

2001 No. 615

MAGISTRATES' COURTS

PROCEDURE

The Magistrates' Courts (Transfer of Justices' Clerks' Functions) (Miscellaneous Amendments) Rules 2001

<i>Made - - - -</i>	<i>28th February 2001</i>
<i>Laid before Parliament</i>	<i>2nd March 2001</i>
<i>Coming into force</i>	<i>1st April 2001</i>

The Lord Chancellor, in exercise of the powers conferred on him by section 144 of the Magistrates' Courts Act 1980(a), as extended by section 145 of that Act, and after consultation with the Rule Committee appointed under the said section 144, hereby makes the following Rules:—

1. These Rules may be cited as the Magistrates' Courts (Transfer of Justices' Clerks' Functions) (Miscellaneous Amendments) Rules 2001 and shall come into force on 1st April 2001.

2. The following Rules are amended in accordance with the provisions of the Schedule to these Rules:—

- (i) the Maintenance Orders (Facilities for Enforcement) Rules 1922(b) and the Maintenance Orders (Facilities for Enforcement) (Amendment) Rules 2000(c);
- (ii) the Maintenance Orders Act 1950 (Summary Jurisdiction) Rules 1950(d);
- (iii) the Magistrates' Courts (Maintenance Orders Act 1958) Rules 1959(e);
- (iv) the Magistrates' Courts (Backing of Warrants) Rules 1965(f);
- (v) the Magistrates' Courts (Attachment of Earnings) Rules 1971(g);
- (vi) the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) Rules 1974(h);

(a) 1980 c. 43; the Act, in particular section 144(1), is amended by paragraphs 95 to 117 of Schedule 13 to the Access to Justice Act 1999 (c. 22).

(b) S.R. & O. 1922/1355, amended by S.I. 1970/762, S.I. 1989/384, S.I. 1992/457, S.I. 1993/617 and S.I. 2000/1875.

(c) S.I. 2000/1875.

(d) S.I. 1950/2035, amended by S.I. 1980/1895 and S.I. 1992/457.

(e) S.I. 1959/3, the relevant amending instruments are S.I. 1980/1896, S.I. 1986/1962 and 1992/457.

(f) S.I. 1965/1906, amended by S.I. 1989/1596.

(g) S.I. 1971/809.

(h) S.I. 1974/668; the relevant amending instruments are S.I. 1975/2236, S.I. 1979/170, S.I. 1986/1962, S.I. 1992/457 and S.I. 1998/617.

- (vii) the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Republic of Ireland) Rules 1975**(a)**;
- (viii) the Magistrates' Courts (Recovery Abroad of Maintenance) Rules 1975**(b)**;
- (ix) the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Hague Convention Countries) Rules 1980**(c)**;
- (x) the Magistrates' Courts (Forms) Rules 1981**(d)**;
- (xi) the Magistrates' Courts (Adoption) Rules 1984**(e)**;
- (xii) the Magistrates' Courts (Discontinuance of Proceedings) Rules 1986**(f)**;
- (xiii) the Magistrates' Courts (Child Abduction and Custody) Rules 1986**(g)**;
- (xiv) the Magistrates' Courts (Civil Jurisdiction and Judgments Act 1982) Rules 1986**(h)**;
- (xv) the Magistrates' Courts (Family Law Act 1986) Rules 1988**(i)**;
- (xvi) the Magistrates' Courts (Notices of Transfer) Rules 1988**(j)**;
- (xvii) the Magistrates' Courts (Extradition) Rules 1989**(k)**;
- (xviii) the Magistrates' Courts (Social Security Act 1986) (Transfer of Orders to maintain and Enforcement of Maintenance Orders) Rules 1990**(l)**;
- (xix) the Magistrates' Courts (Criminal Justice (International Co-operation)) Rules 1991**(m)**;
- (xx) the Family Proceedings (Children Act 1989) Rules 1991**(n)**;
- (xxi) the Family Proceedings Courts (Constitution) Rules 1991**(o)**;
- (xxii) the Magistrates' Courts (Detention and Forfeiture of Drug Trafficking Cash) Rules 1991**(p)**;
- (xxiii) the Family Proceedings Courts (Matrimonial Proceedings etc.) Rules 1991**(q)**;
- (xxiv) the Magistrates' Courts (Costs Against Legal Representatives in Civil Proceedings) Rules 1991**(r)**;
- (xxv) the Magistrates' Courts (Attendance Centre) Rules 1992**(s)**;
- (xxvi) the Magistrates' Courts (Notice of Transfer) (Children's Evidence) Rules 1992**(t)**;
- (xxvii) the Magistrates' Courts (Children and Young Persons) Rules 1992**(u)**;
- (xxviii) the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Miscellaneous Amendments) Rules 1993**(v)**;

