
STATUTORY INSTRUMENTS

1991 No. 1991

**The Family Proceedings Courts
(Matrimonial Proceedings etc.) Rules 1991**

PART II

**MATRIMONIAL PROCEEDINGS UNDER THE DOMESTIC
PROCEEDINGS AND MAGISTRATES' COURTS ACT 1978**

Interpretation, application and savings

2. –

(1) In this Part of 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,

“application” means an application for an order made under or by virtue of the Act and “applicant” shall be construed accordingly,

“business day” means any day other than–

(a) a Saturday, Sunday, Christmas Day or Good Friday; or

(b) a bank holiday, that is to say, a day which is, or is to be observed as, a bank holiday or a holiday under the Banking and Financial Dealings Act 1971(1), in England and Wales,

“court” means a family proceedings court constituted in accordance with sections 66 and 67 of the Magistrates' Courts Act 1980(2) (save where section 16(5) of the Act applies) or, in respect of those proceedings prescribed in rule 25, a single justice who is a member of a family panel,

“directions appointment” means a hearing for directions under rule 6(1),

“family protection order” means an order under section 16 of the Act,

“file” means deposit with the justices' clerk,

“form” means a form in Schedule 1 to these Rules with such variation as the circumstances of the particular case may require,

“note” includes a record made by mechanical means,

“respondent” includes, as the case may be, more than one respondent,

“the Act” means the Domestic Proceedings and Magistrates' Courts Act 1978(3).

(2) Expressions used in this Part of these Rules have the meaning which they bear in the Act.

(3) This Part of these Rules shall not apply in relation to any such application or order as is referred to in paragraph 1 or 2 of Schedule 1 to the Domestic Proceedings and Magistrates' Courts Act 1978

(1) 1971 c. 80.

(2) Sections 66 and 67 were amended by paragraph 8 of Schedule 11 to the Children Act 1989 (c. 41).

(3) 1978 c. 22.

(transitional provisions); and, accordingly, the Magistrates' Courts (Matrimonial Proceedings) Rules 1960(4) shall continue to apply in relation to any such application or order but with the following modification, that is to say, on any complaint made by virtue of paragraph 2(d) of the said Schedule 1 for the variation or revocation of a provision requiring access to a child to be given to a grandparent, rule 7 of the said Rules of 1960 shall be construed as applying to the complaint as it applies to a complaint made by virtue of section 8 of the Matrimonial Proceedings (Magistrates' Courts) Act 1960(5) and as if paragraph (5) of that rule included a reference to that grandparent.

(4) Subject to rule 1(2), the provisions of the Magistrates' Courts Rules 1981(6) shall have effect subject to this Part of these Rules.

Applications

3. –

(1) Subject to paragraphs (3) and (4), an applicant shall–

- (a) file the application in the appropriate form in Schedule 1 to these Rules or, where there is no such form, in writing, together with sufficient copies for one to be served on the respondent, and
- (b) save where section 16(6) of the Act applies, serve a copy of the application, endorsed in accordance with paragraph (2)(b), together with any notice attached under paragraph (2)(c), on the respondent at least 21 days and, in the case of an application under section 16, at least one day, prior to the date fixed under paragraph (2)(a).

(2) On receipt of the documents filed under paragraph (1)(a), the justices' clerk shall–

- (a) fix the date, time and place for a hearing or a directions appointment, which in the case of an application under section 16 shall be no later than 14 days after receipt of the application, allowing sufficient time for the applicant to comply with paragraph (1)(b),
- (b) endorse the date, time and place so fixed upon the copies of the application filed by the applicant,
- (c) in the case of an application under section 16, and save where subsection (6) of that section applies, attach to the application a notice in the appropriate form in Schedule 1 to these Rules which sets out the power of the court with regard to family protection orders, and
- (d) return the copies to the applicant forthwith.

(3) A court may proceed on an application made orally where it is made by virtue of section 6(4) of the Act and where an application is so made paragraph (1) shall not apply.

(4) An application for an expedited order under section 16(6) of the Act may, with leave of the justices' clerk, be made ex parte in which case the applicant shall–

- (a) file with the justices' clerk or the court the application at the time when the application is made or as directed by the justices' clerk, and
- (b) serve a copy of the application on the respondent within 48 hours after the making of the order.

Service

4. –

(1) Where service of a document is required by these Rules it may be effected, unless the contrary is indicated–

(4) S.I.1960/2229.

(5) 1960 c. 48.

(6) S.I. 1981/552.

