
STATUTORY INSTRUMENTS

1993 No. 617 (L.3)

MAGISTRATES' COURTSPROCEDURE

The Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Miscellaneous Amendments) Rules 1993

<i>Made</i>	- - - -	<i>10th March 1993</i>
<i>Laid before Parliament</i>		<i>12th March 1993</i>
<i>Coming into force</i>	- -	<i>5th April 1993</i>

The Lord Chancellor, in exercise of the powers conferred on him by section 144 of the Magistrates' Courts Act 1980(1), after consultation with the Rule Committee appointed under that section, hereby makes the following Rules:

1. These Rules may be cited as the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Miscellaneous Amendments) Rules 1993 and shall come into force on 5th April 1993.
2. The following Rules—
 - (a) the Maintenance Orders (Facilities for Enforcement) Rules 1922(2);
 - (b) the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) Rules 1974(3);
 - (c) the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Republic of Ireland) Rules 1975(4);
 - (d) the Magistrates' Courts (Recovery Abroad of Maintenance) Rules 1975(5);
 - (e) the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Hague Convention Countries) Rules 1980(6); and
 - (f) the Magistrates' Courts (Civil Jurisdiction and Judgments Act 1982) Rules 1986(7)

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- (1) 1980 c. 43, as extended by section 145 of that Act; by section 7 of the Maintenance Orders (Facilities for Enforcement) Act 1920 (c. 33) and sections 18 and 38A of the Maintenance Orders (Reciprocal Enforcement) Act 1972 (c. 18) (sections 7, 18 and 38A were amended or inserted by paragraphs 4, 11 and 18 respectively, of Schedule 1 to the Maintenance Orders (Reciprocal Enforcement) Act 1992 (c. 56)); and section 18(1) as applied by the Reciprocal Enforcement of Maintenance Orders (Republic of Ireland) Order 1993 (S.I. 1993/594), and the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1993 (S.I. 1993/593); by section 28 of the Justices of the Peace Act 1979 (c. 55) as amended by section 117 of the Courts and Legal Services Act 1990 (c. 41); and by section 48 of the Civil Jurisdiction and Judgments Act 1982 (c. 27).
 - (2) S.R. & O. 1922/1355, amended by S.I. 1970/762, 1989/384 and 1992/457.
 - (3) S.I. 1974/688, amended by S.I. 1975/2236, 1979/170, 1983/1148, 1986/1762 and 1992/457.
 - (4) S.I. 1975/286, amended by S.I. 1992/457.
 - (5) S.I. 1975/488, amended by S.I. 1979/1561 and 1980/1584.
 - (6) S.I. 1980/108, amended by S.I. 1986/190 and 1992/457.
 - (7) S.I. 1980/1962, amended by S.I. 1992/457.

shall have effect subject to the amendments set out in Schedule 1 to these Rules.

3. Paragraphs 1 to 13 of Schedule 2 to these Rules shall be added—

- (a) to the Maintenance Orders (Facilities for Enforcement) Rules 1922, as the Schedule to those Rules;
- (b) to the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) Rules 1974, as Schedule A1 (which shall be inserted before Schedule 1) to those Rules;
- (c) to the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Republic of Ireland) Rules 1975, as Schedule A1 (which shall be inserted before the Schedule) to those Rules;
- (d) to the Magistrates' Courts (Recovery Abroad of Maintenance) Rules 1975, as Schedule 2 to those Rules; and
- (e) to the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Hague Convention Countries) Rules 1980, as Schedule 1A to those Rules.

Dated 10th March 1993

Mackay of Clashfern, C.

SCHEDULE 1

Rule 2

AMENDMENTS TO RULES

The Maintenance Orders (Facilities for Enforcement) Rules 1922

1. The Maintenance Orders (Facilities for Enforcement) Rules 1922 shall be amended as follows—

- (a) In rule 2, for the word “summons” there shall be substituted the words “notice of hearing”.
- (b) After rule 2 there shall be inserted the following rule—

“**2A.** On receipt of an order in accordance with rule 2 above the justices' clerk to whom it is sent shall serve upon the person against whom the order is made certified copies of the order and of the accompanying documents, together with the notice required to be served under section 4 of the Act.”.