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- (a)** S.I. 1975/286, amended by S.I. 1992/457 and S.I. 1993/617.
 - (b)** S.I. 1975/488, amended by S.I. 1979/1561, S.I. 1980/1584 and S.I. 1993/617.
 - (c)** S.I. 1980/108; the relevant amending instruments are S.I. 1986/1962, S.I. 1992/457 and S.I. 1993/617.
 - (d)** S.I. 1981/553; the relevant amending instruments are S.I. 1986/1333, S.I. 1988/2132 and S.I. 1995/585.
 - (e)** S.I. 1984/611; the relevant amending instrument is S.I. 1991/1991.
 - (f)** S.I. 1986/367.
 - (g)** S.I. 1986/1141; the amending instrument is not relevant.
 - (h)** S.I. 1986/1962, amended by S.I. 1992/457 and S.I. 1993/617.
 - (i)** S.I. 1988/329, amended by S.I. 1991/1991.
 - (j)** S.I. 1988/1701, amended by S.I. 1997/708.
 - (k)** S.I. 1989/1597.
 - (l)** S.I. 1990/1909.
 - (m)** S.I. 1991/1074.
 - (n)** S.I. 1991/1395; the relevant amending instruments are S.I. 1991/1991, S.I. 1992/2068, S.I. 1994/2166, S.I. 1994/3156 and S.I. 1997/1895.
 - (o)** S.I. 1991/1405; the amending instruments are not relevant.
 - (p)** S.I. 1991/1923, amended by S.I. 1994/3154.
 - (q)** S.I. 1991/1991; the relevant amending instruments are S.I. 1992/2068, S.I. 1993/627 and 1997/1894.
 - (r)** S.I. 1991/2096
 - (s)** S.I. 1992/2069.
 - (t)** S.I. 1992/2070, amended by S.I. 1997/709.
 - (u)** S.I. 1992/2071; the amending instruments are not relevant.
 - (v)** S.I. 1993/617.

- (xxix) the Family Proceedings Courts (Child Support Act 1991) Rules 1993**(a)**;
- (xxx) the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997**(b)**;
- (xxxi) the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Confidentiality) Rules 1997**(c)**;
- (xxxii) the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Tainted Acquittals) Rules 1997**(d)**;
- (xxxiii) the Magistrates' Courts (Sex Offender and Anti-social Behaviour Orders) Rules 1998**(e)**;
- (xxxiv) the Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999**(f)**.

28th February 2001

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(a) S.I. 1993/627.
(b) S.I. 1997/703.
(c) S.I. 1997/704.
(d) S.I. 1997/1055.
(e) S.I. 1998/2682.
(f) S.I. 1999/681.

Amendments

The Maintenance Orders (Facilities for Enforcement) Rules 1922

1. In rule 1, for “a justices’ clerk acting” substitute “the justices’ chief executive”.
2. In rule 2A for “justices clerk”, in rule 3, for “Clerk”, in rule 5 and 5A(4) for “clerk of the court”, and in rules 4 and 7 for “Clerk of the Court”, substitute “justices’ chief executive”.
3. In rule 5A(2) before “notify in writing” insert “the justices’ chief executive shall”.
4. In rule 5A(3), for “clerk of”, in each place where it occurs, substitute “justices’ chief executive for”.
5. In rule 5A(4), for “the clerk shall”, substitute “he shall”, for “the clerk grants” substitute “the clerk of the court grants” and for “he shall” substitute “the justices’ chief executive shall”.
6. In rule 6, for “clerk” substitute “justices’ chief executive”.
7. For rule 6A(3) substitute—
 - “(3) On receipt of such an application by the justices’ chief executive—
 - (a) the justices’ clerk shall fix the date, time and place for a hearing or a directions appointment; and
 - (b) the justices’ chief executive shall notify the applicant of the date, time and place so fixed.”.

The Maintenance Orders (Facilities for Enforcement) (Amendment) Rules 2000

8. In rule 2 for “1992” substitute “1922”.

The Maintenance Orders Act 1950 (Summary Jurisdiction) Rules 1950

9. In rules 1(2) and (4) (in the first place where it occurs), 2(1), (3) (in the first place where it occurs) and (4), 3(3), 4(1) and (2) (in the first place where it occurs), 5(1) and (2) (in the first place where it occurs), 6, 7 (in the first place where it occurs), 9(3), 9B(2) (in each place where it occurs) and (3), 10(1) (in the first place where it occurs) and (2), 11(1), 12 (in the first place where it occurs), 12A, 13(2) and 15, and in Form 4 in the Schedule, for “clerk of” substitute “justices’ chief executive for”.
10. In rule 9B(1) before “notify in writing” insert “the justices’ chief executive shall”.
11. In rule 9B(3)—
 - (a) for “the clerk shall” substitute “the justices’ chief executive shall”; and
 - (b) for “where the clerk grants” substitute “where the clerk of the court grants”.
12. In rule 11(2), for “the clerk” substitute “the justices’ chief executive”.
13. In rule 12 for “the clerk shall” substitute “the justices’ chief executive shall”.
14. In rule 13(1) for “the clerk of that court” substitute “the justices chief executive for the court”.
15. In Forms 1 and 2 in the Schedule, for “Clerk [and Collecting Officer] of” substitute “Justices’ Chief Executive and Collecting Officer for”.

16. In Form 4 in the Schedule, for “Justices’ Clerk” substitute “Justices’ Chief Executive”.

The Magistrates’ Courts (Maintenance Orders Act 1958) Rules 1959

17. In rules 2(5)(a), 2A, 4, 4A, 5(1) (in both places where it occurs), (2) (in both places where it occurs) and (3) (in each place where it occurs), 5A(2) (in each place where it occurs) and (3), 7(1), (2), (3), (3A), (3B), (4) and (5), 8, 8A, 21(a) (in both places where it occurs), 22(1), (2), (5) and (6) and in the Schedule, in Form 8 (in each place where it occurs), Form 9 (in each place where it occurs) and Form 10, for “clerk of” substitute “justices’ chief executive for”.

18. In rules 3(1) and (2) and 22(3) (in both places where it occurs) and in the Schedule, in Form 19, for “the clerk” substitute “the justices’ chief executive”.

19. In rule 2(5)(a) for “signed by the clerk” substitute “signed by the justices’ chief executive”.

20. In rule 5(2) for “clerk to” substitute “justices’ chief executive for”, for “through a clerk” substitute “through a justices’ chief executive” and for “that other clerk” substitute “that other justices’ chief executive”.

