

2011 No. 633 (L.5)

MAGISTRATES' COURTS, ENGLAND AND WALES

PROCEDURE

The Justices' Clerks (Amendment) Rules 2011

<i>Made</i> - - - -	<i>2nd March 2011</i>
<i>Laid before Parliament</i>	<i>7th March 2011</i>
<i>Coming into force</i> - -	<i>6th April 2011</i>

The Lord Chancellor makes the following Rules in exercise of the powers conferred by sections 28 and 108(6) of the Courts Act 2003(a) with the concurrence of the Senior Presiding Judge (as nominee of the Lord Chief Justice(b)):

In accordance with section 28(9) of that Act the Lord Chancellor has consulted the Criminal Procedure Rule Committee, the Family Procedure Rule Committee and the Magistrates' Courts Rule Committee.

Citation and commencement

1. These rules may be cited as the Justices' Clerks (Amendment) Rules 2011 and shall come into force on 6th April 2011.

Amendments to Justices' Clerks Rules 2005

2. The Justices' Clerks Rules 2005(c) are amended in accordance with the following rules.

3. In rule 2, for "the Schedule" substitute "Schedules 1 and 2".

4. In rule 3(1)—

(a) for "paragraphs 1 to 36 and 44 to 71 in the Schedule" substitute "paragraphs 1 to 36 of Schedule 1 and paragraphs 1 to 7 of Schedule 2"; and

(b) for "reference in the Schedule" substitute "reference in these Rules".

5. After rule 3 insert—

"3A. Where a justices' clerk—

(a) is performing the function of a single justice in accordance with paragraphs 1 to 7 of Schedule 2 to these Rules; and

(a) 2003 c.39. Section 28 was amended by section 15(1) of, and paragraphs 308 and 327(1), (2) and (3) of Part 1 of Schedule 4 to, the Constitutional Reform Act 2005 (c.4) and section 108(6) was amended by section 15(1) of and paragraphs 308 and 348 of Part 1 of Schedule 4 to the Constitutional Reform Act 2005.

(b) The Lord Chief Justice may nominate a judicial office holder under section 28(10) of the Courts Act 2003.

(c) S.I. 2005/545. Relevant amending instruments are S.I. 2005/2796 and 2006/2493.

(b) considers, for whatever reason, that it is inappropriate to perform the function, the justices' clerk must refer the matter to the magistrates' court which may perform the function.”.

6. In rule 5, for “the Schedule” in paragraphs (a) and (b) substitute “Schedule 1”.

7. In the Schedule—

- (a) in the heading, for “Schedule” substitute “Schedule 1”;
- (b) omit the heading “Family etc.” after paragraph 36; and
- (c) omit paragraphs 37 to 71.

8. After the Schedule insert Schedule 2 which is set out in the Schedule to these Rules.

Transitional provisions

9. Where, by virtue of Part 36 of the Family Procedure Rules 2010(a), the Family Procedure Rules 2010 do not apply to a particular case, the Justices' Clerks Rules 2005 shall have effect as if the amendments made to the Justices' Clerks Rules 2005 by these Rules had not been made.

28th February 2011

I concur

2nd March 2011

J Djanogly
Parliamentary Under Secretary of State
Ministry of Justice

John Goldring, L.J.
Senior Presiding Judge

SCHEDULE

Rule 8

“SCHEDULE 2

Family etc.

1. The transfer of proceedings in accordance with any order made by the Lord Chancellor under Part 1 of Schedule 2 to the Children Act 1989(b).

2. The appointment of a children's guardian or solicitor for a child under section 41 of the Children Act 1989(c).

3. The making of an order under section 11(3) or 38(1) of the Children Act 1989 where—

- (a) a previous such order has been made in the same proceedings;
- (b) the terms of the order sought are the same as those of the last such order made; and
- (c) a written request for such an order has been made and—

(a) S.I. 2010/2955.

(b) 1989 c. 41. Part 1 of Schedule 2 was amended by section 7(1) and (4) of the Children (Leaving Care) Act 2000 (c.35) and article 2 of the Children Act 1989 (Amendment) (Children's Services Planning) Order 1996 (S.I. 1996/785) and section 64 of and Part 1 of Schedule 5 to the Children Act 2004 (c.31) and section 582(1) of and paragraph 92 of Schedule 37 to the Education Act 1996 (c.56) and sections 19 and 25(1) to (4) and section 42 of and Schedule 4 to the Children and Young Persons Act 2008 (c.23).

(c) Section 41 was amended by sections 74 and 75 of and paragraphs 87, 91(a) to (e) of Part II of Schedule 7 to and Schedule 8 to the Criminal Justice and Court Services Act 2000 (c.43) and section 40 of and paragraphs 5, 9(1), (2), (3), (4)(a), 4(b) and (5) of Schedule 3 to the Children Act 2004 (c.31) and section 122(1)(a) and (b) of the Adoption and Children Act 2002 (c.38) and section 116 of and paragraph 17 of Schedule 16 to the Courts and Legal Services Act 1990 (c.41) and articles 4, 5 and Schedule 1 to the Solicitors' Incorporated Practices Order 1991 (S.I. 1991/2684).

