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**1999 No. 3491 (L. 28)**

**FAMILY PROCEEDINGS (ENGLAND AND WALES)  
SUPREME COURT OF ENGLAND AND WALES  
COUNTY COURTS (ENGLAND AND WALES)**

**The Family Proceedings (Amendment No. 2) Rules 1999**

*Made* - - - - - *15th December 1999*

*Laid before Parliament* *14th January 2000*

*Coming into force* - - - *5th June 2000*

We, the authority having the power under section 40(1) of the Matrimonial and Family Proceedings Act 1984<sup>(a)</sup> to make rules of court for the purposes of family proceedings in the High Court and county courts, in the exercise of the powers conferred by section 40 make the following rules—

**Citation, commencement and transitional provisions**

1.—(1) These rules may be cited as the Family Proceedings (Amendment No. 2) Rules 1999 and shall come into force on 5th June 2000.

(2) The Family Proceedings Rules 1991<sup>(b)</sup>, as amended by these rules, shall apply to proceedings commenced by Form A or B on or after 5th June 2000.

(3) Where proceedings have been commenced before 5th June 2000:

- (a) the court may, if it considers it just to do so, direct that the Family Proceedings Rules 1991, as amended by these rules, shall apply to those proceedings; otherwise
- (b) the Family Proceedings Rules 1991 shall apply to those proceedings as if these rules had not been made.

**Amendment of the Family Proceedings Rules 1991**

2. The Family Proceedings Rules 1991 shall be amended in accordance with the provisions of these rules.

3. In the Arrangement of Rules, for the numbers and words from “2.52 Right to be heard on ancillary questions” to “2.68 Application for order under section 37(2)(a) of Act of 1973”, there shall be substituted the following;

“2.51A Application of ancillary relief rules

2.51B The overriding objective

2.52 Right to be heard on ancillary questions

2.53 Application by petitioner or respondent for ancillary relief

2.54 Application by parent, guardian etc. for ancillary relief in respect of children

2.57 Children to be separately represented on certain applications

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(a) 1984 c. 42. Section 40 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 50.

(b) S.I. 1991/1247; the relevant amending instruments are S.I. 1996/1674, 1996/1778, 1997/637, 1997/1056 and 1999/1012.

- 2.59 Evidence on application for property adjustment or avoidance of disposition order
- 2.60 Service of statement in answer
- 2.61 Information on application for consent order for financial relief
- 2.61A Application for ancillary relief
- 2.61B Procedure before the first appointment
- 2.61C Expert evidence
- 2.61D The first appointment
- 2.61E The FDR appointment
- 2.61F Costs
- 2.62 Investigation by district judge of application for ancillary relief
- 2.64 Order on application for ancillary relief
- 2.65 Reference of application to judge
- 2.66 Arrangements for hearing of application etc by judge
- 2.67 Request for periodical payments order at same rate as order for maintenance pending suit
- 2.68 Application for order under section 37(2)(a) of Act of 1973
- 2.69 Offers to settle
- 2.69A Interpretation of rules 2.69B to 2.69D
- 2.69B Judgment or order more advantageous than an offer made by the other party
- 2.69C Judgment or order more advantageous than offers made by both parties
- 2.69D Factors for court's consideration under rules 2.69B and 2.69C
- 2.69E Open proposals
- 2.69F Application for interim orders
- 2.70 Pensions".

4.—(1) In rule 1.2(4), after “Appendix 1” there shall be inserted “or 1A”.

(2) After rule 1.2(5) there shall be inserted:

“(5A) In these rules a reference to a Part or rule, if prefixed by the letters “CPR”, is a reference to that Part or rule in the Civil Procedure Rules 1998().”.

5.—(1) In rule 2.45(1) for “Form M12” there shall be substituted “Form B”.

(2) Rule 2.45(2) and (3) shall be omitted.

(3) In rule 2.45(5):

- (a) the words “the proper officer shall fix an appointment for the hearing; and” shall be omitted;
- (b) for “rules 2.62(3) to (7)” there shall be substituted “rules 2.51B to 2.70”; and
- (c) after “application for ancillary relief” there shall be inserted “and, unless the context otherwise requires, those rules shall be read as if all references to Form A were references to Form B”.

6. Before rule 2.52, but after the heading “Ancillary relief,” the following shall be inserted:

**“Application of ancillary relief rules**

**2.51A**—(1) The procedures set out in rules 2.51B to 2.70 (“the ancillary relief rules”) apply to any ancillary relief application and to any application under section 10(2) of the Act of 1973.

