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STATUTORY INSTRUMENTS

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**2010 No. 2955 (L. 17)**

**FAMILY PROCEEDINGS**  
**SENIOR COURTS OF ENGLAND AND WALES**  
**COUNTY COURTS, ENGLAND AND WALES**  
**MAGISTRATES' COURTS,**  
**ENGLAND AND WALES**

The Family Procedure Rules 2010

*Made* - - - - *13th December 2010*  
*Laid before Parliament* *17th December 2010*  
*Coming into force* - - *6th April 2011*

<sup>M1M2M3M4M5M6M7M8</sup>The Family Procedure Rule Committee makes the following rules in exercise of the powers conferred by sections 75 and 76 of the Courts Act 2003 , section 18(1) of the Maintenance Orders (Reciprocal Enforcement) Act 1972 , sections 12 and 48 of the Civil Jurisdiction and Judgments Act 1982 , sections 10 and 24 of the Child Abduction and Custody Act 1985 , section 97(1) of the Children Act 1989 , section 54(1) of the Access to Justice Act 1999 , sections 52(7), 102, 109(2) and 141(1) and (3) of the Adoption and Children Act 2002 , after consulting in accordance with section 79 of the Courts Act 2003 .

These rules may be cited as the Family Procedure Rules 2010 and shall come into force on 6th April 2011.

**Modifications etc. (not altering text)**

- C1** Rules applied (with modifications) (18.6.2011) by [The Magistrates' Courts \(Enforcement or Variation of Orders Made in Family Proceedings and Miscellaneous Provisions\) Rules 2011 \(S.I. 2011/1329\)](#), rules 1, **50-53**, 69, 71, 74-76, 78, 80 (with rules 3(2), 83)

**Marginal Citations**

- M1** [2003 c.39](#). Section 75 was amended by section 15(1) and 146 of and paragraphs 308 and 338 of Schedule 4 and Part 2 of Schedule 18 to the [Constitutional Reform Act 2005 \(c.4\)](#). Section 76 was amended by section 12(2) of and paragraph 29 of Schedule 1 to the [Constitutional Reform Act 2005](#) and section 261(1) of and paragraph 172 of Schedule 27 to the [Civil Partnership Act 2004 \(c.33\)](#) and

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section 62(7) of the [Children Act 2004 \(c.31\)](#) and section 25 of and paragraph 14 of Schedule 3 to the [Children, Schools and Families Act 2010 \(c.26\)](#).

- M2** [1972 c.18](#). Section 18 was amended by section 109(1) and paragraphs 155(1),(2)(a) and (3) of Schedule 8 to the Courts Act 2003.
- M3** [1982 c.27](#).
- M4** [1985 c.60](#).
- M5** [1989 c.41](#). Section 97(1) was amended by section 109(1) and paragraphs 337(1) and (2) of Schedule 8 to the Courts Act 2003 and by section 101(3) of the [Adoption and Children Act 2002 \(c.38\)](#).
- M6** [1999 c.22](#).
- M7** [2002 c.38](#). Section 102 was amended by section 40 of and paragraphs 15, 16(1), (2), (3) and (4) of Schedule 3 to the Children Act 2004. Section 141(1) and (3) were amended by section 109(1) of and paragraph 413(1) and (2) of Schedule 8 to the Courts Act 2003. Sections 102(1) to (4) and (6) to (8) and 141(1) and (3) of the Adoption and Children Act 2002 were applied with modifications for the purposes of parental orders by regulation 2 of and, Schedule 1 to the [Human Fertilisation and Embryology Act \(Parental Orders\) Regulations 2010 \(S.I.2010/985\)](#).
- M8** [Section 79](#) was amended by sections 15(1) and 146 of and paragraphs 308 and 341(1) of Schedule 4 and Part 2 of Schedule 18 to the Constitutional Reform Act 2005.

## PART 1

### OVERRIDING OBJECTIVE

#### The overriding objective

**1.1.**—(1) These rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly, having regard to any welfare issues involved.

- (2) Dealing with a case justly includes, so far as is practicable—
- (a) ensuring that it is dealt with expeditiously and fairly;
  - (b) dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues;
  - (c) ensuring that the parties are on an equal footing;
  - (d) saving expense; 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.

#### Application by the court of the overriding objective

**1.2.** The court must seek to give effect to the overriding objective when it—

- (a) exercises any power given to it by these rules; or
- (b) interprets any rule.

#### Duty of the parties

**1.3.** The parties are required to help the court to further the overriding objective.

#### Court's duty to manage cases

**1.4.**—(1) The court must further the overriding objective by actively managing cases.

[<sup>F1</sup>(2) Active case management includes—

- (a) setting timetables or otherwise controlling the progress of the case;
- (b) identifying at an early stage—
  - (i) the issues; and
  - (ii) who should be a party to the proceedings;
- (c) deciding promptly—
  - (i) which issues need full investigation and hearing and which do not; and
  - (ii) the procedure to be followed in the case;
- (d) deciding the order in which issues are to be resolved;
- (e) controlling the use of expert evidence;
- (f) encouraging the parties to use [<sup>F2</sup>a non-court dispute resolution] procedure if the court considers that appropriate and facilitating the use of such procedure;
- (g) helping the parties to settle the whole or part of the case;
- (h) encouraging the parties to co-operate with each other in the conduct of proceedings;
- (i) considering whether the likely benefits of taking a particular step justify the cost of taking it;
- (j) dealing with as many aspects of the case as it can on the same occasion;
- (k) dealing with the case without the parties needing to attend at court;
- (l) making use of technology; and
- (m) giving directions to ensure that the case proceeds quickly and efficiently.]

#### Textual Amendments

- F1** Rule 1.4(2) substituted (31.1.2013) by [The Family Procedure \(Amendment\) \(No.5\) Rules 2012 \(S.I. 2012/3061\)](#), rules 1, 3
- F2** Words in rule 1.4(2)(f) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, 3

## PART 2

### APPLICATION AND INTERPRETATION OF THE RULES

#### Application of these Rules

- [<sup>F3</sup>**2.1.** Unless the context otherwise requires, these rules apply to family proceedings in—
- (a) the High Court; and
  - (b) the family court.]

#### Textual Amendments

- F3** Rule 2.1 substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, 3 (with rule 137); S.I. 2014/954, art. 2

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## The glossary

2.2.—(1) The glossary at the end of these rules is a guide to the meaning of certain legal expressions used in the rules, but is not to be taken as giving those expressions any meaning in the rules which they do not have in the law generally.

(2) Subject to paragraph (3), words in these rules which are included in the glossary are followed by “GL”.

(3) The word “service”, which appears frequently in the rules, is included in the glossary but is not followed by “GL”.

## Interpretation

2.3.—(1) In these rules—

[<sup>F4</sup>“the 1958 Act” means the Maintenance Orders Act 1958;]

“the 1973 Act” means the Matrimonial Causes Act 1973 <sup>M9</sup>;

“the 1978 Act” means the Domestic Proceedings and Magistrates' Courts Act 1978 <sup>M10</sup>;

“the 1980 Hague Convention” means the Convention on the Civil Aspects of International Child Abduction which was signed at The Hague on 25 October 1980;

“the 1984 Act” means the Matrimonial and Family Proceedings Act 1984 <sup>M11</sup>;

“the 1986 Act” means the Family Law Act 1986 <sup>M12</sup>;

“the 1989 Act” means the Children Act 1989;

“the 1990 Act” means the Human Fertilisation and Embryology Act 1990 <sup>M13</sup>;

“the 1991 Act” means the Child Support Act 1991 <sup>M14</sup>;

“the 1996 Act” means the Family Law Act 1996 <sup>M15</sup>;

“the 1996 Hague Convention” means the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in Respect of Parental Responsibility and Measures for the Protection of Children;

“the 2002 Act” means the Adoption and Children Act 2002;

“the 2004 Act” means the Civil Partnership Act 2004;

“the 2005 Act” means the Mental Capacity Act 2005 <sup>M16</sup>;

[<sup>F5</sup>“the 2007 Hague Convention” means the Convention on the International Recovery of Child Support and other forms of Family Maintenance done at The Hague on 23 November 2007;]

“the 2008 Act” means the Human Fertilisation and Embryology Act 2008 <sup>M17</sup>;

[<sup>F6</sup>“the 2014 Act” means the Children and Families Act 2014]

“adoption proceedings” means proceedings for an adoption order under the 2002 Act;

<sup>F7</sup> ...

<sup>F8</sup> ...

“application form” means a document in which the applicant states his intention to seek a court order other than in accordance with the Part 18 procedure;

“application notice” means a document in which the applicant states his intention to seek a court order in accordance with the Part 18 procedure;

[<sup>F9</sup>“Article 11 form” means a form published by the Permanent Bureau of the Hague Conference under Article 11(4) of the 2007 Hague Convention for use in relation to an

application under Article 10 of that Convention, and includes a Financial Circumstances Form as defined in rule 9.3(1) which accompanies such an application;]

“Assembly” means the National Assembly for Wales;

“bank holiday” means a bank holiday under the Banking and Financial Dealings Act 1971 <sup>M18</sup> —

- (a) for the purpose of service of a document within the United Kingdom, in the part of the United Kingdom where service is to take place; and
- (b) for all other purposes, in England and Wales.

“business day” means any day other than—

- (a) a Saturday, Sunday, Christmas Day or Good Friday; or
- (b) a bank holiday;

“care order” has the meaning assigned to it by section 31(11) of the 1989 Act;

“CCR” means the County Court Rules 1981, as they appear in Schedule 2 to the CPR <sup>F10</sup> ...;

“child” means a person under the age of 18 years who is the subject of the proceedings; except that—

- (a) in adoption proceedings, it also includes a person who has attained the age of 18 years before the proceedings are concluded; and
- (b) in proceedings brought under the Council Regulation, the 1980 Hague Convention or the European Convention, it means a person under the age of 16 years who is the subject of the proceedings;

[<sup>F11</sup>“child arrangements order” has the meaning given to it by section 8(1) of the 1989 Act;]

“child of the family” has the meaning given to it by section 105(1) of the 1989 Act;

“children and family reporter” means an officer of the Service or a Welsh family proceedings officer who has been asked to prepare a welfare report under section 7(1)(a) of the 1989 <sup>M19</sup> Act or section 102(3)(b) of the 2002 Act;

“children's guardian” means—

- (a) in relation to a child who is the subject of and a party to specified proceedings or proceedings to which Part 14 applies, the person appointed in accordance with rule 16.3(1); and
- (b) in any other case, the person appointed in accordance with rule 16.4;

“civil partnership order” means one of the orders mentioned in section 37 of the 2004 Act;

“civil partnership proceedings” means proceedings for a civil partnership order;

<sup>F12</sup> ...

“civil restraint order” means an order restraining a party—

- (a) from making any further applications in current proceedings (a limited civil restraint order);
- (b) from making certain applications in specified courts (an extended civil restraint order); or
- (c) from making any application in specified courts (a general civil restraint order);

<sup>F13</sup> ...

“consent order” means an order in the terms applied for to which the respondent agrees;

<sup>F14</sup> ...

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“the Council Regulation” means Council Regulation (EC) No 2201/2003 of 27 November 2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility;

“court” means, subject to any rule or other enactment which provides otherwise, the High Court, [<sup>F15</sup>or the family court];  
(rule 2.5 relates to the power to perform functions of the court.)

F16 ...

“court officer” means [<sup>F17</sup>a member of court staff];

“CPR” means the Civil Procedure Rules 1998;

“deputy” has the meaning given in section 16(2)(b) of the 2005 Act;

F18 ...

“detailed assessment proceedings” means the procedure by which the amount of costs is decided in accordance with Part 47 of the CPR;

“directions appointment” means a hearing for directions;

F19 ...

F20 ...

F21 ...

“the European Convention” means the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on the Restoration of Custody of Children which was signed in Luxembourg on 20 May 1980;

“filing”, in relation to a document, means delivering it, by post or otherwise, to the court office;

“financial order” means—

- (a) an avoidance of disposition order;
- (b) an order for maintenance pending suit;
- (c) an order for maintenance pending outcome of proceedings;
- (d) an order for periodical payments or lump sum provision as mentioned in section 21(1) of the 1973 Act <sup>M20</sup>, except an order under section 27(6) of that Act <sup>M21</sup>;
- (e) an order for periodical payments or lump sum provision as mentioned in paragraph 2(1) of Schedule 5 to the 2004 Act, made under Part 1 of Schedule 5 to that Act;
- (f) a property adjustment order;
- (g) a variation order;
- (h) a pension sharing order; or
- (i) a pension compensation sharing order; (“variation order”, “pension compensation sharing order” and “pension sharing order” are defined in rule 9.3.)

“financial remedy” means—

- (a) a financial order;
- (b) an order under Schedule 1 to the 1989 Act;
- (c) an order under Part 3 of the 1984 Act [<sup>F22</sup>except an application under section 13 of the 1984 Act for permission to apply for a financial remedy] ;
- (d) an order under Schedule 7 to the 2004 Act [<sup>F23</sup>except an application under paragraph 4 of Schedule 7 to the 2004 Act for permission to apply for an order under paragraph 9 or 13 of that Schedule] ;

- (e) an order under section 27 of the 1973 Act;
- (f) an order under Part 9 of Schedule 5 to the 2004 Act;
- (g) an order under section 35 of the 1973 Act <sup>M22</sup>;
- (h) an order under paragraph 69 of Schedule 5 to the 2004 Act;
- (i) an order under Part 1 of the 1978 Act;
- (j) an order under Schedule 6 to the 2004 Act;
- (k) an order under section 10(2) of the 1973 Act <sup>M23</sup>; or
- (l) an order under section 48(2) of the 2004 Act;

“hearing” includes a directions appointment;

“hearsay” means a statement made, otherwise than by a person while giving oral evidence in proceedings, which is tendered as evidence of the matters stated, and references to hearsay include hearsay of whatever degree;

[<sup>F24</sup>“incoming protection measure” means a protection measure that has been ordered in a Member State of the European Union other than the United Kingdom or Denmark;]

“inherent jurisdiction” means the High Court's power to make any order or determine any issue in respect of a child, including in wardship proceedings, where it would be just and equitable to do so unless restricted by legislation or case law; (Practice Direction 12D (Inherent Jurisdiction (including Wardship Proceedings)) provides examples of inherent jurisdiction proceedings.)

[<sup>F25</sup>“judge” means—

- (a) in the High Court, a judge or a district judge of that court (including a district judge of the principal registry) or a person authorised to act as such; and
- (b) in the family court, a person who is—
  - (i) the Lord Chief Justice;
  - (ii) the Master of the Rolls;
  - (iii) the President of the Queen's Bench Division;
  - (iv) the President of the Family Division;
  - (v) the Chancellor of the High Court;
  - (vi) an ordinary judge of the Court of Appeal (including the vice-president, if any, of either division of that court);
  - (vii) the Senior President of Tribunals;
  - (viii) a puisne judge of the High Court;
  - (ix) a deputy judge of the High Court;
  - (x) a person who has been a judge of the Court of Appeal or a puisne judge of the High Court who may act as a judge of the family court by virtue of section 9 of the Senior Courts Act 1981;
  - (xi) the Chief Taxing Master;
  - (xii) a taxing master of the Senior Courts;
  - (xiii) a person appointed to act as a deputy for the person holding office referred to in sub-paragraph (xii) or to act as a temporary additional officer for any such office;
  - (xiv) a circuit judge;
  - (xv) a Recorder;

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- (xvi) the Senior District Judge of the Family Division;
- (xvii) a district judge of the principal registry;
- (xviii) a person appointed to act as a deputy for the person holding office referred to in sub-paragraph (xvii) or to act as a temporary additional office holder for any such office;
- (xix) a district judge;
- (xx) a deputy district judge appointed under section 102 of the Senior Courts Act 1981 or section 8 of the County Courts Act 1984;
- (xxi) a District Judge (Magistrates' Courts);
- (xxii) a lay justice;
- (xxiii) any other judge referred to in section 31C(1) of the 1984 Act who is authorised by the President of the Family Division to conduct particular business in the family court;]

“jurisdiction” means, unless the context requires otherwise, England and Wales and any part of the territorial waters of the United Kingdom adjoining England and Wales;

“justices' clerk” has the meaning assigned to it by section 27(1) of the Courts Act 2003 <sup>M24</sup>;

[<sup>F26</sup>“lay justice” means a justice of the peace who is not a District Judge (Magistrates' Courts);]

“legal representative” means a—

- (a) barrister;
- (b) solicitor;
- (c) solicitor's employee;
- (d) manager of a body recognised under section 9 of the Administration of Justice Act 1985 <sup>M25</sup>, or
- (e) person who, for the purposes of the Legal Services Act 2007 <sup>M26</sup>, is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of the Act),

who has been instructed to act for a party in relation to proceedings;

“litigation friend” has the meaning given—

- (a) in relation to a protected party, by Part 15; and
- (b) in relation to a child, by Part 16;

[<sup>F27</sup>“the Maintenance Regulation” means Council Regulation (EC) No 4/2009 of 18th December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and co-operation in matters relating to maintenance obligations, including as applied in relation to Denmark by virtue of the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark;]

“matrimonial cause” means proceedings for a matrimonial order;

“matrimonial order” means—

- (a) a decree of divorce made under section 1 of the 1973 Act <sup>M27</sup>;
- (b) a decree of nullity made on one of the grounds set out in sections 11 or 12 of the 1973 Act <sup>M28</sup>;
- (c) a decree of judicial separation made under section 17 of the 1973 Act <sup>M29</sup>;



[<sup>F28</sup>“non-court dispute resolution” means methods of resolving a dispute, including mediation, other than through the normal court process;]

“note” includes a record made by mechanical means;

“officer of the Service” has the meaning given by section 11(3) of the Criminal Justice and Court Services Act 2000;

“order” includes directions of the court;

“order for maintenance pending outcome of proceedings” means an order under paragraph 38 of Schedule 5 to the 2004 Act;

“order for maintenance pending suit” means an order under section 22 of the 1973 Act <sup>M30</sup>;

“parental order proceedings” has the meaning assigned to it by rule 13.1;

“parental responsibility” has the meaning assigned to it by section 3 of the 1989 Act;

“placement proceedings” means proceedings for the making, varying or revoking of a placement order under the 2002 Act;

“principal registry” means the principal registry of the Family Division of the High Court;

“proceedings” means, unless the context requires otherwise, family proceedings as defined in section 75(3) of the Courts Act 2003;

“professional acting in furtherance of the protection of children” includes—

- (a) an officer of a local authority exercising child protection functions;
- (b) a police officer who is—
  - (i) exercising powers under section 46 of the Act of 1989; or
  - (ii) serving in a child protection unit or a paedophile unit of a police force;
- (c) any professional person attending a child protection conference or review in relation to a child who is the subject of the proceedings to which the information regarding the proceedings held in private relates [<sup>F29</sup>];
- (d) an officer of the National Society for the Prevention of Cruelty to Children; [<sup>F30</sup>or]
- (e) [<sup>F31</sup>a member or employee of the [<sup>F32</sup>Disclosure and Barring Service], being the body established under [<sup>F33</sup>section 87(1) of the Protection of Freedoms Act 2012];]

“professional legal adviser” means a—

- (a) barrister;
- (b) solicitor;
- (c) solicitor's employee;
- (d) manager of a body recognised under section 9 of the Administration of Justice Act 1985; or
- (e) person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of that Act),

who is providing advice to a party but is not instructed to represent that party in the proceedings;

“property adjustment order” means—

- (a) in proceedings under the 1973 Act, any of the orders mentioned in section 21(2) of that Act;
- (b) in proceedings under the 1984 Act, an order under section 17(1)(a)(ii) of that Act;

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- (c) in proceedings under Schedule 5 to the 2004 Act, any of the orders mentioned in paragraph 7(1); or
- (d) in proceedings under Schedule 7 to the 2004 Act, an order for property adjustment under paragraph 9(2) or (3);

“protected party” means a party, or an intended party, who lacks capacity (within the meaning of the 2005 Act) to conduct proceedings;

[<sup>F34</sup>“protection measure” has the meaning given to it in the Protection Measures Regulation;

“Protection Measures Regulation” means the Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12th June 2013 on mutual recognition of protection measures in civil matters(1);]

“reporting officer” means an officer of the Service or a Welsh family proceedings officer appointed to witness the documents which signify a parent's or guardian's consent to the placing of the child for adoption or to the making of an adoption order or a section 84 order;

“risk assessment” has the meaning assigned to it by section 16A(3) of the 1989 Act;

<sup>F35</sup> ...

“RSC” means the Rules of the Supreme Court 1965 as they appear in Schedule 1 to the CPR <sup>F10</sup> ...;

“section 8 order” has the meaning assigned to it by section 8(2) of the 1989 Act;

“section 84 order” means an order made by the High Court under section 84 of the 2002 Act giving parental responsibility prior to adoption abroad;

“section 89 order” means an order made by the High Court under section 89 of the 2002 Act—

- (a) annulling a Convention adoption or Convention adoption order;
- (b) providing for an overseas adoption or determination under section 91 of the 2002 Act to cease to be valid; or
- (c) deciding the extent, if any, to which a determination under section 91 of the 2002 Act has been affected by a subsequent determination under that section;

“Service” has the meaning given by section 11 of the Criminal Justice and Court Services Act 2000;

“the Service Regulation” means Regulation (EC) No. 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No. 1348/2000, as amended from time to time and as applied by the Agreement made on 19 October 2005 between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil and commercial matters;

“specified proceedings” has the meaning assigned to it by section 41(6) of the 1989 Act and rule 12.27;

“welfare officer” means a person who has been asked to prepare a report under section 7(1) (b) of the 1989 Act <sup>M31</sup>;

“Welsh family proceedings officer” has the meaning given by section 35(4) of the Children Act 2004.

(2) In these rules a reference to —

- (a) an application for a matrimonial order or a civil partnership order is to be read as a reference to a petition for—
  - (i) a matrimonial order;

(ii) a decree of presumption of death and dissolution of marriage made under section 19 of the 1973 Act <sup>M32</sup>; or

(iii) a civil partnership order,

and includes a petition by a respondent asking for such an order;

(b) “financial order” in matrimonial proceedings is to be read as a reference to “ancillary relief”;

(c) “matrimonial proceedings” is to be read as a reference to a matrimonial cause or proceedings for an application for a decree of presumption of death and dissolution of marriage made under section 19 of the 1973 Act.

(3) [<sup>F36</sup>Where] these rules apply the CPR, they apply the CPR as amended from time to time.

<sup>F37</sup>(4) .....

**Textual Amendments**

- F4** Words in rule 2.3(1) inserted (18.6.2011) by The Family Procedure (Amendment) Rules 2011 (S.I. 2011/1328), rules 1, **4(a)**
- F5** Words in rule 2.3(1) inserted (20.12.2012) by The Family Procedure (Amendment No. 4) Rules 2012 (S.I. 2012/2806), rules 1, **4(a)**
- F6** Words in rule 2.3(1) inserted (22.4.2014) by The Family Procedure (Amendment No. 3) Rules 2014 (S.I. 2014/843), rules 1, **4(a)**
- F7** Words in rule 2.3(1) omitted (22.4.2014) by virtue of The Family Procedure (Amendment No.3) Rules 2013 (S.I. 2013/3204), rules 1, **4(a)(i)** (with art. 137); S.I. 2014/954, **art. 2**
- F8** Words in rule 2.3(1) omitted (22.4.2014) by virtue of The Family Procedure (Amendment No. 3) Rules 2014 (S.I. 2014/843), rules 1, **4(b)**
- F9** Words in rule 2.3(1) inserted (20.12.2012) by The Family Procedure (Amendment No. 4) Rules 2012 (S.I. 2012/2806), rules 1, **4(b)**
- F10** Words in rule 2.3(1) omitted (22.4.2014) by The Family Procedure (Amendment No. 2) Rules 2014 (S.I. 2014/667), rules 1, **3(a)(i)** (with rule 45)
- F11** Words in rule 2.3(1) inserted (22.4.2014) by The Family Procedure (Amendment No. 3) Rules 2014 (S.I. 2014/843), rules 1, **4(d)**
- F12** Words in rule 2.3(1) omitted (22.4.2014) by virtue of The Family Procedure (Amendment No.3) Rules 2013 (S.I. 2013/3204), rules 1, **4(a)(ii)** (with rule 137); S.I. 2014/954, **art. 2**
- F13** Words in rule 2.3(1) omitted (1.8.2012) by virtue of The Public Bodies (Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions) Order 2012 (S.I. 2012/2007), art. 1(2), **Sch. para. 125(a)**
- F14** Words in rule 2.3(1) omitted (22.4.2014) by virtue of The Family Procedure (Amendment No. 3) Rules 2014 (S.I. 2014/843), rules 1, **4(e)**
- F15** Words in rule 2.3(1) substituted (22.4.2014) by The Family Procedure (Amendment No.3) Rules 2013 (S.I. 2013/3204), rules 1, **4(b)** (with rule 137); S.I. 2014/954, **art. 2**
- F16** Words in rule 2.3(1) omitted (22.4.2014) by virtue of The Family Procedure (Amendment No.3) Rules 2013 (S.I. 2013/3204), rules 1, **4(a)(iii)** (with rule 137); S.I. 2014/954, **art. 2**
- F17** Words in rule 2.3(1) substituted (22.4.2014) by The Family Procedure (Amendment No.3) Rules 2013 (S.I. 2013/3204), rules 1, **4(c)** (with rule 137); S.I. 2014/954, **art. 2**
- F18** Words in rule 2.3(1) omitted (22.4.2014) by virtue of The Family Procedure (Amendment No.3) Rules 2013 (S.I. 2013/3204), rules 1, **4(a)(iv)** (with rule 137); S.I. 2014/954, **art. 2**
- F19** Words in rule 2.3(1) omitted (22.4.2014) by virtue of The Family Procedure (Amendment No.3) Rules 2013 (S.I. 2013/3204), rules 1, **4(a)(v)** (with rule 137); S.I. 2014/954, **art. 2**
- F20** Words in rule 2.3(1) omitted (22.4.2014) by virtue of The Family Procedure (Amendment No.3) Rules 2013 (S.I. 2013/3204), rules 1, **4(a)(vi)** (with rule 137); S.I. 2014/954, **art. 2**

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

- F21** Words in rule 2.3(1) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 4\(a\)\(vii\)](#) (with rule 137); S.I. 2014/954, [art. 2](#)
- F22** Words in rule 2.3(1) inserted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), [rules 1, 3\(a\)\(i\)](#) (with rule 30)
- F23** Words in rule 2.3(1) inserted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), [rules 1, 3\(a\)\(ii\)](#) (with rule 30)
- F24** Words in rule 2.3(1) inserted (11.1.2015) by [The Family Procedure \(Amendment No. 4\) Rules 2014 \(S.I. 2014/3296\)](#), [rules 1\(2\), 3\(a\)\(i\)](#) (with rule 15)
- F25** Words in rule 2.3(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), [rules 1, 3\(a\)\(iii\)](#) (with rule 45)
- F26** Words in rule 2.3(1) inserted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), [rules 1, 3\(a\)\(ii\)](#) (with rule 45)
- F27** Words in rule 2.3(1) inserted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), [rules 1, 4\(b\)](#)
- F28** Words in rule 2.3(1) inserted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), [rules 1, 4\(c\)](#)
- F29** Words in rule 2.3(1) substituted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), [rules 1, 3\(b\)\(i\)](#) (with rule 30)
- F30** Word in rule 2.3(1) inserted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), [rules 1, 3\(b\)\(ii\)](#) (with rule 30)
- F31** Words in rule 2.3(1) inserted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), [rules 1, 3\(b\)\(iii\)](#) (with rule 30)
- F32** Words in rule 2.3(1) substituted (1.12.2012) by [The Protection of Freedoms Act 2012 \(Disclosure and Barring Service Transfer of Functions\) Order 2012 \(S.I. 2012/3006\)](#), [arts. 1\(1\), 30\(2\)\(a\)](#) (with Pt. 4)
- F33** Words in rule 2.3(1) substituted (1.12.2012) by [The Protection of Freedoms Act 2012 \(Disclosure and Barring Service Transfer of Functions\) Order 2012 \(S.I. 2012/3006\)](#), [arts. 1\(1\), 30\(2\)\(b\)](#) (with Pt. 4)
- F34** Words in rule 2.3(1) inserted (11.1.2015) by [The Family Procedure \(Amendment No. 4\) Rules 2014 \(S.I. 2014/3296\)](#), [rules 1\(2\), 3\(a\)\(ii\)](#) (with rule 15)
- F35** Words in rule 2.3(1) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 4\(a\)\(viii\)](#) (with rule 137); S.I. 2014/954, [art. 2](#)
- F36** Word in rule 2.3(3) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), [rule 1, 3\(b\)](#) (with rule 45)
- F37** Rule 2.3(4) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), [rules 1, 3\(c\)](#) (with rule 45)

### Marginal Citations

- M9** 1973 c.18.
- M10** 1978 c.22.
- M11** 1984 c.42.
- M12** 1986 c.55.
- M13** 1990 c.37.
- M14** 1991 c.48.
- M15** 1996 c.27.
- M16** 2005 c.9.
- M17** 2008 c.22.
- M18** 1971 c.80.
- M19** [Section 7\(1\)\(a\)](#) was amended by [section 74](#) of and [paragraphs 87 and 88\(a\)](#) of [Schedule 7](#) to the [Criminal Justice and Court Services Act 2000 \(c.43\)](#) and [section 40](#) of and [paragraphs 5 and 6](#) of [Schedule 3](#) to the [Children Act 2004](#).
- M20** [Section 21\(1\)](#) was amended by [section 15](#) of and [paragraph 2](#) of [Schedule 2](#) to the [Family Law Act 1996](#) as amended by the [section 84\(1\)](#) of and [paragraphs 64 and 65\(1\) to \(8\)](#) of [Schedule 12](#) to the [Welfare Reform and Pensions Act 1999 \(c.30\)](#).

