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STATUTORY INSTRUMENTS

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**1997 No. 1895 (L.31)**

**MAGISTRATES COURTS**

**The Family Proceedings Courts (Children Act 1989) (Amendment) Rules 1997**

<i>Made</i>	- - - -	<i>28th July 1997</i>
<i>Laid before Parliament</i>		<i>31st July 1997</i>
<i>Coming into force</i>	- -	<i>1st October 1997</i>

The Lord Chancellor, in the 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—

**Citation, commencement and interpretation**

1.—(1) These Rules may be cited as the Family Proceedings Courts (Children Act 1989) (Amendment) Rules 1997 and shall come into force on 1st October 1997.

(2) The Family Proceedings Courts (Children Act 1989) Rules 1991(2) shall be amended in accordance with the following provisions of these Rules and, in those provisions, any reference to a rule by number alone shall be construed as a reference to the rule so numbered in the said Rules of 1991.

2. Rule 23 shall be amended by inserting, after paragraph (2), the following new paragraph—

“(3) Nothing in this rule shall prevent the disclosure of a document prepared by a guardian ad litem for the purpose of—

- (a) enabling a person to perform functions required by regulations made under section 41(7);
- (b) assisting a guardian ad litem or a reporting officer (within the meaning of section 65(1)(b) of the Adoption Act 1976(3)) who is appointed under any enactment to perform his functions.”.

3.—(1) Rule 25(4) shall stand as paragraph (1) of that rule and shall be amended by inserting, as sub-paragraph (b), the following—

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(1) 1980 c. 43; the relevant amending enactment is the Courts and Legal Services Act 1990 (c. 41), Schedule 18 paragraph 25).  
(2) S.I.1991/1395; the relevant amending instruments are noted in footnotes to provisions in the body of the instrument.  
(3) 1976 c. 36.  
(4) Rule 25 was amended by S.I. 1992/2068.

“(b) section 38A(2)(b)(ii) or 44A(2)(b)(ii), or”.

(2) After rule 25(1), there shall be inserted the following—

“(2) Any written consent given for the purposes of subsection (2) of section 38A or section 44A, shall include a statement that the person giving consent—

- (a) is able and willing to give to the child the care which it would be reasonable to expect a parent to give him; and
- (b) understands that the giving of consent could lead to the exclusion of the relevant person from the dwelling-house in which the child lives.”.

4. After rule 25, there shall be inserted the following new rule—

**“Exclusion requirements: interim care orders and emergency protection orders**

**25A.**—(1) This rule applies where the court includes an exclusion requirement in an interim care order or an emergency protection order.

(2) The applicant for an interim care order or emergency protection order shall

- (a) prepare a separate statement of the evidence in support of the application for an exclusion requirement;
- (b) serve the statement personally on the relevant person with a copy of the order containing the exclusion requirement (and of any power of arrest which is attached to it);
- (c) inform the relevant person of his right to apply to vary or discharge the exclusion requirement.

(3) Where a power of arrest is attached to an exclusion requirement in an interim care order or an emergency protection order, a copy of the order shall be delivered to the officer for the time being in charge of the police station for the area in which the dwelling-house in which the child lives is situated (or of such other station as the court may specify) together with a statement that the relevant person has been served with the order or informed of its terms (whether by being present when the order was made or by telephone or otherwise).

(4) Rules 12A(3), 20 (except paragraphs (1) and (3)) and 21 of the Family Proceedings Courts (Matrimonial Proceedings etc) Rules 1991<sup>(5)</sup> shall apply, with the necessary modifications, for the service, variation, discharge and enforcement of any exclusion requirement to which a power of arrest is attached as they apply to an order made on an application under Part IV of the Family Law Act 1996.

(5) The relevant person shall serve the parties to the proceedings with any application which he makes for the variation or discharge of the exclusion requirement.

