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STATUTORY INSTRUMENTS

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**1993 No. 295**

**The Family Proceedings (Amendment) Rules 1993**

1. These rules may be cited as the Family Proceedings (Amendment) Rules 1993 and shall come into force on 5th April 1993.
2. The Family Proceedings Rules 1991(1) shall be amended in accordance with the following provisions of these Rules and, in those provisions, any reference to a rule or Appendix by number alone shall be construed as a reference to the rule or Appendix so numbered in the said Rules of 1991.
3. In rule 1.2(1), after the definition of “the Act of 1989” there shall be inserted the words ““the Act of 1991” means the Child Support Act 1991;(2)”.
4. After rule 3.20 there shall be inserted the following:—

**“Application under section 27 of the Act of 1991 for declaration of parentage**

**3.21.**—(1) Rule 4.6 shall apply to an application under section 27 of the Act of 1991 (reference to court for declaration of parentage) as it applies to an application under the Act of 1989.

(2) Where an application under section 27 of the Act of 1991 has been transferred to the High Court or a county court the court shall, as soon as practicable after a transfer has occurred, consider what directions to give for the conduct of the proceedings.

(3) Without prejudice to the generality of paragraph (2), the court may, in particular, direct that—

- (a) the proceedings shall proceed as if they had been commenced by originating summons or originating application;
  - (b) any document served or other thing done while the proceedings were pending in another court, including a magistrates' court, shall be treated for such purposes as may be specified in the direction as if it had been such document or other thing, being a document or other thing provided for by the rules of court applicable in the court to which the proceedings have been transferred, as may be specified in the direction and had been served or done pursuant to any such rule;
  - (c) a pre-trial hearing shall be held to determine what further directions, if any, should be given.
- (4) The application may be heard and determined by a district judge.

**Appeal under section 20 of the Act of 1991 from decision of child support officer**

**3.22.**—(1) Rule 4.6 shall apply to an appeal under section 20 of the Act of 1991 (appeals against certain decisions of child support officers) as it applies to an application under the Act of 1989.

(2) Where an appeal under section 20 of the Act of 1991 is transferred to the High Court or a county court, Rule 3.21(2) and (3) shall apply to the appeal as it applies to an application under section 27 of the Act of 1991.

### **Appeal from Child Support Commissioner**

**3.23.**—(1) This rule shall apply to any appeal to the Court of Appeal under section 25 of the Act of 1991 (appeal from Child Support Commissioner on question of law).

(2) Where leave to appeal is granted by the Commissioner, the notice of appeal must be served within 6 weeks from the date on which notice of the grant was given in writing to the appellant.

(3) Where leave to appeal is granted by the Court of Appeal upon an application made within 6 weeks of the date on which notice of the Commissioner’s refusal of leave to appeal was given in writing to the appellant, the notice of appeal must be served—

(a) before the end of the said period of 6 weeks; or

(b) within 7 days after the date on which leave is granted,

whichever is the later, or within such other period as the Court of Appeal may direct.”.

5. After rule 10.21 there shall be inserted the following:—

#### **“Disclosure of information under the Act of 1991**

**10.21A.** Where the Secretary of State requires a person mentioned in regulation 2(2) or (3)(a) of the Child Support (Information, Evidence and Disclosure) Regulations 1992(3) to furnish information or evidence for a purpose mentioned in regulation 3(1) of those Regulations, nothing in rules 4.23 (confidentiality of documents), 10.20 (inspection etc of documents in court) or 10.21 (disclosure of addresses) shall prevent that person from furnishing the information or evidence sought or require him to seek leave of the court before doing so.”.

6. After rule 10.23 there shall be inserted the following:—

#### **“Applications for relief which is precluded by the Act of 1991**

**10.24.**—(1) Where an application is made for an order which, in the opinion of the district judge, the court would be prevented from making by section 8 or 9 of the Act of 1991, the proper officer may send a notice in Form M34 to the applicant.

(2) In the first instance, the district judge shall consider the matter under paragraph (1) himself, without holding a hearing.

(3) Where a notice is sent under paragraph (1), no requirement of these rules, except for those of this rule, as to the service of the application by the proper officer or as to any other procedural step to follow the making of an application of the type in question, shall apply unless and until the court directs that they shall apply or that they shall apply to such extent and subject to such modifications as may be specified in the direction.

(4) Where an applicant who has been sent a notice under paragraph (1) informs the proper officer in writing, within 14 days of the date of the notice, that he wishes to persist with his application, the proper officer shall refer the matter to the district judge for action in accordance with paragraph (5).

(5) Where the district judge acts in accordance with this paragraph, he shall give such directions as he considers appropriate for the matter to be heard and determined by the court and, without prejudice to the generality of the foregoing, such directions may provide for the hearing to be ex parte.

(6) Where directions are given under paragraph (5), the proper officer shall inform the applicant of the directions and, in relation to the other parties,—

- (a) send them a copy of the application;
- (b) where the hearing is to be ex parte, inform them briefly—
  - (i) of the nature and effect of the notice under this rule,
  - (ii) that the matter is being resolved ex parte, and
  - (iii) that they will be informed of the result in due course; and
- (c) where the hearing is to be inter partes, inform them of—
  - (i) the circumstances which led to the directions being given, and
  - (ii) the directions.