(2) In the ancillary relief rules, unless the context otherwise requires:

“applicant” means the party applying for ancillary relief;

“respondent” means the respondent to the application for ancillary relief;

“FDR appointment” means a Financial Dispute Resolution appointment in accordance with rule 2.61E.

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(a) S.I. 1998/3132.

**The overriding objective**

**2.51B**—(1) The ancillary relief rules are a procedural code with the overriding objective of enabling the court to deal with cases justly.

- (2) Dealing with a case justly includes, so far as is practicable—
  - (a) ensuring that the parties are on an equal footing;
  - (b) saving expense;
  - (c) dealing with the case in ways which are proportionate—
    - (i) to the amount of money involved;
    - (ii) to the importance of the case;
    - (iii) to the complexity of the issues; and
    - (iv) to the financial position of each party;
  - (d) ensuring that it is dealt with expeditiously and fairly; and
  - (e) allotting to it an appropriate share of the court’s resources, while taking into account the need to allot resources to other cases.
- (3) The court must seek to give effect to the overriding objective when it—
  - (a) exercises any power given to it by the ancillary relief rules; or
  - (b) interprets any rule.
- (4) The parties are required to help the court to further the overriding objective.
- (5) The court must further the overriding objective by actively managing cases.
- (6) Active case management includes—
  - (a) encouraging the parties to co-operate with each other in the conduct of the proceedings;
  - (b) encouraging the parties to settle their disputes through mediation, where appropriate;
  - (c) identifying the issues at an early date;
  - (d) regulating the extent of disclosure of documents and expert evidence so that they are proportionate to the issues in question;
  - (e) helping the parties to settle the whole or part of the case;
  - (f) fixing timetables or otherwise controlling the progress of the case;
  - (g) making use of technology; and
  - (h) giving directions to ensure that the trial of a case proceeds quickly and efficiently.”.
7. In rule 2.53 and 2.54(1), for “Form M11”, wherever it occurs, there shall be substituted “Form A”.
8. Rules 2.55, 2.56 and 2.58 shall be omitted.
- 9.—(1) Rule 2.59(1) shall be omitted.
  - (2) In rule 2.59(2) for “Form M11 or M13” there shall be substituted “Form A”.
  - (3) In rule 2.59(3) for the words from “A copy” to “supporting affidavit” there shall be substituted “Copies of Form A and of Form E completed by the applicant”.
  - (4) In rule 2.59(4):
    - (a) for “Form M11 or M13 as the case may be” there shall be substituted “Form A”.
    - (b) for “affidavit” there shall be substituted “Form E”.
  - (5) In rule 2.59(5):
    - (a) for “an affidavit” in sub-paragraph (a) there shall be substituted “copies of Forms A and E”;
    - (b) for “an affidavit” in sub-paragraph (b) there shall be substituted “a copy of Form E”; and
    - (c) for “file an affidavit” there shall be substituted “file a statement”.
  - (6) At the end of rule 2.59(5), there shall be inserted the following:

“(6) A statement filed under paragraph (5) shall be sworn to be true.”.

10. For rule 2.60 there shall be substituted:

**“Service of statement in answer**

**2.60—(1)** Where a form or other document filed with the court contains an allegation of adultery or of an improper association with a named person (“the named person”), the court may direct that the party who filed the relevant form or document serve a copy of all or part of that form or document on the named person, together with Form F.

(2) If the court makes a direction under paragraph (1), the named person may file a statement in answer to the allegations.

(3) A statement under paragraph (2) shall be sworn to be true.

(4) Rule 2.37(3) shall apply to a person served under paragraph (1) as it applies to a co-respondent.”.

11. After rule 2.61 there shall be inserted:

**“Application for ancillary relief**

**2.61A—(1)** A notice of intention to proceed with an application for ancillary relief made in the petition or answer or an application for ancillary relief must be made by notice in Form A.

(2) The notice must be filed:

- (a) if the case is pending in a divorce county court, in that court; or
- (b) if the case is pending in the High Court, in the registry in which it is proceeding.

(3) Where the applicant requests an order for ancillary relief that includes provision to be made by virtue of section 25B or 25C of the Act of 1973() the terms of the order requested must be specified in the notice in Form A.

