
STATUTORY INSTRUMENTS

1988 No. 913

**The Magistrates' Courts (Children
and Young Persons) Rules 1988**

PART IV

**PROCEEDINGS IN RELATION TO ACCESS TO CHILDREN IN CARE
AND RESOLUTIONS CONCERNING PARENTAL RIGHTS AND DUTIES**

Application and interpretation of Part IV.

29.—(1) This Part shall apply in connection with proceedings in a court under Part 1A of the Act of 1980(1) (access to children in care) and under section 3(6)(2) or 5(4) of that Act (objection to resolution vesting parental rights and duties in a local authority or voluntary organisation), except that rule 33 shall apply only in connection with proceedings under the said section 3(6) or 5(4).

(2) In this Part of the Rules the expressions “child”, “guardian” (except where it is used in the expression “*guardianad litem*”), “local authority” and “voluntary organisation” have the meanings assigned to them by section 87(1) of the said Act; the expression “parent” has the meaning assigned to it by section 87(1) of the said Act, except that in proceedings under section 3(6) or 5(4) of the said Act it includes a person having custody of a child by an order of a court where section 8(2) of the said Act applies; and the expression “custodian” means a person in whom legal custody of a child is vested by an order under section 33 of the Children Act 1975(3).

Notice of complaint.

30.—(1) A local authority or voluntary organisation which is a party to any proceedings in a court to which this Part of the Rules applies shall send a notice specifying the time and place fixed for the hearing of the complaint to any other person who is a parent of the child to whom the proceedings relate and who lives apart from the parent who is the complainant or defendant (unless a summons is issued for the purpose of securing his attendance thereat) or who is a foster parent or other person with whom the child has had his home for a period of, or periods amounting in total to, not less than 42 days, ending not more than six months before the date of the complaint, if the whereabouts of such a person is known to the local authority or voluntary organisation; and a parent who is the complainant in any such proceedings shall send a notice specifying the time and place fixed for the hearing of the complaint to any other parent of the child who lives apart from him if the whereabouts of such other parent is known to him.

(2) A local authority which is a party to proceedings in a court under Part 1A of the Act of 1980 shall send a notice specifying the time and place fixed for the hearing of the complaint to any person other than the complainant (and other than a person to whom a notice is required to be sent under

(1) 1980 c. 5; Part 1A was inserted by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 1, Part I, paragraph 1.
(2) Section 3(6) applies also to a resolution under section 64 of the Child Care Act 1980, by virtue of section 67 thereof.
(3) 1975 c. 72.

paragraph (1)) who is a parent, guardian or custodian of the child, if his whereabouts is known to the local authority.

(3) If a parent, guardian or custodian of the child who is required to be given notice in accordance with paragraph (1) or (2) appears at the hearing he shall be entitled to meet any allegations made against him in the course of the proceedings by cross-examining any witness and calling or giving evidence; and any person who is required to be given such a notice shall be entitled to make representations to the court at the conclusion of the evidence for the complainant (including any evidence in rebuttal of evidence for the defence) and the evidence, if any, for the defence but before any address by the defendant or complainant under rule 14(4) or (5) of the Magistrates' Courts Rules 1981(4).

Appointment and duties of guardian *ad litem*.

31.—(1) In any proceedings under section 3(6) or 5(4) of the Act of 1980 in which the court makes the child a party to the proceedings, the court shall appoint a guardian *ad litem* of the child for the purposes of the proceedings unless the court is satisfied that to do so is not necessary for safeguarding the interests of the child.

(2) An appointment of a guardian *ad litem* under section 7 or 12F(3) of the Act of 1980 shall be made by order and the person to be appointed shall be selected from a panel established by regulations under section 103 of the Children Act 1975(5) except that the person appointed shall not—

- (a) be a member, officer or servant of a local authority or voluntary organisation which is a party to the proceedings; or
- (b) be, or at any time have been, a member, officer or servant of a local authority or voluntary organisation who has been directly concerned in that capacity in arrangements relating to the care, accommodation or welfare of the child; or
- (c) be a serving probation officer (except that a probation officer who has not in that capacity been previously concerned with the child or his family and who is employed part-time may, when not engaged in his duties as a probation officer, act as a guardian *ad litem*).

(3) Where the court has appointed a guardian *ad litem* under the said section 7 or 12F(3) and it appears to the court desirable that some other person should act as guardian *ad litem* in substitution for the person appointed earlier the court shall, by order, revoke the earlier appointment and make a new appointment.

(4) The powers of the court to appoint a guardian *ad litem* under the said section 7 or 12F(3) and to give directions concerning legal representation of the child in accordance with paragraph (6)(c) or concerning any other matter in accordance with paragraph (6)(e) shall also be exercisable, before the hearing of the complaint, by a single justice or by the justices' clerk; and where the power to appoint a guardian *ad litem* is so exercised, the single justice or the justices' clerk shall on the same occasion consider whether the child should be legally represented and may direct that the guardian *ad litem* so appointed is to instruct a solicitor to represent the child.

(5) The court shall cause notice of an order appointing a guardian *ad litem* to be given to the guardian *ad litem*, the complainant, the defendant, the child to whom the proceedings relate and any other person to whom notice of the hearing has been given under rule 30(1).

(6) The guardian *ad litem* appointed under the said section 7 or 12F(3) with a view to safeguarding the interests of the child before the court shall—

(4) S.I.1981/552.

