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 STATUTORY INSTRUMENTS
 

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1984 No. 567 (L. 3)

**MAGISTRATES' COURTS**

**The Magistrates' Courts (Children and Young Persons)  
(Amendment) Rules 1984**

<i>Made - - - - -</i>	10th April 1984
<i>Laid before Parliament</i>	18th April 1984
<i>Coming into Operation</i>	27th May 1984

The Lord Chancellor, in exercise of the powers conferred on him by section 144 of the Magistrates' Courts Act 1980(a), 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 (Children and Young Persons) (Amendment) Rules 1984 and shall come into operation on 27th May 1984.

2. The Magistrates' Courts (Children and Young Persons) Rules 1970(b) shall have effect subject to the amendments specified in the Schedule to these Rules.

Dated 10th April 1984.

*Hailsham of St. Marylebone, C.*

SCHEDULE

Rule 2

AMENDMENTS TO THE MAGISTRATES' COURTS (CHILDREN AND YOUNG PERSONS)  
RULES 1970

1. In paragraph (1) of Rule 2 there shall be substituted for the word "In" in the first place where it occurs the words "Subject to Rule 21A of these Rules, in".

2. In Rule 14A, there shall be substituted for paragraphs (2), (4), (6) and (7) respectively the following paragraphs:—

“(2) An appointment of a guardian *ad litem* under this rule or section 32B(1) of the Act of 1969 shall be made by order and the person to be appointed shall be selected from a panel established by regulations under section 103 of the Children Act 1975 (c) except that the person appointed shall not—

(a) be a member, officer or servant of a local authority or authorised person (within the meaning of section 1 of the Act of 1969) which is a party to the proceedings; or

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(a) 1980 c.43; section 144 was extended by section 145 of that Act; by section 32B of the Children and Young Persons Act 1969 (c.54), inserted by the Children Act 1975 (c.72), section 64; and by sections 7 and 12F of the Child Care Act 1980 (c.5), the latter section inserted by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), Schedule 1, paragraph 1.

(b) S.I. 1970/1792, amended by S.I. 1976/1769, 1978/869, 1983/526, 1793.

(c) 1975 c.72; section 103 was amended by the Child Care Act 1980, Schedule 5, paragraph 37, and the Health and Social Services and Social Security Adjudications Act 1983, Schedule 1, paragraph 4 and Schedule 2, paragraph 28.

- (b) be, or at any time have been, a member, officer or servant of a local authority or a voluntary organisation (within the meaning of section 87(1) of the Child Care Act 1980) who has been directly concerned in that capacity in arrangements relating to the care, accommodation or welfare of the relevant infant; or
- (c) be a serving probation officer”;

“(4) The powers of the court to appoint a guardian *ad litem* under this rule or section 32B(1) of the Act of 1969 and to give directions concerning legal representation of the infant in accordance with paragraph (6)(c) of this rule or concerning any other matter in accordance with paragraph (6)(e) of this rule shall also be exercisable, before the hearing of the application to which the proceedings relate, by a single justice or by the justices’ clerk; and where the power to appoint a guardian *ad litem* is so exercised, the single justice or the justices’ clerk shall on the same occasion consider whether the infant should be legally represented and may direct that the guardian *ad litem* so appointed is to instruct a solicitor to represent the infant.”;

“(6) The guardian *ad litem* appointed under this rule or section 32B(1) of the Act of 1969, with a view to safeguarding the interests of the relevant infant before the court shall—