21. In rule 5(3) for “through a clerk” substitute “through a justices’ chief executive” and for “that other clerk” substitute “that other justices’ chief executive”.

22. In rule 5A(1) before “notify in writing” insert “the justices’ chief executive shall”.

23. In rule 5A(3) for “the clerk shall” substitute “the justices’ chief executive shall” and for “the clerk grants” substitute “the clerk of the court grants”.

24. In rule 21(B) for “the last-mentioned clerk” substitute “the last-mentioned justices’ chief executive”.

25. In rule 22(3) for “receipt by the clerk” substitute “receipt by the justices’ chief executive” and for “the clerk sends” substitute “the justices’ chief executive sends”.

26. In the Schedule, in Forms 1, 2, 3, 7, 11, 12, 15, 16 (in both places where it occurs) and 19, for “Clerk of” substitute “Justices’ Chief Executive for”.

27. In the Schedule, in Forms 1, 2, 3, 7, 8, 9 (in both places where it occurs) and 10, for “*clerk of*” substitute “*justices’ chief executive for*”.

28. In the Schedule, in Forms 8, 9 and 10, for “Justices’ Clerk” substitute “Justices’ Chief Executive”.

29. In the Schedule, in Form 19, for “received by the Clerk” substitute “received by the Chief Executive”.

The Magistrates’ Courts (Backing of Warrants) Rules 1965

30. In rules 3(2) and (3) and 4(1), for “clerk of” substitute “justices’ chief executive for”.

31. In rule 5B—

(a) for “clerk to the justices” substitute “justices’ chief executive”; and

(b) for “the clerk shall forthwith send” substitute “the justices’ chief executive shall forthwith send”.

The Magistrates’ Courts (Attachment of Earnings) Rules 1971

32. In rule 6(1) and (3), 8, 9(2) (in each place where it occurs) and (3), 14(3), 15(7) and (9), 16(2), 17(1), 18(1), (2) and (3), 19(1), 21(1) and (2) and 24, for “clerk of” substitute “justices’ chief executive for”.

33. In rules 14(3), 15(7) and 23(4), for “the clerk” substitute “the justices’ chief executive”.

34. In the Schedule, in Forms 1 and 2, for “Clerk of”, in the first and last places where it occurs, substitute “Justices’ Chief Executive for”.

35. In the Schedule, in Form 4, for “Clerk of the Court” substitute “Justices’ Chief Executive for the Court”.

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

36. In each place where it occurs in rules 8(1) and (2), 9(1A) (including the proviso thereto), (2), 9A, 12(1) to (4), 13(1) and (3) and 14(1) and (2), for “justices’ clerk” substitute “justices’ chief executive”.

37. In rules 7(1)(c), 9(1) and 9B(2) (in each place where it occurs), for “clerk of” substitute “justices’ chief executive for”.

38. In rule 2(1)—

- (a) for “his register” substitute “the court’s register”;
- (b) for “justices’ clerk” substitute “justices’ chief executive”; and
- (c) for “that clerk” substitute “the justices’ chief executive”.

39. In rule 4A, for paragraph (3) substitute—

“(3) Where the justices chief executive receives such an application—

- (a) the justices’ clerk shall fix the date, time and place for a hearing or a directions appointment, and
- (b) the justices’ chief executive shall notify the applicant of the date, time and place so fixed.”

40. In rule 4B, for paragraph (2)—

“(2) On receipt of the order and accompanying documents referred to in section 5(5), 7 or 9(6) of the Act—

- (a) the justices’ clerk shall 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) the justices’ chief executive shall serve a copy of the order and documents on the resident party, together with a notice stating the date, time and place so fixed.”

41. For rule 7(2) substitute—

“Where a justices’ chief executive receives notification that the person on whose application the maintenance order was made wishes to adduce further evidence—

- (a) the justices’ clerk shall fix a date for the hearing of such evidence; and
- (b) the justices’ chief executive shall send that person written notice of the date fixed.”

42. In rule 8(1) and (2), for “his register” substitute “the court’s register”.

43. In rule 9(1), for “that clerk” substitute “that justices’ chief executive”.

44. In rule 9B—

- (a) in paragraph (1), insert “the justices’ chief executive shall” before “notify”; and
- (b) in paragraph (3)—
 - (i) for “clerk of the court” substitute “justices’ chief executive for the court”;
 - (ii) for “the clerk shall notify” substitute “the justices’ chief executive shall notify”;
 - and
 - (iii) after “where the clerk” insert “of the court”.

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

45. In each place where it occurs in rules 8(1), 9(2), 10(1A), (2) and (3), 12, 13(1) to (3) and 14(1) to (3), for “justices’ clerk” substitute “justices’ chief executive”.

46. In rules 6, 10(1), 10A(2) (in each place where it occurs) and 14(1), for “clerk of” substitute “justices’ chief executive for”.

47. In rule 2—

- (a) for “his register” substitute “the court’s register”;
- (b) for “justices’ clerk” substitute “justices’ chief executive”;
- (c) for “that clerk” substitute “the justices’ chief executive”.

48. For rule 4A(2) substitute the following new paragraph—

“(2) Where the justices’ chief executive receives such an application—

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

49. In rule 8(1), for “his register” substitute “the court’s register”.

50. In rule 10(1), for “that clerk” substitute “that justices’ chief executive”.

51. In the Schedule, in Parts I and II—

- (a) for “J.C.” substitute “J.C.E.”; and
- (b) for “Justices’ Clerk” substitute “Justices’ Chief Executive”.

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

52. In rules 4, 5(2), 5A, 6(1) and (2), 7(1) and (2), 8(1) and 10(1), for “justices’ clerk” substitute “justices’ chief executive”.

