

**2005 No. 2796 (L.23)**

**MAGISTRATES' COURTS**

**PROCEDURE**

**The Justices' Clerks (Amendment) Rules 2005**

<i>Made</i> - - - -	<i>10th October 2005</i>
<i>Laid before Parliament</i>	<i>12th October 2005</i>
<i>Coming into force</i> - -	<i>30th December 2005</i>

The Lord Chancellor makes the following Rules in exercise of the powers conferred by section 28 of the Courts Act 2003(a).

In accordance with section 28(9) of that Act he has consulted the Criminal Procedure Rule Committee, the Family Procedure Rule Committee and the Magistrates' Courts Rule Committee.

**Citation and commencement**

1. These Rules may be cited as the Justices' Clerks (Amendment) Rules 2005 and shall come into force on—

- (a) for the purposes of rule 5 and this rule on 5th December 2005; and
- (b) for all other purposes on 30th December 2005.

**Amendments to the Justices' Clerks Rules 2005**

2. The Justices' Clerks Rules 2005(b) are amended in accordance with the following rules.

3. In rule 3(1) after "paragraphs 1 to 36" insert "and 44 to 71".

4. After rule 4 add—

**"5.** Until the commencement of paragraph 125 of Schedule 32 to the Criminal Justice Act 2003(c)—

- (a) paragraph 25 of the Schedule shall have effect as if the words "paragraph 18" were substituted for the words "paragraph 15"; and
- (b) paragraph 27 of the Schedule shall have effect as if the words "paragraph 4(5)" were substituted for the words "paragraph 4(6)."."

5. At the end of paragraph 43 add "or Schedule 6 to the Civil Partnership Act 2004(d)".

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(a) 2003 c.39.  
(b) S.I. 2005/545 (L.10).  
(c) 2003 c.44.  
(d) 2004 c.33.

6. After paragraph 43, omit the heading “Transitional Provisions”.

7. For paragraph 44 substitute—

**44.** The determination that a complaint for the revocation, discharge, revival, alteration, variation or enforcement of a magistrates’ court maintenance order be dealt with by a magistrates’ court acting for another local justice area in accordance with the provisions of rule 41 or 59 of the Magistrates’ Courts Rules 1981.

**45.** The fixing or setting aside of a date, time and place for any hearing or directions hearing in connection with an application made in accordance with the Family Procedure (Adoption) Rules 2005 (“the Adoption Rules”)(a).

**46.** The exercising of the case management powers in accordance with rule 12(2)(a) to (c), (e), (g), (i), (j), (m) and (n), and, if exercised of own initiative, in accordance with rule 13(1) to (4) and (6) of the Adoption Rules.

**47.** The taking of a step instead of a court officer in accordance with rule 14(b) of the Adoption Rules.

**48.—**(1) The giving, variation or revocation of directions in accordance with—

- (a) rules 20(3), 21(1) and (2), 23(4), 24(4), 25, 26(1), (4) and (5), 27(4)(b)(ii), 32(4) and (7), 34(b), 35(3), 36(1)(b), 37(4) and (5), 39, 55(3) and (5), 57(2), 63(1), 64(2)(a) and (b), 65(1), (3) and (4)(a), 66(2)(b)(ii), 72(4), 74(1) and (3)(a), 77, 78(1)(b), 83, 85(1)(a), 86(4)(c), 92(c), 93(2), 97(3), 99(4), 103(3), 104(2), 107(1)(b), 112(1) and (4), 113(2), 126(2) and (3), 131(3) and (4), 138(3) and (8), 139(2), 149(2), 158, 160(1) and (3)(b), 161(3), 162(1), 165, 167(2) and (3), 168(3), 169(2)(a) and (3)(a) and 170(2) and (3)(a) of the Adoption Rules and, with the consent of the parties, rules 23(2) and (3) and 24(3)(a) of those Rules;
- (b) paragraph 2.3 of the practice direction supplementing Part 2, rule 9(4) of those Rules;
- (c) paragraph 1 of the practice direction supplementing Part 5, rule 24(1)(b)(ii) of those Rules;
- (d) paragraph 1.2 of the practice direction supplementing Part 8, rule 78 of those Rules;
- (e) paragraphs 2.5, 2.6, 2.9, 4, 5.1, 8.2, 8.4, 8.5 and 8.6 of the practice direction supplementing Part 9 of those Rules;
- (f) paragraphs 4.1, 4.2 and 5.5 of the practice direction supplementing Part 10 of those Rules;
- (g) paragraphs 15.4 and 25.1, and annex 3, of the practice direction supplementing Part 15 of those Rules; and
- (h) paragraph 4 of the practice direction supplementing Part 17 of those Rules.