(7) Where a notice has been sent under paragraph (1) and the proper officer is not informed under paragraph (4), the application shall be treated as having been withdrawn.

(8) Where the matter is heard pursuant to directions under paragraph (5) and the court determines that it would be prevented by section 8 or 9 of the Act of 1991 from making the order sought by the application, it shall dismiss the application.

(9) Where the court dismisses an application under this rule it shall give its reasons in writing, copies of which shall be sent to the parties by the proper officer.

(10) In this rule, “the matter” means the question whether the making of an order in the terms sought by the application would be prevented by section 8 or 9 of the Act of 1991.

#### **Modification of rule 10.24 in relation to non-free-standing applications**

**10.25** Where a notice is sent under rule 10.24(1) in respect of an application which is contained in a petition or other document (“the document”) which contains material extrinsic to the application—

- (a) the document shall, until the contrary is directed under sub-paragraph (c) of this rule, be treated as if it did not contain the application in respect of which the notice was served;
- (b) the proper officer shall, when he sends copies of the document to the respondents under any provision of these rules, attach a copy of the notice under rule 10.24(1) and a notice informing the respondents of the effect of sub-paragraph (a) of this paragraph; and
- (c) if it is determined, under rule 10.24, that the court would not be prevented, by section 8 or 9 of the Act of 1991, from making the order sought by the application, the court shall direct that the document shall be treated as if it contained the application, and it may give such directions as it considers appropriate for the conduct of the proceedings in consequence of that direction.”

#### **Forms**

7. In the list of forms at the beginning of Appendix 1, after the entry relating to M33(4) there shall be inserted the following:—

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(4) The entry relating to M33 was inserted by S.I. 1992/2067.

“M34 Notice under rule 10.24(1)”.

**8.** In Appendix 1, after Form M33(5) there shall be inserted the form set out in Schedule 1 to these Rules.

**9.** In Appendix 1, the forms set out in Schedule 2 to these Rules shall be substituted for forms M11, M13, M19 and CHA13.

**10.** The following amendments shall be made to Form M4 (Statement of Arrangements for Children):-

(a) in the opening section headed “To the Petitioner” there shall be substituted for the last paragraph the following-

“You should obtain legal advice from a solicitor or, alternatively, from an advice agency. Addresses of solicitors and advice agencies can be obtained from the Yellow Pages and the Solicitors' Regional Directory which can be found at Citizens Advice Bureaux, Law Centres and any local library.”;

(b) for section 7 there shall be substituted the provision contained in Schedule 3 to these Rules;

(c) in section 10, in question (c), there shall be inserted after “or maintenance?” the following-

“(You need not include any Child Support Agency proceedings here)”.

**11.** The following amendments shall be made to Form M5 (Notice of Proceedings):-

(a) in paragraph 1, for “8 days” there shall be substituted “7 days” and the words “,inclusive of the day of receipt,” shall be deleted;

(b) in paragraph 3, for “29 days” there shall be substituted “28 days” and the words “,inclusive of the day of receipt,” shall be deleted;

(c) for paragraph 10 there shall be substituted the following-

“**10.** Please answer Question 10.

If your answer to Question 10(c) is Yes please make sure that you sign the form at 12(a).”;

(d) after paragraph 12 the following paragraph shall be inserted:-

“**13.** If you wish to make an application for

a Residence Order

a Contact Order

a Specific Issue Order

a Prohibited Steps Order

in respect of a child, you will have to make a separate application on Form CHA10(D). You can get this form from the court office. Before you apply for any of these orders or any other orders which may be available to you under Part I or II of the Children Act 1989 you are advised to see a solicitor.”.

**12.** In Form M6 (Acknowledgement of Service), Question 10(d) shall be deleted.

**13.** The following amendments shall be made to Form M21 (Originating Application for Alteration of Maintenance Agreement during Parties' Lifetime):-

(a) in paragraph 1, after “the respondent” a closing bracket shall be inserted;

(b) in paragraph 8, after “the alteration[s] are:-” there shall be inserted-

*“[if there are or have been any proceedings in the Child Support Agency with reference to the maintenance of a child of the family please give details here.]”.*

- 14.** The following amendments shall be made to Form CHA14 (Statement of Means):–
- (a) in section 6, after “Other state benefit(s)” there shall be inserted “Child Support Agency maintenance”;
  - (b) in section 7, after “pocket money” there shall be inserted “Child Support Agency payments”;
  - (c) in section 9, after “Other” there shall be inserted “Child Support Agency arrears”;
  - (d) in sections 7 and 9, for “Community charge” there shall be substituted “Council tax”.
- 15.** In form CHA15 (Application for Variation/Discharge of an Order for Financial Provision) (a), **(6)** there shall be substituted for section 4 the provision contained in Schedule 4 to these Rules.
- 16.** In Appendix 2 after paragraph 1(i), the following shall be inserted–
- “(ia) whether or not there have been any applications under the Act of 1991 for a maintenance assessment in respect of any child of the family and if so–
    - (i) the date of any such application, and
    - (ii) details of the assessment made;”.

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