

2007 No. 2188 (L. 18)

MAGISTRATES' COURTS, ENGLAND AND WALES

**The Family Proceedings Courts (Miscellaneous Amendments)
Rules 2007**

<i>Made</i> - - - -	<i>23rd July 2007</i>
<i>Laid before Parliament</i>	<i>26th July 2007</i>
<i>Coming into force</i> - -	<i>1st October 2007</i>

The Lord Chief Justice with the concurrence of the Lord Chancellor, after having consulted the rule committee appointed under section 144(A1) of the Magistrates' Courts Act 1980(a), makes the following Rules in exercise of the powers conferred by section 144 of the Magistrates' Courts Act 1980(b):

Citation, commencement and interpretation

1. These Rules may be cited as the Family Proceedings Courts (Miscellaneous Amendments) Rules 2007 and shall come into force on 1st October 2007.

Amendments to the Family Proceedings Courts (Children Act 1989) Rules 1991

2. The Family Proceedings Courts (Children Act 1989) Rules 1991(c) shall be amended in accordance with these Rules.

3. In the Arrangement of Rules—

(a) after the entry for rule 11A insert—

“11AA Additional powers and duties of officers of the service and Welsh family proceedings officers: family assistance order reports and risk assessments”;

(b) after the entry for rule 13 insert—

“13A Local authority officer preparing a family assistance order report”; and

(c) after the entry for rule 17A insert—

“17AA Service of risk assessment”.

4. In rule 1(2)—

(a) after the definition of “emergency protection order” insert—

(a) 1980 c.43; sub-section (A1) was inserted by the Constitutional Reform Act 2005 (c.4), Schedule 4, paragraphs 99 and 102.
(b) 1980 c.43; section 144 was amended by the Constitutional Reform Act 2005 (c.4), Schedule 4, paragraphs 99 and 102 and Schedule 11, paragraph 4 and the Courts Act 2003 (c.39), Schedule 8, paragraph 245 (on a date to be appointed).
(c) S.I. 1991/1395, amended by S.I. 1991/1991, S.I. 1992/2068, S.I. 1994/3156, S.I. 1997/1895, S.I. 2001/615, S.I. 2001/818, S.I. 2005/585, S.I. 2005/617, S.I. 2005/1977 and S.I. 2005/2930; there are other amending instruments but none is relevant.

““family assistance order report” means a report to the court pursuant to a direction in a family assistance order under section 16(6);”(a) and

(b) after the definition of “relevant proceedings” insert—

““risk assessment” has the meaning assigned to it by section 16A(3);”(b).

5. In rule 5(4)—

(a) in sub-paragraph (a)—

(i) after “the children’s guardian” delete “and” and insert “,”;

(ii) for “or” the third time it appears substitute “, the”; and

(iii) after “children and family reporter” insert “and the officer of the service or the Welsh family proceedings officer who is preparing or has prepared a family assistance order report or a risk assessment”; and

(b) in sub-paragraph (b)—

(i) after “the children’s guardian” delete “and” and insert “,”;

(ii) for “or” the third time it appears substitute “, the”; and

(iii) after “children and family reporter” insert “and the officer of the service or Welsh family proceedings officer who is preparing or has prepared a family assistance order report or a risk assessment”.

6. In rule 11—

(a) in paragraph (1) after “section 7(1)(a)” insert “, section 16(6), section 16A”; and

(b) in paragraph (3) for “11A or 11B” substitute “11A, 11AA or 11B”.

7. After rule 11A insert the following rule—

“Additional powers and duties of officers of the service and Welsh family proceedings officers: family assistance order reports and risk assessments

11AA.—(1) This rule applies where an officer of the service or a Welsh family proceedings officer is preparing or has prepared—

(a) a family assistance order report; or

(b) a risk assessment.

(2) Where an officer of the service or a Welsh family proceedings officer is preparing a family assistance order report or a risk assessment, he must consider whether—

(a) to notify the child of such of the contents of the report or assessment as he considers appropriate to the age and understanding of the child;

(b) to recommend in the report or assessment that the court lists a hearing for the purposes of considering the report or assessment;

(c) it is in the best interests of the child for the child to be made a party to the proceedings.