- M21** Section 27(6) was amended by section 63(3) of the Domestic Proceedings and Magistrates' Courts Act 1978.
- M22** Section 35 was amended by section 46(1) of and paragraph 13 of Schedule 1 to the Matrimonial and Family Proceedings Act 1984 and section 261(1) of and paragraph 44 of Schedule 27 to the Civil Partnership Act 2004 and section 66(1) of and paragraph 20 of Schedule 8 to the Family Law Act 1996.
- M23** Section 10(2) has been prospectively repealed with savings by section 66(3) of and Schedule 10 to the Family Law Act 1996.
- M24** Section 27(1) was amended by section 15(1) of and paragraphs 308 and 326(1) and (2) of Schedule 4 to the Constitutional Reform Act 2005.
- M25** 1985 c.61.
- M26** 2007 c.29.
- M27** Section 1 has been prospectively repealed by section 66(3) of and Schedule 10 to the Family Law Act 1996.
- M28** Section 11 was amended by section 2(4) of the Marriage Act 1983 (c.32) and section 6(4) of the Marriage (Prohibited Degrees of Relationship) Act 1986 (c.16) and section 261(1) of and paragraph 40 of Schedule 27 to the Civil Partnership Act 2004 and section 12 was amended by section 148 of and paragraph 34 of Schedule 4 to the Mental Health Act 1983 (c.20) and sections 4(4) and 11 of and paragraphs 1 and 2 of Schedule 2 and paragraphs 4 and 5 of Schedule 4 to the Gender Recognition Act 2004 (c.7).
- M29** Section 17 has been prospectively repealed by section 66(3) of and Schedule 10 to the Family Law Act 1996.
- M30** Section 22 has been prospectively repealed by section 66(3) of and Schedule 10 to the Family Law Act 1996.
- M31** Section 7(1)(b) was amended by section 40 of and paragraphs 5 and 6 of Schedule 3 to the Children Act 2004.
- M32** Section 19 was amended by section 6(4) and 17(2) of and Schedule 6 to the Domicile and Matrimonial Proceedings Act 1973 (c. 45) and subsection (4) has been prospectively repealed by section 66(1) of and paragraph 7 of Schedule 8 to the Family Law Act 1996.

**Modification of rules in application to serial numbers etc.**

2.4. If a serial number has been assigned under rule 14.2 or the name or other contact details of a party is not being revealed in accordance with rule 29.1—

- (a) any rule requiring any party to serve any document will not apply; and
- (b) the court will give directions about serving any document on the other parties.

**Power to perform functions conferred on the court by these rules and practice directions**

2.5.—(1) <sup>M33</sup>Where these rules or a practice direction provide for the court to perform any function then, except where any rule or practice direction [<sup>F38</sup>or any other enactment] provides otherwise, that function may be performed—

- (a) in relation to proceedings in the High Court or in a district registry, by any judge or district judge of that Court including a district judge of the principal registry;
- <sup>F39</sup>(b) in relation to proceedings in the family court—
  - (i) by the court composed in accordance with rules made under section 31D of the 1984 Act; or
  - (ii) where Practice Direction 2A applies, by a single lay justice who is authorised as specified in rules made under section 31D of the 1984 Act.]

<sup>F40</sup>(c) .....

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

[<sup>F41</sup>(Rules made under section 31O of the 1984 Act make provision for a justices’ clerk to carry out certain functions of the family court or of a judge of the family court and for an assistant to a justices’ clerk to carry out functions of a justices’ clerk given under those rules, or by section 31O(2) of the 1984 Act.)]

(2) A deputy High Court judge and a district judge, including a district judge of the principal registry, may not try a claim for a declaration of incompatibility in accordance with section 4 of the Human Rights Act 1998 <sup>M34</sup>.

**Textual Amendments**

- F38** Words in rule 2.5(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 5\(a\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)
- F39** Rule 2.5(1)(b) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), [rules 1, 4](#) (with [rule 45](#))
- F40** Rule 2.5(1)(c) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 5\(c\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)
- F41** Words in rule 2.5(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 5\(d\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

**Modifications etc. (not altering text)**

- C2** Rule 2.5 excluded (18.6.2011) by [The Magistrates' Courts \(Enforcement or Variation of Orders Made in Family Proceedings and Miscellaneous Provisions\) Rules 2011 \(S.I. 2011/1329\)](#), [rules 1, 17](#) (with [rule 3\(2\)](#))

**Marginal Citations**

- M33** [1990 c.41](#). Section 9 was amended by section 15(1) of and paragraphs 211 and 213 of Schedule 4 to the [Constitutional Reform Act 2005](#).
- M34** [1998 c.42](#). Section 4 was amended by section 40(4) of and paragraphs 66(1) and (2) of Schedule 9 to the [Constitutional Reform Act 2005](#) and section 378(1) of and paragraph 156 of Schedule 16 to the [Armed Forces Act 2006 \(c.52\)](#) and section 67(1) of and paragraph 43 of Schedule 6 to the [Mental Capacity Act 2005](#).

**Powers of the single justice to perform functions under the 1989 Act, the 1996 Act, the 2002 Act and the Childcare Act 2006**

**2.6.—**(1) [<sup>F42</sup>A single lay justice who is authorised as specified in rules made under section 31D of the 1984 Act may perform the functions of the family court—]

- (a) where an application without notice is made under sections 10, 44(1), 48(9), 50(4) and 102(1) of the 1989 Act <sup>M35</sup>;
- (b) subject to paragraph (2), under sections 11(3) or 38(1) of the 1989 Act;
- (c) under sections 4(3)(b), 4A(3)(b), 4ZA(6)(b), 7, 34(3)(b), 41, 44(9)(b) and (11)(b)(iii), 48(4), 91(15) or (17) or paragraph 11(4) of Schedule 14 of the 1989 Act;
- <sup>F43</sup>(d) .....
- (e) where an application without notice is made under section 41(2) of the 2002 Act (recovery orders);
- (f) where an application without notice is made for an occupation order or a non molestation order under Part 4 of the 1996 Act; or
- (g) where an application is made for a warrant under section 79 of the Childcare Act 2006;

(2) A single [<sup>F44</sup>lay justice] may make an order under section 11(3) or 38(1) of the 1989 Act where—

- (a) a previous such order has been made in the same proceedings;
- (b) the terms of the order sought are the same as those of the last such order made; and
- (c) a written request for such an order has been made and —
  - (i) the other parties and any children's guardian consent to the request and they or their legal representatives have signed the request; or
  - (ii) at least one of the other parties and any children's guardian consent to the request and they or their legal representatives have signed the request, and the remaining parties have not indicated that they either consent to or oppose the making of the order.

(3) The proceedings referred to in paragraph [<sup>F45</sup>(1)(a) and (c)] are proceedings which are prescribed for the purposes of section 93(2)(i) of the 1989 Act.

**Textual Amendments**

- F42** Words in rule 2.6(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **5(a)(i)** (with rule 45)
- F43** Rule 2.6(1)(d) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **5(a)(ii)** (with rule 45)
- F44** Words in rule 2.6(2) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **5(b)** (with rule 45)
- F45** Words in rule 2.6(3) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **5(c)** (with rule 45)

**Marginal Citations**

- M35** [Section 10](#) was amended by section 139(1) of and paragraphs 54 and 56(a) (b) and (c) of Schedule 3 to the Adoption and Children Act 2002 and section 77 of the Civil Partnership Act 2004 and section 36 of the [Children and Young Persons Act 2008 \(c. 23\)](#).

**[<sup>F46</sup>Single lay justice: power to refer to the family court**

**2.7.** Where a single lay justice—

- (a) is performing a function of the family court in accordance with rule 2.5(1)(b)(ii) or rule 2.6(1) or (2); and
- (b) considers, for whatever reason, that it is inappropriate to perform the function,

the single lay justice must refer the matter to the family court.]

**Textual Amendments**

- F46** Rule 2.7 substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **6** (with rule 45)

**Court's discretion as to where it deals with cases**

**2.8.** The court may deal with a case at any place that it considers appropriate.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

## Computation of time

**2.9.**—(1) This rule shows how to calculate any period of time for doing any act which is specified—

- (a) by these rules;
- (b) by a practice direction; or
- (c) by a direction or order of the court.

(2) A period of time expressed as a number of days must be computed as clear days.

(3) In this rule “clear days” means that in computing the numbers of days—

- (a) the day on which the period begins; and
- (b) if the end of the period is defined by reference to an event, the day on which that event occurs,

are not included.

(4) Where the specified period is 7 days or less and includes a day which is not a business day, that day does not count.

(5) When the period specified—

- (a) by these rules or a practice direction; or
- (b) by any direction or order of the court,

for doing any act at the court office ends on a day on which the office is closed, that act will be in time if done on the next day on which the court office is open.

## Dates for compliance to be calendar dates and to include time of day

**2.10.**—(1) Where the court makes an order or gives a direction which imposes a time limit for doing any act, the last date for compliance must, wherever practicable—

- (a) be expressed as a calendar date; and
- (b) include the time of day by which the act must be done.

(2) Where the date by which an act must be done is inserted in any document, the date must, wherever practicable, be expressed as a calendar date.

(3) Where “month” occurs in any order, direction or other document, it means a calendar month.

## [<sup>F47</sup>Part 3

### Non-court Dispute Resolution

#### Textual Amendments

**F47** Pt. 3 substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, 5

#### Chapter 1

#### Interpretation

**3.1.** In this Part—

“allocation” means allocation of proceedings other than appeal proceedings to a level of judge;



“authorised family mediator” means a mediator who is—

- (a) subject to the Family Mediation Council’s code of conduct by virtue of his or her membership of a Family Mediation Council member organisation; and
- (b) certified to undertake MIAMs by the professional practice consultant who is supervising the mediator’s practice and who is a member of and approved for the purpose by a Family Mediation Council member organisation;

“domestic violence” means any incident, or pattern of incidents, of controlling, coercive or threatening behaviour, violence or abuse (whether psychological, physical, sexual, financial or emotional) between the prospective applicant and another prospective party;

“family mediation information and assessment meeting” has the meaning given to it in section 10(3) of the 2014 Act.

“harm” has the meaning given to it in section 31 of the Children Act 1989;

“mediator’s exemption” has the meaning given to it in Rule 3.8(2);

“MIAM” means a family mediation information and assessment meeting;

“MIAM exemption” has the meaning given to it in Rule 3.8(1);

“MIAM requirement” is the requirement in section 10(1) of the 2014 Act for a person to attend a MIAM before making a relevant family application;

“private law proceedings” has the meaning given to it in Rule 12.2;

“prospective applicant” is the person who is considering making a relevant family application;

“prospective party” is a person who would be likely to be a party to the proceedings in the relevant family application;

“prospective respondent” is a person who would be a likely respondent to the proceedings in the relevant family application; and

“relevant family application” has the meaning given to it in section 10(3) of the 2014 Act.

## Chapter 2:

### The Court’s Duty and Powers Generally

#### Scope of this Chapter

**3.2.** This Chapter contains the court’s duty and powers to encourage and facilitate the use of non-court dispute resolution.

#### The court’s duty to consider non-court dispute resolution

**3.3.—(1)** The court must consider, at every stage in proceedings, whether non-court dispute resolution is appropriate.

(2) In considering whether non-court dispute resolution is appropriate in proceedings which were commenced by a relevant family application, the court must take into account –

- (a) whether a MIAM took place;
- (b) whether a valid MIAM exemption was claimed or mediator’s exemption was confirmed; and
- (c) whether the parties attempted mediation or another form of non-court dispute resolution and the outcome of that process.

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### **When the court will adjourn proceedings or a hearing in proceedings**

**3.4.**—(1) If the court considers that non-court dispute resolution is appropriate, it may direct that the proceedings, or a hearing in the proceedings, be adjourned for such specified period as it considers appropriate—

(a) to enable the parties to obtain information and advice about non-court dispute resolution; and

(b) where the parties agree, to enable non-court dispute resolution to take place.

(2) The court may give directions under this rule on an application or of its own initiative.

(3) Where the court directs an adjournment under this rule, it will give directions about the timing and method by which the parties must tell the court if any of the issues in the proceedings have been resolved.

(4) If the parties do not tell the court if any of the issues have been resolved as directed under paragraph (3), the court will give such directions as to the management of the case as it considers appropriate.

(5) The court or court officer will—

(a) record the making of an order under this rule; and

(b) arrange for a copy of the order to be served as soon as practicable on the parties.

(6) Where the court proposes to exercise its powers of its own initiative, the procedure set out in rule 4.3(2) to (6) applies.

### Chapter 3:

#### Family Mediation Information and Assessment Meetings (MIAMs)

### **Scope of this Chapter**

**3.5.** This Chapter contains Rules about the requirement in section 10(1) of the 2014 Act to attend a MIAM.

### **Applications to which the MIAM requirement applies**

**3.6.**—(1) The MIAM requirement applies to any application to initiate the proceedings specified in paragraph (2), unless a MIAM exemption or a mediator’s exemption applies.

(2) The specified proceedings are—

(a) the private law proceedings relating to children specified in Practice Direction 3A; and

(b) the proceedings for a financial remedy specified in Practice Direction 3A.

### **Making an application**

**3.7.** An application to initiate any of the proceedings specified in Rule 3.6 must contain, or be accompanied by, a form containing, either—

(a) a confirmation from an authorised family mediator that the prospective applicant has attended a MIAM;

(b) a claim by the prospective applicant that one of the MIAM exemptions applies; or

*(A list of MIAM exemptions is set out in Rule 3.8(1) below.)*

(c) a confirmation from an authorised family mediator that a mediator’s exemption applies.

*(A list of mediator’s exemptions is set out in Rule 3.8(2) below.)*

### **Circumstances in which the MIAM requirement does not apply (MIAM exemptions and mediator's exemptions)**

**3.8.** The MIAM requirement does not apply if—

(1) a prospective applicant claims in the relevant form that any of the following circumstances (a “MIAM exemption”) applies—

#### *Domestic violence*

(a) there is evidence of domestic violence, as specified in Practice Direction 3A; or

#### *Child protection concerns*

- (b) (i) — a child would be the subject of the application; and  
(ii) that child or another child of the family who is living with that child is currently—  
(aa) the subject of enquiries by a local authority under section 47 of the 1989 Act; or  
(ab) the subject of a child protection plan put in place by a local authority; or

#### *Urgency*

- (c) the application must be made urgently because—  
(i) there is risk to the life, liberty or physical safety of the prospective applicant or his or her family or his or her home; or  
(ii) any delay caused by attending a MIAM would cause—  
(aa) a risk of harm to a child;  
(ab) a risk of unlawful removal of a child from the United Kingdom, or a risk of unlawful retention of a child who is currently outside England and Wales;  
(ac) a significant risk of a miscarriage of justice;  
(ad) unreasonable hardship to the prospective applicant; or  
(ae) irretrievable problems in dealing with the dispute (including the irretrievable loss of significant evidence); or  
(iii) there is a significant risk that in the period necessary to schedule and attend a MIAM, proceedings relating to the dispute will be brought in another state in which a valid claim to jurisdiction may exist, such that a court in that other State would be seised of the dispute before a court in England and Wales; or

#### *Previous MIAM attendance or MIAM exemption*

- (d) —  
(i) in the 4 months prior to making the application, the person attended a MIAM or participated in another form of non-court dispute resolution relating to the same or substantially the same dispute; or  
(ii) at the time of making the application, the person is participating in another form of non-court dispute resolution relating to the same or substantially the same dispute; or  
(e) —  
(i) in the 4 months prior to making the application, the person filed a relevant family application confirming that a MIAM exemption applied; and  
(ii) that application related to the same or substantially the same dispute; or  
(f) —

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- (i) the application would be made in existing proceedings which are continuing; and
- (ii) the prospective applicant attended a MIAM before initiating those proceedings; or
- (g) —
  - (i) the application would be made in existing proceedings which are continuing; and
  - (ii) a MIAM exemption applied to the application for those proceedings; or

*Other*

- (h) —
  - (i) there is evidence that the prospective applicant is bankrupt, as specified in Practice Direction 3A; and
  - (ii) the proceedings would be for a financial remedy; or
- (i) the prospective applicant does not have sufficient contact details for any of the prospective respondents to enable a family mediator to contact any of the prospective respondents for the purpose of scheduling the MIAM; or
- (j) the application would be made without notice; or

*(Paragraph 5.1 of Practice Direction 18A sets out the circumstances in which applications may be made without notice.)*

- (k) —
  - (i) the prospective applicant is or all of the prospective respondents are subject to a disability or other inability that would prevent attendance at a MIAM unless appropriate facilities can be offered by an authorised mediator;
  - (i) the prospective applicant has contacted as many authorised family mediators as have an office within fifteen miles of his or home (or three of them if there are three or more), and all have stated that they are unable to provide such facilities; and
  - (iii) the names, postal addresses and telephone numbers or e-mail addresses for such authorised family mediators, and the dates of contact, can be provided to the court if requested; or
- (l) the prospective applicant or all of the prospective respondents cannot attend a MIAM because he or she is, or they are, as the case may be—
  - (i) in prison or any other institution in which he or she is or they are required to be detained;
  - (ii) subject to conditions of bail that prevent contact with the other person; or
  - (iii) subject to a licence with a prohibited contact requirement in relation to the other person; or
- (m) the prospective applicant or all of the prospective respondents are not habitually resident in England and Wales; or
- (n) a child is one of the prospective parties by virtue of Rule 12.3(1); or
- (o) —
  - (i) the prospective applicant has contacted as many authorised family mediators as have an office within fifteen miles of his or her home (or three of them if there are three or more), and all of them have stated that they are not available to conduct a MIAM within fifteen business days of the date of contact; and
  - (ii) the names, postal addresses and telephone numbers or e-mail addresses for such authorised family mediators, and the dates of contact, can be provided to the court if requested; or

- (p) there is no authorised family mediator with an office within fifteen miles of the prospective applicant’s home; or
- (2) an authorised family mediator confirms in the relevant form (a “mediator’s exemption”) that he or she is satisfied that—
  - (a) mediation is not suitable as a means of resolving the dispute because none of the respondents is willing to attend a MIAM; or
  - (b) mediation is not suitable as a means of resolving the dispute because all of the respondents failed without good reason to attend a MIAM appointment; or
  - (c) mediation is otherwise not suitable as a means of resolving the dispute.

### **Conduct of MIAMs**

- 3.9.**—(1) Only an authorised family mediator may conduct a MIAM.
- (2) At the MIAM, the authorised family mediator must—
- (a) provide information about the principles, process and different models of mediation, and information about other methods of non-court dispute resolution;
  - (b) assess the suitability of mediation as a means of resolving the dispute;
  - (c) assess whether there has been, or is a risk of, domestic violence; and
  - (d) assess whether there has been, or is a risk of, harm by a prospective party to a child that would be a subject of the application.

### **MIAM exemption not validly claimed**

**3.10.**—(1) If a MIAM exemption has been claimed, the court will, if appropriate when making a decision on allocation, and in any event at the first hearing, inquire into whether the exemption was validly claimed.

- (2) If a court finds that the MIAM exemption was not validly claimed, the court will—
- (a) direct the applicant, or direct the parties to attend a MIAM; and
  - (b) if necessary, adjourn the proceedings to enable a MIAM to take place;

unless the court considers that in all the circumstances of the case, the MIAM requirement should not apply to the application in question.

- (3) In making a decision under Rule 3.10(2), the court will have particular regard to—
- (a) any applicable time limits;
  - (b) the reason or reasons why the MIAM exemption was not validly claimed;
  - (c) the applicability of any other MIAM exemptions; and
  - (d) the number and nature of issues that remain to be resolved in the proceedings.]

## **PART 4**

### **GENERAL CASE MANAGEMENT POWERS**

#### **The court's general powers of management**

**4.1.**—(1) In this Part, “statement of case” means the whole or part of, an application form or answer.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

(2) The list of powers in this rule is in addition to any powers given to the court by any other rule or practice direction or by any other enactment or any powers it may otherwise have.

(3) Except where these rules provide otherwise, the court may—

- (a) extend or shorten the time for compliance with any rule, practice direction or court order (even if an application for extension is made after the time for compliance has expired);
- (b) make such order for disclosure and inspection, including specific disclosure of documents, as it thinks fit;
- (c) adjourn or bring forward a hearing;
- (d) require a party or a party's legal representative to attend the court;
- (e) hold a hearing and receive evidence by telephone or by using any other method of direct oral communication;
- (f) direct that part of any proceedings be dealt with as separate proceedings;
- (g) stay<sup>(GL)</sup> the whole or part of any proceedings or judgment either generally or until a specified date or event;
- (h) consolidate proceedings;
- (i) hear two or more applications on the same occasion;
- (j) direct a separate hearing of any issue;
- (k) decide the order in which issues are to be heard;
- (l) exclude an issue from consideration;
- (m) dismiss or give a decision on an application after a decision on a preliminary issue;
- (n) direct any party to file and serve an estimate of costs; and
- (o) take any other step or make any other order for the purpose of managing the case and furthering the overriding objective.

(Rule 21.1 explains what is meant by disclosure and inspection.)

(4) When the court makes an order, it may—

- (a) make it subject to conditions, including a condition to pay a sum of money into court; and
- (b) specify the consequence of failure to comply with the order or a condition.

(5) Where the court gives directions it will take into account whether or not a party has complied with any relevant pre-action protocol<sup>(GL)</sup>.

(6) A power of the court under these rules to make an order includes a power to vary or revoke the order.

(7) Any provision in these rules—

- (a) requiring or permitting directions to be given by the court is to be taken as including provision for such directions to be varied or revoked; and
- (b) requiring or permitting a date to be set is to be taken as including provision for that date to be changed or cancelled.

(8) The court may not extend the period within which [<sup>F48</sup>an application for] a section 89 order must be made.

#### **Textual Amendments**

**F48** Words in rule 4.1(8) inserted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), rules 1, 4 (with rule 30)

### Court officer's power to refer to the court

- 4.2. Where a step is to be taken by a court officer—
- (a) the court officer may consult the court before taking that step;
  - (b) the step may be taken by the court instead of the court officer.

### Court's power to make order of its own initiative

4.3.—(1) Except where an enactment provides otherwise, the court may exercise its powers on an application or of its own initiative. (Part 18 sets out the procedure for making an application.)

- (2) [<sup>F49</sup>Subject to rule 29.17, where] the court proposes to make an order of its own initiative—
- (a) it may give any person likely to be affected by the order an opportunity to make representations; and
  - (b) where it does so it must specify the time by and the manner in which the representations must be made.
- (3) Where the court proposes—
- (a) to make an order of its own initiative; and
  - (b) to hold a hearing to decide whether to make the order,

it must give each party likely to be affected by the order at least 5 days' notice of the hearing.

(4) The court may make an order of its own initiative without hearing the parties or giving them an opportunity to make representations.

- (5) Where the court has made an order under paragraph (4)—
- (a) a party affected by the order may apply to have it set aside<sup>(GL)</sup>, varied or stayed<sup>(GL)</sup>; and
  - (b) the order must contain a statement of the right to make such an application.
- (6) An application under paragraph (5)(a) must be made—
- (a) within such period as may be specified by the court; or
  - (b) if the court does not specify a period, within 7 days beginning with the date on which the order was served on the party making the application.

(7) If [<sup>F50</sup>the court] of its own initiative strikes out a statement of case or dismisses an application (including an application for permission to appeal) and it considers that the application is totally without merit—

- (a) the court's order must record that fact; and
- (b) the court must at the same time consider whether it is appropriate to make a civil restraint order.

#### Textual Amendments

- F49** Words in rule 4.3(2) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 6\(a\)](#) (with [rule 137](#)); [S.I. 2014/954](#), [art. 2](#)
- F50** Words in rule 4.3(7) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 6\(b\)](#) (with [art. 137](#)); [S.I. 2014/954](#), [art. 2](#)

### Power to strike out a statement of case

4.4.—(1) Except in proceedings to which Parts 12 to 14 apply, the court may strike out<sup>(GL)</sup> a statement of case if it appears to the court—

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

- (a) that the statement of case discloses no reasonable grounds for bringing or defending the application;
  - (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings;
  - (c) that there has been a failure to comply with a rule, practice direction or court order; or
  - (d) in relation to applications for matrimonial and civil partnership orders and answers to such applications, that the parties to the proceedings consent.
- (2) When the court strikes out a statement of case it may make any consequential order it considers appropriate.
- (3) Where—
- (a) the court has struck out an applicant's statement of case;
  - (b) the applicant has been ordered to pay costs to the respondent; and
  - (c) before paying those costs, the applicant starts another application against the same respondent, arising out of facts which are the same or substantially the same as those relating to the application in which the statement of case was struck out,
- the court may, on the application of the respondent, stay<sup>(GL)</sup> that other application until the costs of the first application have been paid.
- (4) Paragraph (1) does not limit any other power of the court to strike out<sup>(GL)</sup> a statement of case.
- (5) If [<sup>F51</sup>the court] strikes out an applicant's statement of case and it considers that the application is totally without merit—
- (a) the court's order must record that fact; and
  - (b) the court must at the same time consider whether it is appropriate to make a civil restraint order.

