of the Rules of 1968 (proof of service, handwriting, etc.) shall apply for the purpose of proving the delivery of a written notice in pursuance of paragraph (1)(a) as it applies for the purpose of proving the service of a summons.

In relation to a solemn declaration made outside the United Kingdom, the said rule 55(1), as applied by this paragraph, shall have effect as if for the reference to the persons before whom the declaration is to be made there were substituted a reference to a consular officer of Her Majesty's Government in the United Kingdom, or any person for the time being authorised by law, in the place where the declarant is, to administer an oath for any judicial or other legal purpose.

(4) Rule 55(2) of the Rules of 1968 shall apply for the purpose of proving the sending by post of a written notice in pursuance of paragraph (1)(a), or the insertion of a notice in a newspaper in pursuance of paragraph (1)(b), as it applies for the purpose of proving the service of any process, provided, as respects the insertion of a notice in a newspaper, that a copy of the newspaper containing the notice is annexed to the certificate.

*Certificate by clerk when maintenance payments are forwarded abroad*

11. A complainant for the revocation or variation of an order under section 9, 10 or 11 of the Act of 1971 under which payments fall to be made by the complainant to the defendant through the clerk of a magistrates' court may apply to the clerk for such a certificate as is mentioned in section 9(4) of the Matrimonial Proceedings (Magistrates' Courts) Act 1960(a) and, if the facts warrant it, the clerk shall supply such a certificate to the complainant in the form numbered 4 in the Schedule.

Dated 11th April 1974.

*Elwyn-Jones C.*

Rules 7, 8,  
10 and 11

SCHEDULE  
FORMS

1

*Notice to local authority of proposal to commit a minor to their care*  
(G. of M. Act 1971, s. 9; G. Act 1973, ss. 2(2)(b), 4(2).)

.....Magistrates' Court (Code)

To the council of the [non-metropolitan county] [metropolitan district] of

.....  
Proceedings are pending under section 9 of the Guardianship of Minors Act 1971,  
before this Court between A.B. of , and B.B.  
of

Notice is hereby given that the Court proposes to commit the following minors  
to the care of the council, namely:—

C.B., D.B., and E.F.

If the Council wishes to make any representations in this matter, including  
representations about payments to the council towards the maintenance of the  
said minors, the Court will hear such representations on ,  
at .m.

Dated:

J.C.,  
Justices' Clerk.

2

*Notice of appointment of new supervisor for minor*  
(G. Act 1973, s. 3(4).)

.....Magistrates' Court (Code)

To A.B., who has for the time being the custody of C.B. by virtue of an order  
under section 9 of the Guardianship of Minors Act 1971.

To the justices' clerk for the petty sessions area  
[or to the council of the [non-metropolitan county] [metropolitan district]  
of ].

By an order dated the day of , 19 , made  
under section 2(2)(a) of the Guardianship Act 1973, the said C.B., then of  
, was placed under the supervision of a probation  
officer for the petty sessions area [or of the council of the [non-metropolitan  
county] [metropolitan district] of ].

You are hereby given notice that the Court, being of the opinion that the said  
C.B. is now or will be resident in the petty sessions area  
[or the area of the council of the [non-metropolitan county] [metropolitan  
district] of at ], has  
varied the order so that the said C.B., shall be under the supervision of a  
probation officer for that petty sessions area [or of that council].

Dated:

J.C.,  
Justices' Clerk.

## 3

*Notice to defendant outside United Kingdom of complaint for revocation  
etc. of order for maintenance payments*

(M.P.(M.C.) Act 1960, s.9(2) and (3); M.O.(R.E.) Act 1972, s.41(2).)

.....Magistrates' Court (Code)

To A.B.

of

A complaint has been made by me, the undersigned, this day [or on  
] to the above Magistrates' Court sitting at  
under section 53 of the Magistrates' Court Act 1952, that the order made by  
that Court under the Guardianship of Minors Act 1971 for the payment of  
periodical sums towards the maintenance of C.B. on  
should be [revoked] [revived] [varied by ].

The complaint will be heard by that Court on , at  
.m. You may appear in person or be represented by a barrister or  
solicitor at the hearing. If you do neither, the Court may, if it thinks it reasonable  
deal with the case in your absence.