53. In rule 2(1)—

- (a) for “his register” substitute “the court’s register”;
- (b) for “justices’ clerk” substitute “justices’ chief executive”; and
- (c) for “that clerk” substitute “the justices’ chief executive”.

54. For rule 3A(1) substitute—

“(1) Where the justices’ chief executive receives 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—

- (a) the justices’ clerk shall 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) the justices' chief executive shall serve copies of the application and any accompanying documents, together with a notice stating the date, time and place so fixed, on the respondent."

55. In rules 5(1) and (2), for "his register" substitute "the court's register".

56. In rules 7(1) and 7A(2) (in both places where it occurs) and (3), for "clerk of" substitute "justices' chief executive for".

57. In rule 7A(1) before "notify in writing" insert "the justices' chief executive shall".

58. In rule 7A(3)—

- (a) for "the clerk shall" substitute "the justices chief executive shall"; and
- (b) after "where the clerk" insert "of the court".

59. For rule 7B(3) substitute—

"(3) Where the justices' chief executive receives an application, either filed in accordance with paragraph (2) or sent from the Lord Chancellor under section 34(3) of the Act—

- (a) justices clerk shall fix the date, time and place for a hearing or a directions appointment; and
- (b) the justices' chief Executive shall notify the applicant of the date, time and place so fixed."

60. In the Form in the Schedule—

- (a) for "J.C." substitute "J.C.E."; and
- (b) for "Justices' Clerk" insert "Justices Chief Executive".

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

61. In rules 6, 8(1), 8B(2) (in each place where it occurs) and (3) and 12(1), for "clerk of" substitute "justices' chief executive for".

62. In rules 5(1) and (3), 7(2), 8(1A) and (2), 8A, 10(1) and (2), 11, 12(1) (in both places where it occurs) and (2) (in both places where it occurs), for "justices' clerk" substitute "justices' chief executive".

63. In rule 2—

- (a) for "his register" substitute "the court's register";
- (b) for "justices' clerk" substitute "a justices chief executive"; and
- (c) for "that clerk" substitute "the justices' chief executive".

64. In rule 4A(3) substitute—

"(3) Where the justices' chief executive receives such an application—

- (a) the justices' clerk shall fix the date, time and place for a hearing or a directions appointment; and
- (b) the justices' chief executive shall notify the applicant of the date, time and place so fixed."

65. In rule 5(1), for "his register" substitute "the court's register".

66. In rule 8(1), for "that clerk" substitute "that justices' chief executive".

67. In rule 8B(1) before "notify in writing" insert "the justices' chief executive shall".

68. In rule 8B(3)—

- (a) for the second reference to "the clerk", substitute "the justices' chief executive"; and
- (b) for the third reference to "the clerk", substitute "the clerk of the court".

69. In Parts I and II of Schedule 2—
- (a) for “J.C.” substitute “J.C.E.”;
 - (b) for “Clerk of the Court” substitute “Justices’ Chief Executive”; and
 - (c) for “Justices’ Clerk” substitute “Justices’ Chief Executive”.

The Magistrates’ Courts (Forms) Rules 1981

70. In Schedule 2—
- (a) in Form 13, in the Note, after “clerk of the court” insert “justices’ chief executive for the court”;
 - (b) in Forms 20, 46 (in each place where it occurs), 47 (in each place where it occurs), 59, 61 (in each place where it occurs), 53A, 53B, 62, 88, 133 (in each place where it occurs), 146, 153A, 153B, 158 and 159 (in each place where it occurs), for “Justices’ Clerk” substitute “Justices’ Chief Executive”;
 - (c) in Forms 21, 28, 48, 60, 63, 97, 114, 122, 123, 124, 125, 126, 127, 128, 131, 132 and 154, for “Clerk of” substitute “Justices’ Chief Executive for”;
 - (d) in Forms 25 and 53B, for “Clerk to”, in each place where it occurs, substitute “Chief Executive to”, and in Form 53B for “CLERK TO”, in both places where it occurs, substitute “CHIEF EXECUTIVE TO”;
 - (e) in Form 27—
 - (i) for “the Clerk of the Court” substitute “the Justices Chief Executive for the Court”;
 - (ii) for “the Clerk”, in each other place where it occurs, substitute “the Justices’ Chief Executive”; and
 - (iii) for “the clerk” substitute “the justices’ chief executive”;
 - (f) in Form 59, for “clerk of” substitute “justices’ chief executive for”;
 - (g) in Forms 59 and 60, for “the clerk making the order” substitute “the justices’ chief executive making the order”;
 - (h) in Form 63, for “*clerk of*” substitute “*justices’ chief executive for*”; and
 - (i) in Forms 109, 118, 119, 120 and 129, below “Clerk of the Court” insert “Justices’ Chief Executive for the Court”, and, in Form 148, after “Clerk of the Court” insert “/Justices’ Chief Executive for the Court”.

The Magistrates’ Courts (Adoption) Rules 1984

71. In rules 4(4), 5(5), 7(1), (3) and (4), 14, 15(4), 19(1), (3) and (4), 21(2), 22(4), 27(4) (in both places where it occurs), (5) and (10), 28(2) and (3) and 31(2), (3), (4), (5) and (7), for “justices’ clerk” substitute “justices’ chief executive”.

72. In rule 16 after “on receipt” insert “by the justices’ chief executive”.

73. In rule 28(1), for “clerk to the justices” substitute “justices’ chief executive”.

74. In rules 9(1) and 21(1), before “shall serve notice”, and in rule 12(3), before “shall send to him a copy of the application”, insert “the justices’ chief executive”.