- (a) so far as it is reasonably practicable, investigate all circumstances relevant to the proceedings and for that purpose shall interview such persons, inspect such records and obtain such professional assistance as the guardian *ad litem* thinks appropriate;
- (b) regard as the first and paramount consideration the need to safeguard and promote the infant’s best interests until he achieves adulthood, and shall take into account the wishes and feelings of the infant, having regard to his age and understanding, and shall ensure that those wishes and feelings are made known to the court;
- (c) except where a solicitor has been instructed to represent the infant before the appointment of the guardian *ad litem* or a direction has been given in accordance with paragraph (4) of this rule that a solicitor be instructed, obtain the views of the court as to whether the infant should be legally represented and, unless the court otherwise directs, instruct a solicitor to represent the infant;
- (d) consider how the case should be presented on behalf of the infant, acting in conjunction with the solicitor in a case in which one has been instructed (whether by the guardian *ad litem* or otherwise) to represent the infant; and shall, in such a case, instruct the solicitor (unless the solicitor considers, having taken into account the views of the guardian *ad litem*, that the infant wishes to give instructions which conflict with those of the guardian *ad litem* and that he is able, having regard to his age and understanding, to give such instructions on his own behalf);
- (e) seek the views of the court in any case where difficulties arise in relation to the performance of his duties;
- (f) as soon as practicable make a report in writing to the court for the purposes of rule 20(1)(a);
- (g) perform such other duties as the court may direct.”;

“(7) When the court has finally disposed of the case the guardian *ad litem* shall consider, acting in conjunction with the solicitor in a case in which the infant is legally represented, whether it would be in the infant’s best interests to appeal to the Crown Court and, if it is considered that it would be, he shall ensure that notice of appeal is given on behalf of the infant (unless the solicitor, in a case in which the infant is legally represented, considers, having taken into account the views of the guardian *ad litem*, that the infant wishes to give instructions which conflict with those of the guardian *ad litem* and that he is able, having regard to his age and understanding, to give such instructions on his own behalf).”.

3. In paragraph (a) of Rule 14B there shall be inserted after the word "by" the words "cross-examining any witness and".

4. After Rule 14B there shall be inserted the following Rule:—

*"Rights of foster parents etc.*

14C. Any person who is required to be given notice of the proceedings by virtue of rule 14(3)(bb) of these Rules shall be entitled to make representations to the court at the conclusion of the evidence (including the evidence, if any, for a parent or guardian in accordance with rule 14B(a) of these Rules) but before any representations are made by a parent or guardian in accordance with rule 14B(b) of these Rules and before either the respondent or the applicant addresses the court under rule 14(4) or (5) of the Magistrates' Courts Rules 1981 as applied by rule 15(2) of these Rules."

5. In Rule 16, after paragraph (2) there shall be inserted the following paragraph:—

"(3) Where a guardian *ad litem* has been appointed, he shall be given an opportunity, if he is able to give evidence relevant to the applicant's case (whether or not he has already been called as a witness), to give such evidence at the conclusion of the evidence for the applicant and respondent, but before any evidence or representations are heard in accordance with rule 14B or 14C of these Rules."

6. For sub-paragraph (a) of Rule 20(1) there shall be substituted the following paragraphs:—

"(a) where a guardian *ad litem* has been appointed, the court shall take into consideration his written report to the court, which may be received and considered by the court without being read aloud, and copies of which shall in any case be given by the court to the applicant and the respondent and to any parent or guardian of the relevant infant who attends the hearing or requests it before the hearing or to their legal representatives, except that if the relevant infant is not legally represented a copy of the report need not be given to him unless the guardian *ad litem* considers it desirable to do so;

(aa) where a guardian *ad litem* has been appointed, he shall in addition be entitled to make oral representations to the court;"

7. The following shall be inserted after Part III:—

#### "PART IIIA

##### PROCEEDINGS IN RELATION TO ACCESS TO CHILDREN IN CARE AND RESOLUTIONS CONCERNING PARENTAL RIGHTS AND DUTIES

###### *Application and interpretation of Part IIIA*

21A.—(1) This Part shall apply in connection with proceedings in a court under Part IA of the Child Care Act 1980 (access to children in care) and under section 3(6) (a) or 5(4) of that Act (objection to resolution vesting parental rights and duties in a local authority or voluntary organisation).

(2) In this Part of the Rules the expressions "child", "guardian" (except where it is used in the expression "guardian *ad litem*"), "local authority" and "voluntary organisation" have the meanings assigned to them by section 87(1) of the said Act; the expression "parent" has the meaning assigned to it by section 87(1) of the said Act, except that in proceedings under section 3(6) or 5(4) of the said Act it includes a person having custody of a child by an order of a court where section 8(2) of the said Act applies; and the expression "custodian" means a person in whom legal custody of a child is vested by an order under section 33 of the Children Act 1975 (b).