(4) Upon the filing of Form A the court must:

- (a) fix a first appointment not less than 12 weeks and not more than 16 weeks after the date of the filing of the notice and give notice of that date;
- (b) serve a copy on the respondent within 4 days of the date of the filing of the notice.

(5) The date fixed under paragraph (4) for the first appointment, or for any subsequent appointment, must not be cancelled except with the court’s permission and, if cancelled, the court must immediately fix a new date.

**Procedure before the first appointment**

**2.61B—(1)** Both parties must, at the same time, exchange with each other, and each file with the court, a statement in Form E, which—

- (a) is signed by the party who made the statement;
- (b) is sworn to be true, and
- (c) contains the information and has attached to it the documents required by that Form.

(2) Form E must be exchanged and filed not less than 35 days before the date of the first appointment.

(3) Form E must have attached to it:

- (a) any documents required by Form E; and
- (b) any other documents necessary to explain or clarify any of the information contained in Form E.

(4) Form E must have no documents attached to it other than the documents referred to in paragraph (3).

(5) Where a party was unavoidably prevented from sending any document required by Form E, that party must at the earliest opportunity:

- (a) serve copies of that document on the other party; and
- (b) file a copy of that document with the court, together with a statement explaining the failure to send it with Form E.

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(a) sections 25B and 25C were inserted in the Act of 1973 by section 166(1) of the Pensions Act 1995 (c. 26).

(6) No disclosure or inspection of documents may be requested or given between the filing of the application for ancillary relief and the first appointment, except—

- (a) copies sent with Form E, or in accordance with paragraph (5); or
- (b) in accordance with paragraph (7).

(7) At least 14 days before the hearing of the first appointment, each party must file with the court and serve on the other party—

- (a) a concise statement of the issues between the parties;
- (b) a chronology;
- (c) a questionnaire setting out by reference to the concise statement of issues any further information and documents requested from the other party or a statement that no information and documents are required;
- (d) a notice in Form G stating whether that party will be in a position at the first appointment to proceed on that occasion to a FDR appointment.

(8) Where an order for ancillary relief is requested that includes provision to be made under section 25B or 25C of the Act of 1973, the applicant must file with the court and serve on the respondent at least 14 days before the hearing of the first appointment, confirmation that rule 2.70(4) has been complied with.

(9) At least 14 days before the hearing of the first appointment, the applicant must file with the court and serve on the respondent, confirmation of the names of all persons served in accordance with rule 2.59(3) and (4), and that there are no other persons who must be served in accordance with those paragraphs.

### **Expert evidence**

**2.61C** CPR rules 35.1 to 35.14 relating to expert evidence (with appropriate modifications), except CPR rules 35.5(2) and 35.8(4)(b) apply to all ancillary relief proceedings.

### **The first appointment**

**2.61D**—(1) The first appointment must be conducted with the objective of defining the issues and saving costs.

(2) At the first appointment the district judge—

- (a) must determine—
  - (i) the extent to which any questions seeking information under rule 2.61B must be answered; and
  - (ii) what documents requested under rule 2.61B must be produced, and give directions for the production of such further documents as may be necessary;
- (b) must give directions about—
  - (i) the valuation of assets (including, where appropriate, the joint instruction of joint experts);
  - (ii) obtaining and exchanging expert evidence, if required; and
  - (iii) evidence to be adduced by each party and, where appropriate, about further chronologies or schedules to be filed by each party;
- (c) must, unless he decides that a referral is not appropriate in the circumstances, direct that the case be referred to a FDR appointment;
- (d) must, where he decides that a referral to a FDR appointment is not appropriate, direct one of the following:
  - (i) that a further directions appointment be fixed;
  - (ii) that an appointment be fixed for the making of an interim order;
  - (iii) that the case be fixed for final hearing and, where that direction is given, the district judge must determine the judicial level at which the case should be heard; or
  - (iv) that the case be adjourned for out-of-court mediation or private negotiation or, in exceptional circumstances, generally;
- (e) must consider whether, having regard to all the circumstances (including the extent to which each party has complied with this Part, and in particular the requirement to send documents with Form E), to make an order about the costs of the hearing; and

- (f) may—
- (i) make an interim order where an application for it has been made in accordance with rule 2.69F returnable at the first appointment;
  - (ii) having regard to the contents of Form G filed by the parties, treat the appointment (or part of it) as a FDR appointment to which rule 2.61E applies;
  - (iii) in a case where an order for ancillary relief is requested that includes provision to be made under section 25B or 25C of the Act of 1973, require any party to request a valuation under regulation 4 of the Divorce etc. (Pensions) Regulations 1996(1) from the trustees or managers of any pension scheme under which the party has, or is likely to have, any benefits.