75. In Forms 3 and 8 in Schedule 1, for “Justices’ Clerk” substitute “Justices’ Chief Executive” and for “Clerk to the Justices” substitute “Chief Executive to the Justices”.

The Magistrates’ Courts (Discontinuance of Proceedings) Rules 1986

76. In rule 6, for “clerk of” substitute “justices’ chief executive for”.

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

77. In rule 8(1), (3) and (4), for “justices’ clerk” substitute “justices’ chief executive”.

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

78. In rules 4(1) to (4) (including the proviso thereto) and (5) to (7), 6(1A), (2) and (3), 7, 8(1) (including the proviso thereto) (in each place where it occurs), (2) and (3) (in both places where it

occurs), 9, 10(2)(b), (3), (4) and (6) (in the first place where it occurs), 11(2)(b), (3)(a) and (b), (4) and (5) (in the first place where it occurs), 12(1) and (3) to (5) (in both places where it occurs), for “justices’ clerk” substitute “justices’ chief executive”.

79. In each place where it occurs in rules 6(1) and 6A(2), for “clerk of” substitute “justices’ chief executive for”.

80. In rule 2—

- (a) for “his register” substitute “the court’s register”;
- (b) for “justices’ clerk” substitute “justices’ chief executive”; and
- (c) for “that clerk” substitute “the justices chief executive”.

81. In rule 4(1), for “his register” substitute “the court’s register”.

82. In rules 6(1) and 11(2), for “that clerk” substitute “that justices’ chief executive”, and in rule 10(2)(c) for “the clerk” substitute “the justices’ chief executive”.

83. In rule 6A(1), before “notify in writing” insert “the justices’ chief executive shall”.

The Magistrates’ Courts (Family Law Act 1986) Rules 1988

84. In rules 2(2), 3(3), (4) and (6), 4(1) to (5) and 6(1), for “clerk of” substitute “justices’ chief executive for”.

85. In the Schedule in Forms 1 and 2, for “Justices’ Clerk”, in each place where it occurs, substitute “Justices’ Chief Executive”.

The Magistrates’ Courts (Notices of Transfer) Rules 1988

86. In rules 3(1) and (2), 4, 5(1) and (2) and 7, for “clerk of” substitute “justices’ chief executive for”.

87. In the Schedule—

- (a) in Form 2, for “Justices’ Clerk” substitute “Justices’ Chief Executive”; and
- (b) in Form 3, for “Clerk of” substitute “Justices’ Chief Executive for”.

The Magistrates’ Courts (Extradition) Rules 1989

88. In rule 4—

- (a) in paragraph (1), for “clerk” substitute “justices’ chief executive”; and
- (b) in paragraph (4)—
 - (i) for “clerk of” substitute “justices’ chief executive for”; and
 - (ii) for “the clerk shall” substitute “the justices’ chief executive shall”.

The Magistrates’ Courts (Social Security Act 1986) (Transfer of Orders to maintain and Enforcement of Maintenance Orders) Rules 1990

89. For rule 3 substitute—

“3. Where a clerk amends an order made under section 24(4) in accordance with rule 2 of these Rules—

- (a) he shall make a written record of the fact that, the circumstances in which and the date on which, he has done so, and shall keep it with the register kept under rule 66 of the Magistrates’ Courts Rules 1981; and
- (b) the justices’ chief executive shall send a copy of the amended order, as soon as practicable, to the Secretary of State, the liable parent and the dependent parent.”

90. In rule 4, for “clerk of” substitute “justices’ chief executive for”.

The Magistrates' Courts (Criminal Justice (International Co-operation)) Rules 1991

- 91.** In rule 5, for “justices’ clerk of” substitute “justices’ chief executive for”.
- 92.** In rules 3, 7 and 9(1) and (4), for “justices’ clerk” substitute “justices’ chief executive”.

The Family Proceedings Courts (Children Act 1989) Rules 1991

93. In rules 1(2) (in the definition of “file”), 3(2)(a), 4(1)(b) and (4)(i) (in the first place where it occurs), 5(4)(a), 6(1) (in both places where it occurs) and (2), 7(3)(a) and (b), 8(3)(c), 10(5) and (6), 13(1) (in the last place where it occurs), (2) and (3)(a), 14(4) and (8)(a), 15(3), 19(2)(a) and (3), 21G(1) and (2), 21H(2) and (3), 21J(3) and (5), 23(2), 25(1)(ii), 26, 27(3) and (4) and 30(2), for “justices’ clerk” substitute “justices chief executive”.

94. In rule 1(2) before the definition of “justices’ clerk” insert the following definition

““justices’ chief executive” means a justices’ chief executive appointed under section 40 of the Justices of the Peace Act 1997(a);”.

95. In rule 15(3) for “justices’ clerk’s office”, in both places where it occurs, substitute “office of the justices’ chief executive”.

96. In rule 15(5) for the words from “the justices’ clerk” (where they first occur) to the end substitute—

- “(i) the justices’ clerk shall fix a date upon which the proceedings shall come before him or the court again for such purposes as he or the court directs, which date shall, where paragraph (a) applies, be as soon as possible after the transfer, and
- (ii) the justices’ chief executive shall give notice to the parties and to the guardian ad litem or the welfare officer of the date so fixed.”

97. In rules 3(2)(b) (before “give such notice”), 5(4)(b) (before “give at least 7 days’ notice”), 12(6) (before “serve a copy”), 14(7) (before “give not less than 2 days’ notice”), (8)(b) (before “give not less than 2 days’ notice”) and (12) (before “serve, as soon as practicable, a copy of the form”) and 24 (before “give notice, as soon as practicable”), insert “the justices’ chief executive shall”.