(3) If the officer of the service or the Welsh family proceedings officer decides to notify the child of any of the contents of the report or assessment, he must explain those contents to the child in a manner appropriate to the child’s age and understanding.

(4) If the officer of the service or the Welsh family proceedings officer considers that the child should be made a party to the proceedings, he must notify the court of his opinion together with the reasons for that opinion.

(a) Section 16(6) Children Act 1989 (c.41) was amended by section 6(5) Children and Adoption Act 2006 (c.20).

(b) Section 16A Children Act 1989 was inserted by section 7 Children and Adoption Act 2006.

(5) If the officer of the service or the Welsh family proceedings officer considers that the court should exercise the discretion under rule 17AA(2) in relation to service of a risk assessment, he must state in the risk assessment—

- (a) the way in which he considers the discretion should be exercised (including his view on the length of any suggested delay in service); and
- (b) his reasons for reaching his view.

(6) The officer of the service or the Welsh family proceedings officer must file the report or assessment with the court—

- (a) at or by the time directed by the court;
- (b) in the absence of any such direction, at least 14 days before a relevant hearing; or
- (c) where there has been no direction from the court and no relevant hearing is listed, as soon as possible following completion of the report or assessment.

(7) In paragraph (6), a hearing is a relevant hearing if the justices' clerk has given the officer of the service or the Welsh family proceedings officer notice that the report or assessment is to be considered at it.

(8) When an officer of the service or a Welsh family proceedings officer prepares a family assistance order report, he shall as soon as practicable serve copies of the report on—

- (a) each party; and
- (b) any local authority that is preparing or has prepared a report under section 14A(8) or (9).

(9) At any hearing where a family assistance order report or risk assessment is considered any party may question the officer of the service or the Welsh family proceedings officer about the report or the assessment.”.

8. After rule 13 insert the following rule—

“Local authority officer preparing a family assistance order report

13A. Where a family assistance order directs a local authority officer to prepare a family assistance order report, rules 5(4)(a) and (b), 13, 14(1)(a)(i) and (2), 15(5) and 17(1) shall apply to, or in respect of, the local authority officer as they would apply to, or in respect of, a welfare officer preparing a report in accordance with section 7(1)(b).”.

9. In rule 14—

(a) for paragraph (1) substitute—

“(1) In this rule, “party” includes the children’s guardian and, where a request or directions is or are concerned with—

- (a) a report under—
 - (i) section 7, the welfare officer or children and family reporter;
 - (ii) section 14A(8) or (9), the local authority preparing that report;
- (b) a family assistance order report, the officer of the service or the Welsh family proceedings officer who is preparing the report;
- (c) a risk assessment, the officer of the service or the Welsh family proceedings officer who is preparing the assessment.”;

(b) in paragraph (2), after sub-paragraph (k) insert—

- “(l) the preparation of family assistance order reports;
 - (m) listing a hearing for the purposes of considering the contents of a risk assessment.”
- ; and

(c) after paragraph (11) insert—

“(11A) After the filing of a family assistance order report or a risk assessment, the court may direct that the officer of the service or the Welsh family proceedings officer attend any hearing at which the report or assessment is to be considered.”.

10. In rule 15(5)(c)(ii)—

- (a) for “or” the third time it appears substitute “,”;
- (b) for “or” the fourth time it appears substitute “, the”; and
- (c) after “children and family reporter” insert “or the officer of the service or the Welsh family proceedings officer who is preparing or has prepared a family assistance order report or a risk assessment”.

11. In rule 17(1)—

- (a) for “or” the third time it appears substitute “, any”; and
- (b) after “children and family reporter” insert “, any officer of the service or any Welsh family proceedings officer who is preparing or has prepared a family assistance order report or a risk assessment”.