(a) Section 3(6) applies also to a resolution under section 64 of the Child Care Act 1980, by virtue of section 67 thereof.

(b) 1975 c.72; section 33 had not been brought into force at the date of these Rules.

*Notice of complaint*

21B.—(1) A local authority or voluntary organisation which is a party to any proceedings in a court to which this Part of the Rules applies shall send a notice specifying the time and place fixed for the hearing of the complaint to any other person who is a parent of the child to whom the proceedings relate and who lives apart from the parent who is the complainant or defendant (unless a summons is issued for the purpose of securing his attendance thereat) or who is a foster parent or other person with whom the child has had his home for a period of not less than six weeks ending not more than six months before the date of the complaint, if the whereabouts of such a person is known to the local authority or voluntary organisation, and a parent who is the complainant in any such proceedings shall send a notice specifying the time and place fixed for the hearing of the complaint to any other parent of the child who lives apart from him if the whereabouts of such other parent is known to him.

(2) If a parent of the child who is required to be given notice in accordance with the preceding paragraph appears at the hearing he shall be entitled to meet any allegations made against him in the course of the proceedings by cross-examining any witness and calling or giving evidence; and any person who is required to receive such a notice shall be entitled to make representations to the court at the conclusion of the evidence for the complainant (including any evidence in rebuttal of evidence for the defence) and the evidence, if any, for the defence but before any address by the defendant or complainant under rule 14(4) or (5) of the Magistrates' Courts Rules 1981 (a).

*Appointment and duties of guardian ad litem*

21C.—(1) In any proceedings under section 3(6) or 5(4) of the Child Care Act 1980 in which the court makes the child a party to the proceedings, the court shall appoint a guardian *ad litem* of the child for the purposes of the proceedings unless the court is satisfied that to do so is not necessary for safeguarding the interests of the child.

(2) An appointment of a guardian *ad litem* under section 7 or 12F(3) of the Child Care Act 1980 shall be made by order and the person to be appointed shall be selected from a panel established by regulations under section 103 of the Children Act 1975 except that the person appointed shall not—

- (a) be a member, officer or servant of a local authority or voluntary organisation which is a party to the proceedings; or
- (b) be, or at any time have been, a member, officer or servant of a local authority or voluntary organisation who has been directly concerned in that capacity in arrangements relating to the care, accommodation or welfare of the child; or
- (c) be a serving probation officer.

(3) Where the court has appointed a guardian *ad litem* under the said section 7 or 12F(3) and it appears to the court desirable that some other person should act as guardian *ad litem* in substitution for the person appointed earlier the court shall, by order, revoke the earlier appointment and make a new appointment.

(4) The powers of the court to appoint a guardian *ad litem* under the said section 7 or 12F(3) and to give directions concerning legal representation of the child in accordance with paragraph (6)(c) of this rule or concerning any other matter in accordance with paragraph (6)(e) of this rule shall also be exercisable, before the hearing of the complaint, by a single justice or by the justices' clerk; and where the power to appoint a guardian *ad litem* is so exercised, the single justice or the justices' clerk shall on the same occasion consider whether the child should be legally represented and may direct that the guardian *ad litem* so appointed is to instruct a solicitor to represent the child.

(5) The court shall cause notice of an order appointing a guardian *ad litem* to be given to the guardian *ad litem*, the complainant, the defendant, the child to whom the proceedings relate and any other person to whom notice of the hearing has been given under Rule 21B.

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(a) S.I. 1981/552.

(6) The guardian *ad litem* appointed under the said section 7 or 12F(3) with a view to safeguarding the interests of the child before the court shall—