- (c) After rule 6 there shall be inserted the following rules—

“**6A.**—(1) In this rule “an application” means—

- (a) an application under section 3 of the Act for a provisional order,
- (b) an application under section 4A of the Act for variation or revocation of a maintenance order made in the United Kingdom, or
- (c) an application under section 4A of the Act for variation or revocation of a maintenance order confirmed in the United Kingdom.

(2) An application shall be filed in an appropriate form.

(3) On receipt of such an application the justices' clerk shall—

- (a) fix the date, time and place for a hearing or a directions appointment, and
- (b) notify the applicant of the date, time and place so fixed.

6B.—(1) The Schedule to these Rules shall apply to proceedings pursuant to rules 2A and 6A above.

(2) In the Schedule as it applies to rule 2A, “the resident party” and “the non-resident party” shall be taken to mean the payer and the payee respectively under the order in question.

(3) In the Schedule as it applies to rule 6A, “the resident party” and “the non-resident party” shall be taken to mean—

- (a) in the case of an application under sub-paragraph (a) of rule 6A(1), the applicant and respondent respectively,
- (b) in the case of an application under sub-paragraph (b) of rule 6A(1), the payee and payer respectively under the order in question, and
- (c) in the case of an application under sub-paragraph (c) of rule 6A(1), the payer and payee respectively under the order in question.”.

The Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) Rules 1974

2. The Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) Rules 1974 shall be amended by the insertion after rule 4 of the following rules—

“**4A.**—(1) In this rule “an application” means—

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- (a) an application under section 3 of the Act for a provisional maintenance order against a person residing in a reciprocating country,
 - (b) an application under section 5 of the Act for the variation or revocation of a maintenance order made in the United Kingdom, or
 - (c) an application under section 9 of the Act for the variation or revocation of a maintenance order registered by a court in the United Kingdom.
- (2) An application shall be filed in an appropriate form.
- (3) On receipt of such an application the justices' clerk shall—
- (a) fix the date, time and place for a hearing or a directions appointment, and
 - (b) notify the applicant of the date, time and place so fixed.
- 4B.**—(1) This rule applies to proceedings under section 5(5), 7 or 9(6) of the Act for the confirmation of a provisional order made in a reciprocating country.
- (2) On receipt of the order and accompanying documents referred to in section 5(5), 7 or 9(6) of the Act, the justices' clerk shall—
- (a) fix the date, time and place for a hearing or a directions appointment allowing sufficient time for service under this rule to be effected at least 21 days before the date so fixed, and
 - (b) serve a copy of the order and documents on the resident party together with a notice stating the date, time and place so fixed.
- (3) Within 14 days of service under this rule the resident party shall file an answer to the provisional order in an appropriate form.
- 4C.**—(1) Schedule A1 to these Rules shall apply to proceedings pursuant to rules 4A and 4B above.
- (2) In Schedule A1 as it appears to rule 4A, “the resident party” and “the non-resident party” shall be taken to mean—
- (a) in the case of an application under sub-paragraph (a) of rule 4A(1), the applicant and the respondent respectively;
 - (b) in the case of an application under sub-paragraph (b) of rule 4A(1), the payee and the payer respectively under the order in question; and
 - (c) in the case of an application under sub-paragraph (c) of rule 4A(1), the payer and payee respectively under the order in question.
- (3) In rule 4B and in Schedule A1 as it applies to that rule, “the resident party” and “the non-resident party” shall be taken to mean the payer and the payee respectively under the order in question.”.

The Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Republic of Ireland) Rules 1975

3. The Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Republic of Ireland) Rules 1975 shall be amended by the insertion after rule 4 of the following rules—

- “4A.**—(1) An application under section 3 of the Act for a provisional order or under section 5 of the Act for the variation or revocation of a maintenance order or a provisional order made in the United Kingdom shall be filed in an appropriate form.
- (2) On receipt of such an application the justices' clerk shall—

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- (a) fix the date, time and place for a hearing or a directions appointment; and
- (b) notify the applicant of the date, time and place so fixed.