(3) After the first appointment, a party is not entitled to production of any further documents except in accordance with directions given under paragraph (2)(a) above or with the permission of the court.

(4) At any stage:

- (a) a party may apply for further directions or a FDR appointment;
- (b) the court may give further directions or direct that the parties attend a FDR appointment.

(5) Both parties must personally attend the first appointment unless the court orders otherwise.

### **The FDR appointment**

**2.61E**—(1) The FDR appointment must be treated as a meeting held for the purposes of discussion and negotiation and paragraphs (2) to (9) apply.

(2) The district judge or judge hearing the FDR appointment must have no further involvement with the application, other than to conduct any further FDR appointment or to make a consent order or a further directions order.

(3) Not later than 7 days before the FDR appointment, the applicant must file with the court details of all offers and proposals, and responses to them.

(4) Paragraph (3) includes any offers, proposals or responses made wholly or partly without prejudice, but paragraph (3) does not make any material admissible as evidence if, but for that paragraph, it would not be admissible.

(5) At the conclusion of the FDR appointment, any documents filed under paragraph (3), and any filed documents referring to them, must, at the request of the party who filed them, be returned to him and not retained on the court file.

(6) Parties attending the FDR appointment must use their best endeavours to reach agreement on the matters in issue between them.

(7) The FDR appointment may be adjourned from time to time.

(8) At the conclusion of the FDR appointment, the court may make an appropriate consent order, but otherwise must give directions for the future course of the proceedings, including, where appropriate, the filing of evidence and fixing a final hearing date.

(9) Both parties must personally attend the FDR appointment unless the court orders otherwise.

### **Costs**

**2.61F**—(1) At every court hearing or appointment each party must produce to the court an estimate in Form H of the costs incurred by him up to the date of that hearing or appointment.

(2) The parties' obligation under paragraph (1) is without prejudice to their obligations under paragraphs 4.1 to 4.11 of the Practice Direction relating to CPR Part 44."

**12.**—(1) Rule 2.62(1), (3), (5) and (6) shall be omitted.

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(a) S.I. 1996/1676.

- (2) In rule 2.62(4):
- (a) for “discovery and production” there shall be substituted “disclosure and inspection”; and
  - (b) for “affidavits” there shall be substituted “statements”.
- (3) After rule 2.62(4), there shall be inserted:  
“(4A) A statement filed under paragraph (4) shall be sworn to be true.”.
- (4) In rule 2.62(7):
- (a) for “(a ‘production appointment’)” there shall be substituted “(an ‘inspection appointment’)”; and
  - (b) for the second occurrence of “production” there shall be substituted “inspection”.
- (5) In rule 2.62(8), for “a production” there shall be substituted “an inspection”.
- (6) In rule 2.62(9), for “a production” there shall be substituted “an inspection”.

13. Rule 2.63 shall be omitted.

14. In rule 2.64(2) after “final determination of the application,” there shall be substituted “and subject to rule 2.69F,”.

15. In rule 2.66(4) for “as a district judge has under rule 2.62(5)” there shall be substituted “to make directions as a district judge has under these rules”.

16. In rule 2.67(2) for “Form M15”, wherever it occurs, there shall be substituted “Form I”.

17.—(1) For rule 2.69 there shall be substituted:

**“Offers to settle**

**2.69—(1)** Either party to the application may at any time make a written offer to the other party which is expressed to be “without prejudice except as to costs” and which relates to any issue in the proceedings relating to the application.

(2) Where an offer is made under paragraph (1), the fact that such an offer has been made shall not be communicated to the court, except in accordance with rule 2.61E(3), until the question of costs falls to be decided.

**Interpretation of rules 2.69B to 2.69D**

**2.69A** In rules 2.69B to 2.69D, “base rate” has the same meaning as in the Civil Procedure Rules 1998.

**Judgment or order more advantageous than an offer made by the other party**

**2.69B—(1)** This rule applies where the judgment or order in favour of the applicant or respondent is more advantageous to him than an offer made under rule 2.69(1) by the other party.

(2) The court must, unless it considers it unjust to do so, order that other party to pay any costs incurred after the date beginning 28 days after the offer was made.

