STATUTORY INSTRUMENTS

1986 No. 1141 (L.7)

MAGISTRATES' COURTS

PROCEDURE

The Magistrates' Courts (Child Abduction and Custody) Rules 1986

Made - - - -	*1st July 1986*
Laid before Parliament	*10th July 1986*
Coming into Operation	*1st August 1986*

The Lord Chancellor, in exercise of the power conferred upon him by section 144 of the Magistrates' Courts Act 1980, as extended by sections 10 and 24 of the Child Abduction and Custody Act 1985, after consultation with the Rule Committee appointed under the said section 144, hereby makes the following Rules:—

Citation and commencement

1. These Rules may be cited as the Magistrates' Courts (Child Abduction and Custody) Rules 1986 and shall come into operation on 1st August 1986.

Interpretation

2. In these Rules:—

"complaint" includes an application under Rule 14 of the Magistrates' Courts (Children and Young Persons) Rules 1970(**1**);

"Contracting State" means a Contracting State defined in section 2 of the 1985 Act;

"the 1985 Act" means the Child Abduction and Custody Act 1985;

"the Hague Convention" means the Convention defined in section 1(1) of the 1985 Act;

"the High Court" means the High Court in England and Wales or the High Court in Northern Ireland.

(**1**)   amended by S.I. 1976/1769, 1978/869.

Stay of proceedings pending in a magistrates' court

3. Where any proceedings in which a decision falls to be made on the merits of rights of custody (as construed under section 9 of the 1985 Act) are pending in a magistrates' court and that court receives notice from the High Court or the Court of Session that an application in respect of the child concerned has been made under the Hague Convention, the magistrates' court shall order that all further proceedings in the proceedings pending before it shall be stayed, and shall cause notice to be given to the parties to the proceedings accordingly.

Dismissal of complaint

4. Where a magistrates' court which has stayed any proceedings under Rule 3 above receives notice from the High Court or the Court of Session that an order has been made under Article 12 of the Hague Convention for the return of the child concerned, the court shall dismiss the complaint and cause notice to be given to the parties to the proceedings accordingly.

Resumption of proceedings after stay

5. Where a magistrates' court which has stayed any proceedings under Rule 3 above receives notice from the High Court or Court of Session that an order for the return of the child concerned has been refused (other than in the circumstances set out in the third paragraph of Article 12 of the Hague Convention), the court shall order that the stay be lifted, shall so notify the parties to the proceedings, and shall proceed to deal with the complaint accordingly.

Further stay of proceedings or dismissal of complaint

6. Where a magistrates' court which has stayed any proceedings under Rule 3 above receives notice from the High Court or Court of Session that an order has been made under the third paragraph of Article 12 of the Hague Convention staying or dismissing the application thereunder, the court shall continue the stay on the proceedings pending before it or, in a case where the High Court or Court of Session has dismissed the application, dismiss the complaint, and shall cause notice to be given to the parties accordingly.

Notice of registration of order in respect of a child

7. Where any proceedings such as are mentioned in section 20(2)(a), (b) or (c) of the 1985 Act are pending in a magistrates' court and that court receives notice from the High Court or the Court of Session that an application has been made under section 16 of that Act for the registration of a decision made in respect of the child in proceedings commenced before the proceedings which are pending (other than a decision mentioned in section 20(3) of the 1985 Act) or that such a decision has been registered under the said section 16, the court shall cause notice to be given to the parties to those proceedings that it has received notice of the application or of the registration, as the case may be.

Authenticated copy of magistrates' court order

8.—(1) A person who wishes to make an application under the Hague Convention in a Contracting State other than the United Kingdom and who wishes to obtain from a magistrates' court an authenticated copy of a decision of that court relating to the child in respect of whom the application is to be made shall apply in writing to the justices' clerk for that court.

(2) An application under paragraph (1) above shall specify:—

(a) the name and date or approximate date of birth of the child concerned;

(b) the date or approximate date of the proceedings in which the decision of the court was given, and the nature of those proceedings;

(c) the Contracting State in which the application in respect of the child is to be made;

(d) the relationship of the applicant to the child concerned;

(e) the postal address of the applicant.

(3) A justices' clerk who receives an application for an authenticated copy of a decision under this rule shall send by post to the applicant at the address indicated in the application for the purposes an authenticated copy of the decision concerned.

(4) For the purposes of paragraph (3) of this rule a copy of a decision shall be deemed to be authenticated if it is accompanied by a statement signed by the justices' clerk that it is a true copy of the decision concerned.

Application for declaration of unlawful removal of a child

9. An application to a magistrates' court under section 23(2) of the 1985 Act (declaration that the removal of a child from the United Kingdom has been unlawful) may be made orally or in writing in the course of the custody proceedings (as defined in section 27 of that Act).

Dated 1st July 1986

Hailsham of St. Marylebone, C

EXPLANATORY NOTE

These Rules make provision for the procedure to be followed in magistrates' courts in consequence of the Child Abduction and Custody Act 1985 which comes into force on 1st August 1986, by virtue of the Child Abduction and Custody Act 1985 (Commencement) Order 1986 (S.I. 1986/1048). The Act incorporates into the law of the United Kingdom the Convention on the Civil Aspects of Child Abduction done at the Hague on 25th October 1980 (Cmnd. 8281) and the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Registration of Custody of Children, done at Luxembourg on 20th May 1980 (Cmnd. 8155). The main effect of these Conventions on magistrates' courts is to restrict their powers to deal with certain pending custody proceedings where an application has been made under either Convention in respect of a child.

Rules 3–6 make provision for a magistrates' court to notify the parties to such proceedings of an application having been made in the High Court or Court of Session under the Hague Convention, and of the effect of such an application on the proceedings which are pending in the magistrates' court. Rule 7 provides for notice to be given by a magistrates' court of proceedings brought under the European Convention. Rule 8 provides for the provision by the clerk of the court of an authenticated copy of a decision of a magistrates' court relating to a child who is the subject of proceedings under the Hague Convention. Under Rule 9 provision is made for an application made for the purposes of the European Convention for a declaration that the removal of a child from the United Kingdom has been unlawful to be made in a magistrates' court either orally or in writing in the course of custody proceedings.