- (a) if the person to be served is not known by the person serving to be acting by solicitor–
 - (i) by delivering it to him personally, or
 - (ii) by delivering at, or by sending it by first-class post to, his residence or his last known residence, or
 - (b) if the person to be served is known by the person serving to be acting by solicitor–
 - (i) by delivering the document at, or sending it by first-class post to, the solicitor’s address for service,
 - (ii) where the solicitor’s address for service includes a numbered box at a document exchange, by leaving the document at that document exchange or at a document exchange which transmits documents on every business day to that document exchange, or
 - (iii) by sending a legible copy of the document by facsimile transmission to the solicitor’s office.
- (2) In this rule, “first-class post” means first-class post which has been pre-paid or in respect of which pre-payment is not required.
- (3) A document shall, unless the contrary is proved, be deemed to have been served–
 - (a) in the case of service by first-class post, on the second business day after posting, and
 - (b) in the case of service in accordance with paragraph (1)(b)(ii), on the second business day after the day on which it is left at the document exchange.
- (4) Save where section 16(6) of the Act applies, at or before the first directions appointment in, or hearing of, the proceedings, whichever occurs first, the applicant shall file a statement that service of a copy of the application has been effected on the respondent and the statement shall indicate–
 - (a) the manner, date, time and place of service, or
 - (b) where service was effected by post, the date, time and place of posting.
- (5) In any proceedings under the Act, the justices' clerk or the court may direct that a requirement in this Part of these Rules to serve a document shall not apply or shall be effected in such manner as the justices' clerk or the court directs.

Answer to application

5. Within 14 days of service of an application for an order under section 2, 6, 7 or 20 of the Act, the respondent shall file and serve on the parties an answer to the application in the appropriate form in Schedule 1 to these Rules.

Directions

6. –

- (1) In any proceedings under the Act, the justices' clerk or the court may, subject to paragraph (3), give, vary or revoke directions for the conduct of the proceedings, including–
 - (a) the timetable for the proceedings;
 - (b) varying the time within which or by which an act is required, by this Part of these Rules, to be done;
 - (c) the service of documents; and
 - (d) the submission of evidence;

and the justices' clerk shall, on receipt of an application, consider whether such directions need to be given.

(2) Where the justices' clerk or a single justice who is holding a directions appointment considers, for whatever reason, that it is inappropriate to give a direction on a particular matter, he shall refer the matter to the court which may give any appropriate direction.

(3) Directions under paragraph (1) may be given, varied or revoked either–

- (a) of the justices' clerk's or the court's own motion having given the parties notice of the intention to do so and an opportunity to attend and be heard or to make written representations,
- (b) on the written request of a party specifying the direction which is sought, which request has been filed and served on the other parties, or
- (c) on the written request of a party specifying the direction which is sought, to which the other parties consent and which they or their representatives have signed.

(4) In an urgent case, the request under paragraph (3)(b) may, with the leave of the justices' clerk or the court, be made–

- (a) orally,
- (b) without notice to the other parties, or
- (c) both as in sub-paragraph (a) and as in sub-paragraph (b).

(5) On receipt of a request under paragraph (3)(b) the justices' clerk shall fix a date for the hearing of the request and give not less than 2 days' notice to the parties of the date so fixed.

(6) On considering a request under paragraph (3)(c) the justices' clerk or the court shall either–

- (a) grant the request, whereupon the justices' clerk shall inform the parties of the decision, or
- (b) direct that a date be fixed for the hearing of the request, whereupon the justices' clerk shall fix such a date and give not less than 2 days' notice to the parties of the date so fixed.

(7) The justices' clerk or the court shall take a note of the giving, variation or revocation of a direction under this rule and serve, as soon as practicable, a copy of the note on any party who was not present at the giving, variation or revocation.

Timing of proceedings

7. –

(1) Any period of time fixed by this Part of these Rules, or by any order or direction, for the doing of any act shall be reckoned in accordance with this rule.

(2) Where the period, being a period of 7 days or less, would include a day which is not a business day, that day shall be excluded.

(3) Where the time fixed for filing a document with the justices' clerk expires on a day on which the justices' clerk's office is closed, and for that reason the document cannot be filed on that day, the document shall be filed in time if it is filed on the next day on which the justices' clerk's office is open.

(4) Where these Rules provide a period of time within which or by which a certain act is to be performed in the course of proceedings under the Act, that period may not be extended otherwise than by a direction of the justices' clerk or the court under rule 6(1).

(5) At the–

- (a) postponement or adjournment of any hearing or directions appointment in the course of proceedings under the Act, or
- (b) conclusion of any such hearing or directions appointment other than one at which the proceedings are determined, or as soon thereafter as is practicable,

the justices' clerk or the court shall–

- (i) fix a date upon which the proceedings shall come before the justices' clerk or the court again for such purposes as the justices' clerk or the court directs, and
- (ii) give notice to the parties of the date so fixed.

