

**1989 No. 384 (L.7)**

**MAGISTRATES' COURTS**

**The Magistrates' Courts (Family Law Reform Act 1987)  
(Miscellaneous Amendments) Rules 1989**

*Made* - - - - - *8th March 1989*

*Laid before Parliament* *10th March 1989*

*Coming into force* *1st April 1989*

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

1. These Rules may be cited as the Magistrates' Courts (Family Law Reform Act 1987) (Miscellaneous Amendments) Rules 1989 and shall come into force on 1st April 1989.

2. Subject to rule 3 of these Rules, the following Rules—

The Maintenance Orders (Facilities for Enforcement) Rules 1922(b)

The Magistrates' Courts (Maintenance Orders Act 1958) Rules 1959(c)

The Magistrates' Courts (Blood Tests) Rules 1971(d)

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

The Magistrates' Courts (Forms) Rules 1981(f)

The Magistrates' Courts Rules 1981(g)

The Magistrates' Courts (Adoption) Rules 1984(h)

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

shall have effect subject to the amendments set out in the Schedule to these Rules.

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(a) 1980 c. 43; section 144 is extended by section 145 of that Act and by section 16(5) of the Guardianship of Minors Act 1971 (c. 3) as amended by the Guardianship Act 1973 (c. 29), section 2 and Schedule 2, the Children Act 1975 (c. 72), Schedule 3, the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), Schedule 2, and the Magistrates' Courts Act 1980, Schedule 7.

(b) S.I. 1922/1335, amended by S.I. 1970/762.

(c) S.I. 1959/3, amended by S.I. 1977/1890, 1980/1896, 1986/1962, and to which there are other amendments not relevant to these Rules.

(d) S.I. 1971/1991.

(e) S.I. 1974/706, amended by S.I. 1979/953, 1980/1585.

(f) S.I. 1981/533, to which there are amendments not relevant to these Rules.

(g) S.I. 1981/552, amended by S.I. 1983/523, 1985/1695, and to which there are other amendments not relevant to these Rules.

(h) S.I. 1984/611.

(i) S.I. 1988/913, to which there are amendments not relevant to these Rules.

3. These Rules shall not apply in relation to any application to a magistrates' court, any affiliation order or any order made under a provision of the Guardianship of Minors Acts 1971 and 1973(a) in relation to which the Family Law Reform Act 1987(b) does not have effect.

Dated 8th March 1989

*Mackay of Clashfern, C.*

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(a) 1971 c. 3 and 1973 c. 29.

(b) 1987 c. 42; section 33(2) and Schedule 3 provide that applications pending and affiliation orders in force at the time when the provisions of the Family Law Reform Act came into force are not affected by those provisions. Under article 3 of and Schedule 2 to the Family Law Reform Act 1987 (Commencement No 2) Order 1989 (S.I. 1989/382) similar provision is made in respect of orders in force under the Guardianship of Minors Acts 1971 and 1973.

## AMENDMENTS TO RULES

**The Maintenance Orders (Facilities for Enforcement) Rules 1922**

1. In rule 6 of the Maintenance Orders (Facilities for Enforcement) Rules 1922, for the words "an Affiliation Order" there shall be substituted the words "a magistrates' court maintenance order".

**The Magistrates' Courts (Maintenance Orders Act 1958) Rules 1959**

2. In rule 9 of the Magistrates' Courts (Maintenance Orders Act 1958) Rules 1959, and in Forms 18 and 19 in the Schedule to those Rules, for the words "affiliation Order" or "an affiliation order" in each place where they occur there shall be substituted the words "magistrates' court maintenance order" or "a magistrates' court maintenance order", as the case may be.

**The Magistrates' Courts (Blood Tests) Rules 1971**

3. In rule 3 of the Magistrates' Courts (Blood Tests) Rules 1971, the words "under the Affiliation Proceedings Act 1957 or any other complaint" shall be omitted.

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

4. In the Magistrates' Courts (Guardianship of Minors) Rules 1974, for the words "minor" and "minors" in every place where they occur (except in the title of those Rules or the citation of the Guardianship of Minors Act 1971) there shall be substituted the words "child" and "children" respectively.

5. In rule 2 of these Rules, in the definition of "court", after the words "magistrates' court" there shall be inserted the words ", except as provided by rule 9(9)".

6. In rule 7 of those Rules, for the word "maintenance" there shall be substituted the word "access".

7. In rule 8(2)(a) of those Rules, for the words from "legal custody" to the words "Act of 1971" there shall be substituted the words "actual custody of the child and, if different, the person who has legal custody of the child".

8. Rule 9(3) of those Rules shall be omitted.

9. For rule 9(4)(a) and (b) of those Rules there shall be substituted the following sub-paragraphs—  
“(a) the person specified in sub-paragraphs (a), (b) and (d) of paragraph (2);  
(b) the probation officer or local authority under whose supervision the child is; and  
(c) 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 child is.”.

