

Orders of the Royal Court

IX

1989



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 5th day of December, 1989 before Sir Charles Frossard, Kt., Bailiff; present:— Brian Ernest Herbert Joy, Harry Wilson Bisson, Herbert Nicolle Machon, James de Sausmarez Carey, Geoffrey Ernest Le Page, Stanley Walter John Jehan, Raymond Arthur Heaume, Esquires, Mrs. Dorothy Winifred Le Pelley, Leonard Arthur Moss, John Edward Morris, Charles Anthony Spensley and Kenneth John Rowe, Esquires, Jurats.

No. 9 Order, 1989

ENTITLED

The Domestic Proceedings and Magistrate's Court Rules, 1989

THE ROYAL COURT, in exercise of the powers conferred upon it by section 34 of the Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988(a), and of all other powers enabling it in that behalf, hereby orders—

(a) Ordres en Conseil No. XVI of 1988.

Form of application to court.

1. An application to the court for an order under a section of the Law shown in column 1 of the table below shall be in the form in column 2 shown opposite the section (being a form set out in Schedule 1 to these Rules) or in a form to like effect with such variations only as the circumstances may require.

Table

1. Section of Law under which order may be made	2. Number of form in Schedule 1 to be used
2(1)	1
5(1)	2
6(2)	3
7(1)	4
12(1)	5
12(2)	14
13(1)	6
13(3)	14
15(1)	7
15(4)	14
19(1)	14
19(4)	8
20(1) and (5)	14
25(1)	9
25(3)	14
26(1)	10
28	11
31(1)(a)	12
31(1)(b)	13
31(2)	12

Application to be filed at Greffe.

2. The form of application shall, except in the case of an application for an order under section 15(1) of the Law, be filed at the Greffe.

3. (1) A person shall, when filing a form of application for an order under section (21)(a), 5(1), 6(2), 19(4), 28 or 31(1)(b) of the Law or for an order varying or revoking any such order, at the same time file a duly completed statement of means in the form set out in Schedule 4 to these Rules.

Application to be accompanied by statement of means.

(2) The respondent to an application mentioned in paragraph (1) shall, when appearing to answer to the summons, and if he intends to contest the application, present to the court a duly completed statement of means in the form set out in Schedule 4 to these Rules.

(3) The court may, in any case and at any stage of the proceedings, direct any party thereto to make a statement of means in the form set out in Schedule 4 to these Rules.

4. (1) A person intending to make an application to the court for an order under the Law, other than an order under section 15(1) thereof, shall, after filing the form of application in accordance with Rule 2, cause a summons to be served on the respondent.

Summons to be served on respondent.

(2) The summons—

(a) shall be in the form set out in Schedule 2 to these Rules;

(b) shall be served not less than 3 days before the day upon which the application is to be heard;

(c) shall state the date, time and place appointed for the hearing; and

- (d) shall have annexed to it a copy of the form of application and (where appropriate) a copy of the applicant's statement of means under Rule 3.

Applications
for domestic
violence
orders.

5. (1) An application to the court for an order under section 15(1) of the Law may be made *ex parte*.

(2) Upon the hearing of the application the court may—

- (a) make or refuse to make an order under section 15(1); or
- (b) decline to determine the application until a summons conforming with Rule 4(2) has been served on the respondent; and in this case the court may make an interim order under section 15(1) which shall cease to have effect on the date specified by the court, or, if none, when the application is finally determined.

Appeals to
Ordinary
Court.

6. The Magistrate's Court (Civil Appeals) Rules, 1955(b) ("the 1955 Rules") and the Magistrate's Court (Civil Appeals) Rules, 1956(c) apply to an appeal under section 30 of the Law as they apply to an appeal under section 14 of the Magistrate's Court (Guernsey) Law, 1954(d), subject to the following modifications to the 1955 Rules—

- (a) for "section fourteen", wherever appearing, substitute "section 30";

(b) O.R.C. Vol. 1, p. 153.

(c) O.R.C. Vol. 1, p. 175.

(d) Ordres en Conseil Vol. XVI, p. 103.

- (b) in Rule 2(2) for “deliver to” substitute “serve upon”;
- (c) after Rule 6(2) insert—
 - “ (3) The powers conferred on the Royal Court by this Rule are in addition to the powers conferred upon it by section 30 of the Law.”;
- (d) Rule 8 is omitted;
- (e) in Rule 10(1)—
 - (i) for the definition of “the Law” substitute—
 - “ “the Law” means the Domestic Proceedings and Magistrate’s Court (Guernsey) Law, 1988;”;
 - (ii) after the definition of “the Royal Court” insert—
 - “ “served” means served in accordance with Rule 7 of the Domestic Proceedings and Magistrate’s Court Rules, 1989, and cognate expressions shall be construed accordingly.”;
- (f) for the Schedule substitute the Schedule contained in Schedule 3 to these Rules.

