

2005 No. 264

FAMILY PROCEEDINGS, ENGLAND AND WALES

The Family Proceedings (Amendment) Rules 2005

Made - - - - - *7th February 2005*

Laid before Parliament *9th February 2005*

Coming into force - - - *1st March 2005*

We, the authority having power under section 40(1) of the Matrimonial and Family Proceedings Act 1984(a) 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 that section, make the following rules:

Citation, commencement and interpretation

1. These Rules may be cited as the Family Proceedings (Amendment) Rules 2005 and shall come into force on 1st March 2005.

2. In the following Rules—

- (a) a reference to a rule, chapter, Part or Appendix by number alone means the rule, chapter, Part or Appendix so numbered in the Family Proceedings Rules 1991(b); and
- (b) a reference to a Form by letter means the form so identified by that letter in Appendix 1 or (as the case may be) 1A to those Rules.

Amendments to the Family Proceedings Rules 1991

3. In the Arrangement of Rules—

- (a) after the entry for rule 4.27 insert—
“**4.27A** Stay under the Council Regulation”
- (b) after the entry for rule 6.11 insert—
“**6.11A** Stay under the Council Regulation”
- (c) after the entry for rule 6.17 insert—
“**6.18** Registration of registered decisions”
- (d) in the entry for rule 7.48, after “recognition” insert “or non-recognition”;
- (e) in the entry for rule 7.49 for “Enforcement” substitute “Recognition or enforcement”; and
- (f) after the entry for rule 7.50 insert—
“**7.51** Service of a certificate under Articles 41 or 42 of the Council Regulation”

(a) 1984 c.42
(b) S.I.1991/1247

7.52 Registration of certificates issued under Articles 41 or 42 of the Council Regulation

7.53 Application by a party for transfer of proceedings to a court of another Member State

7.54 Application by a court of another Member State for transfer of proceedings

7.55 Rectification of certificates issued under Articles 41 or 42”;

4. In rule 1.2(1)—

(a) in the definition of “Contracting State” substitute (a) with—

“(a) one of the parties to the Council Regulation, that is to say, Belgium, Cyprus, Czech Republic, Germany, Greece, Spain, Estonia, France, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Austria, Poland, Portugal, Slovakia, Slovenia, Finland, Sweden and the United Kingdom.”.

(b) in the definition of “the Council Regulation”—

(i) for “1347/2000 of 29th May 2000 on” substitute “2201/2003 of 27th November 2003 concerning”;

(ii) replace the second occurrence of “in” with “the”; and

(iii) omit “for children of both spouses”.

5. Amend rule 2.27A as follows—

(a) in paragraph (1) for “11” substitute “19”;

(b) in paragraphs (2) and (3) for “9, 10 or 11” substitute “16 to 19”; and

(c) in paragraph (4) for “9” substitute “17”.

6. After rule 4.27 insert—

“4.27A Stay under the Council Regulation

(1) An application for an order under Article 19 of the Council Regulation shall be made to a district judge, who may determine the application or refer the application, or any question arising thereon, to a judge for his decision.

(2) Where at any time after an application under rule 4.4 is made, it appears to the court that, under Articles 16 to 19 of the Council Regulation, the court does not have jurisdiction to hear the application and is required or may be required to stay the proceedings, the court will stay the proceedings and fix a date for a hearing to determine the questions of jurisdiction and whether there should be a stay or other order and shall serve notice of the hearing on the parties to the proceedings.

(3) The court must give reasons for its decision under Articles 16 to 19 of the Council Regulation and, where it makes a finding of fact state such a finding of fact.

(4) A declaration under Article 17 of the Council Regulation that the court has no jurisdiction over the proceedings shall be recorded by the court or proper officer in writing.

(5) The court may, if all parties agree, deal with any question about the jurisdiction of the court without a hearing.”

7. In rule 6.4 after paragraph (2) insert—

“(3) Where the application is one to which the Council Regulation also applies, in addition to the matters specified in rule 6.3, the originating summons shall also identify—

(a) any details of measures taken by courts or authorities to ensure the protection of the child after its return to the Member State of habitual residence of which the applicant is aware; and

(b) details of any person with parental responsibility who is not already listed in accordance with rule 6.3.”