(5) 1975 c. 72; section 103 was amended by the Act of 1980, Schedule 5, paragraph 37 and the Health and Social Services and Social Security Adjudications Act 1983, Schedule 1, paragraph 4 and Schedule 2, paragraph 28; the relevant regulations are S.I. 1983/1908.

- (a) so far as it is reasonably practicable, investigate all circumstances relevant to the proceedings and for that purpose shall interview such persons, inspect such records and obtain such professional assistance as the guardian *ad litem* thinks appropriate;
- (b) regard as the first and paramount consideration the need to safeguard and promote the child's best interests until he achieves adulthood, and shall take into account the wishes and feelings of the child, having regard to his age and understanding, and shall ensure that those wishes and feelings are made known to the court;
- (c) except where a solicitor has been instructed to represent the child before the appointment of the guardian *ad litem* or a direction has been given in accordance with paragraph (4) that a solicitor be instructed, obtain the views of the court as to whether the child should be legally represented and, unless the court otherwise directs, instruct a solicitor to represent the child;
- (d) consider how the case should be presented on behalf of the child, acting in conjunction with the solicitor in a case in which one has been instructed (whether by the guardian *ad litem* or otherwise) to represent the child; and shall, in such a case, instruct the solicitor (unless the solicitor considers, having taken into account the views of the guardian *ad litem*, that the child wishes to give instructions which conflict with those of the guardian *ad litem* and that he is able, having regard to his age and understanding, to give instructions on his own behalf);
- (e) seek the views of the court in any case where difficulties arise in relation to the performance of his duties;
- (f) as soon as practicable make a report in writing to the court;
- (g) perform such other duties as the court may direct.

(7) When the court has concluded the hearing of the complaint the guardian *ad litem* shall consider, acting in conjunction with the solicitor in a case in which the child is legally represented, whether it would be in the child's best interests to appeal to the High Court and, if he considers that it would be, he shall ensure that notice of appeal is given on behalf of the child (unless the solicitor, in a case in which the child is legally represented, considers, having taken into account the views of the guardian *ad litem*, that the child wishes to give instructions which conflict with those of the guardian *ad litem* and that he is able, having regard to his age and understanding, to give such instructions on his own behalf).

Evidence of guardian *ad litem*.

32. Where a guardian *ad litem* has been appointed, the court shall take into consideration his written report to the court; and the guardian *ad litem* shall in addition (whether or not he has already been called as a witness) be given an opportunity to give oral evidence at the conclusion of the evidence, if any, for the child and to make oral representations to the court.

Rights of persons other than parties.

33.—(1) Without prejudice to any other provision of these Rules which provides for a parent or other person to take part in proceedings, any person to whom this paragraph applies shall be entitled, in any proceedings under section 3(6) or 5(4) of the Act of 1980, to make representations to the court, and shall do so at such stage after the conclusion of the evidence in the hearing as the court considers appropriate.

(2) The preceding paragraph applies to:

- (a) any person who is required to be given notice of the proceedings by virtue of rule 30(1); and

- (b) any other person who is not a party to the proceedings and who satisfies the court that both of the criteria specified in the next following paragraph are met.
- (3) The criteria mentioned in the preceding paragraph are—
 - (a) that the person in question has demonstrated an interest in the welfare of the child to whom the proceedings relate which has been maintained until the commencement of the proceedings; and
 - (b) that the representations of that person are likely to be of relevance to the proceedings and to the welfare of the child in question.

Evidence and procedure generally.

34.—(1) The court shall arrange for copies of any written report, including any such report of a guardian *ad litem* or local authority, before the court to be made available, so far as practicable before the hearing, to:

- (a) any parent, guardian or custodian of the child to whom the proceedings relate who is a party to the proceedings;
- (b) the legal representative, if any, of the child;
- (c) the child to whom the proceedings relate, except where the court otherwise directs on the ground that it appears to it impracticable to disclose the report having regard to the age and understanding of the child or undesirable to do so having regard to serious harm which might thereby be suffered by him;
- (d) the guardian *ad litem* of the child; and
- (e) the local authority.

(2) Copies of any such report may, if the court considers it desirable to do so, be shown to any person who is required to be given notice of the proceedings in pursuance of rule 30(1) or (2).

(3) Any written report may be received and considered by the court without being read aloud.

(4) Where, in pursuance of the preceding paragraph, a report has been considered without it being read aloud, then the child shall, if he is not legally represented and a copy of the report has not been made available to him, be told the substance of any part of the information given to the court bearing on his character or conduct unless it appears to the court impracticable so to do having regard to his understanding, and if, having been told the substance of any part of such information, he desires to produce further evidence with reference thereto, the court, if it thinks the further evidence would be material, shall adjourn the proceedings for the production thereof.

Power of the court to hear evidence in absence of child, etc.

35.—(1) Where the court has made the child a party to the proceedings and he is present at the hearing and the evidence likely to be given is such that in the opinion of the court it is in the interests of the child that the whole, or any part, of the evidence should not be given in his presence then, unless the child is conducting his own case, the court may hear the whole or part of the evidence, as it thinks appropriate in his absence:

Provided that evidence relating to the character or conduct of the child shall be heard in his presence.

(2) If the court is satisfied that in the special circumstances it is appropriate so to do, it may require a parent, guardian or custodian of the child to withdraw from the court while the child gives evidence or makes a statement:

Provided that the court shall inform the person so excluded of the substance of any allegations made against him by the child.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.