12. After rule 17A insert the following rule—

“Service of risk assessment

17AA.—(1) Where an officer of the service or Welsh family proceedings officer has filed a risk assessment with the court, subject to paragraph (2), the justices’ clerk shall as soon as practicable serve copies of the risk assessment on—

- (a) each party; and
- (b) any local authority that is preparing or has prepared a report under section 14A(8) or (9).

(2) Before serving the risk assessment, the court must consider whether, in order to prevent a risk of harm to the child, it is necessary for—

- (a) information to be deleted from a copy of the risk assessment before that copy is served on a party; or
- (b) service of a copy of the risk assessment (whether with information deleted from it or not) on a party to be delayed for a specified period,

and may direct accordingly.”.

13.—(1) Rule 23A is amended in accordance with this rule.

(2) In the table in paragraph (2), after the entry relating to communication of information from a party to a health care professional or a person or body providing counselling services for children or families, insert—

“A party	The Secretary of State, a McKenzie Friend, a lay adviser or an appeal tribunal dealing with an appeal made under section 20 of the Child Support Act 1991(a)	For the purposes of making or responding to an appeal under section 20 of the Child Support Act 1991 or the determination of such an appeal.
----------	--	--

(a) 1991 c.48; section 20 as originally enacted was substituted by the Social Security Act 1998 (c.14); and was further substituted by the Child Support, Pensions and Social Security Act 2000 (c.19); and modified by the Family Proceedings Appeals (Jurisdiction of Courts) Order 1993 S.I. 1993/961.

A party	An adoption panel	To enable the adoption panel to discharge its functions as appropriate.”
---------	-------------------	--

(3) In paragraph (4) after the definition of “accreditation body” insert—

““adoption panel” means a panel established in accordance with regulation 3 of the Adoption Agencies Regulations 2005(a) or regulation 3 of the Adoption Agencies (Wales) Regulations 2005(b);”.

14. In Schedule 1, in form C42 (family assistance order)—

(a) after the section headed “The Court directs” insert—

“Where—

- (a) there are no proceedings pending under Part 2 Children Act 1989;
- (b) the officer of the service/ Welsh family proceedings officer who has been made available under this order is given cause to suspect, whilst this order is in force, that the child concerned is at risk of harm; and
- (c) as a result, the officer makes a risk assessment under section 16A of that Act,

the officer may apply to the court for it to revive the previous proceedings and to consider that risk assessment and give such directions as the court thinks necessary.”; and

(b) for “6 months” substitute “12 months”.

15. In Schedule 2, column (i), in the row which begins “Section 4(1)(c)”, omit “16(6),”.

Amendment to the Family Proceedings Courts (Child Support Act 1991) Rules 1993

16. Rule 5 of the Family Proceedings Courts (Child Support Act 1991) Rules 1993(c) is amended in accordance with rule 17.

17.—(1) The existing paragraph shall stand as paragraph (1).

(2) After paragraph (1) insert—

“(2) For the purposes of the law relating to contempt of court, information relating to proceedings held in private to which this paragraph applies may be communicated, subject to any direction of the court, by a party to the proceedings to—

- (a) the Secretary of State;
- (b) a McKenzie Friend or a lay adviser; or
- (c) an appeal tribunal dealing with an appeal made under section 20 of the Child Support Act 1991(d),

for the purposes of making or responding to an appeal under section 20 of the Act of 1991 or the determination of such an appeal.

(3) Paragraph (2) of this rule applies where the proceedings are brought under—

- (a) the Domestic Proceedings and Magistrates’ Courts Act 1978(e); or
- (b) Schedule 6 to the Civil Partnership Act 2004(f).

(a) S.I. 2005/389.

(b) S.I. 2005/1313.

(c) S.I. 1993/627, amended by S.I. 2001/617, S.I. 2001/778, S.I. 2005/617 and S.I. 2005/1977.

(d) 1991 c.48. Section 20 as originally enacted was substituted by the Social Security Act 1998 (c.14) and was further substituted by the Child Support, Pensions and Social Security Act 2000 (c.19) and modified by the Family Proceedings Appeals (Jurisdiction of Courts) Order 1993 (S.I. 1993/961).