10. In rule 9(5)(a) of those Rules, for the words "sub-paragraph (a) of paragraph (3)" there shall be substituted the words "sub-paragraphs (a) and (d) of paragraph (2)".

11. Rule 9(6) of those Rules shall be omitted.

12. In rule 9(7) of those Rules, for the words "sub-paragraph (a) of paragraph (3)" there shall be substituted the words "sub-paragraphs (a) and (d) of paragraph (2)", and the proviso shall be omitted.

13. After rule 9(7) of those Rules there shall be inserted the following paragraphs—

“(8) For the purposes of paragraphs (4)(a), (5)(a) and (7)(a) above, a father who was not married to the mother of a child at the time of his birth shall not be treated as a parent of that child unless he has been adjudged by a court to be the father of that child or unless he was a party to the proceedings in which the order was made.

(9) in this rule, "court" means the High Court, a county court or a magistrates' court.”.

**The Magistrates' Courts (Forms) Rules 1981**

14. In Form 114 in the Schedule to the Magistrates' Courts (Forms) Rules 1981, for the reference to sections 9, 10, 11 and 12C(5) of the Guardianship of Minors Act 1971 there shall be substituted a reference to sections 11B and 11C of that Act, and the reference to section 60 of the Magistrates' Courts Act 1980 shall be omitted.

### **The Magistrates' Courts Rules 1981**

15. Rules 35 and 35A of the Magistrates' Courts Rules 1981 shall be omitted.
16. In paragraph (4)(b)(i) of rule 36 of those Rules, the reference to section 11 of the Guardianship of Minors Act 1971 shall be omitted.
17. In rules 41(1), 43, 44(1), 59(1), 61, 62, 63(1) and 69 of those Rules, for the words "affiliation order" in each place where they appear there shall be substituted the words "magistrates' court maintenance order".
18. In rule 51 of those Rules, after the words "the Children Act 1975" there shall be inserted the word "or" and the words "or section 6A(5) of the Affiliation Proceedings Act 1957" shall be deleted.
19. In rule 105 of those Rules, after the words "section 35 of the Matrimonial Causes Act 1973" there shall be inserted the words "or under section 15 of the Family Law Reform Act 1987" and at the end of the heading to that rule there shall be inserted the words "or under s. 15 of the Family Law Reform Act 1987".
20. In rule 106(1) of those Rules, for the words "section 60 of the Act of 1980 or section 9, 10, 11 or 12C(5)" there shall be substituted the words "sections 11B or 11C".

### **The Magistrates' Courts (Adoption) Rules 1984**

21. In rule 5(4)(e) of the Magistrates' Courts (Adoption) Rules 1984, for the words "an illegitimate child" there shall be substituted the words "a child whose mother and father were not married at the time of his birth".
22. In Schedule 1 to those Rules, in Form 1—
  - (a) for paragraph 11 there shall be substituted the following paragraph:

"(11. The father and mother of the child were not married to each other at the time of his birth and ..... of ..... who is/claims to be the father—

    - (i) does/does not intend to apply for an order giving him all parental rights and duties with respect to the child;
    - (ii) does/does not intend to apply for the custody/care and control of the child.);";
  - (b) for the note on paragraph 3 in that Form there shall be substituted the following:

"Paragraph 3: If the child has previously been adopted, give the names of his adoptive parents and not those of his natural parents. If the father and mother of the child were not married to each other at the time of his birth, and a court has made an order giving the father all the parental rights and duties with respect to the child, or if the father has legal custody of the child by virtue of a court order, give details of the court order under paragraph 12."; and
  - (c) for the note on paragraphs 5 and 6 in that Form there shall be substituted the following:

"Paragraphs 5 and 6: Enter either in paragraph 5 or 6 the names of the persons mentioned in paragraphs 3 and 4, except that if the father and mother of the child were not married at the time of his birth the father of the child should be entered only if a court has made an order giving him all the parental rights and duties in respect of the child or if he has legal custody of the child by virtue of a court order. Where it is sought to dispense with parental agreement, enter in paragraph 6 one or more of the grounds set out in section 12(2) of the 1975 Act.".
23. In Form 6 in that Schedule—
  - (a) for the last sentence of the note on paragraph 9 there shall be substituted the following:

"If the father and mother of the child were not married to each other at the time of his birth, and a court has made an order giving the father all the parental rights and duties with respect to the child, or if the father has legal custody of the child by virtue of a court order, give details of the order under paragraph 19."; and
  - (b) for the first sentence of the note of paragraphs 11 and 12 in that form there shall be substituted the following:

"Paragraphs 11 and 12: Enter either in paragraph 11 or 12 the names of the persons mentioned in paragraphs 9 and 10, except that if the father and mother of the child were not married at the time of his birth the father of the child should be entered only if a court has made an order giving the father all the parental rights and duties in respect of the child or if he has legal custody of the child by virtue of a court order.".

