
STATUTORY INSTRUMENTS

2008 No. 2859

**The Magistrates' Courts (Enforcement of
Children Act 1989 Contact Orders) Rules 2008**

Citation, commencement and interpretation

1. These Rules may be cited as the Magistrates' Courts (Enforcement of Children Act 1989 Contact Orders) Rules 2008 and shall come into force on 8th December 2008.

2. In these Rules—

“the 1989 Act” means the Children Act 1989(1);

“the 1991 Rules” means the Family Proceedings Courts (Children Act 1989) Rules 1991(2);
and

“magistrates' court” has the meaning given in section 148 of the Magistrates' Courts Act 1980(3).

Application of the 1991 Rules

3. The 1991 Rules as modified by these Rules shall have effect in relation to—

(a) an application in the magistrates' court under any of the following provisions of the 1989 Act—

- (i) section 11J (enforcement orders);
- (ii) section 11O (compensation for financial loss);
- (iii) paragraph 4 of Schedule A1 (enforcement orders: power to revoke);
- (iv) paragraph 5, 6 or 7 of Schedule A1 (enforcement orders: amendment);
- (v) paragraph 9 of Schedule A1 (breach of an enforcement order);

(b) an application in the magistrates' court under section 8(2)(a) of the Children and Adoption Act 2006(4); or

(c) a case where a magistrates' court is considering exercising, or has exercised, a power under either of the following provisions of the 1989 Act—

- (i) section 11L(5) (enforcement orders: provision of information); or
- (ii) section 11M(1) (enforcement orders: monitoring).

Modification of the 1991 Rules

4. The 1991 Rules as they apply in relation to the matters in rule 3 are modified as provided in rules 5 to 23.

(1) 1989 c.41.

(2) S.I. 1991/1395. Relevant amending instruments are S.I. 1991/1991, 1992/2068, 1994/2166 and 3156, 1997/1895, 2001/615 and 818, 2003/2840, 2004/3376, 2005/229, 413, 585, 617 and 2930 and 2007/2188.

(3) Section 148 was amended by section 109(1) of and paragraph 248 of Schedule 8 to the Courts Act 2003.

(4) 2006 c.20.

5. In the Arrangement of Rules—

- (a) after the entry for rule 4 insert—
 - “4A Application for a warning notice
 - 4B Application to amend enforcement order by reason of change of residence”;
- (b) after the entry for rule 13A insert—
 - “13B Section 11J or 11O: duties of person notified”; and
- (c) after the entry for rule 21 insert—
 - “21AA Service of enforcement order or order revoking or amending enforcement order”.

6. In rule 1(2)—

- (a) after the definition of “emergency protection order” insert—
 - ““enforcement order” has the meaning assigned to it by section 11J(2);”;
- (b) after the definition of “file” insert—
 - ““financial compensation order” means an order made under section 11O(2);”
- (c) after the definition of “form” insert—
 - ““guardian ad litem” in rule 4(3A) and Schedule 2 means the person by whom the child took part in family proceedings in the High Court or the county court, as referred to in rules 9.2 and 9.5 of the Family Proceedings Rules 1991(5);”;
- (d) after the definition of “leave” insert—
 - ““legal representative” in rule 4(3A) and Schedule 2 has the meaning given in rule 23A(4);”;
- (e) after the definition of “Member State” insert—
 - ““next friend” means the person by whom the child began or prosecuted family proceedings in the High Court or the county court, as referred to in rule 9.2 of the Family Proceedings Rules 1991;”;
- (f) after the definition for “the Act of 1989” insert—
 - ““the Act of 2006” means the Children and Adoption Act 2006;
 - “warning notice” means a notice attached to a contact order pursuant to section 8(2) of the Act of 2006;”.

7. In rule 2—

- (a) in paragraph (5)—
 - (i) in sub-paragraph (d), delete “and”;
 - (ii) in sub-paragraph (e), for “.” substitute “, and”; and
 - (iii) after sub-paragraph (e), insert—
 - “(f) under paragraph 5 of Schedule A1.”; and
- (b) after paragraph (5), insert—
 - “(6) Proceedings under section 8(2)(a) of the Act of 2006 are prescribed as proceedings with respect to which a single justice may discharge the functions of a magistrates’ court.
 - (7) In paragraph (6), “magistrates’ court” has the meaning given in section 148 of the Magistrates’ Courts Act 1980.”.

8. In rule 4—

- (a) in paragraph (1) after “paragraph (4)” insert “and rules 4A and 4B”;
- (b) in paragraph (1A)(a)(i)—
 - (i) for “or” substitute “;”;
 - (ii) after “C51” insert “or C79” ;
- (c) after paragraph (3) insert—

“(3A) In relation to an application under section 11J or section 11O, in addition to complying with paragraph (3), the applicant shall serve a copy of the application on the person who was the children’s guardian, guardian ad litem, next friend or legal representative as referred to in the relevant entry in column (iv) of Schedule 2 to these Rules.”.