8. After rule 6.11 insert—

“6.11A Stay under the Council Regulation

Rule 4.27A applies to proceedings under this Part as it applies to proceedings under Part 4 but as if—

- (a) for “application under rule 4.4 is made” there is read “presentation of an originating summons”; and
- (b) for “application” in sub-paragraph (2) there is read “originating summons”.

9. After rule 6.17 insert the following—

“6.18 Registration of registered decisions

There shall be kept in the principal registry by the proper officer a register of decisions registered under section 16 of the Act together with any variation of those decisions as made under section 17 of the Act.”

10. In rule 7.40 for “13” substitute “2(4)”.

11. In rule 7.42 for “21(2)” substitute “28(2)”.

12. Amend rule 7.43(1) as follows—

- (a) for “21(2)” substitute “28(2)”; and
- (b) in sub-paragraph (a)(v) for “IV or Annex V” substitute “I or Annex II”.

13. Amend rule 7.44 as follows—

- (a) in paragraph (1), for “21(2)” substitute “28(2)”; and
- (b) in paragraph (3), for “12” substitute “20”.

14. In rule 7.45 for “21(2)” substitute “28(2)”.

15. In rule 7.46(1) for “21(2)” substitute “28(2)”.

16. Amend rule 7.47 as follows—

- (a) for “21(2)” in each place it occurs substitute “28(2)”; and
- (b) in paragraph (3), for “12” substitute “20”.

17. Amend rule 7.48 as follows—

- (a) in paragraph (1) for “14(3)” substitute “21(3)”; and
- (b) in paragraph (2)—
 - (i) after “recognition” insert “ or non-recognition”; and
 - (ii) for “21(2)” substitute “28(2)”.

18. In the title of rule 7.49 after “Enforcement” insert “or Recognition”.

19. Amend rule 7.49 as follows—

- (a) in paragraph (1)—
 - (i) after “judgment” insert “or certificate”; and
 - (ii) for “Article 32(1)” substitute “Articles 37(1) or 45(1)”.
- (b) In paragraph (2)—
 - (i) omit “such”; and
 - (ii) after “application” insert “for a certified copy of a judgment”.
- (c) After paragraph (2) insert—

“(2A) A witness statement or affidavit by which an application for a certificate is made must give—

- (a) particulars of the proceedings in which the judgment was obtained;
- (b) the full name, country and place of birth and date of birth of the parties;
- (c) details of the type of certificate applied for and the reasons for making the application; and
- (d) where the application is for a certificate under Annex II to the Council Regulation—
 - (i) the full name, and if known, the address and the date and place of birth of any other person with parental responsibility;
 - (ii) information as to whether or not the judgment entails the return of a child wrongfully removed or retained in another Member State and if so, the full name and address of the person to whom the child should be returned.”

20. In rule 7.50 for “13(3)” substitute “46”.

21. After rule 7.50 insert the following—

“7.51 Service of a certificate under Articles 41 or 42 of the Council Regulation

(1) The court will serve a certificate issued under Article 41 or 42 of the Council Regulation, or a certificate rectified under rule 7.55, on all the parties and the Central Authority of England and Wales.

(2) The Central Authority of England and Wales will serve such a certificate as mentioned in paragraph (1) on the Central Authority of the relevant Member State.

7.52 Registration of certificates issued under Articles 41 or 42 of the Council Regulation

The Central Authority shall keep a register of certificates issued under Articles 41 or 42.

7.53 Application of a party for transfer of proceedings to a court of another Member State

(1) A party may make an application that proceedings, or a specific part of those proceedings, be heard in another Member State pursuant to Article 15 of the Council Regulation.

(2) An application under paragraph (1) shall be made—

- (a) to the court in which the relevant parental responsibility proceedings are pending; and
- (b) the application shall be made—
 - (i) in the High Court, by notice to attend before the judge on a day specified in the notice, and
 - (ii) in the county court, on notice in accordance with CCR Order 13, rule 1 (which deals with applications in the course of proceedings);

and such notice shall be filed and served on the respondents not less than 5 days before the hearing of the application.

(3) An application made under paragraph (1) must be supported by an affidavit, which shall contain evidence of the child’s particular connection to the other Member State in accordance with Article 15(3) of the Council Regulation.

(4) The respondents referred to in paragraph 2(c) are any other parties, the child and the Central Authority of the relevant Member State.

(5) In this rule references to the child are references to the child who is the subject of the parental responsibility proceedings.