(2) Where the justices’ clerk considers, for whatever reason, that it is inappropriate to give a direction on a particular matter, he shall refer the matter to the court which may give any appropriate direction.

**49.—**(1) The request for any relevant forms of consent to be filed in accordance with rule 24(2)(a)(i) or (b)(i) or (3)(b).

(2) The request for a statement made under section 20(4)(a) or (b) to be filed in accordance with rule 24(2)(b)(ii) or (iii).

**50.** The request for a report on the suitability of the prospective adopters to be prepared in accordance with rule 24(2)(a)(ii) or (b)(iv).

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(a) S.I. 2005/2795 (L. 22) .

**51.** The monitoring of compliance with the court’s timetable and directions by the parties in accordance with rule 26(7) of the Adoption Rules.

**52.** The appointment of a children’s guardian for a child in accordance with rule 59 of the Adoption Rules.

**53.** The giving of permission for a children’s guardian to have legal representation in accordance with rule 64(2)(c) of the Adoption Rules.

**54.—**(1) The recording of reasons for—

- (a) refusing to appoint a children’s guardian in accordance with rule 60(1)(a) of the Adoption Rules;
- (b) terminating the appointment of a children’s guardian in accordance with rule 61(2); or
- (c) terminating the appointment of a solicitor for a child in accordance with rule 68(5), of those Rules.

(2) The recording of the appointment of a solicitor for a child or refusal to make such an appointment in accordance with rule 68(6) of those Rules.

**55.** The appointment of a reporting officer in accordance with rule 69 of the Adoption Rules.

**56.** The request for a welfare report in accordance with rule 73(1) of the Adoption Rules.

**57.** The request for a further report from the local authority or adoption agency or for assistance in accordance with rule 29(4) of the Adoption Rules.

**58.** The giving of permission for any of the orders referred to in section 41(2) (recovery orders) of the Adoption and Children Act 2002(a) to be made without notice.

**59.** The choosing of which method of service to use in accordance with rule 36(2) of the Adoption Rules.

**60.** For the purposes of the law relating to contempt of court, the giving of permission for information relating to proceedings held in private to be communicated in accordance with rule 78(1)(a) of the Adoption Rules.

**61.** The removal of protected information from a document before it is disclosed to an adopted adult in accordance with rule 84(2) of the Adoption Rules.

**62.** The dispensing with the requirement to file an application notice in accordance with rule 87(2)(b) of the Adoption Rules.

**63.** The giving of permission to make an application without serving a copy of the application notice on the respondents in accordance with rule 88(2)(c) of the Adoption Rules.

**64.** The giving of an extension of time to file and serve evidence under rule 102 of the Adoption Rules or the giving of permission to file and serve additional evidence before the hearing in accordance with rule 103(1)(b) of those Rules.

**65.** The giving of permission for—

- (a) a notice of making or refusal of a final order to be sent to any other person in accordance with rule 112(1)(f) of the Adoption Rules;
- (b) a copy of a final order to be sent to any other person in accordance with rule 112(3) of those Rules.

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(a) 2002 c.38.

66. The giving of permission to call an expert or put in evidence an expert's report in accordance with rule 157(1) of the Adoption Rules.

67. The giving of permission with regard to the written questions that can be put to an expert in accordance with rule 159(2)(c)(i) of the Adoption Rules.

68. The selection of an expert in accordance with rule 160(3)(a) of the Adoption Rules.

69. The giving of permission for a document to be taken out of the court office in which it was filed or lodged, or is held in accordance with paragraph 2.4 of the practice direction supplementing Part 2, rule 9(4) of the Adoption Rules.

70. The taking of a note of proceedings in accordance with paragraph 7 of the practice direction supplementing Part 9 of the Adoption Rules.

71. The issuing of a witness summons under section 97 of the Magistrates' Courts Act 1980 in proceedings under the Adoption and Children Act 2002."

10th October 2005

*Falconer of Thoroton, C*

### **EXPLANATORY NOTE**

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

These Rules amend the Justices' Clerks Rules 2005 (S.I. 2005/545 (L.10)) primarily to make provision enabling a justices' clerk or an assistant clerk to carry out functions in proceedings under the Adoption and Children Act 2002 (c.38). In addition, rule 5 is an amendment made as a consequence of the implementation of the Civil Partnership Act 2004 (c.33) and rule 7 inserts paragraph 44 into the Schedule to the Rules, which had been omitted when the Justices' Clerks Rules 1999 were replaced by the 2005 Rules.

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