(6) Where an exclusion requirement ceases to have effect whether—

- (a) as a result of the removal of a child under section 38A(10) or 44A(10),
- (b) because of the discharge of the interim care order or emergency protection order,  
or
- (c) otherwise,

the applicant shall inform—

- (i) the relevant person,
- (ii) the parties to the proceedings,

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(5) Rules 20 and 21 of the Family Proceedings Courts (Matrimonial Proceedings etc) Rules 1991 were amended by [S.I. 1997/1894](#).

(iii) any officer to whom a copy of the order was delivered under paragraph (3),  
and

(iv) (where necessary) the court.

(7) Where the court includes an exclusion requirement in an interim care order or an emergency protection order of its own motion, paragraph (2) shall apply with the omission of any reference to the statement of the evidence.”.

5. Rule 31(1)(6) shall be amended by substituting, for the words “in Form C37”, the words “in writing”.

6. After rule 33A there shall be inserted the following–

**“Setting aside on failure of service**

**33B.** Where an application has been sent to a respondent in accordance with rule 8(1) and, after an order has been made on the application, it appears to the court that the application did not come to the knowledge of the respondent in due time, the court may of its own motion set aside the order and may give such directions as it thinks fit for the rehearing of the application.”.

7. There shall be substituted, for Forms C11, C23 and C33 in Appendix 1 to the Family Proceedings Courts (Children Act 1989) Rules 1991, the forms contained in the Schedule to these Rules.

8. Nothing in rules 3, 4 and 7 shall apply to proceedings issued before 1st October 1997.

Dated 28th July 1997

*Irvine of Lairg, C*

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE

Rule 7

SCHEDULE

Rule 7

Supplement for an application for an Emergency Protection Order

Form C11

Section 44 Children Act 1989

The court	To be completed by the court Date issued
The full name(s) of the child(ren)	Case number Child(ren)'s number(s)

**1 Description of the child(ren)**

*If a child's identity is not known, state details which will identify the child.  
You may enclose a recent photograph of the child, which should be dated.*

**2 The grounds for the application**

*The grounds are*

ANY APPLICANT

- A  that there is reasonable cause to believe that [this] [these] child[ren] [is] [are] likely to suffer significant harm if
  - the child[ren] [is] [are] not removed to accommodation provided by or on behalf of this applicant
  - or  the child[ren] [does] [do] not remain in the place where [the child] [they] [is] [are] currently being accommodated.

LOCAL AUTHORITY APPLICANTS

- B  that enquiries are being made about the welfare of the child[ren] under Section 47(1)(b) of Children Act 1989 **and** those enquiries are being frustrated by access to the child[ren] being unreasonably refused to someone who is authorised to seek access **and** there is reasonable cause to believe that access to the child[ren] is required as a matter of urgency.

AUTHORISED PERSON APPLICANTS

- C  that there is reasonable cause to suspect that the child[ren] [is] [are] suffering, or [is] [are] likely to suffer, significant harm **and** enquiries are being made with respect to the welfare of the child[ren] **and** those enquiries are being frustrated by access to the child[ren] being unreasonably refused to someone who is authorised to seek access **and** there is reasonable cause to believe that access to the child[ren] is required as a matter of urgency.

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Form C11 continued

**3 The additional order(s) applied for**

- information on the whereabouts of the child[ren] (Section 48(1) Children Act 1989).
- authorisation for entry of premises (Section 48(3) Children Act 1989).
- authorisation to search for another child on the premises (Section 48(4) Children Act 1989).

**4 The direction(s) sought**

- contact (Section 44(6)(a) Children Act 1989).
- a medical or psychiatric examination or other assessment of the child[ren] (Section 44(6)(b) Children Act 1989).
- to be accompanied by a registered medical practitioner, registered nurse or registered health visitor (Section 45(12) Children Act 1989).
- an exclusion requirement (Section 44A(1) Children Act 1989).