*[To be completed in a case where the complaint is for the revocation or variation  
of a provision for the making of payments by the complainant to the defendant and  
is based on the defendant's prolonged absence abroad as mentioned in s.9(3) of the  
M.P. (M.C.) Act 1960.]*

At the hearing I intend to satisfy the Court that there is reason to believe that  
during the period of six months immediately preceding the making of the com-  
plaint you were continuously outside the United Kingdom or were not in the  
United Kingdom on more than thirty days. If the Court is satisfied of this, it  
may, after having regard to any communication to the Court in writing from you,  
revoke the order for payments by me to you or reduce the amount of the pay-  
ments. If you wish to make any written communication, you should do so by  
letter addressed to the Justices' Clerk at (address) so that it will reach him before  
the hearing.]

(Signed) B.B.

## 4

*Certificate by clerk when maintenance payments are forwarded abroad*

(M.P. (M.C.) Act 1960, s.9(4); M.O. (R.E.) Act 1972, s.41(2).)

I, J.C., the Clerk to the Magistrates' Court sitting at  
through whom payments fall to be made by A.B. to B.B. under an order under  
the Guardianship of Minors Act 1971 made by the Magistrates' Court sitting at  
, on , hereby  
certify that (a) during the period from , to  
, every payment made under the order has been forwarded by  
me to an address outside the United Kingdom, namely ;  
and (b) during the period from , to  
, the said B.B. has not, to my knowledge, been in the United  
Kingdom at any time [or on more than thirty days, namely from  
to .]

Date:

J.C.

## EXPLANATORY NOTE

*(This Note is not part of the Rules.)*

These Rules, which revoke the Guardianship of Infants (Summary Jurisdiction) Rules of 1925 and 1944, contain provisions similar to those in the 1925 Rules relating to the procedure for hearing applications under the Guardianship of Minors Act 1971 and applications for consent to marriage under section 3 of the Marriage Act 1949 and also contain new provisions which take account of the amendments made to the 1971 Act by the Guardianship Act 1973 and of the application of section 9 of the Matrimonial Proceedings (Magistrates' Courts) Act 1960 to maintenance payments under the 1971 Act by section 41 of the Maintenance Orders (Reciprocal Enforcement) Act 1972(c.18).

Rule 4 provides for applications to a magistrates' court under the 1971 Act to be by way of complaint. Rule 5 relates to the procedure for applications for the consent of the court to the marriage of a minor under section 3 of the Marriage Act 1949. Rule 6 enables the court to hear proceedings under the 1971 Act or section 3 of the Marriage Act 1949 *in camera* if it considers it expedient in the interests of the minor.

Rule 7 provides for notice to be given to the local authority where a court hearing an application under section 9 of the 1971 Act proposes to commit a minor to the care of that authority under section 2(2)(b) of the 1973 Act in the form numbered 1 in the Schedule. Rule 8 enables the court to substitute a new local authority or probation officer as supervisor, upon representations by the existing supervisor, where a supervision order has been made under section 2(2)(a) of the 1973 Act and the minor has changed or is about to change his residence. In such a case the Rule provides for notice in form 2 to be given to the person who has custody of the minor and the local authority or (as the case may be) clerk to the justices of the petty sessions area substituted by the order.

Rule 9 makes provision as to the persons to be made defendants to applications to vary or discharge an order under section 1(3) of the 1973 Act, an order under section 9 of the 1971 Act, in a case where custody is given to a person other than one of the parents, a supervision order or an order committing a minor to the local authority under section 2(2) of the 1973 Act (including any order for payments to a local authority under section 3(3) of the Act).

Rule 10 (together with form 3 in the Schedule) provides for notice to be given to a defendant outside the United Kingdom by a complainant for the revocation, revival or variation of an order under section 9, 10 or 11 of the 1971 Act providing for periodical payments towards the maintenance of a minor for the purpose of the hearing of the complaint in the absence of the defendant under section 9 of the Matrimonial Proceedings (Magistrates' Courts) Act 1960, as applied by section 41 of the Maintenance Orders (Reciprocal Enforcement) Act 1972. Rule 11 (with form 4) provides for a certificate by a clerk to a magistrates' court in a case where payments have been made by the clerk to the defendant at an address outside the United Kingdom.





SI 1974/706  
ISBN 0-11-040706-7