98. In rule 14(5)(a) before “having given the parties notice”, insert “the justices’ chief executive”.

99. In rule 14(2) after “on receipt of an application”, and in rule 14(7) after “On receipt of a request”, insert “by the justices’ chief executive”.

100. For rule 4(2) substitute—

“(2) On receipt by the justices’ chief executive of the documents filed under paragraph (1)(a)—

- (a) the justices’ clerk shall fix the date, time and place for a hearing or a directions appointment, allowing sufficient time for the applicant to comply with paragraph (1)(b), and
- (b) the justices’ chief executive shall—
 - (i) endorse the date, time and place so fixed upon Form C6, and where appropriate, Form C6A, and
 - (ii) return forthwith to the applicant the copies of the application and Form C10A if filed with it, together with Form C6, and such of Forms C6A and C7 as are appropriate.”.

101. For rule 21(7) substitute—

“(7) As soon as practicable after the court announces its decision—

(a) 1997 c. 25; section 40 is amended by section 87 of the Access to Justice Act 1999.

- (a) the justices' clerk shall make a record of any order made in the appropriate form in Schedule 1 to these Rules or, where there is no such form, in writing; and
- (b) subject to paragraph (8), the justices' chief executive shall serve a copy of any order made on the parties to the proceedings and on any person with whom the child is living.”.

102. In rule 21H(1), for “clerk to the justices” substitute “justices' chief executive”.

The Family Proceedings Courts (Constitution) Rules 1991

103. In rules 8(2) and 9(1), for “justices' clerk” substitute “justices' chief executive”.

104. For rule 7 substitute the following rule:—

“7.—(1) A justices' chief executive for a petty sessions area may nominate a justice or justices from the panel for that area for temporary transfer to the panel for another petty sessions area within his commission area for the purpose of hearing family proceedings specified in his nomination if he is satisfied that the better administration of justice will be served by such transfer, and the justice or justices so nominated agree to be transferred.

(2) A justices' chief executive for one commission area (“the first commission area”) may make a request to the justices' chief executive for another commission area (“the second commission area”) for the temporary transfer of one or more justices from the panel for a petty sessions area within the second commission area to the panel for a petty sessions area within the first commission area for the purpose of hearing family proceedings specified in the request.

(3) The justices' chief executive for the second commission area shall grant a request under paragraph (2) where he considers that the better administration of justice will be served by such transfer, and the justice or justices nominated by him for the transfer agree to be transferred.

(4) A justices' chief executive who grants a request under paragraph (2) shall do so in writing.

(5) The transfer of a justice or justices under this rule shall not prevent the justice or justices transferred from sitting in a family proceedings court in the petty sessions area from which he or they are transferred.

(6) A justice who is not a District Judge (Magistrates' Courts) shall only be transferred under this rule to a petty sessions area in a different commission area if the Lord Chancellor appoints the justice nominated for the transfer to the commission area within which the petty sessions area falls for the purpose of the proceedings specified in the request”.

The Magistrates' Courts (Detention and Forfeiture of Drug Trafficking Cash) Rules 1991

105. In rules 6, 7(2) and (4), 9(1) and 10, for “clerk of” substitute “justices' chief executive for”.

106. In rule 7—

- (a) in paragraph (1), for “clerk to the justices” substitute “justices' chief executive”; and
- (b) for paragraph (3) substitute—

“(3) Where a justices' chief executive receives an application in accordance with paragraph (1) or (2) above—

- (a) the clerk of the magistrates' court shall fix a date for the hearing of the application; and
- (b) the justices' chief executive shall—
 - (i) notify the applicant thereof; and
 - (ii) notify any persons to whom notice of the order for continued detention has been given of the application and the date fixed for the hearing.”.

107. For rule 9(2), substitute—

“(2) Where the justices’ chief executive receives such an application—

- (a) the clerk of the magistrates’ court shall fix a date for the hearing of the application; and
- (b) the justices’ chief executive shall notify any persons to whom notice of an order for continued detention has been given of the application and the date fixed for the hearing.”.

108. For rule 9A(3), substitute—

“(3) Where a justices’ chief executive receives such an application—

- (a) the clerk of the magistrates’ court shall fix a date for the hearing of the application; and
- (b) the justices’ chief executive shall notify any persons to whom notice of forfeiture was given.”.

109. In rule 12(2), for “clerk to” substitute “justices’ chief executive for”.

110. In Forms C and E in the Schedule, for “Clerk to the Justices” substitute “Justices’ Chief Executive”.

The Family Proceedings Courts (Matrimonial Proceedings etc.) Rules 1991

111. In rules 2(1) (in the definition of “file”), 3A(4)(a) (in the first place where it occurs) and (9), 6(6)(a) and (b), 7(3), 10(2)(a) and (3), 12(8), 12A(3), 18(2), 20(2), (3), (7), (8), (14) (in both places where it occurs in paragraph (6) as substituted), (15), (19) and (20) (in both places where it occurs) and 23(1), for “justices’ clerk” substitute “justices’ chief executive”.

112. For rule 3(2) substitute:

“(2) On receipt by the justices’ chief executive of the documents filed under paragraph (1)(a)—

- (a) the justices’ clerk shall fix the date, time and place for a hearing or a directions appointment, allowing sufficient time for the applicant to comply with paragraph (1)(b), and
- (b) the justices’ chief executive shall—
 - (i) endorse the date, time and place so fixed upon the copies of the application filed by the applicant, and
 - (ii) return the copies to the applicant forthwith.”.

113. In rule 6(3)(a) before “having given the parties notice” insert “the justices’ chief executive”.

114. In rule 6(1) after “on receipt of an application” and (5) after “on receipt of a request” and in rule 15(3) after “shall be recorded in writing”, insert “by the justices’ chief executive”.