#### Textual Amendments

**F51** Words in rule 4.4(5) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 7](#) (with [rule 137](#)); [S.I. 2014/954](#), [art. 2](#)

#### Sanctions have effect unless defaulting party obtains relief

**4.5.—**(1) Where a party has failed to comply with a rule, practice direction or court order, any sanction for failure to comply imposed by the rule, practice direction or court order has effect unless the party in default applies for and obtains relief from the sanction. (Rule 4.6 sets out the circumstances which the court may consider on an application to grant relief from a sanction.)

(2) Where the sanction is the payment of costs, the party in default may only obtain relief by appealing against the order for costs.

(3) Where a rule, practice direction or court order—

- (a) requires a party to do something within a specified time; and
- (b) specifies the consequence of failure to comply,

the time for doing the act in question may not be extended by agreement between the parties.

#### Relief from sanctions

**4.6.—**(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order the court will consider all the circumstances including—



- (a) the interests of the administration of justice;
  - (b) whether the application for relief has been made promptly;
  - (c) whether the failure to comply was intentional;
  - (d) whether there is a good explanation for the failure;
  - (e) the extent to which the party in default has complied with other rules, practice directions, court orders and any relevant pre-action protocol<sup>(GL)</sup>;
  - (f) whether the failure to comply was caused by the party or the party's legal representative;
  - (g) whether the hearing date or the likely hearing date can still be met if relief is granted;
  - (h) the effect which the failure to comply had on each party; and
  - (i) the effect which the granting of relief would have on each party or a child whose interest the court considers relevant.
- (2) An application for relief must be supported by evidence.

#### **General power of the court to rectify matters where there has been an error of procedure**

**4.7.** Where there has been an error of procedure such as a failure to comply with a rule or practice direction—

- (a) the error does not invalidate any step taken in the proceedings unless the court so orders; and
- (b) the court may make an order to remedy the error.

#### **Power of the court to make civil restraint orders**

**4.8.** Practice Direction 4B sets out—

- (a) the circumstances in which [<sup>F52</sup>the court] has the power to make a civil restraint order against a party to proceedings;
- (b) the procedure where a party applies for a civil restraint order against another party; and
- (c) the consequences of the court making a civil restraint order.

#### **Textual Amendments**

**F52** Words in rule 4.8(a) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 8](#) (with [rule 137](#)); [S.I. 2014/954](#), [art. 2](#)

## **PART 5**

### **FORMS AND START OF PROCEEDINGS**

#### **Forms**

**5.1.—**(1) Subject to rule 14.10(2) and(3), the forms referred to in a practice direction, shall be used in the cases to which they apply.

(2) A form may be varied by the court or a party if the variation is required by the circumstances of a particular case.

(3) A form must not be varied so as to leave out any information or guidance which the form gives to the recipient.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

(4) Where these rules require a form to be sent by the court or by a party for another party to use, it must be sent without any variation except such as is required by the circumstances of the particular case.

[<sup>F53</sup>(5) Paragraph (2) does not apply to the forms annexed to the Maintenance Regulation [<sup>F54</sup>, or to an Article 11 form].]

[<sup>F55</sup>(6) Nothing in this rule requires a party to reveal any particulars referred to in rule 29.1(1) if notice of those particulars is given to the court in accordance with rule 29.1(2).]

#### Textual Amendments

**F53** Rule 5.1(5) inserted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), rules 1, 5

**F54** Words in rule 5.1(5) inserted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), rules 1, 5

**F55** Rule 5.1(6) inserted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), rules 1, 5 (with rule 30)

#### Documents to be attached to a form

**5.2.** Subject to any rule or practice direction, unless the court directs otherwise, a form must have attached to it any documents which, in the form, are—

- (a) stated to be required; or
- (b) referred to.

#### Proceedings are started by issue of application form

**5.3.—**(1) Proceedings are started when a court officer issues an application at the request of the applicant.

(2) An application is issued on the date entered in the application form by the court officer.

[<sup>F56</sup>(3) Where the application is made under Article 56 of the Maintenance Regulation, or under Article 10 of the 2007 Hague Convention, the applicant is deemed to have requested the issue of the application by virtue of making the application for establishment or modification of a maintenance decision forwarded on his or her behalf by the Lord Chancellor.

[The Lord Chancellor is the Central Authority for England and Wales in relation to the 2007 Hague Convention and the Maintenance Regulation]]

(Rule 29.7 requires an application form to be authenticated with the stamp of the court when it is issued)

#### Textual Amendments

**F56** Rule 5.3(3) and words inserted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), rules 1, 6

#### [<sup>F57</sup>Where to start proceedings

**5.4.—**(1) Where both the family court and the High Court have jurisdiction to deal with a matter, the proceedings relating to that matter must be started in the family court.

(2) Paragraph (1) does not apply where—

- (a) proceedings relating to the same parties are already being heard in the High Court;
- (b) any rule, other enactment or Practice Direction provides otherwise; or
- (c) the court otherwise directs.]

**Textual Amendments**

**F57** Rule 5.4 inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, 9 (with rule 137); S.I. 2014/954, **art. 2**

## **PART 6**

### **SERVICE**

#### **CHAPTER 1**

##### **SCOPE OF THIS PART AND INTERPRETATION**

#### **Part 6 rules about service apply generally**

- 6.1.** This Part applies to the service of documents, except where—
- (a) another Part, any other enactment or a practice direction makes a different provision; or
  - (b) the court directs otherwise.

#### **Interpretation**

**6.2.** In this Part “solicitor” includes any person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of that Act).

#### **CHAPTER 2**

##### **SERVICE OF THE APPLICATION FOR A MATRIMONIAL ORDER OR CIVIL PARTNERSHIP ORDER IN THE JURISDICTION**

#### **Interpretation**

- 6.3.** In this Chapter, unless the context otherwise requires, a reference to an application—
- (a) is a reference to an application for a matrimonial or civil partnership order; and
  - (b) includes an application by a respondent as referred to in rule 7.4.
- (Part 7 deals with applications in matrimonial or civil partnership proceedings.)

#### **Methods of service**

- 6.4.** An application may be served by any of the following methods—
- (a) personal service in accordance with rule 6.7;
  - (b) first class post, or other service which provides for delivery on the next business day, in accordance with Practice Direction 6A; or
  - (c) where rule 6.11 applies, document exchange.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

### **Who is to serve the application**

**6.5.**—(1) Subject to the provisions of this rule, an application may be served by—

- (a) the applicant; or
- (b) a court officer, if so requested by the applicant.

(2) A court officer will not serve the application if the party to be served is a child or protected party.

(3) An application must not be served personally by the applicant himself or herself. (Rule 6.14 deals with service of the application on children and protected parties.)

### **Every respondent to be served**

**6.6.** The application must be served on every respondent.

### **Personal service**

**6.7.** An application is served personally on a respondent by leaving it with that respondent.

### **Service of application by the court**

**6.8.**—(1) Where the application is to be served by a court officer, the applicant must give the court officer an address at which the respondent is to be served in accordance with rule 6.4.

(2) Where the court officer has sent a notification of failure of service to the applicant in accordance with rule 6.21, the applicant may request the court officer to serve the document on the respondent at an alternative address.

### **Service by the bailiff**

**6.9.**—(1) An applicant may request that an application be served by a bailiff delivering a copy of the application to the respondent personally.

(2) The request must be made in accordance with Practice Direction 6A.

(3) Where the bailiff is unable to serve the application, the applicant may apply to the court for an order under rule 6.19 (service by an alternative method or at an alternative place).

(Practice Direction 6A contains provision about when a request under this rule is appropriate.)  
(Rule 6.22 provides for notice of non-service by a bailiff.)

### **Where to serve the application – general provisions**

**6.10.**—(1) The application must be served within the jurisdiction except as provided for by Chapter 4 of this Part (service out of the jurisdiction).

(2) The applicant must include in the application an address at which the respondent may be served.

(3) Paragraph (2) does not apply where an order made by the court under rule 6.19 (service by an alternative method or at an alternative place) specifies the place or method of service of the application.

### **Service of the application on a solicitor within the jurisdiction or in any EEA state**

**6.11.**—(1) Where a solicitor acting for the respondent has notified the applicant in writing that the solicitor is instructed by the respondent to accept service of the application on behalf of the

respondent at a business address within the jurisdiction, the application must be served at the business address of that solicitor.

(2) Subject to the provisions of Chapter 4 of this Part, where a solicitor acting for the respondent has notified the applicant in writing that the solicitor is instructed by the respondent to accept service of the application on behalf of the respondent at a business address within any EEA state, the application must be served at the business address of that solicitor. (“Solicitor” has the extended meaning set out in rule 6.2 and “EEA state” is defined in Schedule 1 to the Interpretation Act 1978<sup>M36</sup>.)

**Marginal Citations**

**M36** 1978 c.30.

**Service of the application where the respondent gives an address at which the respondent may be served**

**6.12.** Subject to rule 6.13, the respondent may be served with the application at an address within the jurisdiction which the respondent has given for the purpose of being served with the proceedings.

**Service of the application where the respondent does not give an address at which the respondent may be served**

**6.13.—**(1) This rule applies where—

- (a) rule 6.11 (service of application on solicitor); and
- (b) rule 6.12 (respondent gives address at which respondent may be served),

do not apply and the applicant does not wish the application to be served personally under rule 6.7.

(2) Subject to paragraphs (3) to (5) the application must be served on the respondent at his usual or last known address.

(3) Where the applicant has reason to believe that the respondent no longer resides at his usual or last known address, the applicant must take reasonable steps to ascertain the current address of the respondent.

(4) Where, having taken the reasonable steps required by paragraph (3), the applicant—

- (a) ascertains the respondent's current address, the application must be served at that address; or
- (b) is unable to ascertain the respondent's current address, the applicant must consider whether there is—
  - (i) an alternative place where; or
  - (ii) an alternative method by which, service may be effected.

(5) If, under paragraph (4)(b), there is such a place where or a method by which service could be effected, the applicant must make an application under rule 6.19.

**Service of the application on children and protected parties**

**6.14.—**(1) Where the respondent is a child, the application form must be served on—

- (a) one of the child's parents or guardians; or

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*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

- (b) if there is no parent or guardian, an adult with whom the child resides or in whose care the child is.
- (2) Where the respondent is a protected party, the application must be served on—
- (a) one of the following persons with authority in relation to the protected party—
- (i) the attorney under a registered enduring power of attorney;
  - (ii) the donee of a lasting power of attorney; or
  - (iii) the deputy appointed by the Court of Protection; or
- (b) if there is no such person, an adult with whom the protected party resides or in whose care the protected party is.
- (3) Any reference in this Chapter to a respondent or party to be served includes the person to be served with the application form on behalf of a child or protected party under paragraph (1) or (2).
- (4) The court may make an order permitting an application form to be served on a child or protected party, or on a person other than the person specified in paragraph (1) or (2).
- (5) An application for an order under paragraph (4) may be made without notice.
- (6) The court may order that, although an application form has been sent or given to someone other than the person specified in paragraph (1) or (2), it is to be treated as if it had been properly served.
- (7) Where a document is served in accordance with this rule—
- (a) it must be endorsed with the notice set out in Practice Direction 6A; and
  - (b) the person commencing the proceedings must file a witness statement by the person on whom the application form was served stating whether—
    - (i) the contents of the application form; or
    - (ii) the purpose and intention of the application,
 were communicated to the child or protected party and, if not, why not.
- (8) Paragraph (7)(b) does not apply where the Official Solicitor is, as the case may be—
- (a) the litigation friend of the protected party; or
  - (b) the litigation friend or children's guardian of the child.

### **Deemed service – receipt of acknowledgment of service**

**6.15.**—(1) Subject to paragraph (2), an application is deemed to be served if the acknowledgment of service, signed by the party served or the solicitor acting on that party's behalf, is returned to the court office.

(2) Where the signature on the acknowledgment of service purports to be that of the other party to the marriage or civil partnership, the applicant must prove that it is the signature of that party by—

- (a) giving oral evidence to that effect at the hearing; or
- (b) if the application is undefended, confirming it to be so in the [<sup>F58</sup>statement] the applicant files under rule 7.19(4).

#### **Textual Amendments**

**F58** Word in rule 6.15(2)(b) substituted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), rules 1, 6 (with rule 30)

## Deemed service by post or alternative service where no acknowledgment of service filed

6.16.—(1) Subject to paragraph (2), if—

- (a) an application has been served on a respondent by post or other service which provides for delivery on the next business day;
- (b) no acknowledgment of service has been returned to the court office; and
- (c) the court is satisfied that the respondent has received the application,

the [<sup>F59</sup>court] may direct that the application is deemed to be served.

(2) Where—

- (a) the application alleges 2 years' separation and the respondent consents to a matrimonial or civil partnership order being granted; and
- (b) none of the other facts mentioned in section 1(2) of the 1973 Act <sup>M37</sup> or section 44(5) of the 2004 Act, as the case may be, is alleged,

paragraph (1) applies only if—

- (i) the court is satisfied that the respondent has received notice of the proceedings; and
- (ii) the applicant produces a written statement, signed by the respondent, containing the respondent's consent to the grant of an order.

### Textual Amendments

**F59** Word in rule 6.16(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 10](#) (with [rule 137](#)); [S.I. 2014/954](#), [art. 2](#)

### Marginal Citations

**M37** [Section 1\(2\)](#) has been prospectively repealed by section 66(3) of and Schedule 10 to the Family Law Act 1996.

## Proof of personal service where no acknowledgment of service filed

6.17.—(1) This rule applies where—

- (a) an application has been served on a respondent personally; and
- (b) no acknowledgment of service has been returned to the court office.

(2) The person serving the application must file a certificate of service stating the date and time of personal service.

(Practice Direction 6A makes provision for a certificate of service by a bailiff.)

(3) If the respondent served was the other party to the marriage or civil partnership, the certificate of service must show the means by which the person serving the application knows the identity of the party served.

## Proof of service by the court etc.

6.18.—(1) Where a court officer serves an application by post, or other service which provides for delivery on the next business day, the court officer must note in the court records the date of—

- (a) posting; or
- (b) leaving with, delivering to or collection by the relevant service provider.

(2) A record made in accordance with paragraph (1) is evidence of the facts stated in it.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

(3) This rule does not affect the operation of section [F60]31N of the 1984 Act]. (Section [F61]31N of the 1984 Act] provides that where a summons or other process issued from [F62]the family court] is served by an officer of a court, service may be proved by a certificate in a prescribed form.)

#### Textual Amendments

- F60** Words in rule 6.18 substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\), rules 1, 11\(b\)\(i\)](#) (with rule 137); S.I. 2014/954, [art. 2](#)
- F61** Words in rule 6.18(3) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\), rules 1, 11\(a\)](#) (with rule 137); S.I. 2014/954, [art. 2](#)
- F62** Words in rule 6.18 substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\), rules 1, 11\(b\)\(ii\)](#) (with rule 137); S.I. 2014/954, [art. 2](#)

#### Service of the application by an alternative method or at an alternative place

**6.19.**—(1) Where it appears to the court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part, the court may direct that service is effected by an alternative method or at an alternative place.

(2) On an application under this rule, the court may direct that steps already taken to bring the application form to the attention of the respondent by an alternative method or at an alternative place is good service.

- (3) A direction under this rule must specify—
- (a) the method or place of service;
  - (b) the date on which the application form is deemed served; and
  - (c) the period for filing an acknowledgment of service or answer.

#### Power of the court to dispense with service of the application

**6.20.**—(1) The court may dispense with service of the application where it is impracticable to serve the application by any method provided for by this Part.

(2) An application for an order to dispense with service may be made at any time and must be supported by evidence.

- (3) The court may require the applicant to attend when it decides the application.

#### Notification of failure of service by the court

**6.21.** Where—

- (a) the court serves the application by post or other service which provides for delivery on the next business day; and
- (b) the application is returned to the court,

the court will send notification to the applicant that the application has been returned.

#### Notice of non-service by bailiff

**6.22.** Where—

- (a) the bailiff is to serve an application; and
- (b) the bailiff is unable to serve it on the respondent,

the court officer will send notification to the applicant.



## CHAPTER 3

### SERVICE OF DOCUMENTS OTHER THAN AN APPLICATION FOR A MATRIMONIAL ORDER OR CIVIL PARTNERSHIP ORDER IN THE UNITED KINGDOM

#### Method of service

**6.23.** A document may be served by any of the following methods—

- (a) personal service, in accordance with rule 6.25;
- (b) first class post, document exchange or other service which provides for delivery on the next business day, in accordance with Practice Direction 6A;
- (c) leaving it at a place specified in rule 6.26; or
- (d) fax or other means of electronic communication in accordance with Practice Direction 6A.

(Rule 6.35 provides for the court to permit service by an alternative method or at an alternative place.)

#### Who is to serve

**6.24.—**(1) A party to proceedings will serve a document which that party has prepared, or which the court has prepared or issued on behalf of that party, except where—

- (a) a rule or practice direction provides that the court will serve the document; or
- (b) the court directs otherwise.

(2) Where a court officer is to serve a document, it is for the court to decide which method of service is to be used.

(3) Where the court officer is to serve a document prepared by a party, that party must provide a copy for the court and for each party to be served.

#### Personal service

**6.25.—**(1) Where required by another Part, any other enactment, a practice direction or a court order, a document must be served personally.

(2) In other cases, a document may be served personally except where the party to be served has given an address for service under rule 6.26(2)(a).

(3) A document is served personally on an individual by leaving it with that individual.

#### Address for service

**6.26.—**(1) A party to proceedings must give an address at which that party may be served with documents relating to those proceedings.

(2) Subject to paragraph (4), a party's address for service must be—

- (a) the business address either within the United Kingdom or any other EEA state of a solicitor acting for the party to be served; or
- (b) where there is no solicitor acting for the party to be served, an address within the United Kingdom at which the party resides or carries on business.

(“EEA state” is defined in Schedule 1 to the Interpretation Act 1978.)

(3) Where there is no solicitor acting for the party to be served and the party does not have an address within the United Kingdom at which that party resides or carries on business, the party must, subject to paragraph (4), give an address for service within the United Kingdom.

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*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

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- (4) A party who—
- (a) has been served with an application for a matrimonial or civil partnership order outside the United Kingdom; and
  - (b) apart from acknowledging service of the application, does not take part in the proceedings, need not give an address for service within the United Kingdom.

(5) Any document to be served in proceedings must be sent, or transmitted to, or left at, the party's address for service unless it is to be served personally or the court orders otherwise.

(6) Where, in accordance with Practice Direction 6A, a party indicates or is deemed to have indicated that they will accept service by fax, the fax number given by that party must be at the address for service.

(7) Where a party indicates in accordance with Practice Direction 6A, that they will accept service by electronic means other than fax, the e-mail address or electronic identification given by that party will be deemed to be at the address for service.

(8) This rule does not apply where an order made by the court under rule 6.35 (service by an alternative method or at an alternative place) specifies where a document may be served.

#### **Change of address for service**

**6.27.** Where the address for service of a party changes, that party must give notice in writing of the change, as soon as it has taken place, to the court and every other party.

#### **Service of an application form commencing proceedings on children and protected parties**

**6.28.—**(1) This rule applies to the service of an application form commencing proceedings other than an application for a matrimonial or civil partnership order.

(2) An application form commencing proceedings which would otherwise be served on a child or protected party must be served—

- (a) where the respondent is a child, in accordance with rule 6.14(1); and
- (b) where the respondent is a protected party, in accordance with rule 6.14(2).

#### **Service of other documents on or by children and protected parties where a litigation friend has been or will be appointed**

**6.29.—**(1) This rule applies to—

- (a) a protected party; or
- (b) a child to whom the provisions of rule 16.5 and Chapter 5 of Part 16 apply (litigation friends).

(2) An application for an order appointing a litigation friend where a protected party or child has no litigation friend must be served in accordance with rule 15.8 or rule 16.13 as the case may be.

(3) Any other document which would otherwise be served on or by a child or protected party must be served on or by the litigation friend conducting the proceedings on behalf of the child or protected party.

#### **Service on or by children where a children's guardian has been or will be appointed under rule 16.4**

**6.30.—**(1) This rule applies to a child to whom the provisions of rule 16.4 and Chapter 7 apply.

(2) An application for an order appointing a children's guardian where a child has no children's guardian must be served in accordance with rule 16.26.

(3) Any other document which would otherwise be served on or by a child must be served on or by the children's guardian conducting the proceedings on behalf of the child.

### **Service on or by children where a children's guardian has been appointed under rule 16.3**

**6.31.**—(1) This rule applies where a children's guardian has been appointed for a child in accordance with rule 16.3.

- (2) Any document which would otherwise be served on the child must be served on—
- (a) the solicitor appointed by the court in accordance with section 41(3) of the 1989 Act; and
  - (b) the children's guardian.
- (3) Any document which would otherwise be served by the child must be served by—
- (a) the solicitor appointed by the court in accordance with section 41(3) of the 1989 Act or by the children's guardian; or
  - (b) if no solicitor has been appointed as mentioned in paragraph (a), the children's guardian.

### **Supplementary provisions relating to service on children and protected parties**

**6.32.**—(1) The court may direct that a document be served on a protected party or child or on some person other than a person upon whom it would be served under rules 6.28 to 6.31 above.

(2) The court may direct that, although a document has been sent or given to someone other than a person upon whom it should be served under rules 6.28 to 6.31 above, the document is to be treated as if it had been properly served.

(3) This rule and rules 6.28 to 6.31 do not apply where the court has made an order under rule 16.6 allowing a child to conduct proceedings without a children's guardian or litigation friend.

### **Supplementary provision relating to service on children**

**6.33.**—(1) This rule applies to proceedings to which Part 12 applies.

- (2) Where a rule requires—
- (a) a document to be served on a party;
  - (b) a party to be notified of any matter; or
  - (c) a party to be supplied with a copy of a document,

in addition to the persons to be served in accordance with rules 6.28 to 6.32, the persons or bodies mentioned in paragraph (3) must be served, notified or supplied with a copy of a document, as applicable, unless the court directs otherwise.

- (3) The persons or bodies referred to in paragraph (2) are—
- (a) such of the following who are appointed in the proceedings—
    - (i) the children's guardian (if the children's guardian is not otherwise to be served);
    - (ii) the welfare officer;
    - (iii) the children and family reporter;
    - (iv) the officer of the Service, Welsh family proceedings officer or local authority officer acting under a duty referred to in rule 16.38; and
  - (b) a local authority preparing a report under section 14A(8) or (9) of the 1989 Act.

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### Deemed service

**6.34.** A document, other than an application for a matrimonial or civil partnership order, served in accordance with these rules or a practice direction is deemed to be served on the day shown in the following table—

<i>Method of service</i>	<i>Deemed day of service</i>
First class post (or other service which provides for delivery on the next business day)	The second day after it was posted, left with, delivered to or collected by the relevant service provider, provided that day is a business day; or, if not, the next business day after that day.
Document exchange	The second day after it was left with, delivered to or collected by the relevant service provider, provided that day is a business day; or, if not, the next business day after that day.
Delivering the document to or leaving it at a permitted address.	If it is delivered to or left at the permitted address on a business day before 4.30p.m., on that day; or in any other case, on the next business day after that day.
Fax.	If the transmission of the fax is completed on a business day before 4.30p.m., on that day; or, in any other case, the next business day after the day on which it was transmitted.
Other electronic method.	If the e-mail or other electronic transmission is sent on a business day before 4.30p.m., on that day; or in any other case, on the next business day after the day on which it was sent.
Personal service	If the document is served personally before 4.30p.m. on a business day, on that day; or, in any other case, on the next business day after that day.

(Practice Direction 6A contains examples of how the date of deemed service is calculated.)

### Service by an alternative method or at an alternative place

**6.35.** Rule 6.19 applies to any document in proceedings as it applies to an application for a matrimonial or civil partnership order and reference to the respondent in that rule is modified accordingly.

### Power to dispense with service

**6.36.** The court may dispense with the service of any document which is to be served in proceedings.

### Certificate of service

**6.37.—(1)** Where a rule, practice direction or court order requires a certificate of service, the certificate must state the details set out in the following table—

<i>Method of service</i>	<i>Details to be certified</i>
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Personal service.	Date and time of personal service and method of identifying the person served.
First class post, document exchange or other service which provides for delivery on the next business day.	Date of posting, leaving with, delivering to or collection by the relevant service provider.
Delivery of document to or leaving it at a permitted place.	Date and time when the document was delivered to or left at the permitted place.
Fax.	Date and time of completion of transmission.
Other electronic method	Date and time of sending the email or other electronic transmission.
Alternative method or place permitted by court	As required by the court.

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(2) An applicant who is required to file a certificate of service of an application form must do so at or before the earlier of—

- (a) the first directions appointment in; or
- (b) the hearing of,

the proceedings unless a rule or practice direction provides otherwise.

(Rule 17.2 requires a certificate of service to contain a statement of truth.)

#### **Notification of outcome of service by the court**

**6.38.** Where—

- (a) a document to be served by a court officer is served by post or other service which provides for delivery on the next working day; and
- (b) the document is returned to the court,

the court officer will send notification to the party who requested service that the document has been returned.

#### **Notification of non-service by bailiff**

**6.39.** Where—

- (a) the bailiff is to serve a document; and
- (b) the bailiff is unable to serve it,

the court officer must send notification to the party who requested service.

### **CHAPTER 4**

#### **SERVICE OUT OF THE JURISDICTION**

##### **Scope and interpretation**

**6.40.—**(1) This Chapter contains rules about—

- (a) service of application forms and other documents out of the jurisdiction; and
- (b) the procedure for service.

(“Jurisdiction” is defined in rule 2.3.)

(2) In this Chapter—

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“application form” includes an application notice;

“Commonwealth State” means a State listed in Schedule 3 to the British Nationality Act 1981<sup>M38</sup>; and

“the Hague Convention” means the Convention on the service abroad of judicial and extra-judicial documents in civil or commercial matters signed at the Hague on November 15, 1965.

#### Marginal Citations

M38 1981 c.61.

### Permission to serve not required

**6.41.** Any document to be served for the purposes of these rules may be served out of the jurisdiction without the permission of the court.

### Period for acknowledging service or responding to application where application is served out of the jurisdiction

**6.42.—**(1) This rule applies where, under these rules, a party is required to file—

- (a) an acknowledgment of service; or
- (b) an answer to an application,

and sets out the time period for doing so where the application is served out of the jurisdiction.

(2) Where the applicant serves an application on a respondent in—

- (a) Scotland or Northern Ireland; or
- (b) a Member State or Hague Convention country within Europe,

the period for filing an acknowledgment of service or an answer to an application is 21 days after service of the application.