9. After rule 4 insert—

“Application for a warning notice

4A.—(1) This rule applies in relation to an application for a warning notice.

(2) The application shall be made ex parte on Form C78.

(3) The court may deal with the application without a hearing.

(4) Where the court determines that the application shall be dealt with at a hearing—

- (a) rule 4(1)(b) and (3) shall apply;
- (b) rule 4(2) shall apply as if for the words “On receipt by the designated officer of the documents filed under paragraph (1)(a)” there were substituted “On the court determining that the application shall be dealt with at a hearing”; and
- (c) rules 16(7) and 22 shall apply as if the proceedings on the application for a warning notice were relevant proceedings.

(5) Rules 23, 23A and 33 shall apply as if the proceedings on the application for a warning notice were relevant proceedings.

Application to amend enforcement order by reason of change of residence

4B.—(1) This rule applies in relation to an application under paragraph 5 of Schedule A1 (application to amend an enforcement order by reason of change of residence).

(2) The application shall be made ex parte on Form C79.

(3) The court may deal with the application without a hearing.

(4) Where the court determines that the application shall be dealt with at a hearing—

- (a) rule 4(1)(b) and (3) shall apply; and
- (b) rule 4(2) shall apply as if for the words “On receipt by the designated officer of the documents filed under paragraph (1)(a)” there were substituted “On the court determining that the application shall be dealt with at a hearing”.

10. In rule 5—

- (a) in paragraph (3) for “rule 11AA(1)(a) to (e)” substitute “rule 11AA(1)(a) to (g)”;
- (b) in paragraph (4)(a) and (b) for “rule 11AA(1)(a) to (e)” substitute “rule 11A(1)(a) to (g)”.

11. In rule 8(7)—

- (a) in sub-paragraph (a), after “respondent,” delete “and”; and

(b) after sub-paragraph (b), insert—

“and

(c) a copy of the application has been effected under rule 4(3A);”.

12. For rule 9, including the heading, substitute—

“Acknowledgement of application

9. Within 14 days of service of an application for—

- (a) an order under section 4(1)(c);
- (b) a section 8 order;
- (c) an enforcement order;
- (d) a financial compensation order;
- (e) a special guardianship order;
- (f) an order under Schedule 1;
- (g) an order under Part 2 of Schedule A1; or
- (h) an order for a warning notice to which rule 4A(4) applies,

each respondent shall file, and serve on the parties, an acknowledgement of the application in Form C7 and, if both parts of question 6 or question 7 (or both) on Form C7 are answered in the affirmative, Form C1A.”.

13. In rule 11AA—

(a) in paragraph (1)—

(i) in sub-paragraph (e), for “.” substitute “;” and

(ii) after sub-paragraph (e) insert—

“(f) section 11L(5) (providing the court with information as to the making of an enforcement order);

(g) section 11M(1) (monitoring compliance with an enforcement order).”;

(b) in paragraph (2) for “paragraph (1)(a) to (e)” substitute “paragraph (1)(a) to (g)”;

(c) in paragraph (8) for “paragraph (1)(a) to (d)” substitute “paragraph (1)(a), (b), (c), (d), (f) or (g)”; and

(d) in paragraph (9) for “paragraph (1)(a) to (e)” substitute “paragraph (1)(a) to (g)”.

14. After rule 13A insert—

“Section 11J or 11O: duties of person notified

13B. Where there has been a notification of an application in accordance with rule 4(3A), the person notified shall—

- (a) consider whether it is in the best interests of the child for the child to be a party to the proceedings to which that application relates and, therefore, whether the court should consider transferring the proceedings; and
- (b) before the date fixed for the first hearing or directions appointment, notify the court, orally or in writing, of his opinion on these questions, together for the reason for this opinion.”.

15. In rule 14—

- (a) in paragraph (1)(b) for “rule 11AA(1)(a) to (d)” substitute “rule 11AA(1)(a), (b), (c), (d), (f) or (g)”;
 - (b) in paragraph (2)(n) for “rule 11AA(1)(a) to (c)” substitute “rule 11A(1)(a), (b), (c), (f) or (g)”;
 - (c) in paragraph (11A) for “rule 11AA(1)(a) to (e)” substitute “rule 11AA(1)(a) to (g)”.
16. In rule 15(5)(c)(ii) for “rule 11AA(1)(a) to (e)”, substitute “rule 11AA(1)(a) to (g)”.
17. In rule 16(1A)—
- (a) in sub-paragraph (a) after “a contact order” insert “or relates to an application for a financial compensation order, an enforcement order or an order under paragraph 9(2) of Schedule A1”; and
 - (b) in paragraph (b), for “direction or condition” substitute “direction, condition or order”.
18. In rule 17(1), for “rule 11AA(1)(a) to (e)” substitute “rule 11AA(1)(a) to (g)”.
19. In rule 21(7)(b), after “paragraph (8)” insert “and rule 21AA”.
20. After rule 21, insert—

“Service of enforcement order or order amending or revoking enforcement order

21AA.—(1) Paragraphs (2) and (3) apply where an enforcement order or an order under paragraph 9(2) of Schedule A1 is made by the court.