115. In rules 6(5) and (6)(b) before “give not less than 2 days’ notice” and (7) before “serve, as soon as practicable, a copy of the note”, insert “the justices’ chief executive shall”.

116. In rule 7(5) for the words from “the justices’ clerk” to the end substitute—

- (i) the justices’ clerk shall fix a date upon which the proceedings shall come before him or the court again for such purposes as he or the court directs, and
- (ii) the justices’ chief executive shall serve, in accordance with these Rules, a copy of the order made on the parties to the proceedings.”

117. For rule 12(7) substitute—

“(7) After the court announces its decision—

- (a) the justices’ clerk shall, as soon as practicable, make a record of the order made in the appropriate form, in writing, and
- (b) the justices’ chief executive shall serve, in accordance with these Rules, a copy of the order made on the parties to the proceedings.”.

118. In rule 7(3), for “justices’ clerk’s office”, in both places where it occurs, substitute “office of the justices’ chief executive”.

119. In Schedule 1, in Form 7 and in the Form of Notice to Mortgagees and Landlords, for “Clerk to the Justices” substitute “Justices’ Chief Executive”.

The Magistrates’ Courts (Costs Against Legal Representatives in Civil Proceedings) Rules 1991

120. In rules 2(5), (6) and (8), for “justices’ clerk” substitute “justices’ chief executive”.

121. In rule 3(2), (4), (5) and (6), for “justices’ clerk of” substitute “justices’ chief executive for”.

The Magistrates’ Courts (Attendance Centre) Rules 1992

122. In rule 3(1)(a), for “clerk of” substitute “justices’ chief executive for” and delete “(the clerk)”.

123. In rule 3(3) and (4), for “the clerk” substitute “the justices’ chief executive”.

The Magistrates’ Courts (Notice of Transfer) (Children’s Evidence) Rules 1992

124. In rules 3, 4 and 6, for “clerk of” substitute “justices’ chief executive for”.

125. In Schedule 2—

- (a) in Form 2, for “Justices’ Clerk” substitute “Justices’ Chief Executive”; and
- (b) in Form 3, for “Clerk of” substitute “Justices Chief Executive for”.

The Magistrates’ Courts (Children and Young Persons) Rules 1992

126. In rules 14(1), 23(4) to (8) (in each place where it occurs), 24(6), (7), (8), (9) (in both places where it occurs) and (10), 27(1)(a), (3) and (4), for “clerk of” or “clerk to” substitute “justices’ chief executive for”.

127. In Schedule 2, in Forms 4 and 5 for “[me the undersigned] [*or state name*] [Justice of the Peace] [Clerk to the Justices]” substitute “[*state name*] [Justice of the Peace] [Justices’ Chief Executive]”.

128. In Schedule 2, in Form 22, for “me, the Clerk of the Court”, in both places where it occurs, substitute “me, the Justices’ Chief Executive for the Court”.

129. In Schedule 2, in Form 37, in each place where it occurs, for “Justices’ Clerk” substitute “Justices’ Chief Executive”.

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

130. In paragraphs 1 to 13 of Schedule 2 as added to the rules specified in rule 3—

- (a) in the definition of “file” in paragraph 1, for “justices’ clerk” substitute “justices’ chief executive” and before the definition of “justices’ clerk” insert the following definition:

““justices’ chief executive” means a justices’ chief executive appointed under section 40 of the Justices of the Peace Act 1997(a);”

- (b) for the first reference to “justices’ clerk” in paragraph 2(1) substitute “justices’ chief executive”;
- (c) in paragraphs 2(2), 5(3), 7(3) and 8(1), for “justices’ clerk” substitute “justices’ chief executive”;
- (d) in paragraph 4—
 - (i) in sub-paragraph (1), for “and, the justices’ clerk shall, on receipt of an application or any other document by which proceedings are commenced, consider whether such directions need to be given” substitute “and, where the justices’ chief executive receives such an application or any other document by which proceedings are commenced, the justices’ clerk shall consider whether such directions need to be given”; and
 - (ii) in sub-paragraph (4), for “On receipt of a request” substitute “Where the justices’ chief executive receives a request”; and
- (e) in paragraph 5—
 - (i) in sub-paragraph (3), for “justices’ clerks’ office”, in both places where it occurs, substitute “office of the justices’ chief executive”; and
 - (ii) in sub-paragraph (5) for the words from “justices’ clerk” to the end substitute—
 - “(i) the justices’ clerk shall fix a date upon which the proceedings shall come before him or the court again for such purposes as he or the court directs, which date shall, where paragraph (a) applies, be as soon as possible after the transfer, and
 - (ii) the justices’ chief executive shall give notice to the resident party of the date so fixed”.

The Family Proceedings Courts (Child Support Act 1991) Rules 1993

131. In rule 6(1) for “he” substitute “the justices’ chief executive”.

132. In rules 6(3) (in the first place where it occurs), (4), (5) and (7) and 7, for “justices’ clerk” substitute “justices’ chief executive”.

The Magistrates’ Courts (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997

133. In rules 2(2), 3(2)(a), 4(3), 5(2) to (4) and (9), 6(1)(b)(ii), (2) and (3), 7(2) to (4) and (5)(a), 8(2), (3) and (6)(a), for “clerk of” substitute “justices’ chief executive for”.

The Magistrates’ Courts (Criminal Procedure and Investigations Act 1996) (Confidentiality) Rules 1997

134. In rules 2(2) and (5), 4(2) and 5(7)(c), for “clerk of” substitute “justices’ chief executive for”.

135. For rule 2(4), substitute—

“(4) Where the justices’ chief executive for the court receives an application to which this rule applies, the clerk of the court shall fix a date and time for the hearing of the application”.