Attendance at directions appointment and hearing

8. –

(1) Subject to paragraph (2), a party shall attend a directions appointment of which he has been given notice in accordance with rule 6(3) unless the justices' clerk or the court otherwise directs.

(2) Without prejudice to section 16(6) of the Act, and subject to rules 18(2) and 22(2), the court shall not begin to hear an application in the absence of the respondent unless–

- (a) it is proved to the satisfaction of the court that he received reasonable notice of the date of the hearing; or
- (b) the court is satisfied that the circumstances of the case justify proceeding with the hearing.

(3) Where, at the time and place appointed for a hearing, the respondent appears but the applicant does not, the court may refuse the application or, if sufficient evidence has previously been received, proceed in the absence of the applicant.

(4) Where at the time and place appointed for a hearing neither the applicant nor the respondent appears, the court may refuse the application.

Documentary evidence

9. –

(1) Subject to paragraph (4), in any proceedings under the Act the parties shall file and serve on the other parties–

- (a) written statements of the substance of the oral evidence which the party intends to adduce at a hearing of, or a directions appointment in, those proceedings, which shall–
 - (i) be dated,
 - (ii) be signed by the person making the statement, and
 - (iii) contain a declaration that the maker of the statement believes it to be true and understands that it may be placed before the court, and
- (b) copies of any documents upon which the party intends to rely at a hearing of, or a directions appointment in, those proceedings,

at or by such time as the justices' clerk or the court directs or, in the absence of a direction, before the hearing or appointment.

(2) A party may, subject to any direction of the justices' clerk or the court about the timing of statements under this rule, file and serve on the parties a statement which is supplementary to a statement served under paragraph (1).

(3) At a hearing or directions appointment a party may not, without the leave of the justices' clerk in the case of a directions appointment, or the court–

- (a) adduce evidence, or
- (b) seek to rely on a document,

in respect of which he has failed to comply with the requirements of paragraph (1).

Amendment

10. –

(1) Subject to rule 9(2), a copy of a document which has been filed or served in any proceedings under the Act may not be amended without the leave of the justices' clerk or the court which shall, unless the justices' clerk or the court otherwise directs, be requested in writing.

(2) On considering a request for leave to amend a document the justices' clerk or the court shall either—

- (a) grant the request, whereupon the justices' clerk shall inform the person making the request of that decision, or
- (b) invite the parties or any of them to make representations, within a specified period, as to whether such an order should be made.

(3) A person amending a document shall file it with the justices' clerk and serve it on those persons on whom it was served prior to amendment; and the amendments shall be identified.

Oral evidence

11. The justices' clerk or the court shall keep a note of the substance of the oral evidence given at a hearing of, or directions appointment in, proceedings under the Act.

Hearing

12. –

(1) Before the hearing, the justice or justices who will be dealing with the case shall read any documents which have been filed under rule 9 in respect of the hearing.

(2) The justices' clerk at a directions appointment or the court at a hearing or directions appointment, may give directions as to the order of speeches and evidence.

(3) Subject to directions under paragraph (2), at a hearing of, or directions appointment in, proceedings under the Act, the parties shall adduce their evidence in the following order—

- (a) the applicant,
- (b) the respondent other than the child, and
- (c) the child if he is a respondent.

(4) After the final hearing of proceedings under the Act, the court shall make its decision as soon as is practicable.

(5) Before the court makes an order or refuses an application, the justices' clerk shall record in writing—

- (a) the names of the justice or justices constituting the court by which the decision is made, and
- (b) in consultation with the justice or justices, the reasons for the court's decision and any findings of fact.

(6) When making an order or when refusing an application, the court, or one of the justices constituting the court by which the decision is made, shall state any findings of fact and the reasons for the court's decision.

(7) After the court announces its decision, the justices' clerk shall as soon as practicable—

- (a) make a record of any order made in the appropriate form in Schedule 1 to these Rules, or, where there is no such form, in writing; and
- (b) serve, in accordance with these Rules, a copy of any order made on the parties to the proceedings.

(8) The justices' clerk shall supply a copy of the record of the reasons for a decision made in pursuance of paragraph (5)(b) to any person on request, if satisfied that it is required in connection with an appeal or possible appeal.

Costs

13. –

(1) In any proceedings under the Act, the court may, at any time during the proceedings, make an order that a party pay the whole or any part of the costs of any other party.

(2) A party against whom the court is considering making a costs order shall have an opportunity to make representations as to why the order should not be made.