- (a) so far as it is reasonably practicable, investigate all circumstances relevant to the proceedings and for that purpose shall interview such persons, inspect such records and obtain such professional assistance as the guardian *ad litem* thinks appropriate;
- (b) regard as the first and paramount consideration the need to safeguard and promote the child's best interests until he achieves adulthood, and shall take into account the wishes and feelings of the child, having regard to his age and understanding, and shall ensure that those wishes and feelings are made known to the court;
- (c) except where a solicitor has been instructed to represent the child before the appointment of the guardian *ad litem* or a direction has been given in accordance with paragraph (4) of this rule that a solicitor be instructed, obtain the views of the court as to whether the child should be legally represented and, unless the court otherwise directs, instruct a solicitor to represent the child;
- (d) consider how the case should be presented on behalf of the child, acting in conjunction with the solicitor in a case in which one has been instructed (whether by the guardian *ad litem* or otherwise) to represent the child; and shall, in such a case, instruct the solicitor (unless the solicitor considers, having taken into account the views of the guardian *ad litem*, that the child wishes to give instructions which conflict with those of the guardian *ad litem* and that he is able, having regard to his age and understanding, to give instructions on his own behalf);
- (e) seek the views of the court in any case where difficulties arise in relation to the performance of his duties;
- (f) as soon as practicable make a report in writing to the court;
- (g) perform such other duties as the court may direct.

(7) When the court has concluded the hearing of the complaint the guardian *ad litem* shall consider, acting in conjunction with the solicitor in a case in which the child is legally represented, whether it would be in the child's best interests to appeal to the High Court and, if he considers that it would be, he shall ensure that notice of appeal is given on behalf of the child (unless the solicitor, in a case in which the child is legally represented, considers, having taken into account the views of the guardian *ad litem*, that the child wishes to give instructions which conflict with those of the guardian *ad litem* and that he is able, having regard to his age and understanding, to give such instructions on his own behalf).

*Evidence of guardian ad litem*

21D.—(1) Where a guardian *ad litem* has been appointed, the court shall take into consideration his written report to the court, which may be received and considered by the court without being read aloud; and copies of the report shall in any case be given by the court to the parties or to their legal representatives, except that if the child is not legally represented a copy of the report need not be given to him unless the guardian *ad litem* considers it desirable to do so, and a copy of the report shall be given by the court to a parent of the child who was required to be given notice in accordance with rule 21B(1) of these Rules who attends the hearing or requests it before the hearing, or to his legal representative.

(2) Where, in pursuance of the preceding paragraph, a report has been considered without it being read aloud, then the child shall, if he is not legally represented and he has not been given a copy of the report, be told the substance of any part of the information given to the court bearing on his character or conduct unless it appears to the court impracticable so to do having regard to his age and understanding, and

if, having been told the substance of any part of such information, he desires to produce further evidence with reference thereto, the court, if it thinks the further evidence would be material, shall adjourn the proceedings for the production thereof.

(3) Where a guardian *ad litem* has been appointed, he shall in addition (whether or not he has already been called as a witness) be given an opportunity to give oral evidence at the conclusion of the evidence, if any, for the child and to make oral representations to the court.

*Power of court to hear evidence in absence of child, etc.*

21E.—(1) Where the court has made the child a party to the proceedings and he is present at the hearing and the evidence likely to be given is such that in the opinion of the court it is in the interests of the child that the whole, or any part, of the evidence should not be given in his presence then, unless the child is conducting his own case, the court may hear the whole or part of the evidence, as it thinks appropriate in his absence:

Provided that evidence relating to the character or conduct of the child shall be heard in his presence.

(2) If the court is satisfied that in the special circumstances it is appropriate so to do, it may require a parent, guardian or custodian of the child to withdraw from the court while the child gives evidence or makes a statement:

Provided that the court shall inform the person so excluded of the substance of any allegations made against him by the child.”.

8. In Schedule 2, the forms numbered 42A, 42B, 42C and 42D in the Appendix to this Schedule shall be inserted in numerical order.

APPENDIX

FORMS TO BE INSERTED IN SCHEDULE 2 TO THE MAGISTRATES' COURTS (CHILDREN AND YOUNG PERSONS) RULES 1970

42A

Access order (M.C. Act 1980, s.53; Child Care Act 1980, s.12C)

..... Juvenile Court (Code)

Date:

Name of child:

On the complaint of

Complainant:

Address:

made under section 12C of the Child Care Act 1980 that the ..... Council, to whose care the child is committed, has terminated arrangements for access to the child by the complainant or refused to make such arrangements and that an access order should be made, it is adjudged that the complaint is true and it is ordered that

Order: the said Council is hereby required to allow the complainant, being the child's [parent] [guardian] [custodian], access to the child [subject to the following condition[s]:]

Justice of the Peace.  
[or By order of the Court  
Clerk of the Court.]