4B.—(1) Schedule A1 to these Rules shall apply to proceedings pursuant to rule 4A above.

(2) In Schedule A1 as it applies to rule 4A, “the resident party” and “the non-resident party” shall be taken to mean—

- (a) in the case of an application for a provisional order, the applicant and the respondent respectively, and
- (b) in the case of an application for the variation or revocation of a maintenance order or a provisional order, the payee and the payer respectively under the order in question.”.

The Magistrates' Courts (Recovery Abroad of Maintenance) Rules 1975

4. The Magistrates' Courts (Recovery Abroad of Maintenance) Rules 1975 shall be amended as follows—

- (a) after rule 3 there shall be inserted the following rule—

“3A.—(1) On receipt of an application for the recovery of maintenance in England and Wales sent from the Lord Chancellor to a magistrates' court under section 27B of the Act, the justices' clerk shall—

- (a) fix the date, time and place for a hearing or a directions appointment, allowing sufficient time for service under this rule to be effected at least 21 days before the date so fixed; and
- (b) serve copies of the application and any accompanying documents, together with a notice stating the date, time and place so fixed, on the respondent.

(2) Within 14 days of service under this rule, the respondent shall file an answer to the application in the appropriate form.”;

- (b) in rule 4—
 - (i) for the words “a complaint”, in each place where they occur, there shall be substituted the words “an application”; and
 - (ii) for the words “section 27” there shall be substituted the words “section 27A”;
- (c) in rule 5, for the words “section 27(8)” there shall be substituted the words “section 27C(7)”;
- (d) in rule 6, for the words “section 27(8)” there shall be substituted the words “section 27C(7)”;
- (e) in rule 7—
 - (i) for paragraph (1) there shall be substituted—

“(1) A justices' clerk to whom payments are made by virtue of section 27C, section 33 (3A) or section 34A of the Act shall send those payments by post to such person or authority as the Lord Chancellor may from time to time direct.”;

and

- (ii) in paragraph (2), the words “by virtue of paragraph (1) above” shall be omitted.
- (f) after rule 7, there shall be inserted the following rules—

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7A.—(1) Where, in the exercise of the duty imposed under section 27C of the Act, or in the exercise of the powers conferred by virtue of section 33(3A) or section 34A of the Act, the court orders that payments under the order are to be made by a particular means, the clerk of the court shall record on the copy of the order the means of payment which the court has ordered and notify in writing, as soon as practicable, the person liable to make payments under the order of how the payments are to be made.

(2) Where, in the exercise of any of the aforesaid powers, the court orders payment to the clerk of the court, or to the clerk of any other magistrates' court, by a method of payment falling within section 59(6) of the Magistrates' Courts Act 1980⁽⁸⁾ (standing order, etc.) the clerk of the court to whom payments are to be made shall notify the person liable to make the payments under the order of the number and location of the account into which the payments are to be made.

(3) Where, under section 34A(4) of the Act, the clerk of the court receives an application from an interested party for the method of payment to be varied, the clerk shall notify in writing, as soon as practicable, that party and, where practicable, any other interested party, of the result of the application, including any decision to refer the matter to the court; where the clerk grants the application he shall record the variation on the copy of the order.

7B.—(1) In this rule “an application” means an application under section 34 of the Act for the variation or revocation of a registered order.

(2) An application which is made directly to the registering court shall be filed in an appropriate form.

(3) On receipt of an application, either filed in accordance with paragraph (2) or sent from the Lord Chancellor under section 34(3) of the Act, the justices' clerk shall—

- (a) fix the date, time and place for a hearing or a directions appointment; and
- (b) notify the applicant of the date, time and place so fixed.”.

(g) in rule 8—

- (i) for the words “a complaint” and “complaint”, in each place where they occur there shall be substituted the words “an application” and “application” respectively; and
- (ii) in rule 8(1), for the word “defendant” there shall be substituted the word “respondent”.

