

1999 No. 681 (L.3)

MAGISTRATES' COURTS

PROCEDURE

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

Made - - - - - *9th March 1999*

Laid before Parliament *10th March 1999*

Coming into force *1st April 1999*

The Lord Chancellor, in exercise of the powers conferred upon him by section 144 of the Magistrates' Courts Act 1980(a) and sections 2(2), 3 and 12 of the Civil Evidence Act 1995(b), 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 (Hearsay Evidence in Civil Proceedings) Rules 1999 and shall come into force on 1st April 1999.

Application and interpretation

2.—(1) In these Rules, the “1995 Act” means the Civil Evidence Act 1995.

(2) In these Rules—

“hearsay evidence” means evidence consisting of hearsay within the meaning of section 1(2) of the 1995 Act;

“hearsay notice” means a notice under section 2 of the 1995 Act.

(3) These Rules shall apply to hearsay evidence in civil proceedings in magistrates' courts.

Hearsay notices

3.—(1) Subject to paragraphs (2) and (3), a party who desires to give hearsay evidence at the hearing must, not less than 21 days before the date fixed for the hearing, serve a hearsay notice on every other party and file a copy in the court by serving it on the justices' clerk.

(a) 1980 c. 43; section 144 is extended by section 145 of that Act, by the Children Act 1989 (c. 41), section 93, by the Courts and Legal Services Act 1990 (c. 41), sections 10, 125(3) and Schedule 18, paragraph 25(7) and by the Justices of the Peace Act 1997 (c. 25), section 45.

(b) 1995 c. 38.

(2) Subject to paragraph (3), the court or the justices' clerk may make a direction substituting a different period of time for the service of the hearsay notice under paragraph (1) on the application of a party to the proceedings.

(3) The court may make a direction under paragraph (2) of its own motion.

(4) A hearsay notice must—

- (a) state that it is a hearsay notice;
- (b) identify the proceedings in which the hearsay evidence is to be given;
- (c) state that the party proposes to adduce hearsay evidence;
- (d) identify the hearsay evidence;
- (e) identify the person who made the statement which is to be given in evidence; and
- (f) state why that person will not be called to give oral evidence.

(5) A single hearsay notice may deal with the hearsay evidence of more than one witness.

Power to call witness for cross-examination on hearsay evidence

4.—(1) Where a party tenders as hearsay evidence a statement made by a person but does not propose to call the person who made the statement to give evidence, the court may, on application, allow another party to call and cross-examine the person who made the statement on its contents.

(2) An application under paragraph (1) must—

- (a) be served on the justices' clerk with sufficient copies for all other parties;
- (b) unless the court otherwise directs, be made not later than 7 days after service of the hearsay notice; and
- (c) give reasons why the person who made the statement should be cross-examined on its contents.

(3) On receipt of an application under paragraph (1), the justices' clerk must—

- (a) unless the court otherwise directs, allow sufficient time for the applicant to comply with paragraph (4);
- (b) fix the date, time and place and endorse them on the copies of the application filed by the applicant; and
- (c) return the copies to the applicant forthwith.

(4) Subject to paragraphs (5) and (6), on receipt of the copies from the justices' clerk under paragraph (3)(c), the applicant must serve a copy on every other party giving not less than 3 days' notice of the hearing of the application.

(5) The court or the justices' clerk may give directions as to the manner in which service under paragraph (4) is to be effected and may, subject to giving notice to the applicant, alter or dispense with the notice requirement under paragraph (4) if the court or the justices' clerk, as the case may be, considers it is in the interests of justice to do so.

(6) The court may hear an application under paragraph (1) *ex parte* if it considers it is in the interests of justice to do so.

(7) Subject to paragraphs (5) and (6), where an application under paragraph (1) is made, the applicant must file with the court a statement at or before the hearing of the application that service of a copy of the application has been effected on all other parties and the statement must indicate the manner, date, time and address at which the document was served.