**Judgment or order more advantageous than offers made by both parties**

**2.69C—(1)** This rule applies where

- (a) both the applicant and the respondent have made offers under rule 2.69(1); and
- (b) the judgment or order in favour of the applicant or the respondent, as the case may be, is more advantageous to him than both of the offers referred to in paragraph (a).

(2) The court may, where it considers it just, order interest in accordance with paragraph (3) on the whole or part of any sum of money (excluding interest and periodical payments) to be awarded to the applicant or respondent, as the case may be.

(3) Interest under paragraph (2) may be at a rate not exceeding 10 per cent above base rate for some or all of the period beginning 28 days after the offer was made.

(4) The court may also order that the applicant or respondent, as the case may be, is entitled to:

- (a) his costs on the indemnity basis beginning 28 days after the offer was made; and

- (b) interest on those costs at a rate not exceeding 10 per cent above base rate.
- (5) The court's powers under this rule are in addition to its powers under rule 2.69B.

#### **Factors for court's consideration under rules 2.69B and 2.69C**

**2.69D**—(1) In considering whether it would be unjust, or whether it would be just, to make the orders referred to in rules 2.69B and 2.69C, the court must take into account all the circumstances of the case, including—

- (a) the terms of any offers made under rule 2.69(1);
- (b) the stage in the proceedings when any offer was made;
- (c) the information available to the parties at the time when the offer was made;
- (d) the conduct of the parties with regard to the giving or refusing to give information for the purposes of enabling the offer to be made or evaluated; and
- (e) the respective means of the parties.

(2) The power of the court to award interest under rule 2.69C(2) and (4)(b) is in addition to any other power it may have to award interest.

#### **Open proposals**

**2.69E**—(1) Not less than 14 days before the date fixed for the final hearing of an application for ancillary relief, the applicant must (unless the court directs otherwise) file with the court and serve on the respondent an open statement which sets out concise details, including the amounts involved, of the orders which he proposes to ask the court to make.

(2) Not more than 7 days after service of a statement under paragraph (1), the respondent must file with the court and serve on the applicant an open statement which sets out concise details, including the amounts involved, of the orders which he proposes to ask the court to make.

#### **Application for interim orders**

**2.69F**—(1) A party may apply at any stage of the proceedings for an order for maintenance pending suit, interim periodical payments or an interim variation order.

(2) An application for such an order must be made by notice of application and the date fixed for the hearing of the application must be not less than 14 days after the date the notice of application is issued.

(3) The applicant shall forthwith serve the respondent with a copy of the notice of application.

(4) Where an application is made before a party has filed Form E, that party must file with the application and serve on the other party, a draft of the order requested and a short sworn statement explaining why the order is necessary and giving the necessary information about his means.

(5) Not less than 7 days before the date fixed for the hearing, the respondent must file with the court and serve on the other party, a short sworn statement about his means, unless he has already filed Form E.

(6) A party may apply for any other form of interim order at any stage of the proceedings with or without notice.

(7) Where an application referred to in paragraph (6) is made with notice, the provisions of paragraphs (1) to (5) apply to it.

(8) Where an application referred to in paragraph (6) is made without notice, the provisions of paragraph (1) apply to it.”.

**18.**—(1) Rule 2.70(1) shall be omitted.

(2) In rule 2.70(2) for “discovery” there shall be substituted “disclosure”.

(3) In rule 2.70(3):

- (a) for sub-paragraph (a) there shall be substituted:  
“(a) Form A in accordance with rule 2.61A; or”;



(b) sub-paragraph (b) shall be omitted.

(4) In rule 2.70(4) for “Form M11 or M13 as the case may be” there shall be substituted “Form A”.

19. Rules 2.71 to 2.77 shall be omitted.

20. In Part III references to any of rules 2.52 to 2.70 shall be read as references to those rules as they were before these rules came into force.

21. In rule 3.1(7) for “intervention by” there shall be substituted “filing of a statement in answer by”.

22. Forms M11 to M15 shall be omitted from Appendix 1.

23. The following shall be substituted for Appendix 1A:

**“APPENDIX 1A**































































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Dated 15th December 1999

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### EXPLANATORY NOTE

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

These Rules amend the Family Proceedings Rules 1991 so as to create a new procedural code for applications for ancillary relief under the Matrimonial Causes Act 1973. This code appears in rules 2.51B to 2.70 of the Family Proceedings Rules, as amended. These Rules also introduce a new Appendix 1A, which contains new Forms A to I for the new procedure.