(3) Where the applicant serves an application on a respondent in a Hague Convention country outside Europe, the period for filing an acknowledgment of service or an answer to an application is 31 days after service of the application.

(4) Where the applicant serves an application on a respondent in a country not referred to in paragraphs (2) and (3), the period for filing an acknowledgment of service or an answer to an application is set out in Practice Direction 6B.

### Method of service – general provisions

**6.43.—**(1) This rule contains general provisions about the method of service of an application for a matrimonial or civil partnership order, or other document, on a party out of the jurisdiction. *Where service is to be effected on a party in Scotland or Northern Ireland*

(2) Where a party serves an application form or other document on a party in Scotland or Northern Ireland, it must be served by a method permitted by Chapter 2 (and references to “jurisdiction” in that Chapter are modified accordingly) or Chapter 3 of this Part and rule 6.26(5) applies. *Where service is to be effected on a respondent out of the United Kingdom*

(3) Where the applicant wishes to serve an application form, or other document, on a respondent out of the United Kingdom, it may be served by any method—

- (a) provided for by—
  - (i) rule 6.44 (service in accordance with the Service Regulation);

(ii) rule 6.45 (service through foreign governments, judicial authorities and British Consular authorities); or

(b) permitted by the law of the country in which it is to be served.

(4) Nothing in paragraph (3) or in any court order authorises or requires any person to do anything which is contrary to the law of the country where the application form, or other document, is to be served.

### **Service in accordance with the Service Regulation**

**6.44.**—(1) This rule applies where the applicant wishes to serve the application form, or other document, in accordance with the Service Regulation.

(2) The applicant must file—

- (a) the application form or other document;
- (b) any translation; and
- (c) any other documents required by the Service Regulation.

(3) When the applicant files the documents referred to in paragraph (2), the court officer will—

- (a) seal<sup>(GL)</sup>, or otherwise authenticate with the stamp of the court, the copy of the application form; and
- (b) forward the documents to the Senior Master of the Queen's Bench Division.

[<sup>F63</sup>(4) In addition to the documents referred to in paragraph (2), the applicant may file a photograph of the person to be served if the applicant considers that it would assist in ensuring effective service.]

(The Service Regulation is annexed to Practice Direction 6B.) (Article 20(1) of the Service Regulation provides that the Regulation prevails over other provisions contained in any other agreement or arrangement concluded by Member States.)

#### **Textual Amendments**

**F63** Rule 6.44(4) inserted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), rules 1, 6

### **Service through foreign governments, judicial authorities and British Consular authorities**

**6.45.**—(1) Where the applicant wishes to serve an application form, or other document, on a respondent in any country which is a party to the Hague Convention, it may be served—

- (a) through the authority designated under the Hague Convention in respect of that country; or
- (b) if the law of that country permits—
  - (i) through the judicial authorities of that country; or
  - (ii) through a British Consular authority in that country.

(2) Where the applicant wishes to serve an application form, or other document, on a respondent in any country which is not a party to the Hague Convention, it may be served, if the law of that country so permits—

- (a) through the government of that country, where that government is willing to serve it; or
- (b) through a British Consular authority in that country.

(3) Where the applicant wishes to serve an application form, or other document, in—

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- (a) any Commonwealth State which is not a party to the Hague Convention;
- (b) the Isle of Man or the Channel Islands; or
- (c) any British Overseas Territory,

the methods of service permitted by paragraphs (1)(b) and (2) are not available and the applicant or the applicant's agent must effect service on a respondent in accordance with rule 6.43 unless Practice Direction 6B provides otherwise.

(4) This rule does not apply where service is to be effected in accordance with the Service Regulation. (A list of British overseas territories is reproduced in Practice Direction 6B.)

**Procedure where service is to be through foreign governments, judicial authorities and British Consular authorities**

**6.46.**—(1) This rule applies where the applicant wishes to serve an application form, or other document, under rule 6.45(1) or (2).

(2) Where this rule applies, the applicant must file—

- (a) a request for service of the application form, or other document, by specifying one or more of the methods in rule 6.45(1) or (2);
- (b) a copy of the application form or other document;
- (c) any other documents or copies of documents required by Practice Direction 6B; and
- (d) any translation required under rule 6.47.

(3) When the applicant files the documents specified in paragraph (2), the court officer will—

- (a) seal<sup>(GL)</sup>, or otherwise authenticate with the stamp of the court, the copy of the application form or other document; and
- (b) forward the documents to the Senior Master of the Queen's Bench Division.

(4) The Senior Master will send documents forwarded under this rule—

- (a) where the application form, or other document, is being served through the authority designated under the Hague Convention, to that authority; or
- (b) in any other case, to the Foreign and Commonwealth Office with a request that it arranges for the application form or other document to be served.

(5) An official certificate which—

- (a) states that the method requested under paragraph (2)(a) has been performed and the date of such performance;
- (b) states, where more than one method is requested under paragraph (2)(a), which method was used; and
- (c) is made by—
  - (i) a British Consular authority in the country where the method requested under paragraph (2)(a) was performed;
  - (ii) the government or judicial authorities in that country; or
  - (iii) the authority designated in respect of that country under the Hague Convention,

is evidence of the facts stated in the certificate.

(6) A document purporting to be an official certificate under paragraph (5) is to be treated as such a certificate, unless it is proved not to be.



**Translation of application form or other document**

6.47.—(1) Except where paragraphs (4) and (5) apply, every copy of the application form, or other document, filed under rule 6.45 (service through foreign governments, judicial authorities and British Consular authorities) must be accompanied by a translation of the application form or other document.

(2) The translation must be—

- (a) in the official language of the country in which it is to be served; or
- (b) if there is more than one official language of that country, in any official language which is appropriate to the place in the country where the application form or other document is to be served.

(3) Every translation filed under this rule must be accompanied by a statement by the person making it that it is a correct translation, and the statement must include that person's name, address and qualifications for making the translation.

(4) The applicant is not required to file a translation of the application form, or other document, filed under rule 6.45 where it is to be served in a country of which English is an official language.

(5) The applicant is not required to file a translation of the application form or other document filed under rule 6.45 where—

- (a) the person on whom the document is to be served is able to read and understand English; and
- (b) service of the document is to be effected directly on that person.

(This rule does not apply to service in accordance with the Service Regulation which contains its own provisions about the translation of documents.)

**Undertaking to be responsible for expenses of the Foreign and Commonwealth Office**

6.48. Every request for service filed under rule 6.46 (procedure where service is to be through foreign governments, judicial authorities etc.) must contain an undertaking by the person making the request—

- (a) to be responsible for all expenses incurred by the Foreign and Commonwealth Office or foreign judicial authority; and
- (b) to pay those expenses to the Foreign and Commonwealth Office or foreign judicial authority on being informed of the amount.

**PART 7**

**PROCEDURE FOR APPLICATIONS IN MATRIMONIAL AND CIVIL PARTNERSHIP PROCEEDINGS**

**CHAPTER 1**

**APPLICATION AND INTERPRETATION**

**Application and interpretation**

7.1.—(1) The rules in this Part apply to matrimonial and civil partnership proceedings.

<sup>F64</sup>(2) .....

(3) In this Part—

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“defended case” means matrimonial proceedings or civil partnership proceedings in which—

- (a) an answer has been filed opposing the grant of a matrimonial or civil partnership order on the application, and has not been struck out; or
- (b) the respondent has filed an application for a matrimonial or civil partnership order in accordance with rule 7.14 and neither party's application has been disposed of; or
- (c) rule 7.12(11) applies, notice has been given of intention to rebut and that notice has not been withdrawn,

and in which no matrimonial or civil partnership order has been made; and

“undefended case” means matrimonial proceedings or civil partnership proceedings other than a defended case.

(4) In this Part—

- (a) a reference to a conditional order is a reference to a civil partnership order (other than a separation order) which has not been made final; and
- (b) a reference to a final order is a reference to a conditional order which has been made final.

**Textual Amendments**

**F64** Rule 7.1(2) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013](#) (S.I. 2013/3204), [rules 1, 12](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

**District Registries**

<sup>F65</sup>**7.2.** . . . . .

**Textual Amendments**

**F65** Rule 7.2 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013](#) (S.I. 2013/3204), [rules 1, 12](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

**Principal Registry**

<sup>F66</sup>**7.3.** . . . . .

**Textual Amendments**

**F66** Rule 7.3 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013](#) (S.I. 2013/3204), [rules 1, 12](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

**References to respondents**

**7.4.—(1)** Where a respondent makes an application for a matrimonial order or a civil partnership order, unless the context otherwise requires, the rules in this Part shall apply with necessary modifications as if the reference to a respondent is a reference to the applicant in the other party's application for a matrimonial order or a civil partnership order.

**(2)** Where a respondent makes an application for a matrimonial order, unless the context otherwise requires, the rules in this Part shall apply with necessary modifications as if the reference to a co-respondent is a reference to a party cited in the respondent's application for a matrimonial order.

## CHAPTER 2

### RULES ABOUT STARTING AND RESPONDING TO PROCEEDINGS

#### Starting proceedings

<sup>F67</sup>7.5. ....

##### Textual Amendments

**F67** Rule 7.5 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **12** (with rule 137); S.I. 2014/954, **art. 2**

#### Statement of reconciliation

**7.6.**—<sup>F68</sup>(1) Where the applicant is legally represented, the legal representative must, unless the court directs otherwise, complete and file with the application a statement in the form for this purpose referred to in Practice Direction 5A, certifying whether the legal representative has discussed with the applicant the possibility of a reconciliation and given the applicant the names and addresses of persons qualified to help effect a reconciliation.

<sup>F69</sup>(2) This rule applies to an application for—

- (a) a decree of divorce made under section 1 of the 1973 Act;
- (b) a decree of judicial separation made under section 17 of the 1973 Act;
- (c) a dissolution order as mentioned in section 37(1)(a) of the 2004 Act; or
- (d) a separation order as mentioned in section 37(1)(d) of the 2004 Act.]

##### Textual Amendments

**F68** Rule 7.6 renumbered as rule 7.6(1) (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), rules 1, **7(a)** (with rule 30)

**F69** Rule 7.6(2) inserted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), rules 1, **7(b)** (with rule 30)

#### Limitation on applications in respect of same marriage or civil partnership

**7.7.**—(1) Subject to paragraph (2), a person may not make more than one application for a matrimonial or civil partnership order in respect of the same marriage or civil partnership unless—

- (a) the first application has been dismissed or finally determined; or
- (b) the court gives permission.

(2) Where a person—

- (a) has, within one year of the date of the marriage or civil partnership, made an application for, as the case may be, a decree of judicial separation or an order for separation; and
- (b) then, after that one-year period has passed, wishes to apply for a decree of divorce or a dissolution order on the same facts as those mentioned in the first application,

that person does not need the court's permission to make the application referred to in subparagraph (b).

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**Service of application**

7.8.—(1) After an application for a matrimonial or civil partnership order has been issued by the court, a copy of it must be served on the respondent and on any co-respondent. (Rule 6.4 provides for who may serve an application for a matrimonial or civil partnership order.)

(2) When the application is served on a respondent it must be accompanied by—

(a) a form for acknowledging service; [<sup>F70</sup>and]

(b) a notice of proceedings [<sup>F71</sup>.]

<sup>F72</sup>(c) .....

**Textual Amendments**

**F70** Word in rule 7.8(2)(a) inserted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **6(a)**

**F71** Rule 7.8(2)(b): full stop substituted for word (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **6(b)**

**F72** Rule 7.8(2)(c) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **6(c)**

**Withdrawal of application before service**

7.9. An application for a matrimonial or civil partnership order may be withdrawn at any time before it has been served by giving notice in writing to the court where the proceedings were started.

**Who the parties are**

7.10.—(1) The parties to matrimonial proceedings or civil partnership proceedings are—

(a) the parties to the marriage or civil partnership concerned; and

(b) any other person who is to be a party in accordance with a provision of the rules in this Part.

(2) Subject to paragraph (3), where an application for a matrimonial order or an answer to such an application alleges that the other party to the marriage has committed adultery with a named person, that named person is to be the co-respondent.

(3) The named person referred to in paragraph (2) is not to be a co-respondent where—

(a) the court so directs;

(b) that person has died; or

(c) unless the court directs otherwise—

(i) that person is under 16 years of age; or

(ii) the other party to the marriage is alleged in the application or answer to have committed rape on the named person.

(4) Where an application for a matrimonial or civil partnership order or an answer alleges that the other party to the marriage or civil partnership has had an improper association with a named person, the court may direct that the named person is to be [<sup>F73</sup>the co-respondent] to the application, unless the named person has died.

(5) An application for directions under paragraph (3)(a) or (c) may be made without notice if the acknowledgment of service indicates that no party intends to defend the case.

#### Textual Amendments

- F73** Words in rule 7.10(4) substituted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), rules 1, 8 (with rule 30)

#### Nullity: Interim and full gender recognition certificates

**7.11.**—(1) Where the application is for—

- (a) nullity of marriage under section 12(g) of, or paragraph 11(1)(e) of Schedule 1 to, the 1973 Act <sup>M39</sup>; or
- (b) an order of nullity of civil partnership under section 50(1)(d) of the 2004 Act,

the court officer must send to the Secretary of State a notice in writing that the application has been made.

(2) Where a copy of an interim gender recognition certificate has been filed with the application, that certificate must be attached to the notice.

(3) Where no copy of an interim gender recognition certificate has been filed the notice must also state—

- (a) in matrimonial proceedings—
  - (i) the names of the parties to the marriage and the date and place of the marriage, and
  - (ii) the last address at which the parties to the marriage lived together as [<sup>F74</sup>a married couple];
- (b) in civil partnership proceedings—
  - (i) the names of the parties to the civil partnership and the date on, and the place at which, the civil partnership was formed, and
  - (ii) the last address at which the parties to the civil partnership lived together as civil partners of each other; and
- (c) in either case, such further particulars as the court officer considers appropriate.

(4) Where—

- (a) the application is for a decree of nullity of marriage under section 12(h) of the 1973 Act <sup>M40</sup> or for an order of nullity of civil partnership under section 50(1)(e) of the 2004 Act; and
- (b) a full gender recognition certificate has been issued to the respondent,

the applicant must file a copy of that full certificate with the application unless the court, on an application made without notice, directs otherwise.

#### Textual Amendments

- F74** Words in rule 7.11(3)(a)(ii) substituted (13.3.2014) by [The Family Procedure \(Amendment\) Rules 2014 \(S.I. 2014/524\)](#), rules 1, 3

#### Marginal Citations

- M39** Section 12(g) was inserted by section 4(4) of and paragraph 2 of Schedule 2 to the Gender Recognition Act 2004.
- M40** Section 12(h) was inserted by section 11 of and paragraphs 4 and 5 of Schedule 4 to the Gender Recognition Act 2004.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

**What the respondent and co-respondent should do on receiving the application**

7.12.—(1) The respondent, and any co-respondent, must file an acknowledgment of service within 7 days beginning with the date on which the application for a matrimonial or civil partnership order was served.

(2) This rule is subject to rule 6.42 (which specifies how the period for filing an acknowledgment of service is calculated where the application is served out of the jurisdiction).

(3) The acknowledgment of service must—

- (a) subject to paragraph (4), be signed by the respondent or the respondent's legal representative or, as the case may be, the co respondent or the co respondent's legal representative;
- (b) include the respondent's or, as the case may be, the co respondent's address for service; and
- (c) where it is filed by the respondent, indicate whether or not the respondent intends to defend the case.

(4) Where paragraph (5) or (6) applies, the respondent must sign the acknowledgment of service personally.

(5) This paragraph applies where—

- (a) the application for a matrimonial order alleges that the respondent has committed adultery; and
- (b) the respondent admits the adultery.

(6) This paragraph applies where—

- (a) the application for a matrimonial or civil partnership order alleges that the parties to the marriage or civil partnership concerned have been separated for more than 2 years; and
- (b) the respondent consents to the making of the matrimonial or civil partnership order.

<sup>F75</sup>(7) .....

(8) A respondent who wishes to defend the case must file and serve an answer within 21 days beginning with the date by which the acknowledgment of service is required to be filed.

(9) An answer is not required where the respondent does not object to the making of the matrimonial or civil partnership order but objects to paying the costs of the application <sup>F76</sup>....

(10) A respondent may file an answer even if the intention to do so was not indicated in the acknowledgment of service.

(11) Where the application is for nullity of marriage under section 12(d) of the 1973 Act or for nullity of civil partnership under section 50(1)(b) of the 2004 Act and the respondent files an answer containing no more than a simple denial of the facts stated in the application, the respondent must, if intending to rebut the matters stated in the application, give notice to the court of that intention when filing the answer.

(12) A respondent to an application for a matrimonial or civil partnership order alleging 2 years' separation and the respondent's consent may—

- (a) indicate consent to the making of the matrimonial or civil partnership order in writing at any time after service of the application, whether in the acknowledgment of service or otherwise;
- (b) indicate lack of consent to the making of that order, or withdraw any such consent already given, by giving notice to the court.

(13) Where a respondent gives a notice under paragraph (12)(b) and no other relevant fact is alleged, the proceedings must be stayed<sup>(GL)</sup>, and notice of the stay<sup>(GL)</sup> given to the parties by the court officer.

(14) In this rule, a “relevant fact” is—

- (a) in matrimonial proceedings, one of the facts mentioned in section (1)(2) of the 1973 Act; and
- (b) in civil partnership proceedings, one of the facts mentioned in section 44(5) of the 2004 Act.

(The form of the answer is referred to in Practice Direction 5A.)

[<sup>F77</sup>(15) In paragraphs (3)(c), (8), (9) and (10), any reference to a respondent is to be read as including a reference to a co-respondent where the context so requires.]

#### Textual Amendments

- F75** Rule 7.12(7) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), [rules 1, 7\(a\)](#)
- F76** Words in rule 7.12(9) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), [rules 1, 7\(b\)](#)
- F77** Rule 7.12(15) inserted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), [rules 1, 9](#) (with [rule 30](#))

#### Amendments to the application and the answer

**7.13.**—(1) Unless paragraph (2) applies—

- (a) a party making an application for a matrimonial or civil partnership order may amend the application at any time before an answer to it has been filed;
- (b) a party who has filed an answer may amend the answer.

(2) No amendment to an application for a matrimonial or civil partnership order or to an answer may be made under paragraph (1) if an application under rule 7.19(1) has been made in relation to the marriage or civil partnership concerned.

(3) Where an amendment is made under paragraph (1)—

- (a) if the document amended is the application—
  - (i) it must be served in accordance with rule 7.8 (service of application); and
  - (ii) rule 7.12 (what the respondent and co respondent should do) applies;
- (b) rule 7.10 (parties) applies; and
- (c) any person who becomes a co-respondent to the proceedings in accordance with rule 7.10 as a consequence of such an amendment must be served with the documents required to be served on a co-respondent with an application for a matrimonial or civil partnership order.

(4) Paragraphs (1) and (2) do not apply if the amendment is made—

- (a) with the written consent of all the other parties; or
- (b) with the permission of the court.

(5) Where the court gives permission for a party to amend that party's application for a matrimonial or civil partnership order or answer it may give directions as to—

- (a) the service of the amended application or answer and any accompanying documents;
- (b) the joining of any additional parties in accordance with rule 7.10; and
- (c) the extent to which rule 7.12 must be complied with in respect of any amended application.

(6) The court may direct that any person cease to be a party if, in consequence of any amendment made under this rule, that person—

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- (a) no longer falls within rule 7.10(2) or(4); or
- (b) falls within rule 7.10(4) but it is no longer desirable for that person to be a party to the proceedings.

### **How the respondent can make an application**

**7.14.—**(1) A respondent who wishes to make an application for a matrimonial or civil partnership order must make the application for that order within 21 days beginning with the date by which the respondent's acknowledgment of service is required to be filed, unless the court gives permission to make the application after that time has passed.

(2) Where the respondent makes an application under this rule, that application is to be treated as an application in the same proceedings for the purposes of this Part.

### **Further information about the contents of the application and the answer**

**7.15.—**(1) The court may at any time order a party—

- (a) to clarify any matter which is in dispute in the proceedings; or
- (b) to give additional information in relation to any such matter,

whether or not the matter is contained or referred to in the application for a matrimonial or civil partnership order or in the answer.

(2) Paragraph (1) is subject to any rule of law to the contrary.

(3) Where the court makes an order under paragraph (1), the party against whom it is made must—

- (a) file the reply to the order made under paragraph (1); and
- (b) serve a copy of it on each of the other parties,

within the time specified by the court.

(4) The court may direct that information provided by a party to another party (whether given voluntarily or following an order made under paragraph (1)) must not be used for any purpose except for the proceedings in which it is given.

## **CHAPTER 3**

### **HOW THE COURT DETERMINES MATRIMONIAL AND CIVIL PARTNERSHIP PROCEEDINGS**

#### **General rule – hearing to be in public**

**7.16.—**(1) The general rule is that a hearing to which this Part applies is to be in public.

(2) The requirement for a hearing to be in public does not require the court to make special arrangements for accommodating members of the public.

(3) A hearing, or any part of it, may be in private if—

- (a) publicity would defeat the object of the hearing;
- (b) it involves matters relating to national security;
- (c) it involves confidential information (including information relating to personal financial matters ) and publicity would damage that confidentiality;
- (d) a private hearing is necessary to protect the interests of any child or protected party;
- (e) it is a hearing of an application made without notice and it would be unjust to any respondent for there to be a public hearing; or
- (f) the court considers this to be necessary, in the interests of justice.



(4) A hearing of an application for rescission of an order by consent under rule 7.28 is, unless the court directs otherwise, to be in private.

(5) The court may order that the identity of any party or witness must not be disclosed if it considers non-disclosure necessary in order to protect the interests of that party or witness.

**Exercise of jurisdiction in cases heard at place other than the court in which the case is proceeding**

<sup>F78</sup>7.17. ....

**Textual Amendments**

**F78** Rule 7.17 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **12** (with [rule 137](#)); S.I. 2014/954, **art. 2**

**Notice of hearing**

**7.18.** The court officer will give notice to the parties—

- (a) of the date, time and place of every hearing which is to take place in a case to which they are a party; and
- (b) in the case of a hearing following a direction under rule 7.20(2)(a), of the fact that, unless the person wishes or the court requires, the person need not attend.

**Applications for a decree nisi or a conditional order**

**7.19.—**(1) An application may be made to the court for it to consider the making of a decree nisi, a conditional order, a decree of judicial separation or a separation order in the proceedings—

- (a) at any time after the time for filing the acknowledgment of service has expired, provided that no party has filed an acknowledgment of service indicating an intention to defend the case; and
- (b) in any other case, at any time after the time for filing an answer to every application for a matrimonial or civil partnership order made in the proceedings has expired.

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

- (a) in a case within paragraph (1)(a), by the applicant; and
- (b) in any other case, by either party to the marriage or civil partnership in question.

(3) An application under this rule must, if the information which was required to be provided by the application form is no longer correct, be accompanied by a statement setting out particulars of the change.

(4) If [<sup>F79</sup>no] party has filed an answer opposing the making of a decree nisi, a conditional order, a decree of judicial separation or a separation order on [<sup>F80</sup>another party's] application, then an application under this rule must be accompanied by [<sup>F81</sup>a statement]—

- (a) stating whether there have been any changes in the information given in the application <sup>F82</sup>....;
- (b) confirming that, subject to any changes stated, the contents of the application <sup>F83</sup>... are true; and
- (c) where the acknowledgment of service has been signed by the other party [<sup>F84</sup>to the marriage or civil partnership], confirming that party's signature on the acknowledgment of service.

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[<sup>F85</sup>(5) A statement under paragraph (4) must be verified by a statement of truth.]

#### Textual Amendments

- F79** Word in rule 7.19(4) substituted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), [rules 1, 10\(a\)\(i\)](#) (with [rule 30](#))
- F80** Words in rule 7.19(4) substituted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), [rules 1, 10\(a\)\(ii\)](#) (with [rule 30](#))
- F81** Words in rule 7.19(4) substituted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), [rules 1, 10\(a\)\(iii\)](#) (with [rule 30](#))
- F82** Words in rule 7.19(4)(a) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), [rules 1, 8\(a\)](#)
- F83** Words in rule 7.19(4)(b) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), [rules 1, 8\(b\)](#)
- F84** Words in rule 7.19(4)(c) inserted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), [rules 1, 10\(b\)](#) (with [rule 30](#))
- F85** Rule 7.19(5) inserted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), [rules 1, 10\(c\)](#) (with [rule 30](#))

#### What the court will do on an application for a decree nisi, a conditional order, a decree of judicial separation or a separation order

**7.20.**—(1) This rule applies where an application is made under rule 7.19.

(2) If at the relevant time the case is an undefended case, the court must—

(a) if satisfied that the applicant is entitled to—

(i) in matrimonial proceedings, a decree nisi or a decree of judicial separation (as the case may be); or

(ii) in civil partnership proceedings, a conditional order or a separation order (as the case may be),

so certify and direct that the application be listed before a [<sup>F86</sup>judge] for the making of the decree or order at the next available date;

(b) if not so satisfied, direct—

(i) that any party to the proceedings provide such further information, or take such other steps, as the court may specify; or

(ii) that the case be listed for a case management hearing.

(3) If the applicant has applied for costs, the court may, on making a direction under paragraph (2)

(a)—

(a) if satisfied that the applicant is entitled to an order for costs, so certify; or

(b) if not so satisfied, make no direction about costs.

(4) If at the relevant time the case is a defended case, the court must direct that the case be listed for a case management hearing.

(5) The court may, when giving a direction under paragraph (2)(b), direct that the further information provided be verified by an affidavit [<sup>F87</sup>or a statement of truth].

(6) The court must not give directions under this rule unless at the relevant time it is satisfied—

(a) that a copy of each application for a matrimonial or civil partnership order or answer (including any amended application or answer) has been properly served on each party on whom it is required to be served; and

(b) that —

- (i) in matrimonial proceedings, the application for a decree nisi or a decree of judicial separation; or
- (ii) in civil partnership proceedings, the application for a conditional order or separation order,

was made at a time permitted by rule 7.19(1).

(7) In this rule, “the relevant time” means the time at which the court is considering an application made under rule 7.19(1).

[<sup>F88</sup>(8) Where a decree or order is made in accordance with a certificate under paragraph (2)(a), any person may, within 14 days after the making of the decree or order, inspect the certificate and the evidence filed under rule 7.19(4) <sup>F89</sup>... and may obtain copies.

(9) Paragraph (8) does not apply to a certificate which relates to—

- (a) a decree of nullity of marriage under section 12(g) of, or paragraph 11(1)(e) of Schedule 1 to, the 1973 Act; or
- (b) an order for nullity of civil partnership under section 50(1)(d) of the 2004 Act,

unless the court has given permission.]

#### **Textual Amendments**

- F86** Word in rule 7.20(2)(a) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\), rules 1, 13](#) (with rule 137); [S.I. 2014/954, art. 2](#)
- F87** Words in rule 7.20(5) inserted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\), rules 1, 11\(a\)](#) (with rule 30)
- F88** Rule 7.20(8)(9) inserted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\), rules 1, 11\(b\)](#) (with rule 30)
- F89** Words in rule 7.20(8) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 9](#)

#### **Further provisions about costs**

**7.21.—**(1) Subject to paragraph (2), any party to matrimonial or civil partnership proceedings may be heard on any question as to costs at the hearing of the proceedings.