(e) 1978 c.22.

(f) 2004 c.33.

(4) Nothing in rule 14 of the Family Proceedings Courts (Matrimonial Proceedings etc) Rules 1991^(a) (confidentiality of documents) shall prevent a party from communicating information for the purposes specified in paragraph (2) of this rule or require him to seek the leave of the court before doing so.

(5) In this rule—

“lay adviser” means a non-professional person who gives lay advice on behalf of an organisation in the lay advice sector;

“McKenzie Friend” means any person permitted by the court to sit beside an unrepresented litigant in court to assist that litigant by prompting, taking notes and giving him advice.”.

Phillips of Worth Matravers, C.J.

I concur

23rd July 2007

Jack Straw
Lord Chancellor

^(a) S.I. 1991/1991, amended by S.I. 1997/1894.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules make amendments to rules relating to the Family Proceedings Courts in relation to (a) the coming into force of sections 6 and 7 of the Children and Adoption Act 2006 (c.20) (“the 2006 Act”) and (b) communication of information relating to proceedings.

The Children and Adoption Act 2006

Section 6 of the 2006 Act amends section 16 of the Children Act 1989 (“the 1989 Act”) to, inter alia, make provision for a family assistance order to direct the officer appointed under that order to prepare a report to the court on such matters relating to an order under section 8 of the 1989 Act as the court may require. Section 7 of the 2006 Act inserts a new section 16A in the 1989 Act to make provision for an officer of the service or a Welsh family proceedings officer to prepare a risk assessment in specified circumstances where he suspects that a child is at risk of harm.

Rule 4 amends rule 1(2) of the Family Proceedings Courts (Children Act 1989) Rules 1991 (“FPC(CA89)R 1991”) to insert the new defined terms “family assistance order report” and “risk assessment”.

Rule 5, 6, 9, 10 and 11 amend various rules in the FPC(CA89)R 1991 to ensure that those rules apply to officers of the service or Welsh family proceedings officers preparing family assistance order reports or risk assessments. Rule 7 inserts a new rule 11AA in the FPC(CA89)R 1991 to make provision for additional powers and duties to apply to such officers.

Rule 8 inserts a new rule 13A in the FPC(CA89)R 1991 to ensure that all rules which apply to, or in respect of, local authority officers preparing section 7 reports apply equally to, or in respect of, local authority officers preparing family assistance order reports.

Rule 12 inserts a new rule 17AA in the FPC(CA89)R 1991 to make provision for service of risk assessments by the court.

Rule 14 amends the standard form of family assistance order (form C42) in the FPC(CA89)R 1991 inter alia to provide that, where there are no proceedings pending, an officer of the service or Welsh family proceedings officer who makes a risk assessment has the ability to apply to the court to revive the previous proceedings and to consider the risk assessment.

Rule 15 makes a consequential amendment to Schedule 2 to the FPC(CA89)R 1991.

Communication of information relating to proceedings

Rule 13 amends the table in rule 23A of the FPC(CA89)R 1991 to enable a party to communicate any information to an appeal tribunal under section 20 of the Child Support Act 1991 and to an adoption panel and the communication of information must be for specified purposes.

A definition of an adoption panel is inserted in to paragraph (4) of rule 23A of the FPC(CA89)R 1991.

Rule 17 amends the Family Proceedings Courts (Child Support Act 1991) Rules 1993. The amendments enable a party to communicate any information relating to proceedings under the Domestic Proceedings and Magistrates’ Courts Act 1978 or under Schedule 6 to the Civil Partnership Act 2004 relating to proceedings held in private to an appeal tribunal under section 20 of the Child Support Act 1991.

2007 No. 2188 (L. 18)

MAGISTRATES' COURTS, ENGLAND AND WALES

**The Family Proceedings Courts (Miscellaneous Amendments)
Rules 2007**

£3.00

© Crown copyright 2007

Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E1148 8/2007 171148T 19585