7. (1) Without prejudice to any other lawful Service. method of service, a document to be served under these Rules upon any person is validly served—

- (a) if delivered to him;
- (b) if left at, or sent by recorded delivery service or registered post addressed to him at, his usual or last known place of abode in the Island; or

(c) if served in such other manner as the court may direct.

(2) For the purposes of paragraph (1)(c) the court may make such order for substituted or other service, or for the substitution for service of notice, by advertisement or otherwise, as the court thinks just.

(3) In the case of service by recorded delivery service or registered post, the date of service shall, unless the contrary is shown, be deemed to be the third day after the day of postage.

Interpretation.

8. (1) In these Rules—

“the Court” means the Magistrate’s Court established under the Magistrate’s Court (Guernsey) Law, 1954;

“day”—

(a) does not mean a clear day;

(b) does not include a non-business day within the meaning of section 1(1) of the Bills of Exchange (Guernsey) Law, 1958(e);

“filed” means filed at the Greffe, and cognate expression shall be construed accordingly;

“the Law” means the Domestic Proceedings and Magistrate’s Court (Guernsey) Law, 1988;

“the Magistrate” means the Magistrate appointed under section 2(2) of the Magistrate’s Court (Guernsey) Law, 1954.

(e) Ordres en Conseil Vol. XVII, p. 384.

(f) Ordres en Conseil Vol. XIII, p. 355.

(2) Any reference in these Rules to an enactment is a reference to the enactment as amended, extended, applied or re-enacted by or under any other enactment.

(3) The Interpretation (Guernsey) Law, 1948(f) applies to the interpretation of these Rules as it applies to the interpretation of an enactment.

9. These Rules may be cited as the Domestic Proceedings and Magistrate's Court Rules, 1989. Citation.

10. These Rules shall come into force on 5th December, 1989. Commencement.

SCHEDULE 1

Contents

- Form 1 Application for order under section 2(1)
(orders for financial provision or separation).
- Form 2 Application for order under section 5(1)
(orders for payments agreed by the parties).
- Form 3 Application for order under section 6(2)
orders for payment where parties are living apart by agreement).
- Form 4 Application for order under section 7(1)
(orders regarding custody of or access to children).
- Form 5 Application for order under section 12(1)
(orders regarding disputes as to custody).
- Form 6 Application for order under section 13(1)
(orders regarding access to children by grandparents).
- Form 7 Application for order under section 15(1)
(orders for protection against domestic violence).
- Form 8 Application for order under section 19(4)
(orders for the revival of periodical payments).
- Form 9 Application for order under section 25(1)
(orders prohibiting removal of children from Guernsey).

- Form 10 Application for order under section 26(1)
(orders for repayment of amounts mistakenly paid).
- Form 11 Application for order under section 28
(orders for reduction etc. of arrears).
- Form 12 Application for order under section 31(1)
(a) or 31(2) (orders for committal to prison).
- Form 13 Application for order under section 31(1)
(b) (orders for wage arrests).
- Form 14 Application for order under section 12(2),
13(3), 15(4), 19(1), 20(1), 20(5) or 25(3)
(orders for variation or revocation of
previous orders).

SCHEDULE 1

Forms of application to court

FORM 1

Domestic Proceedings and Magistrate's Court
(Guernsey) Law, 1988

Application for order under section 2(1)
(orders for financial provision or separation)

Name of applicant:

Address of applicant:

Name of respondent:

Address of respondent:

I hereby apply to the Magistrate's Court for an order for [financial provision/separation]* under section 2(1) of the above Law on the ground(s) that the respondent—

*[(a) has failed to provide reasonable maintenance for me]

[(b) has failed to provide, or to make a proper contribution towards, reasonable maintenance for any child of the family]

[(c) has behaved in such a way that I cannot reasonably be expected to live with him or her]

[(d) has deserted me]

[(e) has committed adultery and I find it intolerable to live with him or her]

Give names and dates of birth of

any children of the family:

Give here a brief description of the order sought:

State to whom and for whose benefit payments are
to be made

Signed
(Applicant or Advocate)

Dated

* Delete as appropriate.