136. In rule 3(2), for “the clerk” substitute “the justices’ chief executive”.

The Magistrates’ Courts (Criminal Procedure and Investigations Act 1996) (Tainted Acquittals) Rules 1997

137. In rules 4(1), 6(1), 7(1) to (3), 8(1) to (3) and 9(1) (in both places where it occurs), for “clerk of” substitute “justices’ chief executive for”.

(a) 1997 c. 25; section 40 is amended by section 87 of the Access to Justice Act 1999.

138. In Form TAM 1 in the Schedule, for “Clerk to the Justices” substitute “Justices Chief Executive”.

The Magistrates’ Courts (Sex Offender and Anti-social Behaviour Orders) Rules 1998

139. In rule 3—

- (a) in paragraph (4), for “the clerk to” substitute “the justices chief executive for”; and
- (b) in paragraph (5), for “the clerk” substitute “the justices’ chief executive”.

140. In rule 4, for “the clerk of the court” substitute “the justices’ chief executive for the court”.

The Magistrates’ Courts (Hearsay Evidence in Civil Proceedings) Rules 1999

141. In rules 3(1), 4(2)(a) and 4(4), for “justices’ clerk” substitute “justices’ chief executive”.

142. For rule 4(3) substitute—

“(3) On receipt of an application under paragraph (1)—

- (a) the justices’ clerk must—
 - (i) unless the court otherwise directs, allow sufficient time for the applicant to comply with paragraph (4); and
 - (ii) fix the date, time and place of the hearing; and
- (b) the justices’ chief executive must—
 - (i) endorse the date, time and place of the hearing on the copies of the application filed by the applicant; and
 - (ii) return the copies to the applicant forthwith.”.

143. In rule 4(5), after “subject to” insert “the justices’ chief executive’s”.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the following Rules:—

- (i) the Maintenance Orders (Facilities for Enforcement) Rules 1922 and the Maintenance Orders (Facilities for Enforcement) (Amendment) Rules 2000;
- (ii) the Maintenance Orders Act 1950 (Summary Jurisdiction) Rules 1950;
- (iii) the Magistrates' Courts (Maintenance Orders Act 1958) Rules 1959;
- (iv) the Magistrates' Courts (Backing of Warrants) Rules 1965;
- (v) the Magistrates' Courts (Attachment of Earnings) Rules 1971;
- (vi) the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) Rules 1974;
- (vii) the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Republic of Ireland) Rules 1975;
- (viii) the Magistrates' Courts (Recovery Abroad of Maintenance) Rules 1975;
- (ix) the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Hague Convention Countries) Rules 1980;
- (x) the Magistrates' Courts (Forms) Rules 1981;
- (xi) the Magistrates' Courts (Adoption) Rules 1984;
- (xii) the Magistrates' Courts (Discontinuance of Proceedings) Rules 1986;
- (xiii) the Magistrates' Courts (Child Abduction and Custody) Rules 1986;
- (xiv) the Magistrates' Courts (Civil Jurisdiction and Judgments Act 1982) Rules 1986;
- (xv) the Magistrates' Courts (Family Law Act 1986) Rules 1988;
- (xvi) the Magistrates' Courts (Notices of Transfer) Rules 1988;
- (xvii) the Magistrates' Courts (Extradition) Rules 1989;
- (xviii) the Magistrates' Courts (Social Security Act 1986) (Transfer of Orders to maintain and Enforcement of Maintenance Orders) Rules 1990;
- (xix) the Magistrates' Courts (Criminal Justice (International Co-operation)) Rules 1991;
- (xx) the Family Proceedings Courts (Children Act 1989) Rules 1991;
- (xxi) the Family Proceedings Courts (Constitution) Rules 1991;
- (xxii) the Magistrates' Courts (Detention and Forfeiture of Drug Trafficking Cash) Rules 1991;
- (xxiii) the Family Proceedings Courts (Matrimonial Proceedings etc.) Rules 1991;
- (xxiv) the Magistrates' Courts (Costs Against Legal Representatives in Civil Proceedings) Rules 1991;
- (xxv) the Magistrates' Courts (Attendance Centre) Rules 1992;
- (xxvi) the Magistrates' Courts (Notice of Transfer) (Children's Evidence) Rules 1992;
- (xxvii) the Magistrates' Courts (Children and Young Persons) Rules 1992;
- (xxviii) the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Miscellaneous Amendments) Rules 1993;
- (xxix) the Family Proceedings Courts (Child Support Act 1991) Rules 1993;
- (xxx) the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997;

- (xxxi) the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Confidentiality) Rules 1997;
- (xxxii) the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Tainted Acquittals) Rules 1997;
- (xxxiii) the Magistrates' Courts (Sex Offender and Anti-social Behaviour Orders) Rules 1998; and
- (xxxiv) the Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999.

The amendments transfer the administrative functions of justices' clerks under those Rules to justices' chief executives in line with sections 90 (transfer of clerks' functions to chief executives) and 91 (accounting etc. functions of chief executives) of, and Schedule 13 to, the Access to Justice Act 1999 (c. 22) which implement corresponding transfers in primary legislation.

Subsection (5) of section 90 provides that, for the purposes of that section, the administrative functions of justices' clerks are all of their functions apart from those which are legal functions within the meaning of section 48(2) of the Justices of the Peace Act 1997 (c. 25), as substituted by section 89(1) of the 1999 Act.

2001 No. 615

MAGISTRATES' COURTS

PROCEDURE

The Magistrates' Courts (Transfer of Justices' Clerks' Functions) (Miscellaneous Amendments) Rules 2001

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