42B

Order varying or discharging access order (M.C. Act 1980, s.53; Child Care Act 1980, s.12D)

..... Juvenile Court (Code)

Date:

Name of child:

On (date) [this] [.....] Juvenile Court made an access order requiring the ..... Council to allow access to the child by (specify parent, guardian or custodian).

On the complaint of

Complainant:

Address:

made under section 12D of the Child Care Act 1980 for the variation or discharge of the said order it is adjudged that the complaint is true and it is ordered

Order: The said order is hereby [discharged] [varied as follows:]

Justice of the Peace.  
[or By order of the Court  
Clerk of the Court.]

42C

*Emergency order suspending access order (Child Care Act 1980, s.12E)*

..... Juvenile Court (*Code*)

Date:

Name of child:

On (*date*) the ..... Juvenile Court made an access order requiring the ..... Council to allow access to the child by (*specify parent, guardian or custodian*).

Application having been made by ..... I am satisfied that continued access to the child by ..... in accordance with the terms of the said access order will put the child's welfare seriously at risk:

Order: The operation of the said access order is hereby suspended for a period of days beginning with the date of this order.

Justice of the Peace.

NOTE: If during the above-mentioned period for which the said access order is suspended the above-named Council make an application to a juvenile court for variation or discharge of that access order, the operation of the said access order will be further suspended until the date on which such application to vary or discharge the access order is determined or abandoned.



## 42D

*Requirement to give notice of complaint (M.C. (C. & Y.P.) Rules 1970, r.21B)*

..... Juvenile Court (*Code*)

Date:

To:

Matter of complaint: (*short particulars and statute*)

Take notice that, [being a party to the proceedings begun by [having made] the complaint of which particulars are given above, you are required to send a notice specifying the time and place fixed for the hearing of the said complaint to any person whose whereabouts is known to you who is—

- (a) a parent of the child to whom the proceedings relate who is not a party to the proceedings and who lives apart from [the parent who is such a party] [you] [; or
- (b) a foster parent or other person with whom the said child has had his home for a period of not less than 6 weeks ending not more than 6 months before (*date of complaint*)].

Clerk of the Court.

## EXPLANATORY NOTE

*(This Note is not part of the Rules.)*

These Rules further amend the Magistrates' Courts (Children and Young Persons) Rules 1970 to take account of the Guardians Ad Litem and Reporting Officers (Panels) Regulations 1983 (S.I. 1983/1908), section 32B(2) of the Children and Young Persons Act 1969 (which is concerned with safeguarding the interests of a child or young person where there is a conflict of interest between him and his parent or guardian, in care proceedings, etc., by the appointment of a guardian *ad litem*), section 7 of the Child Care Act 1980 (which is concerned with safeguarding the interests of a child in proceedings concerning parental rights resolutions by making him a party to the proceedings and appointing a guardian *ad litem*) and Part IA of the 1980 Act (which is concerned with access to children in care). The above-mentioned Regulations come into force on 27th May 1984; Part IA of the 1980 Act came into force on 30th January 1984 with the exception of section 12F(3) and (4) which comes into force on 27th May 1984 (S.I. 1983/1862); section 32B(2) of the 1969 Act and section 7 of the 1980 Act also come into force on 27th May 1984 (S.I. 1983/1946 and section 90 of the 1980 Act).

Part III of the 1970 Rules is amended so as to preclude the use as guardians *ad litem* in care proceedings of probation officers and of certain other persons who have been directly involved in the case in question, and to vary the duties of guardians *ad litem* in such proceedings; there are also procedural amendments. A new Part IIIA is inserted, concerned with proceedings in relation to access to children in care and resolutions vesting in local authorities or voluntary organisations parental rights and duties. Provision is made for the appointment and duties of guardians *ad litem* (with restrictions as to the categories of person eligible for appointment); there are procedural provisions, including a requirement for parents and foster parents who are not parties to the proceedings to be notified of them; and forms are prescribed for use in access proceedings (Forms 42A, 42B, 42C and 42D).

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