(8) The court must notify all parties of its decision on an application under paragraph (1).

Credibility and previous inconsistent statements

5.—(1) If—

- (a) a party tenders as hearsay evidence a statement made by a person but does not call the person who made the statement to give oral evidence, and
- (b) another party wishes to attack the credibility of the person who made the statement or allege that the person who made the statement made any other statement inconsistent with it,

that other party must notify the party tendering the hearsay evidence of his intention.

(2) Unless the court or the justices' clerk otherwise directs, a notice under paragraph (1) must be given not later than 7 days after service of the hearsay notice and, in addition to the requirements in paragraph (1), must be served on every other party and a copy filed in the court.

(3) If, on receipt of a notice under paragraph (1), the party referred to in paragraph (1)(a) calls the person who made the statement to be tendered as hearsay evidence to give oral evidence, he must, unless the court otherwise directs, notify the court and all other parties of his intention.

(4) Unless the court or the justices' clerk otherwise directs, a notice under paragraph (3) must be given not later than 7 days after the service of the notice under paragraph (1).

Service

6.—(1) Where service of a document is required by these Rules it may be effected, unless the contrary is indicated—

- (a) if the person to be served is not known by the person serving to be acting by solicitor—
 - (i) by delivering it to him personally, or
 - (ii) by delivering at, or by sending it by first-class post to, his residence or his last known residence, or
- (b) if the person to be served is known by the person serving to be acting by solicitor—
 - (i) by delivering the document at, or sending it by first-class post to, the solicitor's address for service,
 - (ii) where the solicitor's address for service includes a numbered box at a document exchange, by leaving the document at that document exchange or at a document exchange which transmits documents on every business day to that document exchange, or
 - (iii) by sending a legible copy of the document by facsimile transmission to the solicitor's office.

(2) In this rule, "first-class post" means first-class post which has been pre-paid or in respect of which pre-payment is not required.

(3) A document shall, unless the contrary is proved, be deemed to have been served—

- (a) in the case of service by first-class post, on the second business day after posting,
- (b) in the case of service in accordance with paragraph (1)(b)(ii), on the second business day after the day on which it is left at the document exchange, and
- (c) in the case of service in accordance with paragraph (1)(b)(iii), where it is transmitted on a business day before 4 p.m., on that day and in any other case, on the next business day.

(4) In this rule, "business day" means any day other than—

- (a) a Saturday, Sunday, Christmas Day or Good Friday; or
- (b) a bank holiday under the Banking and Financial Dealings Act 1971(a), in England and Wales.

(a) 1971 c. 80.

Amendment to the Justices' Clerks Rules 1970

7. The Justices' Clerks Rules 1970(a) shall be amended by the insertion, after paragraph 18 of the Schedule, of the following paragraph—

“**19.** The giving, variation or revocation of directions in accordance with rules 3(2), 4(5), 5(2) and (4) of the Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999(b).”.

Dated 9th March 1999

Irvine of Lairg, C.

(a) S.I. 1970/231.
(b) 1999/681.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules make provision for the requirements of the Civil Evidence Act 1995 in relation to hearsay evidence in civil proceedings in magistrates' courts. These Rules make provision for—

- (a) a hearsay notice (*rule 3*);
- (b) the procedure to call a witness for cross-examination on hearsay evidence (*rule 4*);
- (c) a notice requirement where a party tenders hearsay evidence but does not call the person who made the statement to give oral evidence, and another party wishes to attack the credibility of the person who made the statement or allege that he has made another statement inconsistent with it (*rule 5*);
- (d) the service of a document required by these Rules (*rule 6*); and
- (e) a consequential amendment to the Schedule to the Justices' Clerks Rules 1970 (*rule 7*).

1999 No. 681 (L.3)

MAGISTRATES' COURTS

PROCEDURE

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

£2.00

© Crown copyright 1999

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

WO 4385 3/99 ON (MFK)