**5 The reason(s) for the application**

*If you are relying on a report or other documentary evidence, state the date(s) and author(s) and enclose a copy.*

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Signed (Applicant)	Date
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Form C23



In the

Case Number:

Child(ren)'s Number(s):

**Order**

Emergency Protection Order  
Section 44 Children Act 1989

The full name(s) of the child(ren)      Boy or Girl      Date(s) of birth

[described as

**Warning**

**It is an offence intentionally to obstruct any person exercising the power under Section 44(4)(b) Children Act 1989 to remove, or prevent the removal, of a child (Section 44(15) Children Act 1989).**

The Court grants      an Emergency Protection Order to the applicant who is

The Order gives the applicant parental responsibility for the child[ren].

The Court authorises      [the applicant to remove the child[ren] to accommodation provided by or on behalf of the applicant]  
[the applicant to prevent the child[ren] being removed from

[This order directs that      any person who can produce the child[ren] to the applicant must do so.]

The Court directs that      [[a named person] to be excluded from [a named address] [forthwith] [from [date]] so that the child may continue to live there, consent to the exclusion requirement having been given by [a named person]]

[a power of arrest be attached to the exclusion requirement for a period of ]

This order ends on      at      [am] [pm]

Ordered by      [Mr] [Mrs] Justice  
[His] [Her] Honour Judge  
District Judge [of Family Division]  
Justice[s] of the Peace

on      at      [am] [pm]

C23

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Form C23 continued

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### *Notes about the Emergency Protection Order*

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*About this order*

This is an Emergency Protection Order.  
This order states what has been authorised in respect of the child[ren] and when the order will end.  
The court can extend this order for up to 7 days but it can only do this once.

**Warning**

**If you are shown this order, you must comply with it. If you do not, you may commit an offence. Read the order now.**

*What you may do*

You may apply to the court  
to **change the directions**  
or to **end the order**.

You may apply at any time, but the court will only hear an application to end an order **when 72 hours** have passed since the order was made.  
If you would like to ask the court to change the directions, or end the order, you must fill in a form. You can obtain the form from a court office.

If the court has directed that the child[ren] should have a medical, psychiatric or another kind of examination, you may ask the court to allow a doctor of your choice to be at the examination.

*What you should do*

Go to a solicitor as soon as you can.

Some solicitors specialise in court proceedings which involve children. You can obtain the address of a solicitor or advice agency from the Yellow Pages or the Solicitor's Regional Directory.

You will find these books at

- a Citizens Advice Bureau
- a Law Centre
- a local library

A solicitor or an advice agency will be able to tell you whether you may be eligible for legal aid.

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Form C33



In the

Case Number:

Child(ren)'s Number(s):

Order

Interim Care Order  
Section 38 Children Act 1989

The full name(s) of the child(ren)

Date(s) of birth

The Court orders that the child[ren] be placed in the care of

local authority

The order expires on

The Court directs

[[a named person] be excluded from [a named address] [forthwith] [from [date]] so that the child may continue to live there, consent to the exclusion requirement having been given by [a named person]].

[a power of arrest be attached to the exclusion requirement for a period of ]

**Warning**

**While a Care Order is in force no person may cause the child[ren] to be known by a new surname or remove the child[ren] from the United Kingdom without the written consent of every person with parental responsibility for the child[ren] or the leave of the court.**

**However, the local authority, in whose care a child is, may remove that child from the United Kingdom for a period of less than 1 month.**

**It may be a criminal offence under the Child Abduction Act 1984 to remove the child[ren] from the United Kingdom without the leave of the Court.**

Ordered by [Mr] [Mrs] Justice  
[His] [Her] Honour Judge  
District Judge [of the Family Division]  
Justice[s] of the Peace  
Clerk of the Court

on

C33



## EXPLANATORY NOTE

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

These Rules amend the Family Proceedings Courts (Children Act 1989) Rules 1991 so as—

- (a) to relax for specified purposes the requirements for confidentiality in respect of the report of a guardian ad litem (*rule 2*);
- (b) to make provision where the court includes an exclusion requirement in an interim care order or an emergency protection order (*rules 3, 4, 7 and 8*);
- (c) to make a minor correction (*rule 5*);
- (d) to enable magistrates to set an order aside where there has been failure of service (*rule 6*).