24. In Form 7 in that Schedule, in the fifth paragraph of the Notes, for the words from the beginning of that paragraph to the words "court order;" there shall be substituted the following words:

"A father who was not married to the mother of a child at the time of his birth is not a parent for this purpose, but is a guardian if a court has made an order giving him all the parental rights and duties with respect to the child or if he has legal custody of the child by virtue of a court order;"

25. In Schedule 2 to those Rules, in paragraph 1-

(a) for sub-paragraph (b) there shall be substituted the following sub-paragraph:

"(b) whether the child's father and mother were married to each other at the time of his birth."; and

(b) in sub-paragraph (i) for the words "if the child is illegitimate" there shall be substituted the words "if the father and mother of the child were not married to each other at the time of his birth".

26. For the heading to paragraph 2 of the said Schedule, there shall be substituted the following:

"2. Each Natural Parent, including where appropriate the father who was not married to the child's mother at the time of his birth."

27. In sub-paragraph (b) of paragraph 6 of the said Schedule, for the words "claiming to be the father of an illegitimate child" there shall be substituted the words "who was not married to the mother of the child at the time of his birth and who claims to be the father of the child".

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

28. In the Magistrates' Courts (Children and Young Persons) Rules 1988, in rule 2(1), after the definition of the word "court", there shall be inserted the following definition:

"'parent', in the case of a child or young person whose father and mother were not married to each other at the time of his birth, has the same meaning as it has in section 70(1A) and (1B) of the Children and Young Persons Act 1969(a);".

29. In rule 14(3) of those Rules, after sub-paragraph (d), there shall be inserted the following sub-paragraph:

"(dd) where the father and mother of the relevant infant were not married to each other at the time of his birth, any person who is known to the applicant to have made an application for an order under section 4 of the Family Law Reform Act 1987 (parental rights and duties of father) which has not yet been determined;"

30. In rule 29(2) of those Rules-

(a) for the words "section 87(1)" in the second place where they occur there shall be substituted the words "section 87"; and

(b) after the word "applies" there shall be inserted the words "and a father of a child where an order is in force under section 4 of the Family Law Reform Act 1987 by virtue of which actual custody is shared between the mother and the father and section 8(3) of the Act of 1980(b) accordingly applies".

31. In rule 30(1) of those Rules-

(a) the word "and" which follows the words "voluntary organisation;" in the second place where they occur shall be omitted, and

(b) there shall be inserted at the end the following words-

"; and a local authority or voluntary organisation which is a party to any such proceedings and a parent who is the complainant in any such proceedings in a case where the mother and father of the child were not married to each other at the time of his birth shall send a notice specifying the time and place fixed for the hearing of the complaint to any person who is known to the local authority, voluntary organisation or parent, as the case may be, to have made an application for an order under section 4 of the Family Law Reform Act 1987 (parental rights and duties of father) which has not yet been determined."

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(a) 1969 c. 54; section 70(1A) and (1B) were inserted respectively by section 8(1) of and paragraph 26 of Schedule 2 to the Family Law Reform Act 1987 (c. 42).

(b) Section 8(3) was inserted by section 8(2) of the Family Law Reform Act 1987.

## EXPLANATORY NOTE

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

These Rules make amendments to the Maintenance Orders (Facilities for Enforcement) Rules 1922, the Magistrates' Courts (Maintenance Orders Act 1958) Rules 1959, the Magistrates' Courts (Blood Tests) Rules 1971, the Magistrates' Courts (Guardianship of Minors) Rules 1974, the Magistrates' Courts (Forms) Rules 1981, the Magistrates' Courts Rules 1981, the Magistrates' Courts (Adoption) Rules 1984 and the Magistrates' Courts (Children and Young Persons) Rules 1988. The amendments are all consequential upon the provisions of Parts I and II of the Family Law Reform Act 1987. Part I came into force on 4th April 1988 (the Family Law Reform Act 1987 (Commencement No.1) Order 1988 (S.I. 1988/425)). Part II, apart from section 9, comes into force on 1st April 1989 (the Family Law Reform Act 1987 (Commencement No.2) Order 1989 (S.I. 1989/382)).

Parts I and II of the 1987 Act establish the principle that references to any relationship between two persons shall be construed without regard to whether the father and mother of either of them have or had been married to each other at any time, and substitute in various existing enactments references to whether the mother and father of a child were married to one another at the time of his birth for references to illegitimacy. Under Part II of the 1987 Act affiliation proceedings under the Affiliation Proceedings Act 1957 (c.55) are abolished and amendments made to the Guardianship of Minors Acts 1971 and 1973 to enable financial provision for a child to be obtained, whatever the marital status of the parents, in proceedings under the Guardianship of Minors Act 1971. The amendments made by these Rules reflect those changes.

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