(2) In the case of a hearing following a direction under rule 7.20(2)(a), a party will not be heard unless that party has, not less than 2 days before the hearing, served on every other party written notice of that party's intention to attend the hearing and apply for, or oppose the making of, an order for costs.

#### **What the court must do for the case management hearing**

**7.22.—**(1) This rule applies to a case in which the court has directed a case management hearing under rule 7.20.

(2) Where a hearing has been directed under rule 7.20(4) the court must—

- (a) decide where the hearing in the case should take place;
- (b) set a timetable for the filing and service of evidence;
- (c) make such order for the disclosure and inspection of documents as it considers appropriate; and
- (d) give directions as to the conduct of the final hearing and the attendance of witnesses.

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(Rule 21.1 explains what is meant by disclosure and inspection.)

- (3) Where a hearing has been directed under rule 7.20(2)(b)(ii), the court must—
  - (a) consider what further evidence is required properly to dispose of the proceedings and give directions about the filing and service of such evidence;
  - <sup>F90</sup>(b) .....
  - (c) give directions for the further conduct of the proceedings, including—
    - (i) giving a direction that on compliance with any directions under sub-paragraph (a) <sup>F91</sup>... a further application may be made under rule 7.19(1) for the proceedings to be dealt with under rule 7.20(2)(a); or
    - (ii) giving a direction that the case is not suitable for determination under that rule.

(4) Where the court gives a direction under paragraph (3)(c)(ii), it may also give directions under paragraph (2) or direct that the case be listed for a further hearing at which such directions will be given.

(5) Any party to proceedings which are not being dealt with under rule 7.20(2)(a) may apply to the court for further directions at any time. (Part 3 sets out the court's powers to encourage the parties to use [<sup>F92</sup>non-court dispute resolution] and Part 4 sets out the court's general case management powers.)

**Textual Amendments**

- F90** Rule 7.22(3)(b) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), [rules 1, 10\(a\)\(i\)](#)
- F91** Words in rule 7.22(3)(c) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), [rules 1, 10\(a\)\(ii\)](#)
- F92** Words in rule 7.22(5) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), [rules 1, 10\(b\)](#)

**Where proceedings under this Part may be heard**

<sup>F93</sup>**7.23.** .....

**Textual Amendments**

- F93** Rule 7.23 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 14](#) (with [rule 137](#)); [S.I. 2014/954](#), [art. 2](#)

**The circumstances in which proceedings may be transferred between courts**

<sup>F94</sup>**7.24.** .....

**Textual Amendments**

- F94** Rule 7.24 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 14](#) (with [rule 137](#)); [S.I. 2014/954](#), [art. 2](#)

**The procedure for complying with section 41 of 1973 Act or section 63 of 2004 Act**

<sup>F95</sup>**7.25.** .....

### Textual Amendments

**F95** Rule 7.25 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **11**

## Medical examinations in proceedings for nullity of [<sup>F96</sup>a marriage of an opposite sex couple]

**7.26.**—(1) Where the application is for a decree of nullity of [<sup>F97</sup>a marriage of an opposite sex couple] on the ground of incapacity to consummate or wilful refusal to do so, the court must determine whether medical examiners should be appointed to examine the parties or either of them.

(2) The court must only appoint medical examiners under paragraph (1) where it considers that it is necessary for the proper disposal of the case.

(3) The person to be examined must, in the presence of the medical examiner, sign a statement identifying that person as the party to whom the order for examination applies.

(4) The medical examiner must certify on the same statement that it was signed in his or her presence by the person who has been examined.

(5) The person who carries out the examination must prepare a report and file it with the court by the date directed by the court.

(6) Either party is entitled to see a copy of a report filed under paragraph (5).

### Textual Amendments

**F96** Words in rule 7.26 heading substituted (13.3.2014) by virtue of [The Family Procedure \(Amendment\) Rules 2014 \(S.I. 2014/524\)](#), rules 1, **4(a)(i)**

**F97** Words in rule 7.26(1) substituted (13.3.2014) by virtue of [The Family Procedure \(Amendment\) Rules 2014 \(S.I. 2014/524\)](#), rules 1, **4(b)(i)**

## Stay of proceedings

**7.27.**—(1) Where—

- (a) the court is considering an application in accordance with rule 7.20 or gives directions under rule 7.22;
- (b) it appears to the court that there are proceedings continuing in any country outside England and Wales which are in respect of the marriage or civil partnership in question or which are capable of affecting its validity or subsistence; and
- (c) the court considers that the question whether the proceedings should be stayed<sup>(GL)</sup> under paragraph 9 of Schedule 1 to the Domicile and Matrimonial Proceedings Act 1973<sup>M41</sup> or, for civil partnership proceedings, under rules made under sections 75 and 76 of the Courts Act 2003 [<sup>F98</sup>ought to be determined by the court],

the court must give directions for the hearing of that question.

(2) Where at any time after the making of an application under this Part it appears to the court in matrimonial proceedings that, under Articles 16 to 19 of the Council Regulation, the court does not have jurisdiction to hear the application and is or may be required to stay<sup>(GL)</sup> the proceedings, the court will—

- (a) stay<sup>(GL)</sup> the proceedings; and

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(b) fix a date for a hearing to determine the questions of jurisdiction and whether there should be a further stay<sup>(GL)</sup> or other order.

(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 finding of fact.

(4) An order under Article 17 of the Council Regulation that the court has no jurisdiction over the proceedings will be recorded by the court or the court officer in writing.

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

#### Textual Amendments

**F98** Words in rule 7.27(1)(c) inserted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), rules 1, 12 (with rule 30)

#### Marginal Citations

**M41** [Paragraph 9](#) of Schedule 1 was amended by section 19(5) of and paragraphs 7(1), (2), (3), (4) and (5) of Schedule 3 to the Family Law Act 1996 and regulation 4 of the European Communities (Matrimonial Jurisdiction and Judgments) Regulations 2001( [S.I. 2001/310](#)).

## CHAPTER 4

### COURT ORDERS

#### The circumstances in which an order may be set aside (rescission)

**7.28.**—(1) The court must not hear an application by a respondent for—

- (a) the rescission of a decree of divorce under section 10(1) of the 1973 Act;
- (b) the rescission of a dissolution order under section 48(1) of the 2004 Act,

less than 14 days after service of the application.

(2) Either party to the marriage concerned may apply—

- (a) after the decree nisi has been made but before it has been made absolute; or
- (b) after a decree of judicial separation has been made

for the rescission of the decree on the grounds that the parties are reconciled and both consent to the rescission.

(3) Either party to the civil partnership concerned may apply—

- (a) after a conditional order has been made but before it has been made final; or
- (b) after a separation order has been made,

for the rescission of the order on the grounds that the parties are reconciled and both consent to the rescission.

#### Applications under section 10(2) of 1973 Act or section 48(2) of 2004 Act

**7.29.** Where the court makes—

- (a) in the case of divorce, a decree absolute following an application under section 10(2) of the 1973 Act; or
- (b) in the case of dissolution, a final order following an application under section 48(2) of the 2004 Act,

it must make a written record of the reasons for deciding to make that decree absolute or final order.

### **Orders under section 10A(2) of the 1973 Act**

**7.30.**—(1) Where the court has made an order under section 10A(2) of the 1973 Act, the declaration referred to in that section must—

- (a) be made and signed by both parties to the marriage concerned;
- (b) give particulars of the proceedings in which the order was obtained;
- (c) confirm that the steps required to dissolve the marriage in accordance with the religious usages appropriate to the parties have been taken;
- (d) be accompanied by—
  - (i) a certificate from a relevant religious authority that all such steps have been taken; or
  - (ii) such other documents showing the relevant steps have been taken as the court may direct; and
  - (iii) be filed at the court either before or together with an application to make the decree nisi absolute,

under rule 7.32 or 7.33.

(2) Where the certificate referred to in paragraph (1)(d)(i) is not in English it must be accompanied by a translation of that certificate into English, certified by a notary public or authenticated by statement of truth.

(3) The court may direct that the declaration need not be accompanied by the material mentioned in paragraph (1)(d).

(4) In this rule a religious authority is “relevant” if the party who made the application for the order under section 10A(2) of the 1973 Act considers that authority competent to confirm that the steps referred to in paragraph (1)(c) have been taken.

### **Applications to prevent decrees nisi being made absolute or conditional orders being made final**

**7.31.**—(1) This rule applies to an application under section 8 or 9 of the 1973 Act <sup>M42</sup> or under section 39 or 40 of the 2004 Act to prevent —

- (a) in the case of divorce or nullity of marriage, a decree nisi being made absolute; or
- (b) in the case of dissolution or nullity of civil partnership, a conditional order being made final.

(2) An application to which this rule applies must be made using the Part 18 procedure, subject to paragraphs (3) to (6) of this rule.

(3) The person making an application to which this rule applies must within 28 days of filing the application apply to the court to give directions for the hearing of the application.

(4) Where the person making an application to which this rule applies does not apply for directions under paragraph (3), then the person in whose favour the decree nisi or conditional order (as the case may be) was made may do so.

(5) Rule 7.22(2) applies to an application to which this rule applies as it applies to an application for a matrimonial or civil partnership order.

(6) Where an application to which this rule applies is made by the Queen's Proctor—

- (a) the Queen's Proctor may give written notice, to the court and to the party in whose favour the decree nisi or conditional order (as the case may be) was made, of the Queen's Proctor's

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intention to make an application to prevent the decree nisi being made absolute or the conditional order being made final; and

- (b) where the Queen's Proctor does so the application under paragraph (1) must be made within 21 days beginning with the date on which the notice is given.

**Marginal Citations**

**M42** Section 8 was amended by section 66(1) and (3) of and paragraph 5 of Schedule 8 to the Family Law Act 1996 and section 9 was prospectively repealed by section 66(3) of and Schedule 10 to the Family Law Act 1996.

**Making decrees nisi absolute or conditional orders final by giving notice**

**7.32.**—(1) Unless rule 7.33 applies—

- (a) in matrimonial proceedings, a spouse in whose favour a decree nisi has been made may give notice to the court that he or she wishes the decree nisi to be made absolute; or
- (b) in civil partnership proceedings, a civil partner in whose favour a conditional order has been made may give notice to the court that he or she wishes the conditional order to be made final.

(2) Subject to paragraphs (3) and (4), where the court receives a notice under paragraph (1) it will make the decree nisi absolute or the conditional order final (as the case may be) if it is satisfied that—

- (a) no application for rescission of the decree nisi or the conditional order is pending;
- (b) no appeal against the making of the decree nisi or the conditional order is pending;
- (c) no order has been made by the court extending the time for bringing an appeal of the kind mentioned in sub-paragraph (b), or if such an order has been made, that the time so extended has expired;
- (d) no application for an order of the kind mentioned in sub-paragraph (c) is pending;
- (e) no application to prevent the decree nisi being made absolute or the conditional order being made final is pending;

<sup>F99</sup>(f) .....

- (g) the provisions of section 10(2) to (4) of the 1973 Act or section 48(2) to (4) of the 2004 Act do not apply or have been complied with;
- (h) any order under section 10A(2) of the 1973 Act has been complied with; and
- (i) where the decree nisi was made on the ground in section 12(g) of, or paragraph 11(1)(e) of Schedule 1 to, the 1973 Act, or the conditional order was made under section 50(1)(d) of the 2004 Act—
  - (i) there is not pending a reference under section 8(5) of the Gender Recognition Act 2004 in respect of the application on which the interim gender recognition certificate to which the application relates was granted;
  - (ii) that interim certificate has not been revoked under section 8(6)(b) of that Act; and
  - (iii) no appeal is pending against an order under section 8(6)(a) of that Act.

(3) Where the notice is received more than 12 months after the making of the decree nisi or the conditional order, it must be accompanied by an explanation in writing stating—

- (a) why the application has not been made earlier;
- (b) whether the applicant and respondent have lived together since the decree nisi or the conditional order was made, and, if so, between what dates;



- (c) if the applicant is female, whether she has given birth to a child since the decree nisi or the conditional order was made and whether it is alleged that the child is or may be a child of the family;
  - (d) if the respondent is female, whether the applicant has reason to believe that she has given birth to a child since the decree nisi or the conditional order was made and whether it is alleged that the child is or may be a child of the family.
- (4) Where paragraph (3) applies, the court may—
- (a) require the applicant to file an affidavit verifying the explanation [F100 or to verify the explanation with a statement of truth]; and
  - (b) make such order on the application as it thinks fit, but where it orders the decree nisi to be made absolute or the conditional order to be made final that order is not to take effect until the court is satisfied that none of the matters mentioned in paragraph (2)(a) to (i) applies.

#### Textual Amendments

**F99** Rule 7.32(2)(f) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), [rules 1, 12](#)

**F100** Words in rule 7.32(4) inserted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), [rules 1, 13](#) (with [rule 30](#))

### Applications to make decrees nisi absolute or conditional orders final

**7.33.—**(1) An application must be made—

- (a) in matrimonial proceedings, for the decree nisi to be made absolute; or
- (b) in civil partnership proceedings, for the conditional order to be made final,

where the conditions set out in paragraph (2) apply.

(2) The conditions referred to in paragraph (1) are—

- (a) the Queen's Proctor gives notice to the court under rule 7.31(6)(a) and has not withdrawn that notice;
- (b) there are other circumstances which ought to be brought to the attention of the court before the application is granted; or
- (c) the application is made—
  - (i) in matrimonial proceedings, by the spouse against whom the decree nisi was made; or
  - (ii) in civil partnership proceedings, by the civil partner against whom the conditional order was made.

[F101(3) An application under this rule to which paragraph (2)(a) applies must be served on the Queen's Proctor.]

(4) Where the court orders—

- (a) in matrimonial proceedings, a decree to be made absolute under this rule; or
- (b) in civil partnership proceedings, a conditional order to be made final under this rule,

that order is not to take effect until the court is satisfied about the matters mentioned in rule 7.32(2)(a) to (i) .

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

#### Textual Amendments

**F101** Rule 7.33(3) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 15](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

#### What the court officer must do when a decree nisi is made absolute

**7.34.** In matrimonial proceedings, where a decree nisi is made absolute the court officer must—

- (a) endorse that fact on the decree nisi together with the precise time at which the decree was made absolute; and
- (b) send a certificate that a decree nisi has been made absolute to the applicant, the respondent, any co-respondent and any other party.

#### What the court officer must do when a conditional order is made final

**7.35.** Where a conditional order is made final the court officer must—

- (a) endorse that fact on the conditional order together with the precise time at which the order was made final; and
- (b) send the final order to the applicant, the respondent and any other party.

#### Records of decrees absolute and final orders

**7.36.—(1)** A central index of decrees absolute and final orders must be kept under the control of the principal registry.

(2) Any person <sup>F102</sup>... may require a search to be made of that index and to be provided with a certificate showing the results of that search.

(3) Any person who requests it must <sup>F102</sup>... be issued with a copy of the decree absolute or final order.

#### Textual Amendments

**F102** Words in rule 7.36(2)(3) omitted (6.4.2012) by virtue of [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), [rules 1, 14](#) (with [rule 30](#))

## PART 8

### PROCEDURE FOR MISCELLANEOUS APPLICATIONS

#### CHAPTER 1

#### PROCEDURE

#### Procedure

**8.1.** Subject to rules 8.13 and 8.24, applications to which this Part applies must be made in accordance with the Part 19 procedure.

## CHAPTER 2

### APPLICATION FOR CORRECTED GENDER RECOGNITION CERTIFICATE

#### Scope of this Chapter

**8.2.** The rules in this Chapter apply to an application under section 6(1) of the Gender Recognition Act 2004 for the correction of a full gender recognition certificate issued under section 5(1) or 5A(1) of that Act <sup>M43</sup>.

#### Marginal Citations

**M43** [Section 5A\(1\)](#) was inserted by section 250(1) and (4) of the Civil Partnership Act 2004.

#### Where to start proceedings

**8.3.** The application must be made to the court which issued the original certificate unless the court directs otherwise.

#### Who the parties are

**8.4.** Where the applicant is—

- (a) the person to whom the original certificate was issued, the Secretary of State must be a respondent;
- (b) the Secretary of State, the person to whom the original certificate was issued must be a respondent.

#### Delivery of copy certificate to Secretary of State

**8.5.** Where the court issues a corrected full gender recognition certificate, a court officer must send a copy of the corrected certificate to the Secretary of State.

## CHAPTER 3

### APPLICATION FOR ALTERATION OF MAINTENANCE AGREEMENT AFTER DEATH OF ONE PARTY

#### Scope of this Chapter

**8.6.** The rules in this Chapter apply to an application under section 36 of the 1973 Act <sup>M44</sup> or paragraph 73 of Schedule 5 to the 2004 Act to alter a maintenance agreement after the death of one of the parties.

#### Marginal Citations

**M44** [Section 36](#) was amended by section 26(1) of the [Inheritance \(Provision for Family and Dependents\) Act 1975 \(c.63\)](#).

#### Where to start proceedings

<sup>F103</sup>**8.7.** .....

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

### Textual Amendments

**F103** Rule 8.7 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 16](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

### Who the parties are

- 8.8.**—(1) Where the applicant is—
- (a) the surviving party to the agreement, the personal representative of the deceased must be a respondent;
  - (b) the personal representative of the deceased, the surviving party to the agreement must be a respondent.
- (2) The court may at any time direct that—
- (a) any person be made a party to proceedings; or
  - (b) a party be removed.

### Representative parties

- 8.9.**—(1) The court may, before or after the application has been filed at court, make an order appointing a person to represent any other person or persons in the application where the person or persons to be represented—
- (a) are unborn;
  - (b) cannot be found;
  - (c) cannot easily be ascertained; or
  - (d) are a class of persons who have the same interest in an application and—
    - (i) one or more members of that class are within sub-paragraphs(a), (b) or (c); or
    - (ii) to appoint a representative would further the overriding objective.
- (2) An application for an order under paragraph (1) may be made by—
- (a) any person who seeks to be appointed under the order; or
  - (b) any party to the application.
- (3) An application for an order under paragraph (1) must be served on—
- (a) all parties to the application to alter the maintenance agreement, if that application has been filed at court;
  - (b) the person sought to be appointed, if that person is not the applicant or a party to the application; and
  - (c) any other person as directed by the court.
- (4) The court's approval is required to settle proceedings in which a party is acting as a representative.
- (5) The court may approve a settlement where it is satisfied that the settlement is for the benefit of all the represented persons.
- (6) Unless the court directs otherwise, any order made on an application in which a party is acting as a representative—
- (a) is binding on all persons represented in the proceedings; and

(b) may only be enforced by or against a person who is not a party with the permission of the court.

(7) An application may be brought by or against trustees, executors or administrators without adding as parties any persons who have a beneficial interest in the trust or estate and any order made on the application is binding on the beneficiaries unless the court orders otherwise.

### **Acknowledgment of service**

**8.10.**—(1) A respondent who is a personal representative of the deceased must file with the acknowledgment of service a statement setting out—

- (a) full particulars of the value of the deceased's estate for probate after providing for the discharge of the funeral, testamentary and administration expenses, debts and liabilities (including inheritance tax and interest); and
- (b) the people (including names, addresses and details of any persons under disability) or classes of people beneficially interested in the estate and the value of their interests so far as ascertained.

(2) The respondent must file the acknowledgment of service and any statement required under this rule within 28 days beginning with the date on which the application is served.

### **Hearings may be in private**

**8.11.** The court may decide to hear any application to which this Chapter applies in private.

## **CHAPTER 4**

### **APPLICATION FOR QUESTION AS TO PROPERTY TO BE DECIDED IN SUMMARY WAY**

#### **Scope of this Chapter**

**8.12.** The rules in this Chapter apply to an application under section 17 of the Married Women's Property Act 1882 <sup>M45</sup> or section 66 of the 2004 Act.

#### **Marginal Citations**

**M45** [1882 c.75.](#)

#### **Procedure**

**8.13.** Where an application for an order under section 17 of the Married Women's Property Act 1882 <sup>M46</sup> or section 66 of the 2004 Act is made in any proceedings for a financial order, the application must be made in accordance with the Part 18 procedure.

#### **Marginal Citations**

**M46** [Section 17](#) was amended by the [Statute Law \(Repeals\) Act 1969 \(c.52\)](#) and section 43 of the [Matrimonial and Family Proceedings Act 1984](#).

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

## <sup>F104</sup>Where to start proceedings

**8.14.** Where any matrimonial proceedings or civil partnership proceedings have been started, or are intended to be started, by the applicant or the respondent, the application must be made in the same court as those matrimonial proceedings or civil partnership proceedings.

(Practice Direction 8A makes provision in respect of the particular location where the application should be made.)]

### Textual Amendments

**F104** Rule 8.14 substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, 17 (with rule 137); S.I. 2014/954, art. 2

## Mortgagees as parties

**8.15.—**(1) Where particulars of a mortgage are provided with the application—

- (a) the applicant must serve a copy of the application on the mortgagee; and
- (b) the mortgagee may, within 14 days beginning with the date on which the application was received, file an acknowledgment of service and be heard on the application.

(2) The court must direct that a mortgagee be made a party to the proceedings where the mortgagee requests to be one.

## Injunctions

**8.16.—**(1) The court may grant an injunction<sup>(GL)</sup> only if the injunction<sup>(GL)</sup> is ancillary or incidental to the assistance sought by the applicant.

(2) Applications for injunctive relief must be made in accordance with the procedure in rule 20.4 (how to apply for an interim remedy) and the provisions of rule 20.5 (interim injunction<sup>(GL)</sup> to cease if application is stayed<sup>(GL)</sup>) apply.

## Application of other rules

**8.17.** Rule 9.24 applies where the court has made an order for sale under section 17 of the Married Women's Property Act 1882 or section 66 of the 2004 Act.

## CHAPTER 5 DECLARATIONS

### Scope of this Chapter

**8.18.** The rules in this Chapter apply to applications made in accordance with—

- (a) section 55 of the 1986 Act (declarations as to marital status) and section 58 of the 2004 Act (declarations as to civil partnership status);
- (b) section 55A of the 1986 Act<sup>M47</sup> (declarations of parentage);
- (c) section 56(1)(b) and (2) of the 1986 Act<sup>M48</sup> (declarations of legitimacy or legitimation); and
- (d) section 57 of the 1986 Act<sup>M49</sup> (declarations as to adoptions effected overseas).

**Marginal Citations**

- M47** Section 55A was inserted by section 83(1) and (2) of the [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#).
- M48** Section 56(1) was amended by section 83(5) of and paragraphs 3 and 5(a) of Schedule 8 to the Child Support, Pensions and Social Security Act 2000.
- M49** Section 57 was amended by section 139(1) of and paragraphs 46, and 49(a) and (b) of Schedule 3 to the [Adoption and Children Act 2002 \(c.38\)](#) and section 83(5) of and paragraphs 3 and 6 of Schedule 8 to the Child Support, Pensions and Social Security Act 2000.

**Where to start proceedings**

<sup>F105</sup>**8.19.** . . . . .

**Textual Amendments**

**F105** Rule 8.19 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **18** (with rule 137); S.I. 2014/954, **art. 2**

**Who the parties are**

**8.20.—(1)** In relation to the proceedings set out in column 1 of the following table, column 2 sets out who the respondents to those proceedings will be.

<i>Proceedings</i>	<i>Respondent</i>
Applications for declarations as to marital or civil partnership status.	The other party to the marriage or civil partnership in question or, where the applicant is a third party, both parties to the marriage or civil partnership.
Applications for declarations of parentage.	[ <sup>F106</sup> (i) The person whose parentage is in issue; and  (ii) any person who is or is alleged to be the parent of the person whose parentage is in issue, except where that person is the applicant.]
Applications for declarations of legitimacy or legitimation.	The applicant's father and mother or the survivor of them.
Applications for declarations as to adoption effected overseas.	The person(s) whom the applicant is claiming are or are not the applicant's adoptive parents.

(2) The applicant must include in his application particulars of every person whose interest may be affected by the proceedings and his relationship to the applicant.

(3) The acknowledgment of service filed under rule 19.5 must give details of any other persons the respondent considers should be made a party to the application or be given notice of the application.

(4) Upon receipt of the acknowledgment of service, the court must give directions as to any other persons who should be made a respondent to the application or be given notice of the proceedings.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

(5) A person given notice of proceedings under paragraph (4) may, within 21 days beginning with the date on which the notice was served, apply to be joined as a party.

(6) No directions may be given as to the future management of the case under rule 19.9 until the expiry of the notice period in paragraph(5).

#### **Textual Amendments**

**F106** Words in rule 8.20(1) table substituted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), [rules 1, 15](#) (with [rule 30](#))

### **The role of the Attorney General**

**8.21.**—(1) The applicant must, except in the case of an application for a declaration of parentage, send a copy of the application and all accompanying documents to the Attorney General at least one month before making the application.

(2) The Attorney General may, when deciding whether to intervene in the proceedings, inspect any document filed at court relating to any family proceedings mentioned in the declaration proceedings.

(3) If the court is notified that the Attorney General wishes to intervene in the proceedings, a court officer must send the Attorney General a copy of any subsequent documents filed at court.

(4) The court must, when giving directions under rule 8.20(4), consider whether to ask the Attorney General to argue any question relating to the proceedings.

(5) If the court makes a request to the Attorney General under paragraph (4) and the Attorney General agrees to that request, the Attorney General must serve a summary of the argument on all parties to the proceedings.

### **Declarations of parentage**

**8.22.**—(1) If the applicant or the person whose parentage or parenthood is in issue, is known by a name other than that which appears in that person's birth certificate, that other name must also be stated in any order and declaration of parentage.

(2) A court officer must send a copy of a declaration of parentage and the application to the Registrar General within 21 days beginning with the date on which the declaration was made.

## **CHAPTER 6**

### **APPLICATION FOR PERMISSION TO APPLY FOR A FINANCIAL REMEDY AFTER OVERSEAS PROCEEDINGS**

#### **Scope of this Chapter**

**8.23.** Subject to rule 9.26(6), the rules in this Chapter apply to an application for permission to apply for a financial remedy under section 13 of the 1984 Act and paragraph 4 of Schedule 7 to the 2004 Act. (Rule 9.26(6) enables the application for permission to apply for a financial remedy under section 13 of the 1984 Act or paragraph 4 of Schedule 7 to the 2004 Act to be heard at the same time as the application for a financial remedy under Part 3 of the 1984 Act or Schedule 7 to the 2004 Act where that application is an application for a consent order.)

#### **[<sup>F107</sup>How to start proceedings**

**8.24.** The application must be made in accordance with the Part 18 procedure.]



#### **Textual Amendments**

**F107** Rule 8.24 substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 19](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

#### **Application to be made without notice**

**8.25.**—(1) The court may grant an application made without notice if it appears to the court that there are good reasons for not giving notice.

(2) If the applicant makes an application without giving notice, the applicant must state the reasons why notice has not been given.

#### **Notification of hearing date**

**8.26.** The court officer must—

- (a) fix a date, time and place for the hearing of the application by a judge, but not a district judge; and
- (b) give notice of the date of the hearing to the applicant.