Confidentiality of documents

14. No document, other than a record of an order, held by the court and relating to proceedings under the Act shall be disclosed other than to–

- (a) a party,
- (b) the legal representative of a party, or
- (c) the Legal Aid Board,

without leave of the justices' clerk or the court.

Delegation by justices' clerk

15. –

(1) In this rule, “employed as a clerk in court” has the same meaning as in rule 2(1) of the Justices' Clerks (Qualifications of Assistants) Rules 1979(7).

(2) Anything authorised to be done by, to or before a justices' clerk under this Part of these Rules, or under paragraph 15 or 15D of the Schedule to the Justices' Clerks Rules 1970(8) as amended by Schedule 2 to these Rules, may be done instead by, to or before a person employed as a clerk in court where that person is appointed by the Magistrates' Courts Committee to assist him and where that person has been specifically authorised by the justices' clerk for that purpose.

(3) Any authorisation by the justices' clerk under paragraph (2) shall be recorded in writing at the time the authority is given or as soon as practicable thereafter.

Application of enactments governing procedure in proceedings brought on complaint

16. –

(1) Section 53(3) of the Magistrates' Courts Act 1980(9) (orders with the consent of the defendant without hearing evidence) shall apply to applications under section 20 of the Act for the variation of orders for periodical payments, as it applies to complaints for the variation of the rate of any periodical payments ordered by a magistrates' court to be made.

(2) Section 97 of the Magistrates' Courts Act 1980 (issue of a witness summons) shall apply to proceedings under the Act as it applies to a hearing of a complaint under that section.

Orders made under section 6 in the absence of the respondent

17. For the purposes of subsection (9)(a), (b) and (c) of section 6 of the Act, evidence of the consent of the respondent to the making of the order, of the financial resources of the respondent and of the financial resources of the child shall be by way of a written statement in the appropriate form in Schedule 1 to these Rules signed by the respondent or, where the application is in respect of financial provision for a child and the child has completed the appropriate form, the child.

(7) S.I. 1979/570, amended by 1980/1897.

(8) S.I. 1970/231, amended by 1975/300, 1976/1767, 1978/754, 1983/527 and 1991/1395.

(9) 1980 c. 43.

Application under section 7

18. –

(1) Where, under subsection (4) of section 7 of the Act, a court decides to treat an application under section 7 as if it were an application for an order under section 2 of the Act, the court shall indicate orally which of grounds (a) and (b) in that subsection it considers applicable and a memorandum of the decision and the grounds therefor shall be entered in the court's register.

(2) Where a court decides as aforesaid and the respondent is not then present or represented in court, or the respondent or his representative does not then agree to the continuance of the hearing, the court shall adjourn the hearing and the justices' clerk shall serve notice of the decision and the grounds therefor on the respondent in the appropriate form in Schedule 1 to these Rules.

Respondent on application under section 20 or section 20A

19. –

(1) The respondent on an application for the variation or revocation of an order under section 20 of the Act shall be the party to the marriage in question other than the applicant and, where the order requires payments to be made to or in respect of a child who is 16 years of age or over, that child.

(2) The respondents on an application for the revival of an order under section 20A of the Act shall be the parties to the proceedings leading to the order which it is sought to have revived.

Family protection orders

20. –

(1) Where an application has been made to a court for an order under section 16 of the Act and the applicant makes a statement to the justices' clerk, either orally or in writing, to the effect that there is imminent danger of physical injury to the applicant or a child of the family, the justices' clerk shall take such steps as may be necessary to ensure that the court considers as soon as practicable whether or not to exercise its power to make an expedited order under section 16(2) and (6) of that Act.

(2) Where a court makes an expedited order under section 16(2) and (6) of the Act, the justices' clerk shall serve notice of the making of the order on the respondent by causing a copy of the order to be delivered to the respondent personally, subject to any direction of the court.

(3) Where a court makes an order under section 16 of the Act to which a power of arrest is attached, the justices' clerk shall cause a copy of the order to be sent to the officer for the time being in charge of any police station for the address at which the person who applied for the order resides.

(4) Where a court makes an order under section 17(1) of the Act, varying or revoking any order under section 16 of the Act to which a power of arrest is attached, the justices' clerk shall cause a copy of the order under section 17(1) to be sent to the officer for the time being in charge of the police station to which a copy of the order under section 16 was sent in pursuance of paragraph (3) and, if the person who applied for the order under section 16 has since changed address, any police station for the new address.