NOTE—if you are applying for financial provision,
you must also complete a statement of
means in the prescribed form.”.

FORM 2

Domestic Proceedings and Magistrate's Court
(Guernsey) Law, 1988

Application for order under section 5(1)
(orders for payments agreed by the parties)

Name of applicant:

Address of applicant:

Name of respondent:

Address of respondent:

I hereby apply to the Magistrate's Court for an order for financial provision under section 5(1) of the above Law on the ground that [I have/the respondent has]* agreed to make the financial provision specified below.

Give here a brief description of the payment agreed to be made:

State to whom and for whose benefit payments are to be made

Give names and dates of birth of

any children of the family:

Signed

(Applicant or Advocate)

Dated

* Delete as appropriate.

NOTE—you must also complete a statement of means in the prescribed form.”.

“

FORM 3

Domestic Proceedings and Magistrate's Court
(Guernsey) Law, 1988

Application for order under section 6(2) (orders
for payment where parties are living apart by
agreement)

Name of applicant:

Address of applicant:

.....

Name of respondent:

Address of respondent:

.....

I hereby apply to the Magistrate's Court for an
order for financial provision under section 6(2) of
the above Law. The respondent and I have lived
apart for not less than 3 months, neither party hav-
ing deserted the other.

We separated on (give date)

The aggregate amount of the payments made by the
respondent during the last 3 months is
(state the aggregate amount so far as you are able).

Give names and dates of birth of

any children of the family:

Signed

(Applicant or Advocate)

Dated

NOTE—you must also complete a statement of
means in the prescribed form.”

FORM 4

Domestic Proceedings and Magistrate's Court
(Guernsey) Law 1988

Application for order under section 7(1)
(orders regarding custody of or access to children)

Name of applicant:

Address of applicant:
.....

Name of respondent:

Address of respondent:
.....

I hereby apply to the Magistrate's Court for an order for the custody of or access to the child(ren) mentioned below under section 7(1) of the above Law.

Give here a brief description of the order sought:

Give name(s) and date(s) of birth
of child(ren)

Signed
(Applicant or Advocate)

Dated

FORM 5

Domestic Proceedings and Magistrate's Court
(Guernsey) Law, 1988

Application for order under section 12(1)
(orders regarding disputes as to custody)

Name of applicant:

Address of applicant:

.....

Name of respondent:

Address of respondent:

.....

I hereby apply to the Magistrate's Court for an order under section 12(1) of the above Law on the grounds that, by an order of the court dated, the respondent and I were given rights or duties jointly in respect of the child(ren) mentioned below, and that we are now in disagreement on a matter affecting the child(ren)'s welfare.

Give here a brief description of the order sought:

Give name(s) and date(s) of birth

of child(ren)

Signed

(Applicant or Advocate)

Dated

“

FORM 6

Domestic Proceedings and Magistrate's Court
(Guernsey) Law, 1988

Application for order under section 13(1)
(orders regarding access to children by grandparents)

Name of applicant:

Address of applicant:

.....

Name of respondent:

Address of respondent:

.....

I hereby apply to the Magistrate's Court for an order
for access to the child(ren) mentioned below under
section 13(1) of the above Law.

I am a grandparent of the child. [An order in
respect of the custody of the child was made by the
court on]*

Give here a brief description of the order sought:

Give name(s) and date(s) of birth
of child(ren)

Signed
(Applicant or Advocate)

Dated

* Delete if inapplicable.”.

FORM 7

Domestic Proceedings and Magistrate's Court
(Guernsey) Law, 1988

Application for order under section 15(1)
(orders for protection against domestic violence)

Name of applicant:

Address of applicant:

.....

Name of respondent:

Address of respondent:

.....

I hereby apply to the Magistrate's Court for an order under section 15(1) of the above Law.

On hearing this application, the court is empowered to make any of the following orders:—,

- (a) that the respondent shall not use or threaten to use violence against you;
- (b) that the respondent shall not use or threaten to use violence against a child of the family or a child living with you;
- (c) that the respondent shall not enter the matrimonial home or any part of it, or any other specified premises, or any specified area;
- (d) that the respondent shall permit you to enter and remain in the matrimonial home or any part of it.

The order may also provide that the respondent shall not incite or assist any other person to use or threaten to use violence against you or the child.

Give brief details of the order sought:

If the respondent has caused actual bodily harm to you or the child, give brief details:

Give names and dates of birth
of any children of the family
or children living with you

[The respondent is my spouse/the respondent and I have been living together in the same household as husband and wife.]*

Signed
(Applicant or Advocate)

Dated

* Delete as appropriate."