#### **Hearings to be in private unless the court directs otherwise**

**8.27.** An application under this Chapter must be heard in private unless the court directs otherwise.

#### **Direction that application be dealt with by a district judge of the principal registry**

**8.28.** [<sup>F108</sup>In the High Court, if] the application is granted, the judge may direct that the application for a financial remedy under Part 3 of the 1984 Act or Schedule 7 to the 2004 Act may be heard by a district judge of the principal registry.

#### **Textual Amendments**

**F108** Words in rule 8.28 substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 20](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

## CHAPTER 7

### APPLICATION FOR THE TRANSFER OF A TENANCY UNDER SECTION 53 OF, AND SCHEDULE 7 TO, THE 1996 ACT

#### **Scope of this Chapter**

**8.29.** This Chapter applies to an application for the transfer of a tenancy under section 53 of, and Schedule 7 to, the 1996 Act.

#### **[<sup>F109</sup>Where to start proceedings**

**8.30.** Where any matrimonial proceedings or civil partnership proceedings have been started by the applicant or the respondent, the application must be made in the same court as those matrimonial proceedings or civil partnership proceedings.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

(Practice Direction 8A makes provision in respect of the particular location where the application should be made.)]

#### Textual Amendments

**F109** Rule 8.30 substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 21](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

#### Service of the application

**8.31.**—(1) The court will serve a copy of the application on—

(a) the respondent; and

(b) the landlord (as defined by paragraph 1 of Schedule 7 to the 1996 Act <sup>M50</sup>),

unless the court directs that the applicant must do so.

(2) Where service is effected by the applicant, the applicant must file a certificate of service.

#### Marginal Citations

**M50** [Paragraph 1](#) of Schedule 7 to the Family Law Act 1996 was amended by section 82 of and paragraphs 16(1) and (2) of Schedule 9 to the Civil Partnership Act 2004 and article 2 of and paragraph 10(b)(i) of the Schedule to the [Housing Act 1996 \(Consequential Amendments\) Order 1997 \(S.I. 1997/74\)](#).

#### Who the parties are

**8.32.** The court will direct that a landlord be made a party to the proceedings where the landlord requests to be one.

#### Orders for disclosure

**8.33.** Any party may apply to the court under rule 21.2 for an order that any person must attend an appointment before the court and produce any documents that are specified or described in the order.

#### Injunctions

**8.34.**—(1) The court may grant an injunction<sup>(GL)</sup> only if the injunction<sup>(GL)</sup> is ancillary or incidental to the assistance sought by the applicant.

(2) Applications for injunctive relief must be made in accordance with the procedure in rule 20.4 (how to apply for an interim remedy) and the provisions of rule 20.5 (interim injunction<sup>(GL)</sup>) to cease if application is stayed<sup>(GL)</sup> apply accordingly.

## CHAPTER 8

### APPLICATIONS FOR ORDERS PREVENTING AVOIDANCE UNDER SECTION 32L OF THE CHILD SUPPORT ACT 1991

#### Scope of this Chapter

**8.35.** Subject to rule 8.40, the rules in this Chapter apply to applications made under section 32L (1) and (2) of the 1991 Act <sup>M51</sup>.

**Marginal Citations**

**M51** Section 32L was inserted by section 24 of the [Child Maintenance and Other Payments Act 2008 \(c.6\)](#).

**Interpretation**

**8.36.** In this Chapter—

“child support maintenance” has the meaning assigned to it in section 3(6) of the 1991 Act <sup>M52</sup>;

“reviewable disposition” has the meaning assigned to it in section 32L(5) of the 1991 Act.

**Marginal Citations**

**M52** Section 3(6) was amended by section 1(2) of the Child Support, Pensions and Social Security Act 2000.

**Where to start proceedings**

<sup>F110</sup>**8.37.** . . . . .

**Textual Amendments**

**F110** Rule 8.37 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **22** (with rule 137); S.I. 2014/954, **art. 2**

**Who the parties are**

**8.38.—**(1) The applicant to the proceedings is the [<sup>F111</sup>Secretary of State] and the respondent is the person who has failed to pay child support maintenance.

(2) The court may at any time direct that —

- (a) any person be made a party to proceedings; or
- (b) a party be removed from the proceedings.

**Textual Amendments**

**F111** Words in rule 8.38(1) substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 1(2), **Sch. para. 125(b)**

**Service of the application**

**8.39.—**(1) The applicant must serve the application and a copy of the applicant's written evidence on—

- (a) any respondent;
- (b) the person in whose favour the reviewable disposition is alleged to have been made; and
- (c) such other persons as the court directs.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

(2) Where an application includes an application relating to land, the applicant must serve a copy of the application on any —

- (a) mortgagee;
- (b) trustee of a trust of land or settlement; and
- (c) other person who has an interest in the land,

of whom particulars are given in the application.

(3) Any person served under paragraph (2) may make a request to the court in writing, within 14 days beginning with the date of service of the application, for a copy of the applicant's written evidence.

(4) Any person who —

- (a) is served with copies of the application and the applicant's written evidence under paragraph (1); or
- (b) receives a copy of the applicant's written evidence following a request under paragraph (3),

may, within 14 days beginning with the date of service or receipt, file a statement in answer.

(5) A statement in answer filed under paragraph (4) must be verified by a statement of truth.

#### **Applications without notice**

**8.40.**—(1) This rule applies to an application under section 32L(1) of the 1991 Act.

(2) The court may grant an application made without notice if it appears to the court that there are good reasons for not giving notice.

(3) If the applicant makes an application without giving notice, the evidence in support of the application must state the reasons why notice has not been given.

(4) If the court grants an application under paragraph (2)—

- (a) the order must include a provision allowing any respondent to apply to the court for an order to be reconsidered as soon as just and convenient at a full hearing; and
- (b) the applicant must, as soon as reasonably practicable, serve upon each respondent a copy of the order and a copy of the written evidence in support of the application.

## CHAPTER 9

### APPLICATION FOR CONSENT TO MARRIAGE OF A CHILD OR TO REGISTRATION OF CIVIL PARTNERSHIP OF A CHILD

#### **Scope of this Chapter**

**8.41.** The rules in this Chapter apply to an application under—

- (a) section 3 of the Marriage Act 1949 <sup>M53</sup>; or
- (b) paragraph 3, 4 or 10 of Schedule 2 to the 2004 Act.

#### **Marginal Citations**

**M53** 1949 c.76.

**Child acting without a children's guardian**

8.42. The child may bring an application without a children's guardian, unless the court directs otherwise.

**Who the respondents are**

8.43. Where an application follows a refusal to give consent to—

- (a) the marriage of a child; or
- (b) a child registering as the civil partner of another person,

every person who has refused consent will be a respondent to the application.

**PART 9**

**APPLICATIONS FOR A FINANCIAL REMEDY**

**CHAPTER 1**

**APPLICATION AND INTERPRETATION**

**Application**

9.1. The rules in this Part apply to an application for a financial remedy. (“Financial remedy” and “financial order” are defined in rule 2.3)

**Application of Magistrates' Courts Rules 1981**

<sup>F112</sup>9.2. ....

**Textual Amendments**

**F112** Rule 9.2 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, 7 (with rule 45)

**Interpretation**

9.3.—(1) In this Part—

“avoidance of disposition order” means—

- (a) in proceedings under the 1973 Act, an order under section 37(2)(b) or (c) of that Act;
- (b) in proceedings under the 1984 Act, an order under section 23(2)(b) or 23(3) of that Act<sup>M54</sup>,
- (c) in proceedings under Schedule 5 to the 2004 Act, an order under paragraph 74(3) or (4); or
- (d) in proceedings under Schedule 7 to the 2004 Act, an order under paragraph 15(3) or (4);

“the Board” means the Board of the Pension Protection Fund;

“FDR appointment” means a Financial Dispute Resolution appointment in accordance with rule 9.17;

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

[<sup>F113</sup>“Financial Circumstances Form” means the Financial Circumstances Form published by the Permanent Bureau of the Hague Conference under Article 11(4) of the 2007 Hague Convention for use in relation to applications under Article 10 of that Convention;]

“order preventing a disposition” means—

- (a) in proceedings under the 1973 Act, an order under section 37(2)(a) of that Act;
- (b) in proceedings under the 1984 Act, an order under section 23(2)(a) of that Act;
- (c) in proceedings under Schedule 5 to the 2004 Act, an order under paragraph 74(2); or
- (d) in proceedings under Schedule 7 to the 2004 Act, an order under paragraph 15(2);

“pension arrangement” means—

- (a) an occupational pension scheme;
- (b) a personal pension scheme;
- (c) shareable state scheme rights;
- (d) a retirement annuity contract;
- (e) an annuity or insurance policy purchased, or transferred, for the purpose of giving effect to rights under an occupational pension scheme or a personal pension scheme; and
- (f) an annuity purchased, or entered into, for the purpose of discharging liability in respect of a pension credit under section 29(1)(b) of the Welfare Reform and Pensions Act 1999 or under corresponding Northern Ireland legislation;

“pension attachment order” means—

- (a) in proceedings under the 1973 Act, an order making provision under section 25B or 25C of that Act <sup>M55</sup>;
- (b) in proceedings under the 1984 Act, an order under section 17(1)(a)(i) of that Act making provision equivalent to an order referred to in paragraph (a);
- (c) in proceedings under Schedule 5 to the 2004 Act, an order making provision under paragraph 25 or paragraph 26; or
- (d) in proceedings under Schedule 7 to the 2004 Act, an order under paragraph 9(2) <sup>M56</sup> or (3) making provision equivalent to an order referred to in paragraph (c);

“pension compensation attachment order” means—

- (a) in proceedings under the 1973 Act, an order making provision under section 25F of that Act; <sup>M57</sup>
- (b) in proceedings under the 1984 Act, an order under section 17(1)(a)(i) of that Act <sup>M58</sup> making provision equivalent to an order referred in to paragraph (a);
- (c) in proceedings under Schedule 5 to the 2004 Act, an order under paragraph 34A; and
- (d) in proceedings under Schedule 7 to the 2004 Act, an order under paragraph 9(2) or (3) making provision equivalent to an order referred to in paragraph (c);

“pension compensation sharing order” means—

- (a) in proceedings under the 1973 Act, an order under section 24E of that Act <sup>M59</sup>;
- (b) in proceedings under the 1984 Act, an order under section 17(1)(c) of that Act;
- (c) in proceedings under Schedule 5 to the 2004 Act, an order under paragraph 19A ; and
- (d) in proceedings under Schedule 7 to the 2004 Act, an order under paragraph 9(2) or (3) <sup>M60</sup> making provision equivalent to an order referred to in paragraph (c);

“pension sharing order” means—

- (a) in proceedings under the 1973 Act, an order making provision under section 24B of that Act <sup>M61</sup>;
- (b) in proceedings under the 1984 Act, an order under section 17(1)(b) of that Act;
- (c) in proceedings under Schedule 5 to the 2004 Act, an order under paragraph 15; or
- (d) in proceedings under Schedule 7 to the 2004 Act, an order under paragraph 9(2) or (3) making provision equivalent to an order referred to in paragraph (c);

“pension scheme” means, unless the context otherwise requires, a scheme for which the Board has assumed responsibility in accordance with Chapter 3 of Part 2 of the Pensions Act 2004 (pension protection) or any provision in force in Northern Ireland corresponding to that Chapter;

“PPF compensation” has the meaning given to it—

- (a) in proceedings under the 1973 Act, by section 21C of the 1973 Act <sup>M62</sup>;
- (b) in proceedings under the 1984 Act, by section 18(7) of the 1984 Act; and
- (c) in proceedings under the 2004 Act, by paragraph 19F of Schedule 5 to the 2004 Act;

“relevant valuation” means a valuation of pension rights or benefits as at a date not more than 12 months earlier than the date fixed for the first appointment which has been furnished or requested for the purposes of any of the following provisions—

- (a) the Pensions on Divorce etc (Provision of Information) Regulations 2000 <sup>M63</sup>;
- (b) regulation 5 of and Schedule 2 to the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 <sup>M64</sup> and regulation 11 of and Schedule 1 to the Occupational Pension Schemes (Transfer Value) Regulations 1996 <sup>M65</sup>;
- (c) section 93A or 94(1)(a) or (aa) of the Pension Schemes Act 1993 <sup>M66</sup>;
- (d) section 94(1)(b) of the Pension Schemes Act 1993 or paragraph 2(a) (or, where applicable, 2(b)) of Schedule 2 to the Personal Pension Schemes (Disclosure of Information) Regulations 1987 <sup>M67</sup>;
- (e) the Dissolution etc. (Pensions) Regulations 2005 <sup>M68</sup>;

“variation order” means—

- (a) in proceedings under the 1973 Act, an order under section 31 of that Act; or
- (b) in proceedings under the 2004 Act, an order under Part 11 of Schedule 5 to that Act.

<sup>F114</sup>(2) .....

- (a) [<sup>F115</sup>(3) (a) Where an application is made under Article 56 of, and using the form in Annex VII to, the Maintenance Regulation, references in this Part to “financial statement” apply to the applicant as if for the words “financial statement” were substituted “the form in Annex VII to the Maintenance Regulation”;

[ where an application for establishment or modification of maintenance is made under <sup>F116</sup>(aa) Article 10 of the 2007 Hague Convention, references in this Part to “financial statement” apply to the applicant as if for “financial statement” there were substituted “Financial Circumstances Form;]

- (b) [<sup>F117</sup>Sub-paragraphs (a) and (aa) do] not apply where the relief sought includes relief which is of a type to which the Maintenance Regulation [<sup>F118</sup>or the 2007 Hague Convention, as the case may be,] does not apply.]

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

### Textual Amendments

- F113** Words in rule 9.3(1) inserted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), rules 1, **7(a)**
- F114** Rule 9.3(2) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **22** (with rule 137); S.I. 2014/954, art. 2
- F115** Rule 9.3(3) inserted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), rules 1, 7
- F116** Rule 9.3(3)(aa) inserted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), rules 1, **7(b)(i)**
- F117** Words in rule 9.3(3)(b) substituted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), rules 1, **7(b)(ii)(aa)**
- F118** Words in rule 9.3(3)(b) inserted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), rules 1, **7(b)(ii)(bb)**

### Marginal Citations

- M54** [Sections 23\(2\) \(a\) and \(b\) and 23\(3\)](#) have been prospectively substituted with savings by section 15 of and paragraph 4 of Schedule 2 to the Family Law Act 1996.
- M55** [Section 25B](#) was inserted by section 166(1) of the [Pensions Act 1995 \(c.26\)](#) and amended by section 21 of and paragraphs 1(1),(2),(4),(5)(a),(5)(b), (6),(7)(a),(7)(b), (8)(a), (8)(b), (8)(c) and (9) of the [Welfare Reform and Pensions Act 1999 \(c.30\)](#) and subsections (8) and (9) were inserted by section 16(3) of the Family Law Act 1996 and the section was modified by regulations 2 and 4(1) and (2)(b) of the [Divorce etc \(Pension Protection Fund\) Regulations 2006 \(S.I. 2006/1932\)](#). Section 25C was inserted by section 166(1) of the Pensions Act 1995 and amended by section 66(1) of and paragraph 11 of Schedule 8 to the Family Law Act 1996 and also amended by section 21 of and paragraphs 2(1), (2), (3)(a)(i) and (ii), (3)(b), (4)(a), (4)(b) and (5) of Schedule 4 to the Welfare Reform and Pensions Act 1999.
- M56** [Paragraph 9\(2\)](#) of Schedule 7 to the Civil Partnership Act 2004 was amended by section 120 of and paragraphs 14, 20(1), 20(2)(a) and (b) of the [Pensions Act 2008 \(c. 30\)](#).
- M57** [Section 25F](#) was inserted by section 120 of and paragraphs 1 and 7 of Schedule 6 to the Pensions Act 2008.
- M58** [Section 17\(1\)\(a\)\(i\)](#) was amended by section 66(1) of and paragraph 32(2) of Schedule 8 to the Family Law Act 1996 as amended by section 84(1) of and paragraphs 66(1) and (14) of Schedule 12 to the Welfare Reform and Pensions Act 1999.
- M59** [Section 24E](#) was inserted by section 120 of and paragraphs 1 and 3 of Schedule 6 to the Pensions Act 2008.
- M60** [Paragraphs 9\(2\) and \(3\)](#) of Schedule 7 to the Civil Partnership Act 2004 were amended by section 120 of and paragraphs 14 and 20(2)(b) of Schedule 6 to the Pensions Act 2008.
- M61** [Section 24B](#) was inserted by section 19 of and paragraphs 1 and 4 of Schedule 3 to the Welfare Reform and Pensions Act 1999.
- M62** [Section 21C](#) was inserted by section 120 of and paragraphs 1 and 2 of Schedule 6 to the Pensions Act 2008.
- M63** [S.I. 2000/1048](#).
- M64** [S.I. 1996/1655](#).
- M65** [S.I. 1996/1847](#) Regulation 11 was amended by regulations 5(b), 5(c), 5(d)(i) and (ii), 5(e), 5(f) and 5(g) of the [Occupational Pension Scheme \(Transfer Values\) \(Amendment\) Regulations 2008 \(S.I. 2008/1050\)](#) and regulations 4(a)(ii) and 4(b) of the [Occupational Pension Scheme \(Winding Up and Transfer Values\) \(Amendment\) Regulations 2005 \(S.I. 2005/72\)](#) and regulation 8 of the Occupational, Personal and Stakeholder Pensions (Miscellaneous Amendment) Regulations 2009 ([S.I. 2009/615](#)) and Schedule 1 was amended by regulations 7(a)(ii), (iii), (iv)(aa), (iv)(bb) and 7(b) of Occupational Pension Scheme (Transfer Values) (Amendment) Regulations 2008.



**M66** 1993 c.48 Section 93A was inserted by section 153 of the Pensions Act 1965 (c.26) and section 94(1) (a) and (aa) were amended by section 154(1) and (2) of the Pensions Act 1995.

**M67** S.I. 1987/1110.

**M68** S.I. 2005/2920.

CHAPTER 2

PROCEDURE FOR APPLICATIONS

**When an Application for a financial order may be made**

**9.4.** An application for a financial order may be made—

- (a) in an application for a matrimonial or civil partnership order; or
- (b) at any time after an application for a matrimonial or civil partnership order has been made.

**Where to start proceedings**

**9.5.—(1)** An application for a financial remedy must be filed—

- (a) if there are proceedings for a matrimonial order or a civil partnership order which are proceeding in [<sup>F119</sup>the family court], in that court; or
- (b) if there are proceedings for a matrimonial order or a civil partnership order which are proceeding in the High Court, in the registry in which those proceedings are taking place.

<sup>F120</sup>(2) .....

(3) An application for a financial remedy under Part 3 of the 1984 Act or Schedule 7 to the 2004 Act which is proceeding in the High Court must be heard by a judge, but not a district judge, of that court unless a direction has been made that the application may be heard by a district judge of the principal registry.

(Rule 8.28 enables a judge to direct that an application for a financial remedy under Part 3 of the 1984 Act or Schedule 7 to the 2004 Act [<sup>F121</sup>which is proceeding in the High Court] may be heard by a district judge of the principal registry.)

**Textual Amendments**

**F119** Words in rule 9.5(1)(a) substituted (22.4.2014) by The Family Procedure (Amendment No.3) Rules 2013 (S.I. 2013/3204), rules 1, **23(a)** (with rule 137); S.I. 2014/954, art. 2

**F120** Rule 9.5(2) omitted (22.4.2014) by virtue of The Family Procedure (Amendment No.3) Rules 2013 (S.I. 2013/3204), rules 1, **23(b)** (with rule 137); S.I. 2014/954, art. 2

**F121** Words in rule 9.5 inserted (22.4.2014) by The Family Procedure (Amendment No.3) Rules 2013 (S.I. 2013/3204), rules 1, **23(c)** (with rule 137); S.I. 2014/954, art. 2

**Application for an order preventing a disposition**

**9.6.—(1)** The Part 18 procedure applies to an application for an order preventing a disposition.

(2) An application for an order preventing a disposition may be made without notice to the respondent. (“Order preventing a disposition” is defined in rule 9.3.)

**Application for interim orders**

**9.7.—(1)** A party may apply at any stage of the proceedings for—

- (a) an order for maintenance pending suit;

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- (b) an order for maintenance pending outcome of proceedings;
- (c) an order for interim periodical payments;
- (d) an interim variation order;

[<sup>F122</sup>(da) an order for payment in respect of legal services; or]

- (e) any other form of interim order.

[<sup>F123</sup>(2) An application for an order mentioned in paragraph (1) shall be made using the Part 18 procedure.]

(3) Where a party makes an application before filing a financial statement, the written evidence in support must—

- (a) explain why the order is necessary; and
- (b) give up to date information about that party's financial circumstances.

(4) Unless the respondent has filed a financial statement, the respondent must, at least 7 days before the court is to deal with the application, file a statement of his means and serve a copy on the applicant.

(5) An application for an order mentioned in paragraph (1)(e) may be made without notice.

#### **Textual Amendments**

**F122** Rule 9.7(1)(da) substituted (8.7.2013) by [The Family Procedure \(Amendment No. 2\) Rules 2013 \(S.I. 2013/1472\)](#), rules 1, **4(a)**

**F123** Rule 9.7(2) substituted (8.7.2013) by [The Family Procedure \(Amendment No. 2\) Rules 2013 \(S.I. 2013/1472\)](#), rules 1, **4(b)**

#### **Application for periodical payments order at same rate as an order for maintenance pending suit**

**9.8.**—(1) This rule applies where there are matrimonial proceedings and—

- (a) a decree nisi of divorce or nullity of marriage has been made;
- (b) at or after the date of the decree nisi an order for maintenance pending suit is in force; and
- (c) the spouse in whose favour the decree nisi was made has made an application for an order for periodical payments.

(2) The spouse in whose favour the decree nisi was made may apply, using the Part 18 procedure, for an order providing for payments at the same rate as those provided for by the order for maintenance pending suit.

#### **Application for periodical payments order at same rate as an order for maintenance pending outcome of proceedings**

**9.9.**—(1) This rule applies where there are civil partnership proceedings and—

- (a) a conditional order of dissolution or nullity of civil partnership has been made;
- (b) at or after the date of the conditional order an order for maintenance pending outcome of proceedings is in force;
- (c) the civil partner in whose favour the conditional order was made has made an application for an order for periodical payments.

(2) The civil partner in whose favour the conditional order was made may apply, using the Part 18 procedure, for an order providing for payments at the same rate as those provided for by, the order for maintenance pending the outcome of proceedings.

### CHAPTER 3

#### APPLICATIONS FOR FINANCIAL REMEDIES FOR CHILDREN

##### Application by parent, guardian etc for financial remedy in respect of children

**9.10.**—(1) The following people may apply for a financial remedy in respect of a child—

- (a) a parent, guardian or special guardian of any child of the family;
- (b) any person [<sup>F124</sup>who is named in a child arrangements order as a person with whom a child of the family is to live], and any applicant for such an order;
- (c) any other person who is entitled to apply for [<sup>F125</sup>a child arrangements order which names that person as a person with whom a child is to live];
- (d) a local authority, where an order has been made under section 31(1)(a) of the 1989 Act placing a child in its care;
- (e) the Official Solicitor, if appointed the children's guardian of a child of the family under rule 16.24; and
- (f) [<sup>F126</sup>subject to paragraph (1A),] a child of the family who has been given permission to apply for a financial remedy.

[<sup>F127</sup>(1A) Where the application is—

- (a) for the variation of an order under section 2(1)(c), 6 or 7 of the 1978 Act or paragraph 2(1)(c) of, or Part 2 or 3 of, Schedule 6 to the 2004 Act for periodical payments in respect of a child;
- (b) the application is made by the child in question; and
- (c) the child in question is aged 16 or over,

the child does not require permission to make the application.]

<sup>F128</sup>(2) .....

##### Textual Amendments

**F124** Words in rule 9.10(1)(b) substituted (22.4.2014) by The Family Procedure (Amendment No. 3) Rules 2014 (S.I. 2014/843), rules 1, **13(a)(i)**

**F125** Words in rule 9.10(1)(c) substituted (22.4.2014) by The Family Procedure (Amendment No. 3) Rules 2014 (S.I. 2014/843), rules 1, **13(a)(ii)**

**F126** Words in rule 9.10(1)(f) inserted (22.4.2014) by The Family Procedure (Amendment No.3) Rules 2013 (S.I. 2013/3204), rules 1, **24(a)** (with rule 137); S.I. 2014/954, art. 2

**F127** Rule 9.10(1A) inserted (22.4.2014) by The Family Procedure (Amendment No.3) Rules 2013 (S.I. 2013/3204), rules 1, **24(b)** (with rule 137); S.I. 2014/954, art. 2

**F128** Rule 9.10(2) omitted (22.4.2014) by virtue of The Family Procedure (Amendment No. 3) Rules 2014 (S.I. 2014/843), rules 1, **13(b)**

##### Children to be separately represented on certain applications

**9.11.**—(1) Where an application for a financial remedy includes an application for an order for a variation of settlement, the court must, unless it is satisfied that the proposed variation does not

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adversely affect the rights or interests of any child concerned, direct that the child be separately represented on the application.

(2) On any other application for a financial remedy the court may direct that the child be separately represented on the application.

(3) Where a direction is made under paragraph (1) or (2), the court may if the person to be appointed so consents, appoint—

- (a) a person other than the Official Solicitor; or
- (b) the Official Solicitor,

to be a children's guardian and rule 16.24(5) and (6) and rules 16.25 to 16.28 apply as appropriate to such an appointment.

## CHAPTER 4

### PROCEDURE <sup>F129</sup> ... AFTER FILING AN APPLICATION

#### Textual Amendments

**F129** Words in Pt. 9 Ch. 4 heading omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, 25 (with rule 137); S.I. 2014/954, art. 2

#### Duties of the court and the applicant upon issuing an application

**9.12.**—(1) When an application under this Part is issued [<sup>F130</sup>, except where Chapter 5 of this Part applies] —

- (a) the court will fix a first appointment not less than 12 weeks and not more than 16 weeks after the date of the filing of the application; and
- (b) subject to paragraph (2), within 4 days beginning with the date on which the application was filed, a court officer will—
  - (i) serve a copy of the application on the respondent; and
  - (ii) give notice of the date of the first appointment to the applicant and the respondent.

(2) Where the applicant wishes to serve a copy of the application on the respondent and on filing the application so notifies the court—

- (a) paragraph (1)(b) does not apply;
- (b) a court officer will return to the applicant the copy of the application and the notice of the date of the first appointment; and
- (c) the applicant must,—
  - (i) within 4 days beginning with the date on which the copy of the application is received from the court, serve the copy of the application and notice of the date of the first appointment on the respondent; and
  - (ii) file a certificate of service at or before the first appointment.

(Rule 6.37 sets out what must be included in a certificate of service.)

(3) The date fixed under paragraph (1), 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.

[<sup>F131</sup>(4) In relation to an application to which the Maintenance Regulation [<sup>F132</sup>or the 2007 Hague Convention] applies, where the applicant does not already know the address of the respondent at the time the application is issued, paragraph (2) does not apply and the court will serve the application in accordance with paragraph (1).]