(h) after rule 11, there shall be inserted the following rule—

“12.—(1) Schedule 2 shall apply to proceedings pursuant to rules 3A and 7B above.

(2) In Schedule 2 as it applies to rule 3A, “the resident party” and “the non-resident party” shall be taken to mean the respondent and the applicant respectively.

(3) In Schedule 2 as it applies to rule 7B, “the resident party” and “the non-resident party” shall be taken to mean the payer and the payee under the order in question respectively.”.

⁽⁸⁾ 1980 c. 43; section 59 was substituted by section 2 of the Maintenance Enforcement Act 1991 (c. 17).

The Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Hague Convention Countries) Rules 1980

5. The Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Hague Convention Countries) Rules 1980 shall be amended by the insertion after rule 4 of the following rules—

- 4A.**—(1) In this rule, “an application” means—
- (a) an application under section 3 of the Act for a maintenance order against a person residing in a Hague Convention country,
 - (b) an application under section 5 of the Act for the variation or revocation of a maintenance order made in the United Kingdom, or
 - (c) an application under section 9 of the Act for the variation or revocation of a maintenance order registered by a court in the United Kingdom.
- (2) An application shall be filed in an appropriate form.
- (3) On receipt of such an application the justices' clerk shall—
- (a) fix the date, time and place for a hearing or a directions appointment, and
 - (b) notify the applicant of the date, time and place so fixed.

4B.—(1) Schedule 1A to these Rules shall apply to proceedings pursuant to rule 4A above.

- (2) In Schedule 1A as it applies to rule 4A, “the resident party” and “the non-resident party” shall be taken to mean—
- (a) in the case of an application under sub-paragraph (a) of rule 4A(1), the applicant and the respondent respectively,
 - (b) in the case of an application under sub-paragraph (b) of rule 4A(1), the payee and payer respectively under the order in question, and
 - (c) in the case of an application under sub-paragraph (c) of rule 4A(1), the payer and payee respectively under the order in question.”.

The Magistrates' Courts (Civil Jurisdiction and Judgments Act 1982) Rules 1986

6. In rule 11 of the Magistrates' Courts (Civil Jurisdiction and Judgments Act 1982) Rules 1986, for the words “complaint”, “complainant” and “defendant” in each place where they occur, there shall be substituted the words “application”, “applicant” and “respondent” respectively.

SCHEDULE 2

Rule 3

RULES OF PROCEDURE

1. In this Schedule, and in any rule where this Schedule applies to proceedings pursuant to that rule, unless the context otherwise requires—

“business day” means any day other than—

- (a) a Saturday, Sunday, Christmas 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(9), in England and Wales,

(9) 1971 c. 80.

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- “directions appointment” means a hearing for directions under paragraph 4 below,
- “file” means deposit with the justices' clerk,
- “justices' clerk” has the meaning assigned to it by section 70 of the Justices of the Peace Act 1979 and includes any person who performs a justices' clerk's functions by virtue of paragraph 12 below,
- “leave” includes approval,
- “note” includes a record made by mechanical or electronic means, and
- “proceedings” means proceedings to which this Schedule applies.

Transfer of Proceedings

2.—(1) Where—

- (a) any proceedings are relevant proceedings within the meaning of section 93 of the Children Act 1989⁽¹⁰⁾, and
- (b) the justices' clerk or the court receives a request in writing from the resident party that the proceedings be transferred to another magistrates' court,

the justices' clerk or court shall issue a certificate in the appropriate form, granting or refusing the request in accordance with any Order made by the Lord Chancellor under Part I of Schedule 11 to the Children Act 1989.

(2) Where a request is granted under paragraph (1) the justices' clerk shall send a copy of the certificate—

- (a) to the resident party,
- (b) to the Lord Chancellor's Department, and
- (c) to the magistrates' court to which the proceedings are to be transferred.

