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STATUTORY INSTRUMENTS

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**1981 No. 552**

**The Magistrates' Courts Rules 1981**

MISCELLANEOUS

**Proceedings against person outside the United Kingdom on application for variation, etc. of certain maintenance and custody orders**

**106.**—(1) The period referred to in section 24(2) of the Act of 1978 and in section 41(2A) of the Maintenance Orders (Reciprocal Enforcement) Act 1972(1) (which provide that, subject to certain conditions, a magistrates' court may, if it is satisfied that the respondent has been outside the United Kingdom during such period as may be prescribed by rules, proceed on an application made under section 20 or 21 of the said Act of 1978, section 60 of the Act of 1980 or section 9, 10, 11 or 12C(5) of the Guardianship of Minors Act 1971(2) notwithstanding that the respondent has not been served with the summons) shall be the whole of the period beginning one month before the making of the application and ending with the date of the hearing.

(2) Before proceeding in any such case as is referred to in the said section 24(2) or the said section 41(2A), the court shall be satisfied that, in addition to the matter referred to in those subsections, 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—

- (a) causing a notice in writing to that effect to be delivered to the respondent; or
- (b) 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 of the peace acting for the same petty sessions area as that of the court; or
- (c) causing a notice to that effect to be inserted in one or more newspapers, in accordance with directions given as aforesaid;

and that it is reasonable in all the circumstances to proceed in the absence of the respondent.

(3) In any such case as is referred to in the said section 24(2) or the said section 41(2A), 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 the United Kingdom or was not in the United Kingdom 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 so to do.

(4) Paragraph (1) of rule 67 of these Rules shall apply for the purpose of proving the delivery of a written notice in pursuance of paragraph (2)(a) 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 reference to a consular officer of Her Majesty's

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(1) 1972 c. 18; subsection (2A) of section 41 was inserted by the [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22\)](#), section 89(2)(a) and Schedule 2, paragraph 36.

(2) 1971 c. 3; section 12C was inserted by the [Domestic Proceedings and Magistrates' Courts Act 1978](#), section 43.

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.

(5) 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)(b) or the insertion of a notice in a newspaper in pursuance of paragraph (2)(c) 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.