“

FORM 8

Domestic Proceedings and Magistrate's Court
(Guernsey) Law, 1988

Application for order under section 19(4)
(orders for the revival of periodical payments)

Name of applicant:

.....

Address of applicant:

Name of respondent:

Address of respondent:

.....

The court, on (date of previous order),
made an order for the making of payments to me
or for my benefit.

I hereby apply to the Magistrate's Court for an
order for the revival of that order under section 19(4)
of the above Law.

I have attained full age but have not yet attained
the age of 21. My date of birth was

Signed
(Applicant or Advocate)

Dated

NOTE—you must also complete a statement of
means in the prescribed form.”

“

FORM 9

(Domestic Proceedings and Magistrate’s Court
(Guernsey) Law, 1988

Application for order under section 25(1)
(orders prohibiting removal of children from
Guernsey)

Name of applicant:

Address of applicant:

.....

Name of respondent:

Address of respondent:

.....

[The court, on (date of order),
made an order in respect of the custody or care
of the child(ren) mentioned below.]*

I hereby apply to the Magistrate’s Court for an
order prohibiting or restricting the removal of the
child from the Bailiwick under section 25(1) of the
above Law.

Give a brief explanation of your reasons for seeking
this order:

Give name(s) and date(s)

of birth of child(ren)

Signed

(Applicant or Advocate)

Dated

* Delete if inapplicable.”

“

FORM 10

Domestic Proceedings and Magistrate’s Court
(Guernsey) Law, 1988

Application for order under section 26(1)
(orders for repayment of amounts mistakenly paid)

Name of applicant:

Address of applicant:

.....

Name of respondent:

Address of respondent:

.....

The court, on (date of order),
made an order for the making of periodical pay-
ments to or for the benefit of the respondent. I
believe that the order has ceased to have effect for
the following reasons (give brief statement of reasons)

.....

However, amounts have continued to be paid in the
mistaken belief that the order was subsisting.

I hereby apply to the Magistrate’s Court for an
order for repayment of the amounts mistakenly
paid under section 26(1) of the above Law.

The amount of the repayment sought is
(state amount).

Signed

(Applicant or Advocate)

Dated”

“

FORM 11

Domestic Proceedings and Magistrate's Court
(Guernsey) Law, 1988

Application for order under section 28
(orders for reduction etc. of arrears)

Name of applicant:

Address of applicant:

.....

Name of respondent:

Address of respondent:

.....

The court, on (date of order),
made an order for the making of payments to or
for the benefit of the respondent, and arrears of
such payments have now accrued.

The amount of the arrears is
(state amount).

I hereby apply to the Magistrate's Court for an
order that the arrears be remitted or reduced under
section 28 of the above Law.

Give names and dates of birth

of any children of the family

Signed
(Applicant or Advocate)

Dated

NOTE—you must also complete a statement of
means in the prescribed form.”.

FORM 12

Domestic Proceedings and Magistrate's Court
(Guernsey) Law, 1988

Application for order under section 31(1)(a) or 31(2)
(orders for committal to prison)

Name of applicant:

Address of applicant:

.....

Name of respondent:

Address of respondent:

.....

The court, on (date of order),
made an order [for the payment of money/in respect
of the custody, care or supervision of or access to
the child(ren) mentioned below.]* A copy of the
order was served on the respondent but the respon-
dent has not complied with it in the following
respect

.....
(give brief details of respondent's default).

I hereby apply to the Magistrate's Court for an
order for the committal of the respondent to prison
until the default is remedied under section 31 of
the above Law.

[Give name(s) and date(s)
of birth of child(ren)]*

Signed
(Applicant or Advocate)

Dated

* Delete as appropriate."

“

FORM 13

Domestic Proceedings and Magistrate’s Court
(Guernsey) Law, 1988

Application for order under section 31(1)(b)
(orders for wage arrests)

Name of applicant:

Address of applicant:

.....

Name of respondent:

Address of respondent:

.....

[The court, on (date of order),
made an order for the payment of money by the
respondent.]*

I hereby apply to the Magistrate’s Court for an order
that a proportion not exceeding one half of the
respondent’s wages be arrested to facilitate the re-
covery of payment by the respondent under section
31(1)(b) of the above Law.

Signed
(Applicant or Advocate)

Dated

* Delete if inapplicable.

NOTE—you must also complete a statement of
means in the prescribed form.”.