(3) Any consent given or refused by a justices' clerk in accordance with any Order made by the Lord Chancellor under Part I of Schedule 11 shall be recorded in writing by the justices' clerk at the time it is given or refused or as soon as practicable thereafter.

Service

3.—(1) Where service of a document is required by this Schedule or by a rule where this Schedule applies to proceedings pursuant to that rule it may be effected, unless the contrary is indicated—

- (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 it at, or by sending it by first-class post to, his residence or 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.

⁽¹⁰⁾ 1989 c. 41.

(2) In this paragraph, “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 sub-paragraph (1)(b)(ii), on the second business day after the day on which it is left at the document exchange.

(4) In any proceedings where this Schedule, or a rule where this Schedule applies, requires a document to be served, the court or the justices' clerk may, without prejudice to any power under paragraph 4 below, direct that—

- (a) the requirement shall not apply;
- (b) the time specified by the rules for complying with the requirement shall be abridged to such extent as may be specified in the direction;
- (c) service shall be effected in such manner as may be specified in the direction.

Directions

4.—(1) The justices' clerk or the court may 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 Schedule or by a rule where this Schedule applies to proceedings pursuant to that rule to be done,
- (c) the service of documents, and
- (d) the submission of evidence

and the justices' clerk shall, on receipt of an application or of any other document by which proceedings are commenced, 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 sub-paragraph (1) may be given, varied or revoked either—

- (a) of the justices' clerk's or the court's own motion having given the resident party an opportunity to attend and be heard or to make written representations, or
- (b) on the written request of either party specifying the direction which is sought.

(4) On receipt of a request under sub-paragraph (3)(b) the justices' clerk shall—

- (a) make the direction sought, or
- (b) fix a date for a hearing to consider the request.

Timing of Proceedings

5.—(1) Any period of time fixed by this Schedule or by a rule where this Schedule applies to proceedings pursuant to that rule, or by any order or direction, for doing 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.

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(4) Where this Schedule or a rule where this Schedule applies to proceedings pursuant to that rule provides a period of time within which or by which a certain act is to be performed in the course of relevant proceedings, that period may not be extended otherwise than by a direction of the justices' clerk or the court under paragraph 4(1) above.

(5) At the—

- (a) transfer to a court of proceedings,
- (b) postponement or adjournment of any hearing or directions appointment in the course of relevant proceedings, or
- (c) conclusion of any such hearing or directions appointment other than one at which the proceedings are determined, or so 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, which date shall, where paragraph (a) applies, be as soon as possible after the transfer, and
- (ii) give notice to the resident party of the date so fixed.

Attendance at directions appointment and hearing

6.—(1) The resident party shall attend a directions appointment of which he has been given notice in accordance with paragraph 4 above unless the justices' clerk or the court otherwise directs.

(2) Where at the time and place appointed for a hearing or directions appointment the resident party does not appear the justices' clerk or the court shall not proceed with the hearing or appointment unless—

- (a) the proceedings relate to an application filed by the resident party, or
- (b) the court is satisfied that the resident party has received reasonable notice of the hearing or appointment.

(3) Where at the time and place appointed for a hearing or directions appointment the non-resident party does not appear the court may proceed with the hearing or appointment where the proceedings relate to an order or application sent by the Lord Chancellor to the court under the Act.

(4) Nothing in this Schedule shall be taken as preventing either party from appearing at any hearing or directions appointment.

Documentary evidence

7.—(1) A party shall file, 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—

- (a) written statements of the substance of the oral evidence which he intends to adduce at a hearing or a directions appointment, which shall—
 - (i) be dated,
 - (ii) be signed by the person making the statement,
 - (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
 - (iv) show in the top right-hand corner of the first page—
 - (a) the initials and surname of the person making the statement,
 - (b) the number of the statement in relation to the maker,
 - (c) the date on which the statement was made, and

- (d) the party on whose behalf it is filed, and
- (b) copies of any documents upon which he intends to rely at a hearing or a directions 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 a statement which is supplementary to a statement served under sub-paragraph (1).