### Textual Amendments

- F130** Words in rule 9.12(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **26** (with rule 137); S.I. 2014/954, art. 2
- F131** Rule 9.12(4) inserted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), rules 1, **8**
- F132** Words in rule 9.12(4) inserted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), rules 1, **8**

### Service of application on mortgagees, trustees etc

**9.13.**—(1) Where an application for a financial remedy includes an application for an order for a variation of settlement, the applicant must serve copies of the application on—

- (a) the trustees of the settlement;
- (b) the settlor if living; and
- (c) such other persons as the court directs.

(2) In the case of an application for an avoidance of disposition order, the applicant must serve copies of the application on the person in whose favour the disposition is alleged to have been made.

(3) Where an application for a financial remedy includes an application relating to land, the applicant must serve a copy of the application on any mortgagee of whom particulars are given in the application.

(4) Any person served under paragraphs (1), (2) or (3) may make a request to the court in writing, within 14 days beginning with the date of service of the application, for a copy of the applicant's financial statement or any relevant part of that statement.

(5) Any person who—

- (a) is served with copies of the application in accordance with paragraphs (1), (2) or (3); or
- (b) receives a copy of a financial statement, or a relevant part of that statement, following an application made under paragraph (4),

may within 14 days beginning with the date of service or receipt file a statement in answer.

(6) Where a copy of an application is served under paragraphs (1), (2) or (3), the applicant must file a certificate of service at or before the first appointment.

(7) A statement in answer filed under paragraph (5) must be verified by a statement of truth.

### Procedure before the first appointment

**9.14.**—(1) Not less than 35 days before the first appointment both parties must simultaneously exchange with each other and file with the court a financial statement in the form referred to in Practice Direction 5A.

(2) The financial statement must—

- (a) be verified by [<sup>F133</sup>a statement of truth]; and
- (b) accompanied by the following documents only—
  - (i) any documents required by the financial statement;
  - (ii) any other documents necessary to explain or clarify any of the information contained in the financial statement; and

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- (iii) any documents provided to the party producing the financial statement by a person responsible for a pension arrangement, either following a request under rule 9.30 or as part of a relevant valuation; and
- (iv) any notification or other document referred to in rule 9.37(2), (4) or (5) which has been received by the party producing the financial statement.

[<sup>F134</sup>(2ZA) Paragraph (2A) applies where the court has determined that the procedure in this Chapter should apply to an application under Article 56 of the Maintenance Regulation or Article 10 of the 2007 Hague Convention.]

[<sup>F135</sup>(2A) The requirement of paragraph (2)(a) relating to verification by a statement of truth does not apply to the financial statement of either party where the application has been made under—

- (a) Article 56 of the Maintenance Regulation, using the form in Annex VII to that Regulation; or
- (b) Article 10 of the 2007 Hague Convention, using the Financial Circumstances Form,

and the relief sought is limited to a type to which that Regulation or that Convention, as appropriate, applies, but the court may at any time direct that the financial statement of either party shall be verified by a statement of truth.]

(3) Where a party was unavoidably prevented from sending any document required by the financial statement, that party must at the earliest opportunity—

- (a) serve a copy of that document on the other party; and
- (b) file a copy of that document with the court, together with a written explanation of the failure to send it with the financial statement.

(4) No disclosure or inspection of documents may be requested or given between the filing of the application for a financial remedy and the first appointment, except—

- (a) copies sent with the financial statement, or in accordance with paragraph (3); or
- (b) in accordance with paragraphs (5) and (6).

(Rule 21.1 explains what is meant by disclosure and inspection.)

(5) Not less than 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; and
- (d) a notice stating whether that party will be in a position at the first appointment to proceed on that occasion to a FDR appointment.

(6) Not less than 14 days before the hearing of the first appointment, the applicant must file with the court and serve on the respondent confirmation—

- (a) of the names of all persons served in accordance with rule 9.13(1) to (3); and
- (b) that there are no other persons who must be served in accordance with those paragraphs.

#### **Textual Amendments**

**F133** Words in rule 9.14(2)(a) substituted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), rules 1, **16(a)** (with rule 30)

**F134** Rule 9.14(2ZA) inserted (22.4.2014) by The Family Procedure (Amendment No. 2) Rules 2014 (S.I. 2014/667), rules 1, 8 (with rule 45)

**F135** Rule 9.14(2A) substituted (20.12.2012) by The Family Procedure (Amendment No. 4) Rules 2012 (S.I. 2012/2806), rules 1, 9(a)

### **Duties of the court at the first appointment**

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

(2) At the first appointment the court must determine—

- (a) the extent to which any questions seeking information under rule 9.14(5)(c) must be answered; and
- (b) what documents requested under rule 9.14(5)(c) must be produced,

and give directions for the production of such further documents as may be necessary.

(3) The court must give directions where appropriate about—

- (a) the valuation of assets (including the joint instruction of joint experts);
- (b) obtaining and exchanging expert evidence, if required;
- (c) the evidence to be adduced by each party; and
- (d) further chronologies or schedules to be filed by each party.

(4) If the court decides that a referral to a FDR appointment is appropriate it must direct that the case be referred to a FDR appointment.

(5) If the court decides that a referral to a FDR appointment is not appropriate it must direct one or more of the following—

- (a) that a further directions appointment be fixed;
- (b) that an appointment be fixed for the making of an interim order;
- (c) that the case be fixed for a final hearing and, where that direction is given, the court must determine the judicial level at which the case should be heard.

( [F136]Under Part 3] the court may also direct that the case be adjourned if it considers that [F137]non-court dispute resolution] is appropriate.)

(6) In considering whether to make a costs order under rule 28.3(5), the court must have particular regard to the extent to which each party has complied with the requirement to send documents with the financial statement and the explanation given for any failure to comply.

(7) The court may—

- (a) where an application for an interim order has been listed for consideration at the first appointment, make an interim order;
- (b) having regard to the contents of the notice filed by the parties under rule 9.14(5)(d), treat the appointment (or part of it) as a FDR appointment to which rule 9.17 applies;
- (c) in a case where a pension sharing order or a pension attachment order is requested, direct any party with pension rights to file and serve a Pension Inquiry Form, completed in full or in part as the court may direct; and
- (d) in a case where a pension compensation sharing order or a pension compensation attachment order is requested, direct any party with PPF compensation rights to file and serve a Pension Protection Fund Inquiry Form, completed in full or in part as the court may direct.

(8) Both parties must personally attend the first appointment unless the court directs otherwise.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

### Textual Amendments

**F136** Words in rule 9.15(5) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **14(a)**

**F137** Words in rule 9.15(5) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **14(b)**

### After the first appointment

**9.16.**—(1) Between the first appointment and the FDR appointment, a party is not entitled to the production of any further documents except—

- (a) in accordance with directions given under rule 9.15(2); or
  - (b) with the permission of the court.
- (2) 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 parties attend a FDR appointment.

### The FDR appointment

**9.17.**—(1) The FDR appointment must be treated as a meeting held for the purposes of discussion and negotiation.

(2) The 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 less 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<sup>(GL)</sup>, 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 that party and not retained on the court file.

(6) Parties attending the FDR appointment must use their best endeavours to reach agreement on 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.

(9) If the court does not make an appropriate consent order as mentioned in paragraph (8), the court must give directions for the future course of the proceedings including, where appropriate—

- (a) the filing of evidence, including up to date information; and
- (b) fixing a final hearing date.

(10) Both parties must personally attend the FDR appointment unless the court directs otherwise.



## CHAPTER 5

### [<sup>F138</sup>Procedure after filing particular applications]

#### Textual Amendments

**F138** Pt. 9 Ch. 5 heading substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, 27 (with rule 137); S.I. 2014/954, art. 2

#### Duties of the court and the applicant upon filing an application

**9.18.**—[<sup>F139</sup>(A1) This Chapter applies where an application is made—

(a) under—

(i) the 1978 Act;

(ii) Schedule 6 to the 2004 Act;

(iii) Schedule 1 to the 1989 Act; <sup>F140</sup> ...

[ Article 56 of the Maintenance Regulation; or

<sup>F141</sup>(iv)

(v) Article 10 of the 2007 Hague Convention; or]

(b) for the variation of an order for a financial remedy.]

(1) [<sup>F142</sup>Where an application is issued]—

(a) the court will fix a first hearing date not less than 4 weeks and not more than 8 weeks after the date of the filing of the application; and

(b) subject to paragraph (2), within 4 days beginning with the date on which the application was filed, a court officer will—

(i) serve a copy of the application on the respondent;

(ii) give notice of the date of the first hearing to the applicant and the respondent; and

(iii) send a blank financial statement to both the applicant and the respondent.

(2) Where the applicant wishes to serve a copy of the application on the respondent and, on filing the application, so notifies the court—

(a) paragraph (1)(b) does not apply;

(b) a court officer will return to the applicant the copy of the application and the notice of the date of the first hearing; and

(c) the applicant must—

(i) within 4 days beginning with the date on which the copy of the application is received from the court, serve the copy of the application and notice of the date of the first hearing on the respondent;

(ii) send a blank financial statement to the respondent; and

(iii) file a certificate of service at or before the first hearing.

(3) The date fixed under paragraph (1), or for any other subsequent hearing or appointment must not be cancelled except with the court's permission and, if cancelled, the court must immediately fix a new date.

[<sup>F143</sup>[<sup>F144</sup>(4) The requirement in paragraph (1)(b)(iii) for the court officer to send a blank financial statement to the applicant does not apply where the application has been made under—

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

- (a) Article 56 of the Maintenance Regulation, using the form in Annex VII to that Regulation; or
- (b) Article 10 of the 2007 Hague Convention, using the Financial Circumstances Form.]

(5) In relation to an application to which the Maintenance Regulation [<sup>F145</sup>or the 2007 Hague Convention] applies, where the applicant does not already know the address of the respondent at the time the application is issued, paragraph (2) does not apply and the court will serve the application in accordance with paragraph (1).]

#### Textual Amendments

- F139** Rule 9.18(A1) inserted (22.4.2014) by The Family Procedure (Amendment No.3) Rules 2013 (S.I. 2013/3204), rules 1, **28(a)** (with rule 137); S.I. 2014/954, art. 2
- F140** Word in rule 9.18(A1)(a)(iii) omitted (22.4.2014) by virtue of The Family Procedure (Amendment No. 2) Rules 2014 (S.I. 2014/667), rules 1, **9(a)** (with rule 45)
- F141** Rule 9.18(A1)(a)(iv)(v) inserted (22.4.2014) by The Family Procedure (Amendment No. 2) Rules 2014 (S.I. 2014/667), rules 1, **9(b)** (with rule 45)
- F142** Words in rule 9.18(1) substituted (22.4.2014) by The Family Procedure (Amendment No.3) Rules 2013 (S.I. 2013/3204), rules 1, **28(b)** (with rule 137); S.I. 2014/954, art. 2
- F143** Rule 9.18(4)(5) inserted (18.6.2011) by The Family Procedure (Amendment) Rules 2011 (S.I. 2011/1328), rules 1, **10**
- F144** Rule 9.18(4) substituted (20.12.2012) by The Family Procedure (Amendment No. 4) Rules 2012 (S.I. 2012/2806), rules 1, **10(a)**
- F145** Words in rule 9.18(5) inserted (20.12.2012) by The Family Procedure (Amendment No. 4) Rules 2012 (S.I. 2012/2806), rules 1, **10(b)**

#### [<sup>F146</sup>Request for change of procedure

**9.18A.**—(1) This rule applies if the applicant wishes to seek a direction from the court that the procedure in Chapter 4 of this Part should apply to an application for an order in proceedings referred to in rule 9.18(A1).

- (2) The application for the order must state—
  - (a) that the applicant seeks a direction that the procedure in Chapter 4 of this Part should apply; and
  - (b) the applicant’s reasons for seeking such a direction.
- (3) The court will—
  - (a) determine without notice to the parties and before the first hearing whether the procedure in Chapter 4 or Chapter 5 of this Part should apply to the application; and
  - (b) notify the parties of its determination and any directions made in consequence of that determination.]

#### Textual Amendments

- F146** Rule 9.18A inserted (22.4.2014) by The Family Procedure (Amendment No.3) Rules 2013 (S.I. 2013/3204), rules 1, **29** (with rule 137); S.I. 2014/954, art. 2

**Procedure before the first hearing**

**9.19.**—(1) Not more than 14 days after the date of the issue of the application both parties must simultaneously exchange with each other and file with the court a financial statement referred to in Practice Direction 5A.

(2) The financial statement must—

- (a) be verified by [<sup>F147</sup>a statement of truth]; and
- (b) contain the following documents only—
  - (i) any documents required by the financial statement; and
  - (ii) any other documents necessary to explain or clarify any of the information contained in the financial statement.

[<sup>F148</sup>(2A) The requirement of paragraph (2)(a) relating to verification by statement of truth does not apply to the financial statement of either party where the application has been made under—

- (a) Article 56 of the Maintenance Regulation, using the form in Annex VII to that Regulation; or
- (b) Article 10 of the 2007 Hague Convention, using the Financial Circumstances Form,

but the court may at any time direct that the financial statement of either party shall be verified by a statement of truth.]

(3) Where a party was unavoidably prevented from sending any document required by the financial statement, that party must at the earliest opportunity—

- (a) serve a copy 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 the financial statement.

(4) No disclosure or inspection of documents may be requested or given between the filing of the application for a financial remedy and the first hearing except copies sent with the financial statement or in accordance with paragraph (3). (Rule 21.1 explains what is meant by disclosure and inspection.)

**Textual Amendments**

**F147** Words in rule 9.19(2)(a) substituted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), rules 1, **17(a)** (with rule 30)

**F148** Rule 9.19(2A) substituted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), rules 1, **11(a)**

**Power of the court to direct filing of evidence and set dates for further hearings**

**9.20.** Unless the court is able to determine the application at the first hearing the court may direct that further evidence be filed and set a date for a directions hearing or appointment or final hearing.

**Who the respondent is on an application under section 20 or section 20A of the 1978 Act<sup>M69</sup> or Part 6 of Schedule 6 to the 2004 Act**

**9.21.** In relation to proceedings set out in column 1 of the following table, column 2 sets out who the respondents to those proceedings will be.

<i>Proceedings</i>	<i>Respondent</i>
Application under section 20 of the 1978 Act, <sup>F149</sup>	The other party to the marriage; and

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....	where the order to which the application relates requires periodical payments to be made to, or in respect of, a child who is 16 years of age or over, that child.
Application under paragraphs 30 to 34 of Schedule 6 to the 2004 Act, F149	The other party to the civil partnership; and where the order to which the application relates requires periodical payments to be made to, or in respect of, a child who is 16 years of age or over, that child.
....	
Application for the revival of an order under section 20A of the 1978 Act or paragraph 40 of Schedule 6 to the 2004 Act.	The parties to the proceedings leading to the order which it is sought to have revived.

#### Textual Amendments

**F149** Words in [rule 9.21](#) table omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 30](#) (with [rule 137](#)); [S.I. 2014/954](#), [art. 2](#)

#### Marginal Citations

**M69** [Section 20A](#) was inserted by section 33(1) of and paragraph 69 of Schedule 2 to the Family Law Reform Act 1987 and substituted by section 108(5) of and paragraph 39 of Schedule 13 to the Children Act 1989.

### [<sup>F150</sup>Duty to make entries in the court's register

**9.21A.** Where a court officer receives notice of any direction made in the High Court or family court under section 28 of the 1978 Act by virtue of which an order made under that Act or the 2004 Act ceases to have effect, particulars of the direction must be noted in the court's records.]

#### Textual Amendments

**F150** [Rule 9.21A](#) inserted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), [rules 1, 10](#) (with [rule 45](#))

### [<sup>F151</sup>Chapter 5A]

#### Certain applications

#### Textual Amendments

**F151** Pt. 9 Ch. 5A cross-heading inserted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), [rules 1, 11](#)(with [rule 45](#))

**[<sup>F152</sup>Application <sup>F153</sup>... for a maintenance order, or revocation of a maintenance order to which the 1982 Act, the Lugano Convention, the 1988 Convention or the Maintenance Regulation applies**

**9.22.**—(1) This rule applies where a person makes an application <sup>F154</sup>... for a maintenance order, or for [<sup>F155</sup>the variation or] the revocation of a maintenance order, in relation to which the court has jurisdiction by virtue of the 1982 Act, the Lugano Convention, the 1988 Convention or the Maintenance Regulation, and the respondent is outside the United Kingdom.

- (2) Where the respondent does not enter an appearance and is not represented at the hearing—
  - (a) the court will apply the provisions of Article 20 of the 1968 Convention, Article 20 of the 1988 Convention, Article 26 of the Lugano Convention, or Article 11 of the Maintenance Regulation as appropriate;
  - (b) where the court proceeds to hear the application having applied the appropriate provision referred to in sub-paragraph (a), the court will take into account any written representations made and any evidence given by the respondent under these rules.

<sup>F156</sup>(3) .....

- (4) In this rule—
  - (a) “the 1982 Act”, “the Lugano Convention” and “the 1988 Convention” have the meanings given to them in rule 34.1(2);
  - (b) “the 1968 Convention” has the meaning given to it in the Civil Jurisdiction and Judgments Act 1982.]

<sup>F157</sup> ...

**Textual Amendments**

**F152** Rule 9.22 substituted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), rules 1, **12**

**F153** Words in rule 9.22 heading omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **31(a)** (with rule 137); S.I. 2014/954, art. 2

**F154** Words in rule 9.22(1) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **31(b)(i)** (with rule 137); S.I. 2014/954, art. 2

**F155** Words in rule 9.22(1) inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **31(b)(ii)** (with rule 137); S.I. 2014/954, art. 2

**F156** Rule 9.22(3) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **31(c)** (with rule 137); S.I. 2014/954, art. 2

**F157** Words in rule 9.22 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **31(d)** (with rule 137); S.I. 2014/954, art. 2

**Duty to make entries in the court's register**

<sup>F158</sup>**9.23.** .....

**Textual Amendments**

**F158** Rule 9.23 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **12** (with rule 45)

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Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)

CHAPTER 6

GENERAL PROCEDURE

Power to order delivery up of possession etc.

9.24.—(1) This rule applies where the court has made an order under—

- (a) section 24A of the 1973 Act M70;
(b) section 17(2) of the 1984 Act;
(c) Part 3 of Schedule 5 to the 2004 Act; or
(d) paragraph 9(4) of Schedule 7 to the 2004 Act.

(2) When the court makes an order mentioned in paragraph (1), it may order any party to deliver up to the purchaser or any other person—

- (a) possession of the land, including any interest in, or right over, land;
(b) receipt of rents or profits relating to it; or
(c) both.

Marginal Citations

M70 Section 24A was inserted by section 7 of the Matrimonial Homes and Property Act 1981 (c.24) and subsection 6 was inserted by section 46(1) of and Schedule 1 to that Act and the section was amended by section 66(1) and 66(3) of and paragraph 8 of Schedule 8 to and Schedule 10 to the Family Law Act 1996 and by section 261(1) of and paragraph 42 of Schedule 27 to the Civil Partnership Act 2004.

Where proceedings may be heard

9.25.—(1) Paragraph (2) applies to an application—

- (a) for a financial order;
(b) under Part 3 of the 1984 Act; or
(c) under Schedule 7 to the 2004 Act.

(2) An application mentioned in paragraph (1) must be heard—

- F159(a) .....
(b) where the case is proceeding in the High Court—
(i) at the Royal Courts of Justice; or
(ii) in matrimonial or civil partnership proceedings, any court at which sittings of the High Court are authorised.

F160(3) .....

F161(4) .....

F162(5) .....

Textual Amendments

F159 Rule 9.25(2)(a) omitted (22.4.2014) by virtue of The Family Procedure (Amendment No.3) Rules 2013 (S.I. 2013/3204), rules 1, rule 33 (with rule 137); S.I. 2014/954, art. 2

**F160** Rule 9.25(3) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **33** (with rule 137); S.I. 2014/954, art. 2

**F161** Rule 9.25(4) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **33** (with rule 137); S.I. 2014/954, art. 2

**F162** Rule 9.25(5) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **33** (with rule 137); S.I. 2014/954, art. 2

### **Applications for consent orders for financial remedy**

**9.26.**—(1) Subject to paragraph (5) and to rule 35.2, in relation to an application for a consent order—

- (a) the applicant must file two copies of a draft of the order in the terms sought, one of which must be endorsed with a statement signed by the respondent to the application signifying agreement; and
- (b) each party must file with the court and serve on the other party, a statement of information in the form referred to in Practice Direction 5A.

(2) Where each party's statement of information is contained in one form, it must be signed by both the applicant and respondent to certify that they have read the contents of the other party's statement.

(3) Where each party's statement of information is in a separate form, the form of each party must be signed by the other party to certify that they have read the contents of the statement contained in that form.

(4) Unless the court directs otherwise, the applicant and the respondent need not attend the hearing of an application for a consent order.

(5) Where all or any of the parties attend the hearing of an application for a financial remedy the court may—

- (a) dispense with the filing of a statement of information; and
- (b) give directions for the information which would otherwise be required to be given in such a statement in such a manner as it thinks fit.

(6) In relation to an application for a consent order under Part 3 of the 1984 Act or Schedule 7 to the 2004 Act, the application for permission to make the application may be heard at the same time as the application for a financial remedy if evidence of the respondent's consent to the order is filed with the application. (The following rules contain provision in relation to applications for consent orders - rule 9.32 (pension sharing order), rule 9.34 (pension attachment order), rule 9.41 (pension compensation sharing orders) and rule 9.43 (pension compensation attachment orders).)

### **[<sup>F163</sup>Questions as to the court's jurisdiction or whether the proceedings should be stayed**

**9.26A.**—(1) This rule applies to applications for maintenance where a question as to jurisdiction arises under—

- (a) the 1968 Convention;
- (b) the 1988 Convention;
- (c) the Lugano Convention; <sup>F164</sup> ...
- (d) <sup>F165</sup> ... [<sup>F166</sup>, or
- (e) Article 18 of the 2007 Hague Convention.]

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

(2) If at any time after the issue of the application it appears to the court that it does not or may not have jurisdiction to hear an application, or that under the instruments referred to in paragraph (1) it is or may be required to stay the proceedings or to decline jurisdiction, the court must—

- (a) stay the proceedings, and
- (b) fix a date for a hearing to determine jurisdiction or whether there should be a stay or other order.

(3) The court officer will serve notice of the hearing referred to at paragraph (2)(b) on the parties to the proceedings.

(4) The court must, in writing—

- (a) give reasons for its decision under paragraph (2), and
- (b) where it makes a finding of fact, state such finding.

(5) The court may with the consent of all the parties deal with any question as to the jurisdiction of the court, or as to whether the proceedings should be stayed, without a hearing.

(6) In this rule—

- (a) “the 1968 Convention” has the meaning given to it in the Civil Jurisdiction and Judgments Act 1982;
- (b) “the 1988 Convention” and “the Lugano Convention” have the meanings given to them in rule 34.1(2).]

#### **Textual Amendments**

**F163** Rule 9.26A inserted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), rules 1, **13**

**F164** Word in rule 9.26A(1)(c) omitted (20.12.2012) by virtue of [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), rules 1, **12(a)**

**F165** Rule 9.26A(1)(d) full stop omitted (20.12.2012) by virtue of [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), rules 1, **12(b)**

**F166** Rule 9.26A(1)(e) and word inserted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), rules 1, **12(b)**

#### **[<sup>F167</sup>International Maintenance Obligations: Communication with the Central Authority for England and Wales**

**9.26AA.**—(1) Where the Lord Chancellor requests information or a document from the court officer for the relevant court for the purposes of Article 58 of the Maintenance Regulation or Articles 12 or 25(2) of the 2007 Hague Convention, the court officer shall provide the requested information or document to the Lord Chancellor forthwith.

(2) In this rule, “relevant court” means the court at which an application under Article 56 of the Maintenance Regulation or Article 10 of the 2007 Hague Convention has been filed.

[The Lord Chancellor is the Central Authority for England and Wales in relation to the 2007 Hague Convention and the Maintenance Regulation]]

#### **Textual Amendments**

**F167** Rule 9.26AA inserted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), rules 1, **13**



### [<sup>F168</sup> Adding or removing parties

**9.26B.**—(1) The court may direct that a person or body be added as a party to proceedings for a financial remedy if—

- (a) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or
- (b) there is an issue involving the new party and an existing party which is connected to the matters in dispute in the proceedings, and it is desirable to add the new party so that the court can resolve that issue.

(2) The court may direct that any person or body be removed as a party if it is not desirable for that person or body to be a party to the proceedings.

(3) If the court makes a direction for the addition or removal of a party under this rule, it may give consequential directions about—

- (a) the service of a copy of the application form or other relevant documents on the new party; and
- (b) the management of the proceedings.

(4) The power of the court under this rule to direct that a party be added or removed may be exercised either on the court's own initiative or on the application of an existing party or a person or body who wishes to become a party.

(5) An application for an order under this rule must be made in accordance with the Part 18 procedure and, unless the court directs otherwise, must be supported by evidence setting out the proposed new party's interest in or connection with the proceedings or, in the case of removal of a party, the reasons for removal.]

#### Textual Amendments

**F168** Rule 9.26B inserted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), rules 1, 18 (with rule 30)

### [<sup>F169</sup> Method of making periodical payments

**9.26C.**—(1) This rule applies where under section 1(4) or (4A) of the Maintenance Enforcement Act 1991 the court orders that payments under a qualifying periodical maintenance order are to be made by a particular means.

(2) The court officer will record on a copy of the order the means of payment that the court has ordered.

(3) The court officer will notify in writing the person liable to make payments under the order how the payments are to be made.

(4) Where under section 1(4A) of the Maintenance Enforcement Act 1991 the court orders payment to the court by a method of payment under section 1(5) of that Act, the court officer will notify the person liable to make payments under the order of sufficient details of the account into which payments should be made to enable payments to be made into that account.

(5) Where payments are made to the court, the court officer will give or send a receipt to any person who makes such a payment and who asks for a receipt.

(6) Where payments are made to the court, the court officer will make arrangements to make the payments to—

- (a) the person entitled to them; or

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*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

(b) if the person entitled to them is a child, to the child or to the person with whom the child has his or her home.

(7) The Part 18 procedure applies to an application under section 1(7) of the Maintenance Enforcement Act 1991 (application from an interested party to revoke, suspend, revive or vary the method of payment).

(8) Where the court makes an order under section 1(7) of the Maintenance Enforcement Act 1991 or dismisses an application for such an order, the court officer will, as far as practicable, notify in writing all interested parties of the effect of the order and will take the steps set out in paragraphs (2), (3) and (4), as appropriate..

(9) In this rule, “interested party” and “qualifying periodical maintenance order” have the meanings given in section 1(10) of the Maintenance Enforcement Act 1991.

#### Textual Amendments

**F169** Rules 9.26C-9.26E inserted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), [rules 1, 13](#) (with [rule 45](#))

#### **Court officer to notify subsequent marriage or formation of civil partnership of a person entitled to payments under a maintenance order**

**9.26D.**—(1) This rule applies where—

- (a) there is an order of a type referred to in paragraph (4) which requires payments to be made to the court or to an officer of the court; and
- (b) the court is notified in writing by—
  - (i) the person entitled to receive payments under the order;
  - (ii) the person required to make payments under the order; or
  - (iii) the personal representative of such a person,

that the person entitled to receive payments under the order has subsequently married or formed a civil partnership.

