
EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Family Proceedings Rules 1991 (S.I. 1991/1247) (“FPR”) in consequence of the Gender Recognition Act 2004 (c. 7) (“the 2004 Act”), to make changes consequent on the introduction of Welsh family proceedings officers, and to make several further, minor, changes.

The 2004 Act provides for transsexual persons legal recognition in their acquired gender on the issue of a full gender recognition certificate. A person may apply to a Gender Recognition Panel. If the applicant meets the statutory criteria and is unmarried, the Panel will issue to him a full gender recognition certificate. If he is married, the Panel will issue to him an interim gender recognition certificate. The 2004 Act amended the Matrimonial Causes Act 1973 (c. 18) (“the 1973 Act”) to provide two new grounds of nullity. The first is where an interim gender recognition certificate has, after the time of the marriage, been issued to either party to the marriage (section 12(g) of and paragraph 11(1)(e) of Schedule 1 to the 1973 Act, as amended by section 4(4) of and Schedule 2 to the 2004 Act). Where a person obtains a decree absolute of nullity on this ground, the court must issue to him a full gender recognition certificate. The second new ground of nullity is where the respondent is a person whose gender at the time of the marriage had become the acquired gender under the 2004 Act (section 12(h) of the 1973 Act, as amended by section 11 of and paragraphs 4 to 6 of Schedule 4 to the 2004 Act). A person’s gender only becomes the acquired gender under the 2004 Act when a full gender recognition certificate is issued to him.

Rule 4 inserts FPR rules 2.6A and 2.6B, which require a petitioner to file with his petition a copy of the interim gender recognition certificate (if the petition is brought on the first new ground of nullity) or a copy of the full gender recognition certificate (if the petition is brought on the second new ground). The petitioner may apply to court if he is unable to do this. FPR rule 2.6A requires the proper officer of the court to notify the Secretary of State of petitions brought under the first new ground. **Rule 6** inserts FPR rules 2.12A and 2.12B, which make corresponding provision where either new ground of nullity is raised for the first time in an answer to a petition. **Rule 5** inserts FPR rule 2.9A, which requires respondents to petitions on the new grounds of nullity to file with any acknowledgement of service a copy of the appropriate certificate. Corresponding provision for replies to answers raising either of the new grounds for the first time is made by FPR rule 2.13A inserted by **rule 7**.

Rule 9 inserts FPR rule 2.51AA which makes provision for applications made under section 6(1) of the 2004 Act (where a court has issued a full gender recognition certificate which contains an error, an application may be made under this section for the issue of a corrected certificate).

Rule 15 inserts FPR rule 3.24 which makes provision for references made under section 8(5) of the 2004 Act (where the Secretary of State considers an application for a gender recognition certificate to have been secured by fraud). Where the Secretary of State is aware that nullity proceedings have been brought on the first new ground, he must give particulars of this and serve notice of the section 8(5) reference on the court in which those proceedings are pending. **Rule 8** amends FPR rule 2.49(2), so that a decree on the first new ground of nullity should not be made absolute if a search of that court’s records discloses extant section 8(5) proceedings.

Rule 20 inserts FPR rule 8.4 which makes provision for appeals under section 8(1) of the 2004 Act (which provides a statutory appeal to the High Court on a point of law against a decision of a Gender Recognition Panel to reject an application made to it).

Rule 22 makes provision for the storage of documents concerning gender recognition.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rules 23(a) and 24 make minor amendments, largely to reflect the changes made by these rules to FPR Part 2.

Rules 3(b) and 16 to 19 amend the Family Proceedings Rules 1991 to enable functions performed by an officer of the Children and Family Court Advisory and Support Service (“CAFCASS”) under the Family Proceedings Rules 1991 to be performed by a Welsh family proceedings officer. The amendment follows the transfer of functions from CAFCASS to the National Assembly for Wales by section 35 of the Children Act 2004 for children ordinarily resident in Wales.

A Welsh family proceedings officer is defined under subsection (4) of that section as any member of the staff of the National Assembly for Wales (“the Assembly”) appointed to exercise the functions of a Welsh family proceedings officer, and any other individual exercising those functions by virtue of section 36(2) and (4) of that Act (which allow the Assembly to make arrangements with organisations and individuals to perform the functions of Welsh family proceedings officers).

Rules 25 and 26 make transitional provision to deal with the situation where a CAFCASS officer who is already acting as a children and family reporter or a children’s guardian in proceedings becomes a Welsh family proceedings officer.

Rules 10 to 14, 21, 23(b)—(d) and Schedules 1 and 2 amend the FPR by making a number of minor changes to Part 3 (other Matrimonial etc Proceedings). **Rules 12 and 14** remove redundant references to Form M11 (Notice of Application for Ancillary Relief). This form was revoked by [S.I. 1999/3491](#) with effect from 5 June 2000 and replaced by Forms A and B.

Rule 13 amends a current inconsistency in rule 3.9A (Enforcement of orders made on applications under Part IV of the Family Law Act 1996) so that certain provisions of the Rules of the Supreme Court 1965 and County Court Rules 1981 may apply, with necessary modifications, to the enforcement of orders made on the court’s own motion under Part IV of the Family Law Act 1996.

Under the Matrimonial Causes Rules 1977, Form 6 was a combined form of Acknowledgement of Service that could be used for both matrimonial proceedings and other forms of originating process. The revised Form M6 introduced by the FPR was specifically designed for use in divorce proceedings, however, references to the use of the old version of the form were carried over into Part 3 of the FPR. **Rule 23(d)** resolves this inconsistency by inserting into Appendix 1, a new Form M23A; and **rules 10 and 21** substitute references to this new form (in place of Form M6) where appropriate. **Rule 11** makes a further consequential change. **Rules 23(b) and (c)** make changes to Form M20 and M23 in light of the introduction of Form M23A.