7.54 Application by a court of another Member State for transfer of proceedings

(1) A court of another Member State may make an application that proceedings, or a specific part of those proceedings, be heard in that Member State pursuant to Article 15 of the Council Regulation.

(2) An application under paragraph (1) shall be made in the first instance to the Central Authority of England and Wales.

(3) The Central Authority will forward an application made under paragraph (1) to the court in which the parental responsibility proceedings are pending, or where there are no pending proceedings to the principal registry.

(4) When a court receives the application the court shall serve all other parties in England and Wales not less than 5 days before the hearing of the application.

(5) The hearing of the application will be before a District Judge.

(6) A decision to accept or refuse jurisdiction under Article 15 of the Council Regulation is to be served on all parties, the Central Authority of the relevant Member State and the Central Authority of England and Wales. Service on a Central Authority or court of another Member State will be made by the Central Authority of England and Wales.

7.55 Rectification of certificates issued under Articles 41 or 42

(1) Where there is an error in a certificate issued under Articles 41 or 42 a District Judge can rectify that error.

(2) A rectification under paragraph (1) may be made—

- (a) by the District Judge of his own motion; or
- (b) pursuant to an application by—
 - (i) any party to the proceedings;
 - (ii) the Central Authority of England and Wales; or
 - (iii) the Central Authority of another Member State.

(3) Any application under sub-paragraph (2)(b) may be made without notice being served on any other party.”

22. Amend paragraph 2A(b) of Form M5 (Notice of Proceedings) as follows—

- (a) for “9 and 11” substitute “16, 17 and 19”;
- (b) for “1347/2000 of 29th May 2000 on” substitute “2201/2003 of 27th November 2003 concerning”;
- (c) replace the second occurrence of “in” with “the”; and
- (d) omit “for children of both spouses”.

23. In paragraph 1A(e) of Form M6 (Acknowledgement of Service) for “11” substitute “19”.

24. In paragraph 1(bb) of Appendix 2 for “2(1)” substitute “3(1)”.

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7th February 2005

EXPLANATORY NOTE

(This note is not part of the Order)

These rules amend the Family Proceedings Rules 1991 to give effect to Council Regulation (EC) No 2201/2003 of 27 November 2003 (the new Council Regulation) on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.

The new Council Regulation reproduces and repeals Council Regulation (EC) No 1347/2000 of 29th May 2000 (the previous Council Regulation) extending it to include matters of parental responsibility where there are no matrimonial proceedings. Therefore, many of the alterations in these rules are to update the existing Family Proceedings Rules 1991 to make reference to the new Council Regulation and the correct Article therein.

The amendments to rule 1.2 inserts a definition of a “Contracting State”, which gives a list of Member States who have signed up to the new Council Regulation. This is to save cross reference with other documents when trying to determine if the State in question is one to which the new Council Regulation is relevant. To be consistent with all European documents the list is in alphabetical order in accordance with the spelling of each State’s own spelling of its name.

New rule 4.47A (Stay under the Council Regulation) is a replication of rule 2.27A. The necessity for the repetition is because the new Council Regulation extends matters of parental responsibility to apply in all children cases.

Rule 6.4 is extended so that, where relevant, an originating summons shall include information to meet the requirements of the new Council Regulation.

New rule 6.11A ensures that a stay under the new Council Regulation can also be applied in cases under the Child Abduction and Custody Act 1985 if required.

New rule 6.18 inserts a rule to ensure that decisions made under section 16 of the Child Abduction and Custody Act 1985 are registered.

The amendment to rule 7.48 extends the rule to include non-recognition of judgments as well as recognition of them.

The amendments to 7.49 are so that certified copies of certificates can be obtained in the same way as certified copies of judgments.

New rules 7.51 and 7.52 have been inserted to cater for the service and registration of certificates made under Articles 41 and 42 of the new Council Regulation.

New rule 7.53 has been inserted to deal with the procedure required for Article 15 of the new Council Regulation to operate where parties may apply for their case, or part of their case, to be heard in another Member State.

New rule 7.54 has been inserted to deal with the procedure required for Article 15 of the new Council Regulation to operate where a court of another Member State applies for a case, or part of a case, to be heard in that other Member State.

New rule 7.55 allows for rectification of certificates made under Articles 41 or 42 of the new Council Regulation, where there is an error in them.

STATUTORY INSTRUMENTS

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