- (i) the other parties and any children’s guardian consent to the request and they or their legal representatives have signed the request; or
- (ii) at least one of the other parties and any children’s guardian consent to the request and they or their legal representatives have signed the request, and the remaining parties have not indicated that they either consent to or oppose the making of the order.

4. The issuing of a witness summons under section 97 of the Magistrates’ Courts Act 1980(a) in family proceedings as defined in section 65 of that Act(b).

5. The request for a welfare report under section 7 of the Children Act 1989(c).

6. The determination that a complaint for the revocation, discharge, revival, alteration, variation or enforcement of a magistrates’ court maintenance order be dealt with by a magistrates’ court acting for another local justice area in accordance with the provisions of rule 41 or 59 of the Magistrates’ Courts Rules 1981(d).

7. All the functions of a magistrates’ court which a single justice may perform in accordance with rule 2.6 of the Family Procedure Rules 2010 and Practice Directions supplementing those rules except the functions listed in column 2 of the Table in accordance with the rules listed in column 1.

TABLE

8.20(4)	A direction that any person (who is not a child) should be made a respondent to the application for a declaration of parentage under section 55A of the Family Law Act 1986(e), except where the parties consent to that person (who is not a child) being made a respondent.
12.3(2)	Direction that a person with parental responsibility be made a party except where the parties consent to the person with parental responsibility (who is not a child) being made a party.

(a) 1980 c.43. Section 97 was amended by section 169(2) of the Serious Organised Crime and Police Act 2005 (c.15), article 2 of the Family Procedure (Modification of Enactments) Order 2005 (S.I. 2005/3275), section 31(1) of and paragraph 2 of Schedule 4 to the Criminal Justice (International Co-operation) Act 1990 (c.5), section 51 of the Criminal Procedure and Investigations Act 1996 (c.25), sections 13 and 14 of and paragraph 7 of Part III of Schedule 2 to the Contempt of Court Act 1981 (c.49), section 17(3) of and Parts I and V of Schedule 4 to the Criminal Justice Act 1991 (c.53), and section 65(3) and (4) of and paragraph 6(3) of Schedule 3 to the Criminal Justice Act 1993 (c.36).

(b) Section 65 was amended by section 15(4) of, and Part 1 of Schedule 12 to, the Civil Jurisdiction and Judgments Act 1982 (c.27), section 44 of the Matrimonial and Family Proceedings Act 1984 (c.42), section 86 of, and paragraph 54 of Part II of Schedule 10 to, the Social Security Act 1986 (c.50), section 33 of, and Schedules 2 and 4 to, the Family Law Reform Act 1987 (c.42), sections 92 and 108(7) of, and paragraph 8 of Schedule 11 and Schedule 15 to, the Children Act 1989 (c.41), sections 116 and 125(7) of, and paragraph 40 of Schedule 16 and Schedule 20 to, the Courts and Legal Services Act 1990 (c.41), sections 3 and 4 of, and Schedule 1 and paragraph 60 of Schedule 2 to, the Social Security (Consequential Provisions) Act 1992 (c.6), section 66(1) of, and paragraph 49 of Schedule 8 to, the Family Law Act 1996 (c.27), section 119 of, and paragraph 42 of Schedule 8 to, the Crime and Disorder Act 1998 (c.37), sections 83(5) and 85 of, and paragraph 2(1) to (3) of Schedule 8 and Part 9 of Schedule 9 to, the Child Support, Pensions and Social Security Act 2000 (c.19), section 139(1) of, and paragraphs 36 and 37 of Schedule 3 to, the Adoption and Children Act 2002 (c.38), section 109(1) of, and paragraph 214 (1) and (3) of Schedule 8 to, the Courts Act 2003, section 261(1) of, and paragraph 65 of Schedule 27 to, the Civil Partnership Act 2004, section 103(1) of, and paragraph 2 of Schedule 2 to, the Childcare Act 2006 (c.21), section 166 of, and Part 5 of Schedule 15 to, the Health and Social Care Act 2008 (c.14), section 56 of, and paragraph 20 of Part 1 of Schedule 6 to, the Human Fertilisation and Embryology Act 2008 (c.22), section 72 of, and paragraphs 1 and 2 of Schedule 1 to, the Children and Families (Wales) Measure 2010 (nawm 1), and by S.I. 1993/623, 1997/1898, 2001/3929, 2005/265 and 2007/1655, and was modified by S.I. 2010/1898.