FORM 14

Domestic Proceedings and Magistrate's Court
(Guernsey) Law, 1988

Application for order under section 12(2), 13(3), 15(4),
19(1), 20(1), 20(5) or 25(3)
(orders for variation or revocation of previous orders)

Name of applicant:

Address of applicant:

.....

Name of respondent:

Address of respondent:

.....

The court, on date of order
which you wish to see varied or revoked) made an
order as follows (give here a brief statement of the
main provisions of that order):

.....

.....

The parties to the hearing at which that order was
made were (name
of applicant) and (name of
respondent).

I hereby apply to the Magistrate's Court for an order
under section [12(2)/13(3)/15(4)/19(1)/20(1)/20(5)/
25(3)]* of the above Law [varying/revoking]* that
order.

If a variation is sought, give a brief description of the order now sought:

Give names and dates of birth

of any children of the family

Signed
(Applicant or Advocate)

Dated

* Delete whichever is inapplicable.

NOTE—if you are applying for an order under section 19(1), you must also complete a statement of means in the prescribed form.”.

SCHEDULE 2

“ SUMMONS

To the respondent :

Address :

You are hereby summoned to appear on
(date) at (time) before the Magistrate’s
Court to see (name of applicant)
of (address
of applicant) apply to the court for an order under
section of the Domestic Proceedings
and Magistrate’s Court (Guernsey) Law, 1988.

A copy of the application which will be made to
the court is annexed hereto.

If you do not appear at the appointed time, judge-
ment may be given against you.

*[A copy of the applicant’s statement of means is
attached. You must also complete a statement of
means (a form in blank is attached) if you intend
to contest the application. The statement must be
presented to the court at the time stated above.]

Signed
(Magistrate or Advocate)

Dated

* Delete if inapplicable.

Rule 6(f).

SCHEDULE 3

“ SCHEDULE

Rule one

The Domestic Proceedings and Magistrate’s Court
(Guernsey) Law, 1988

Notice of Appeal to the Royal Court sitting as an
Ordinary Court

To H.M. Greffier,
Royal Court House,
St. Peter Port,
Guernsey.

I, (name of appellant)
of
(address of appellant) hereby give notice of appeal
against the decision of the Magistrate’s Court made
on (date of decision)
in the case of
..... (name of parties).

*[I appeal against the whole of the decision.]

*[I appeal against that part of the decision which
.....
(set out the part of the decision you wish to appeal
against).

The grounds on which I rely in support of my appeal
are set out in the particulars below.

Signed”
(Applicant or Advocate)

Dated

Particulars of grounds of appeal

SCHEDULE 4

“ Statement of means

FULL NAME:
DATE OF BIRTH:
ADDRESS:

OCCUPATION:
EMPLOYER:

Details of weekly income

Basic weekly wage (after tax, social insurance and superannuation):

Overtime, bonuses, commission (average weekly amount):

Supplementary Benefit:

Unemployment Benefit:

Sickness Benefit:

Child Allowance:

Other allowances and benefits (give details and weekly amounts):

Pension (give details and weekly amounts):

Income from other sources (give details and weekly amounts):

Total weekly amount

£

Details of weekly expenditure

Rent:

Mortgage:

Board and lodging:

Water Rates:

Occupiers Rate:

Tax on Rateable Value:

House/Flat Maintenance charge:

Houst/Flat Maintenance charge:

Sewerage Collection:

Medical Insurance:

Medical/Dental/Optical Treatment:

Life Assurance:

Loans/Overdraft (give details):

Hire Purchase Repayments—

(i) Article hired:

(ii) Total purchase price:

(iii) Weekly repayment:

(iv) Date of final repayment:

Food and Household Goods:

Electricity:

Gas:

Oil:

Coal:

Paraffin:

Television/Video Rental:

Television Licence :

Clothes/Shoes :

Newspapers :

Entertainment :

Hair Cut/Cosmetics :

Telephone :

Children's Pocket Money :

Petrol :

Baby items :

Vehicle Insurance :

Vehicle Tax :

Vehicle Maintenance :

Transport and travelling expenses :

Maintenance payments under existing Court Orders :

Other weekly expenditure
(give details and amounts):

Total weekly expenditure :

£

Your capital assets (state values)

House or flat—

- (i) Description of accommodation:
- (ii) Ownership (sole/joint):
- (iii) Mortgage (bank and amount outstanding):

Bank Accounts:

Investments:

Car:

Motorcycle:

Boat:

Other:

Total value of assets:

 £

SIGNED:

DATED:

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