(2) As soon as practicable after an order has been made, a copy of it shall be served by the designated officer on—

- (a) the parties, except the person against whom the order is made;
- (b) the officer of the service or the Welsh family proceedings officer who is obliged to comply with a request under section 11M;
- (c) the responsible officer.

(3) Unless the court directs otherwise, the applicant shall serve a copy of the order personally on the person against whom the order is made.

(4) As soon as practicable after an order had been made under paragraph 4, 5, 6 or 7 of Schedule A1, a copy of the order shall be served by the designated officer on—

- (a) the parties;
- (b) the officer of the service or the Welsh family proceedings officer who is obliged to comply with a request under section 11M;
- (c) the responsible officer; and
- (d) in the case of an order made under paragraph 5 of Schedule A1, the responsible officer in the former local justice area.

(5) In this rule, “responsible officer” has the meaning given in paragraph 8(8) of Schedule A1.”.

21. In rule 33 delete “in a family proceedings court”.

22. In Schedule 1—

- (a) in the list of forms, after the entry for Form C54, insert—

“C78	Application	for attachment of a warning notice to a contact order
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C79	Application	related to enforcement of a contact order
C80	Order	Enforcement order
C81	Order	Revocation of enforcement order
C82	Order	Order for financial compensation”.

; and

(b) after Form C54 insert the forms in the Schedule to these Rules.

23. In Schedule 2—

- (a) in the row beginning “Section 4(1)(c)”, in column (i), after “Schedule 14” insert “or, where rule 4A(4) applies, section 8(2)(a) of the Act of 2006”;
- (b) after the row beginning “Section 4(1)(c)”, insert—

“Section 11J or 11O	14 days	Only the person whom the applicant alleges has failed to comply with the contact order	Any officer of the service or Welsh family proceedings officer exercising a duty conferred on him by section 11H(2) (monitoring compliance with a contact order) Where the child was a party to the proceedings in which the contact order was made— (a) the person who was the children’s guardian, guardian ad litem or next friend of the child in those proceedings; or (b) where there was no children’s guardian, guardian ad litem or next friend, the person who was the legal representative of the child
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in those proceedings”

; and

(c) after the row beginning “Section 25”, insert—

“Paragraph 4 of Schedule A1	14 days	Only— (a) the person who was the applicant for the enforcement order, and (b) where the child was a party to the proceedings in which the enforcement order was made, the child	Any officer of the service or Welsh family proceedings officer exercising a duty conferred on him by section 11M(1) (monitoring compliance with an enforcement order) and the responsible officer (as defined in section 197 of the Criminal Justice Act 2003(6) as modified by Schedule A1)
Where rule 4B applies, paragraph 5 of Schedule A1. Paragraphs 6 and 7 of Schedule A1	14 days	Only the person who was the applicant for the enforcement order	Any officer of the service or Welsh family proceedings officer exercising a duty conferred on him by section 11M(1) (monitoring compliance with an enforcement order) and the responsible officer (as defined in section 197 of the Criminal Justice Act 2003 as modified by Schedule A1)
Paragraph 9 of Schedule A1	14 days	Only the person whom the applicant alleges has failed to comply with the unpaid work requirement imposed by an enforcement order,	Any officer of the service or Welsh family proceedings officer exercising a duty conferred on him by section 11M(1) (monitoring

(6) 2003 c.44. Section 197 is amended by S.I. 2005/886 and 2008/912 and by sections 6(2) and 149 of and paragraphs 71 and 83 of Schedule 4, and Schedule 28, to the Criminal Justice and Immigration Act 2008 (c.4). Section 197 is modified by paragraphs 1, 2 and 3(1) of Schedule A1 to the Children Act 1989.

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	and where the child was a party to the proceedings in which the enforcement order was made, the child	compliance with an enforcement order) and the responsible officer (as defined in section 197 of the Criminal Justice Act 2003 as modified by Schedule A1)”
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Lord Judge, C.J.

I concur

3rd November 2008

Bridget Prentice
Parliamentary Under Secretary of State
Ministry of Justice