(c) Section 7 was amended by section 74 of and paragraphs 87, 88(a) and (b) of Part II of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c.43) and by section 40 of and paragraphs 5 and 6 of Schedule 3 to the Children Act 2004 (c.31) and section 15(1) of and paragraphs 203, 204(1), (2) and (3) of Part I of Schedule 4 to the Constitutional Reform Act 2005 (c.4).

(d) S.I. 1981/552. Relevant amending instruments are S.I. 1989/384, 2001/610 and S.I. 2005/617.

(e) 1986 c.55. Section 55A was amended by section 83(1), (2) of the Child Support, Pensions and Social Security Act 2000 (c.19).

12.3(3)	Direction that any person or body be made a party to proceedings or a party be removed except where the parties consent to a person (who is not a child) or body being made a party or to a party (who is not a child) being removed
12.3(4)	Consequential directions following the addition or removal of a party except where a justices' clerk is able to make such a direction under rule 12.3(2) and (3).
12.14(7)	In relation to a hearing, other than a hearing for directions, if one or more respondents attend the hearing but the applicant does not, refuse the application or if sufficient evidence has previously been received proceed in the absence of the applicant.
12.14(8)	In relation to a hearing, other than a hearing for directions, if neither party attends a hearing, refuse the application.
12.17(2)	Adjournment of proceedings following a direction under section 37(1) of the Children Act 1989.
12.17(4)(b)	Direction for evidence to be served on appropriate authority.
12.17(6)	Direction that a copy of a report under section 37 of the Children Act 1989(a) need not be served on a party.
12.33(3) (insofar as it relates to r12.33(1)(a))	Power to deal with an application for warning notices without a hearing.
12.34(2)	Consider whether it is necessary for information to be deleted from a copy of a risk assessment before that copy is served on a party or service of a copy of the risk assessment on a party to be delayed for a specified period and give directions accordingly.
13.3(3)	Direction that person with parental responsibility be made a party, except where parties consent to person with parental responsibility (who is not a child) being made a party.
13.3(4)	Direction that any person or body be made a party to proceedings or a party be removed, except where parties consent to a person (who is not a child) or body being made a party or to a party (who is not a child) being removed.
13.3(5)	Consequential directions following the addition or removal of a party, except where a justices' clerk is able to make such a direction under rule 13.3(3) and (4).
13.21(3)	Permission for the copy of any final order to be sent to any other person.
14.3(3)	Direction that any person or body be made a party to proceedings or a party be removed,

(a) Section 37 was amended by section 116 of and paragraph 16 of Schedule 16 to the Courts and Legal Services Act 1990 (c. 41).

14.3(4)	except where parties consent to a person (who is not a child) or a body being a party or to a party (who is not a child) being removed. Consequential directions following the addition or removal of a party, except where a justices' clerk is able to make such a direction under rule 14.3(3).
14.6(3)(a)	Direction that the local authority prepare a report giving their reasons for placing the child for adoption.
14.26(3)	Permission for the copy of any final order to be sent to any other person.
16.19	Termination of appointment of children's guardian.
16.25(1)	Direction that a person may not act as a children's guardian, termination of an appointment, appointment of a children's guardian in substitution for an existing one.
16.29(9)	Giving reasons for the termination of an appointment of a solicitor for a child (the justices' clerk may make a note of such reasons).
18.3(1)(c)	In addition to a direction that a child be made a respondent to an application, a direction that any other person be a respondent to an application under Part 18 except where the parties consent to the person (other than a child) being made a respondent.
27.4(4)	Power of court to refuse the application, other than one for directions, where one or more respondents appear but the applicant does not.
27.4(5)	Power of court to refuse the application, other than one for directions, where neither the applicant nor any respondent appears.
27.10(1)(b)	Direction that the proceedings to which the Rules apply will not be held in private, except that a justices' clerk may give such a direction in relation to a hearing which that justices' clerk is conducting.
27.11(2)(g)	Power to permit any other person to be present during any hearing, except that a justices' clerk may give such permission in relation to a hearing which that justices' clerk is conducting.
29.15	Specifying alternative date for an order, to take effect except an order which the justices' clerk has made.
29.16	Correcting an accidental slip or omission in an order except where that order was made by a justices' clerk.

8. In this Schedule, “hearing” and “order” have the meanings assigned to them by rule 2.3 of the Family Procedure Rules 2010.”

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Justices' Clerks Rules 2005 (S.I. 2005/545) ("the 2005 Rules"). Rule 5 inserts a new rule 3A in the 2005 Rules to provide that where a justices' clerk is performing certain functions and considers it inappropriate to perform those functions, the justices' clerk must refer the matter to a magistrates' court.

Rule 8 and the Schedule insert a new Schedule 2 to the 2005 Rules to specify which of the functions which are authorised to be done to, by or before a single justice of the peace may be done to, by or before a justices' clerk.

Rules 3, 4, 6 and 7 make consequential amendments to the 2005 Rules and transitional provision is made in rule 9.

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STATUTORY INSTRUMENTS

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£5.75