(3) Where a non-resident party files a statement or document under this rule, he shall also file a copy of it for service on the resident party; and the justices' clerk shall on receipt of that copy serve it on the resident party.

(4) 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 sub-paragraphs (1) and, where applicable, (3).

Amendment

8.—(1) A party amending a document shall file the amended document with the justices' clerk; and the amendments shall be identified.

(2) Paragraph 7(3) above applies to an amended document filed under this paragraph.

Oral Evidence

9. The justices' clerk or the court shall keep a note of the substance of any oral evidence given at a hearing or directions appointment.

Hearing

10.—(1) Before the hearing, the justice or justices who will be dealing with the case shall read any documents which have been filed under paragraph 7 above 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) After the final hearing, the court shall make its decision as soon as is practicable.

(4) 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.

(5) After the court announces its decision, the justices' clerk shall as soon as practicable make a record in writing of any order.

(6) Where, under subsection (4) of section 7 of the Domestic Proceedings and Magistrates' Courts Act 1978(11), a court decides to treat an application under section 7 as if it were an application for an order under section 2 of that Act, the court shall indicate orally which of grounds (a) and (b) in that subsection it considers applicable and a memorandum of that decision and the grounds therefor shall be entered in the court's register.

(11) 1978 c. 22.

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Confidentiality of documents

11.—(1) No document, other than a record of an order, held by the court and relating to any proceedings shall be disclosed, other than to—

- (a) a party,
- (b) the legal representative of a party,
- (c) the Lord Chancellor’s Department, or
- (d) the Legal Aid Board,

without leave of the justices' clerk or the court.

Delegation by justices' clerk

12.—(1) In this paragraph, “employed as a clerk in court” has the same meaning as in rule 2(1) of the Justices' Clerks (Qualifications of Assistants) Rules 1979(12).

(2) Anything authorised to be done by, to or before a justices' clerk under this Schedule or under a rule to which this Schedule applies 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 sub-paragraph (2) shall be recorded in writing at the time the authority is given or as soon as practicable thereafter.

Application of section 97 of the Magistrates' Courts Act 1980

13.—(1) Subject to sub-paragraph (2) below, section 97 of the Magistrates' Courts Act 1980 shall apply to proceedings to which this Schedule applies as it applies to a hearing of a complaint under that section.

(2) The power of a justice under section 97 of that Act to issue a witness summons may be exercised by a justices' clerk.

EXPLANATORY NOTE

(This note is not part of the Rules)

The Maintenance Orders (Reciprocal Enforcement) Act 1992 amends the Maintenance Orders (Facilities for Enforcement) Act 1920 and the Maintenance Orders (Reciprocal Enforcement) Act 1972. Those amendments were necessary to enable the new forms of procedure in magistrates' courts in England and Wales introduced by the Children Act 1989 to be used for the reciprocal enforcement of maintenance orders and claims for maintenance.

In consequence of the 1992 Act, these Rules amend the various instruments governing the procedure to be followed under each of those Acts. Those instruments are listed in rule 2.

(12) [S.I. 1979/570](#) amended by [S.I. 1980/1897](#).

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The amendments to the main part of each instrument are made by Schedule 1. These include a new rule 7A in the Magistrates' Courts (Recovery Abroad of Maintenance) Rules 1975, requiring the clerk to the justices to notify payers of maintenance of the method by which they should pay.

Rule 3 adds to each of the instruments, as an appropriately numbered schedule, the common set of rules contained in Schedule 2. By virtue of the amendments made to each instrument, the schedule thus added applies to various proceedings governed by the instrument in question.

The rules in Schedule 2, among other things, govern the service of documents (paragraph 3); provide for directions (paragraph 4); require documents to be filed in a prescribed manner (paragraph 7); and make provision for the procedure to be followed at hearings (paragraph 10).

In order for Schedule 2 to be effective wherever it applies, paragraphs 2, 4, 5, 6 and 7 refer to “the resident party” and “the non-resident party”. These terms are defined, according to the proceedings in question, by the amendments in Schedule 1.