(5) In the case of an expedited order, a copy thereof shall not be sent to the police in pursuance of paragraph (3) until notice of the making of the order has been served on the respondent in accordance with paragraph (2) and the justices' clerk shall, before sending it to the police, enter on it an endorsement in the appropriate form in Schedule 1 to these Rules indicating that it has been so served and the date on which the order takes effect.

(6) Where a copy of an expedited order is sent to the police in pursuance of paragraph (3), a copy of the order and its endorsement shall also be sent by the justices' clerk to the person who applied for the order.

(7) Where, by virtue of section 16(8)(b) of the Act, an expedited order to which a power of arrest is attached expires on the date of the commencement of the hearing by a court of an application for an order under section 16 of that Act, the justices' clerk shall cause notice of the expiry to be sent to the officer for the time being in charge of the police station to which a copy of the order was sent in pursuance of paragraph (3).

Powers of arrest and warrants of arrest under section 18

21. A power of arrest which, under section 18(1) of the Act, is attached to an order under section 16 of the Act, and a warrant of arrest issued under section 18(4) of the Act, shall be in the appropriate form in Schedule 1 to these Rules.

Proceedings by or against a person outside England and Wales for variation or revocation of orders under section 20

22. –

(1) The jurisdiction conferred on a court by virtue of section 20 of the Act shall, subject to the provisions of this rule, be exercisable even though the proceedings are brought by or against a person residing outside England and Wales.

(2) Subject to paragraph (3), where a court is satisfied that the respondent has been outside England and Wales for the whole of the period beginning one month before the making of the application and ending with the date of the hearing, it may proceed with an application made under section 20 of the Act provided that–

- (a) the applicant has taken steps to notify the respondent of the making of the application and of the time and place appointed for the hearing by–
 - (i) causing a notice in writing to that effect to be delivered to the respondent;
 - (ii) causing a notice in writing to that effect to be sent by post addressed to the respondent 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 the respondent, in accordance with directions given for the purpose by a justice acting for the same petty sessions area as that of the court; or
 - (iii) causing a notice to that effect to be inserted in one or more newspapers, in accordance with directions given as aforesaid; and
- (b) it is reasonable in all the circumstances to proceed in the absence of the respondent.

(3) The court shall not make the order for which the application is made unless it is satisfied that during the period of 6 months immediately preceding the making of the application the respondent was continuously outside England and Wales or was not in England and Wales on more than 30 days and that, having regard to any communication to the court in writing purporting to be from the respondent, it is reasonable in all the circumstances to do so.

(4) A court shall not exercise its powers under section 20 of the Act so as to increase the amount of any periodical payments required to be made by any person under the Act unless the order under that section is made at a hearing at which that person appears or a statement has been filed under rule 4(4) that service of a copy of the application has been effected on the respondent.

(5) Paragraph (1) of rule 67 of the Magistrates' Courts Rules 1981⁽¹⁰⁾ shall apply for the purpose of proving the delivery of a written notice in pursuance of paragraph (2)(a)(i) as it applies for the purpose of proving the service of a summons. In relation to a solemn declaration made outside the United Kingdom, paragraph (1) of the said rule 67, as applied by this paragraph, shall have effect as if for the reference to the authorities mentioned in the said paragraph (1) there were substituted a

⁽¹⁰⁾ S.I. 1981/552.

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.

(6) Paragraph (2) of the said rule 67 shall apply for the purpose of proving the sending of a written notice in pursuance of paragraph (2)(a)(ii) or the insertion of a notice in a newspaper in pursuance of paragraph (2)(a)(iii) 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.

Entries in court's registers

23. –

(1) Where the justices' clerk receives notice of any direction made by the High Court or a county court under section 28 of the Act by virtue of which an order made by the court under the Act ceases to have effect, particulars thereof shall be entered in the court's register.

(2) Where the hearing of an application under section 2 of the Act is adjourned after the court has decided that it is satisfied of any ground mentioned in section 1 and the parties to the proceedings agree to the resumption of the hearing in accordance with section 31 by a court which includes justices who were not sitting when the hearing began, particulars of the agreement shall be entered in the court's register.

Notification of orders made under section 17(1)

24. Where a court makes an order under section 17(1) of the Act varying or revoking an order made by another court under section 16 for the protection of a party to a marriage or a child of the family, the justices' clerk shall send a copy thereof to the justices' clerk of the court which made the order under section 16.

Proceedings with respect to which a single justice may discharge the functions of a court

25. The following proceedings are prescribed as proceedings with respect to which a single justice may discharge the functions of a court, that is to say, proceedings—

- (a) under section 16(6) of the Act, and
- (b) in accordance with rules 3, 4, 6 (save for paragraph (2) thereof) 7 to 14 and 20(2).