(2) The court officer will, where practicable, notify in writing the courts referred to in paragraph (3) of the notification of the subsequent marriage or formation of a civil partnership.

(3) The courts to be notified are—

- (a) any other court which has made an order of a type referred to in paragraph (4);
- (b) in the case of a provisional order made under section 3 of the 1920 Act or section 3 of the 1972 Act, the court which confirmed the order;
- (c) if an order of a type referred to in paragraph (4) has been transmitted abroad for registration under section 2 of the 1920 Act or section 2 of the 1972 Act, the court in which the order is registered; and
- (d) any other court in which an application to enforce the order has been made.

(4) The orders are—

- (a) those to which the following provisions apply—
  - (i) section 38 of the 1973 Act;
  - (ii) section 4(2) of the 1978 Act;
  - (iii) paragraph 65 of Schedule 5 to the 2004 Act; and
  - (iv) paragraph 26(2) of Schedule 6 to the 2004 Act; and

(b) an attachment of earnings order made to secure payments under an order referred to in sub-paragraph (a).

(5) In this rule—

“the 1920 Act” means the Maintenance Orders (Facilities for Enforcement) Act 1920; and

“the 1972 Act” means the Maintenance Orders (Reciprocal Enforcement) Act 1972.

#### Textual Amendments

**F169** Rules 9.26C-9.26E inserted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), [rules 1, 13](#) (with [rule 45](#))

### Enforcement and apportionment where periodical payments are made under more than one order

**9.26E.**—(1) This rule applies where periodical payments are required to be made by a payer to a payee under more than one periodical payments order.

(2) Proceedings for the recovery of payments under more than one order may be made in one application by the payee, which must indicate the payments due under each order.

(3) Paragraphs (4) and (5) apply where any sum paid to the court on any date by a payer who is liable to make payments to the court under two or more periodical payments orders is less than the total sum that the payer is required to pay to the court on that date in respect of those orders.

(4) The payment made will be apportioned between the orders in proportion to the amounts due under each order over a period of one year.

(5) If, as a result of the apportionment referred to in paragraph (4), the payments under any periodical payments order are no longer in arrears, the residue shall be applied to the amount due under the other order or, if there is more than one other order, shall be apportioned between the other orders in accordance with paragraph (4).

(6) In this rule—

“payee” means a person entitled to receive payments under a periodical payments order; and

“payer” means a person required to make payments under a periodical payments order.]

#### Textual Amendments

**F169** Rules 9.26C-9.26E inserted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), [rules 1, 13](#) (with [rule 45](#))

## CHAPTER 7

### ESTIMATES OF COSTS

#### Estimates of Costs

**9.27.**—(1) Subject to paragraph (2), at every hearing or appointment each party must produce to the court an estimate of the costs incurred by that party up to the date of that hearing or appointment.

(2) Not less than 14 days before the date fixed for the final hearing of an application for a financial remedy, each party (“the filing party”) must (unless the court directs otherwise) file with the court and serve on each other party a statement giving full particulars of all costs in respect of the proceedings which the filing party has incurred or expects to incur, to enable the court to take account of the parties’ liabilities for costs when deciding what order (if any) to make for a financial remedy.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

F170(3) .....

**Textual Amendments**

**F170** Rule 9.27(3) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, 34 (with rule 137); S.I. 2014/954, art. 2

**Duty to make open proposals**

**9.28.**—(1) Not less than 14 days before the date fixed for the final hearing of an application for a financial remedy, 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 the applicant 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 the respondent proposes to ask the court to make.

CHAPTER 8  
PENSIONS

**Application and interpretation of this Chapter**

**9.29.**—(1) This Chapter applies

- (a) where an application for a financial remedy has been made; and
- (b) the applicant or respondent is the party with pension rights.

(2) In this Chapter—

- (a) in proceedings under the 1973 Act and the 1984 Act, all words and phrases defined in sections 25D(3) and (4) of the 1973 Act <sup>M71</sup> have the meaning assigned by those subsections;
- (b) in proceedings under the 2004 Act—
  - (i) all words and phrases defined in paragraphs 16(4) to (5) and 29 of Schedule 5 to that Act have the meanings assigned by those paragraphs; and
  - (ii) “the party with pension rights” has the meaning given to “civil partner with pension rights” by paragraph 29 of Schedule 5 to the 2004 Act;
- (c) all words and phrases defined in section 46 of the Welfare Reform and Pensions Act 1999 <sup>M72</sup> have the meanings assigned by that section.

**Marginal Citations**

**M71** Section 25D(3) and (4) was amended by sections 21 and 84(1) of and paragraphs 3(1) and (5) of Schedule 4 to and paragraphs 64 and 66(1) and (4) of Schedule 12 to the Welfare Reform and Pensions Act 1999 and section 66(1) of and Schedule 8 to the Family Law Act 1996.

**M72** Section 46 was amended by section 320 of and Part 1 of Schedule 13 to the [Pensions Act 2004 \(c.35\)](#) and articles 15(1) and (4) of the [Taxation of Pension Schemes \(Consequential Amendments\) Order 2006 \(S.I. 2006/745\)](#).

### **What the party with pension rights must do when the court fixes a first appointment**

**9.30.**—(1) Where the court fixes a first appointment as required by rule 9.12(1)(a) the party with pension rights must request the person responsible for each pension arrangement under which the party has or is likely to have benefits to provide the information referred to in regulation 2(2) of the Pensions on Divorce etc (Provision of Information) Regulations 2000. (The information referred to in regulation 2 of the Pensions on Divorce etc (Provision of Information) Regulations 2000 relates to the valuation of pension rights or benefits.)

(2) The party with pension rights must comply with paragraph (1) within 7 days beginning with the date on which that party receives notification of the date of the first appointment.

(3) Within 7 days beginning with the date on which the party with pension rights receives the information under paragraph (1) that party must send a copy of it to the other party, together with the name and address of the person responsible for each pension arrangement.

(4) A request under paragraph (1) need not be made where the party with pension rights is in possession of, or has requested, a relevant valuation of the pension rights or benefits accrued under the pension arrangement in question.

### **Applications for pension sharing orders**

**9.31.** Where an application for a financial remedy includes an application for a pension sharing order, or where a request for such an order is added to an existing application for a financial remedy, the applicant must serve a copy of the application on the person responsible for the pension arrangement concerned.

### **Applications for consent orders for pension sharing**

**9.32.**—(1) This rule applies where—

- (a) the parties have agreed on the terms of an order and the agreement includes a pension sharing order;
- (b) service has not been effected under rule 9.31; and
- (c) the information referred to in paragraph (2) has not otherwise been provided.

(2) The party with pension rights must—

- (a) request the person responsible for the pension arrangement concerned to provide the information set out in Section C of the Pension Inquiry Form; and
- (b) on receipt, send a copy of the information referred to in sub-paragraph (a) to the other party.

### **Applications for pension attachment orders**

**9.33.**—(1) Where an application for a financial remedy includes an application for a pension attachment order, or where a request for such an order is added to an existing application for a financial remedy, the applicant must serve a copy of the application on the person responsible for the pension arrangement concerned and must at the same time send—

- (a) an address to which any notice which the person responsible is required to serve on the applicant is to be sent;
- (b) an address to which any payment which the person responsible is required to make to the applicant is to be sent; and
- (c) where the address in sub-paragraph (b) is that of a bank, a building society or the Department of National Savings, sufficient details to enable the payment to be made into the account of the applicant.

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*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

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(2) A person responsible for a pension arrangement who receives a copy of the application under paragraph (1) may, within 21 days beginning with the date of service of the application, request the party with the pension rights to provide that person with the information disclosed in the financial statement relating to the party's pension rights or benefits under that arrangement.

(3) If the person responsible for a pension arrangement makes a request under paragraph (2), the party with the pension rights must provide that person with a copy of the section of that party's financial statement that relates to that party's pension rights or benefits under that arrangement.

(4) The party with the pension rights must comply with paragraph (3)—

- (a) within the time limited for filing the financial statement by rule 9.14(1); or
- (b) within 21 days beginning with the date on which the person responsible for the pension arrangement makes the request,

whichever is the later.

(5) A person responsible for a pension arrangement who receives a copy of the section of a financial statement as required pursuant to paragraph (4) may, within 21 days beginning with the date on which that person receives it, send to the court, the applicant and the respondent a statement in answer.

(6) A person responsible for a pension arrangement who files a statement in answer pursuant to paragraph (5) will be entitled to be represented at the first appointment, or such other hearing as the court may direct, and the court must within 4 days, beginning with the date on which that person files the statement in answer, give the person notice of the date of the first appointment or other hearing as the case may be.

### **Applications for consent orders for pension attachment**

**9.34.**—(1) This rule applies where service has not been effected under rule 9.33(1).

(2) Where the parties have agreed on the terms of an order and the agreement includes a pension attachment order, then they must serve on the person responsible for the pension arrangement concerned—

- (a) a copy of the application for a consent order;
- (b) a draft of the proposed order, complying with rule 9.35; and
- (c) the particulars set out in rule 9.33(1).

(3) No consent order that includes a pension attachment order must be made unless either—

- (a) the person responsible for the pension arrangement has not made any objection within 21 days beginning with the date on which the application for a consent order was served on that person; or
- (b) the court has considered any such objection, and for the purpose of considering any objection the court may make such direction as it sees fit for the person responsible to attend before it or to furnish written details of the objection.

### **Pension sharing orders or pension attachment orders**

**9.35.** An order for a financial remedy, whether by consent or not, which includes a pension sharing order or a pension attachment order, must—

- (a) in the body of the order, state that there is to be provision by way of pension sharing or pension attachment in accordance with the annex or annexes to the order; and
- (b) be accompanied by a pension sharing annex or a pension attachment annex as the case may require, and if provision is made in relation to more than one pension arrangement there must be one annex for each pension arrangement.

### **Duty of the court upon making a pension sharing order or a pension attachment order**

**9.36.**—(1) A court which varies or discharges a pension sharing order or a pension attachment order, must send, or direct one of the parties to send—

(a) to the person responsible for the pension arrangement concerned; or

(b) where the Board has assumed responsibility for the pension scheme or part of it, the Board; the documents referred to in paragraph (4).

(2) A court which makes a pension sharing order or pension attachment order, must send, or direct one of the parties to send to the person responsible for the pension arrangement concerned, the documents referred to in paragraph (4).

(3) Where the Board has assumed responsibility for the pension scheme or part of it after the making of a pension sharing order or attachment order but before the documents have been sent to the person responsible for the pension arrangement in accordance with paragraph (2), the court which makes the pension sharing order or the pension attachment order, must send, or direct one of the parties to send to the Board the documents referred to in paragraph (4).

(4) The documents to be sent in accordance with paragraph (1) to (3) are—

(a) in the case of—

(i) proceedings under the 1973 Act, a copy of the decree of judicial separation;

(ii) proceedings under Schedule 5 to the 2004 Act, a copy of the separation order;

(iii) proceedings under Part 3 of the 1984 Act, a copy of the document of divorce, annulment or legal separation;

(iv) proceedings under Schedule 7 to the 2004 Act, a copy of the document of dissolution, annulment or legal separation;

(b) in the case of divorce or nullity of marriage, a copy of the decree absolute under rule 7.31 or 7.32; or

(c) in the case of dissolution or nullity of civil partnership, a copy of the order making the conditional order final under rule 7.31 or 7.32; and

(d) a copy of the pension sharing order or the pension attachment order, or as the case may be of the order varying or discharging that order, including any annex to that order relating to that pension arrangement but no other annex to that order.

(5) The documents referred to in [F171] paragraph (4)] must be sent—

(a) in proceedings under the 1973 Act and the 1984 Act, within 7 days beginning with the date on which—

(i) the relevant pension sharing or pension attachment order [F172, or any order varying or discharging such an order,] is made; or

(ii) the decree absolute of divorce or nullity or decree of judicial separation is made, whichever is the later; and

(b) in proceedings under the 2004 Act, within 7 days beginning with the date on which—

(i) the relevant pension sharing or pension attachment order [F173, or any order varying or discharging such an order,] is made; or

(ii) the final order of dissolution or nullity or separation order is made, whichever is the later.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

### Textual Amendments

- F171** Words in rule 9.36(5) substituted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), rules 1, **19(a)** (with rule 30)
- F172** Words in rule 9.36(5)(a)(i) inserted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), rules 1, **19(b)** (with rule 30)
- F173** Words in rule 9.36(5)(b)(i) inserted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), rules 1, **19(b)** (with rule 30)

### Procedure where Pension Protection Fund becomes involved with the pension scheme

**9.37.**—(1) This rule applies where—

- (a) rules 9.30 to 9.34 or 9.36 apply; and
- (b) the party with the pension rights (“the member”) receives or has received notification in compliance with the Pension Protection Fund (Provision of Information) Regulations 2005 (“the 2005 Regulations”) <sup>M73</sup>—
  - (i) from the trustees or managers of a pension scheme, that there is an assessment period in relation to that scheme; or
  - (ii) from the Board that it has assumed responsibility for the pension scheme or part of it.

(2) If the trustees or managers of the pension scheme notify or have notified the member that there is an assessment period in relation to that scheme, the member must send to the other party, all the information which the Board is required from time to time to provide to the member under the 2005 Regulations including—

- (a) a copy of the notification; and
- (b) a copy of the valuation summary,

in accordance with paragraph (3).

(3) The member must send the information or any part of it referred to in paragraph (2)—

- (a) if available, when the member sends the information received under rule 9.30(1); or
- (b) otherwise, within 7 days of receipt.

(4) If the Board notifies the member that it has assumed responsibility for the pension scheme, or part of it, the member must—

- (a) send a copy of the notification to the other party within 7 days of receipt; and
- (b) comply with paragraph (5).

(5) Where paragraph (4) applies, the member must—

- (a) within 7 days of receipt of the notification, request the Board in writing to provide a forecast of the member's compensation entitlement as described in the 2005 Regulations; and
- (b) send a copy of the forecast of the member's compensation entitlement to the other party within 7 days of receipt.

(6) In this rule—

- (a) “assessment period” means an assessment period within the meaning of Part 2 of the Pensions Act 2004; and
- (b) “valuation summary” has the meaning assigned to it by the 2005 Regulations.



**Marginal Citations**

M73 [S.I. 2005/674](#).

CHAPTER 9

PENSION PROTECTION FUND COMPENSATION

**Application and interpretation of this Chapter**

**9.38.**—(1) This Chapter applies—

- (a) where an application for a financial remedy has been made; and
- (b) the applicant or respondent is, the party with compensation rights.

(2) In this Chapter “party with compensation rights” —

- (a) in proceedings under the 1973 Act and the 1984 Act, has the meaning given to it by section 25G(5) of the 1973 Act;
- (b) in proceedings under the 2004 Act, has the meaning given to “civil partner with compensation rights” by paragraph 37(1) of Schedule 5 to the 2004 Act <sup>M74</sup>.

**Marginal Citations**

M74 [Paragraph 37\(1\)](#) was amended by section 120 of and paragraph 14, 16(1), (5)(a)(b) and 17(10) of Schedule 6 to the Pensions Act 2008.

**What the party with compensation rights must do when the court fixes a first appointment**

**9.39.**—(1) Where the court fixes a first appointment as required by rule 9.12(1)(a) the party with compensation rights must request the Board to provide the information about the valuation of entitlement to PPF compensation referred to in regulations made by the Secretary of State under section 118 of the Pensions Act 2008.

(2) The party with compensation rights must comply with paragraph (1) within 7 days beginning with the date on which that party receives notification of the date of the first appointment.

(3) Within 7 days beginning with the date on which the party with compensation rights receives the information under paragraph (1) that party must send a copy of it to the other party, together with the name and address of the trustees or managers responsible for each pension scheme.

(4) Where the rights to PPF Compensation are derived from rights under more than one pension scheme, the party with compensation rights must comply with this rule in relation to each entitlement.

**Applications for pension compensation sharing orders**

**9.40.** Where an application for a financial remedy includes an application for a pension compensation sharing order or where a request for such an order is added to an existing application for a financial remedy, the applicant must serve a copy of the application on the Board.

**Applications for consent orders for pension compensation sharing**

**9.41.**—(1) This rule applies where—

- (a) the parties have agreed on the terms of an order and the agreement includes a pension compensation sharing order;

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- (b) service has not been effected under rule 9.40; and
  - (c) the information referred to in paragraph (2) has not otherwise been provided.
- (2) The party with compensation rights must—
- (a) request the Board to provide the information set out in Section C of the Pension Protection Fund Inquiry Form; and
  - (b) on receipt, send a copy of the information referred to in sub-paragraph (a) to the other party.

#### **Applications for pension compensation attachment orders**

**9.42.** Where an application for a financial remedy includes an application for a pension compensation attachment order or where a request for such an order is added to an existing application for a financial remedy, the applicant must serve a copy of the application on the Board and must at the same time send—

- (a) an address to which any notice which the Board is required to serve on the applicant is to be sent;
- (b) an address to which any payment which the Board is required to make to the applicant is to be sent; and
- (c) where the address in sub-paragraph (b) is that of a bank, a building society or the Department of National Savings, sufficient details to enable the payment to be made into the account of the applicant.

#### **Applications for consent orders for pension compensation attachment**

**9.43.—**(1) This rule applies where service has not been effected under rule 9.42.

(2) Where the parties have agreed on the terms of an order and the agreement includes a pension compensation attachment order, then they must serve on the Board—

- (a) a copy of the application for a consent order;
- (b) a draft of the proposed order, complying with rule 9.44; and
- (c) the particulars set out in rule 9.42.

#### **Pension compensation sharing orders or pension compensation attachment orders**

**9.44.** An order for a financial remedy, whether by consent or not, which includes a pension compensation sharing order or a pension compensation attachment order, must—

- (a) in the body of the order, state that there is to be provision by way of pension compensation sharing or pension compensation attachment in accordance with the annex or annexes to the order; and
- (b) be accompanied by a pension compensation sharing annex or a pension compensation attachment annex as the case may require, and if provision is made in relation to entitlement to PPF compensation that derives from rights under more than one pension scheme there must be one annex for each such entitlement.

#### **Duty of the court upon making a pension compensation sharing order or a pension compensation attachment order**

**9.45.—**(1) A court which makes, varies or discharges a pension compensation sharing order or a pension compensation attachment order, must send, or direct one of the parties to send, to the Board—

- (a) in the case of—

- (i) proceedings under Part 3 of the 1984 Act, a copy of the document of divorce, annulment or legal separation;
- (ii) proceedings under Schedule 7 to the 2004 Act, a copy of the document of dissolution, annulment or legal separation;
- (b) in the case of —
  - (i) divorce or nullity of marriage, a copy of the decree absolute under rule 7.32 or 7.33;
  - (ii) dissolution or nullity of civil partnership, a copy of the order making the conditional order final under rule 7.32 or 7.33;
- (c) in the case of separation—
  - (i) in the matrimonial proceedings, a copy of the decree of judicial separation;
  - (ii) in civil partnership proceedings, a copy of the separation order; and
- (d) a copy of the pension compensation sharing order or the pension compensation attachment order, or as the case may be of the order varying or discharging that order, including any annex to that order relating to that PPF compensation but no other annex to that order.
- (2) The documents referred to in paragraph (1) must be sent—
  - (a) in proceedings under the 1973 Act and the 1984 Act, within 7 days beginning with the date on which—
    - (i) the relevant pension compensation sharing or pension compensation attachment order is made; or
    - (ii) the decree absolute of divorce or nullity or the decree of judicial separation is made, whichever is the later; and
  - (b) in proceedings under the 2004 Act, within 7 days beginning with the date on which—
    - (i) the relevant pension compensation sharing or pension compensation attachment order is made; or
    - (ii) the final order of dissolution or nullity or separation order is made, whichever is the later.

## **PART 10**

### **APPLICATIONS UNDER PART 4 OF THE FAMILY LAW ACT 1996**

#### **Scope and interpretation of this Part**

**10.1.** The rules in this Part apply to proceedings under Part 4 of the 1996 Act.

#### **Applications for an occupation order or a non-molestation order**

**10.2.—(1)** An application for an occupation order or a non-molestation order must be supported by a witness statement.

(2) [<sup>F174</sup>An] application for an occupation order or a non-molestation order may be made without notice.

<sup>F175</sup>(3) .....

(4) Where an application is made without notice, the witness statement in support of the application must state the reasons why notice has not been given. (Section 45 of the 1996 Act sets out the criteria for making an order without notice.)

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Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)

**Textual Amendments**

- F174** Word in rule 10.2(2) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 35\(a\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)
- F175** Rule 10.2(3) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 35\(b\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

**Service of the application**

**10.3.—(1)** In an application made on notice, the applicant must serve—

- (a) a copy of the application together with any statement in support; and
- (b) notice of any hearing or directions appointment set by the court,

on the respondent personally—

- (i) not less than 2 days before the hearing; or
- (ii) within such period as the court may direct.

(2) Where the applicant is acting in person, the applicant may request the court officer to serve the application on the respondent.

(3) In an application for an occupation order under section 33, 35 or 36 of the 1996 Act <sup>M75</sup>, the applicant must serve on the mortgagee and any landlord of the dwelling-house in question—

- (a) a copy of the application; and
- (b) notice of the right to make representations in writing or orally at any hearing.

(4) The applicant must file a certificate of service after serving the application. (Rule 6.23 makes provision for the different methods of serving a document and rule 6.35 provides for the court to authorise service by an alternative method.)

**Marginal Citations**

**M75** [Section 33](#) was amended by section 82 of and paragraphs 4(1), (2), (3), (7), (4)(a) and (b), (5) and 6(a) to (e) of Schedule 9 to the Civil Partnership Act 2004. Section 35 was amended by section 82 of and paragraphs 6(1) to 6(10) of Schedule 9 to that Act. Section 36 was amended by sections 2(2) and 58(1) of and paragraphs 34(1) to (3) of Schedule 10 to the [Domestic Violence, Crime and Victims Act 2004 \(c.28\)](#) and section 82 of and paragraph 7 of Schedule 9 to the Civil Partnership Act 2004.

**Transfer of pending proceedings to another court**

<sup>F176</sup>**10.4.** . . . . .

**Textual Amendments**

**F176** Rule 10.4 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 36](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

**Privacy**

**10.5.** [<sup>F177</sup>Any] hearing relating to an application for an occupation order or a non-molestation order will be in private unless the court directs otherwise.

### Textual Amendments

**F177** Word in rule 10.5 substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 37](#) (with [rule 137](#)); [S.I. 2014/954](#), [art. 2](#)

### Service of an order

**10.6.—(1)** The applicant must, as soon as reasonably practicable, serve on the respondent personally—

(a) a copy of the order; and

[<sup>F178</sup>(b) where the order is made without notice—

(i) a copy of the application together with any statement supporting it; and

(ii) where the order is made by lay justices, a copy of the written record of the reasons for the court's decision.

(Rule 27.2 makes provision in respect of lay justices giving written reasons in the family court.)]

(2) The court must serve the documents listed in paragraph (1) if—

(a) an applicant, acting in person, so requests; or

(b) the court made the order of its own initiative.

(3) In an application for an occupation order under section 33, 35 or 36 of the 1996 Act, the applicant must serve a copy of any order made on the mortgagee and any landlord of the dwelling-house in question.

### Textual Amendments

**F178** Rule 10.6(1)(b) substituted and words (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), [rules 1, 14](#) (with [rule 45](#))

### Representations made by a mortgagee or landlord

**10.7.** The court may direct that a hearing be held in order to consider any representations made by a mortgagee or a landlord.

### Applications to vary, extend or discharge an order

**10.8.** Rules 10.5 to 10.7 apply to applications to vary, extend or discharge an order.

### Orders containing provisions to which a power of arrest is attached

**10.9.** Where the court makes an occupation order containing one or more provisions to which a power of arrest is attached (“relevant provisions”)—

(a) each relevant provision must be set out in a separate paragraph in the order; and

(b) a paragraph containing a relevant provision must not include a provision of the order to which the power of arrest is not attached.

### Service of an order on the officer for the time being in charge of a police station

**10.10.—(1)** Where the court makes—

(a) an occupation order to which a power of arrest is attached; or

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

- (b) a non-molestation order,
- a copy of the order must be delivered to the officer for the time being in charge of—
- (i) the police station for the applicant's address; or
  - (ii) such other police station as the court may specify.
- (2) A copy of the order delivered under paragraph (1) must be accompanied by a statement showing that the respondent has been served with the order or informed of its terms (whether by being present when the order was made or by telephone or otherwise).
- (3) The documentation referred to in paragraphs (1) and (2) must be delivered by—
- (a) the applicant; or
  - (b) the court officer, where the order was served following a request under rule 10.6(2).
- (4) Paragraph (5) applies where an order is made varying or discharging—
- (a) a provision of an occupation order to which a power of arrest is attached; or
  - (b) a provision of a non-molestation order.
- (5) The court officer must—
- (a) immediately inform—
    - (i) the officer who received a copy of the order under paragraph (1); and
    - (ii) if the applicant's address has changed, the officer for the time being in charge of the police station for the new address; and
  - (b) deliver a copy of the order referred to in paragraph (4)(a) or (b) and the order referred to in paragraph (1) to any officer so informed.

#### **Proceedings following arrest** <sup>F179</sup> ...

- 10.11.**—(1) This rule applies where a person is arrested pursuant to—
- (a) a power of arrest attached to a provision of an occupation order; <sup>F180</sup> ...
  - (b) a warrant of arrest issued on an application under section 47(8) of the 1996 Act <sup>M76</sup>[<sup>F181</sup>; or]
  - <sup>F182</sup>(c) a warrant of arrest issued on an application for enforcement of an incoming protection measure.
- (The Civil Jurisdiction and Judgments (Protection Measures) Regulations 2014(1) make provision in relation to the powers of the family court and the High Court to enforce incoming protection measures under the Protection Measures Regulation.)]
- (2) The court before which a person is brought following arrest may—
- (a) determine whether the facts, and the circumstances which led to the arrest, amounted to disobedience of the order; or
  - (b) adjourn the proceedings.
- (3) Where the proceedings are adjourned and the arrested person is released—
- (a) unless the court directs otherwise, the matter must be dealt with within 14 days beginning with the date of arrest; and
  - (b) the arrested person must be given not less than 2 days' notice of the hearing.
- (4) An application notice seeking the committal for contempt of court of the arrested person may be issued if the arrested person is not dealt with within the period mentioned in paragraph (3)(a).
- (The powers of [<sup>F183</sup>the court] to remand in custody or on bail are contained in section 47 of and Schedule 5 to the Family Law Act 1996 <sup>M77</sup>.)

(F184 ...)

**Textual Amendments**

- F179** Words in rule 10.11 heading omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **38(a)** (with rule 137); S.I. 2014/954, **art. 2**
- F180** Word in rule 10.11(1)(a) omitted (11.1.2015) by virtue of [The Family Procedure \(Amendment No. 4\) Rules 2014 \(S.I. 2014/3296\)](#), rules 1(2), **9(a)** (with rule 15)
- F181** Word in rule 10.11(1)(b) substituted (11.1.2015) by [The Family Procedure \(Amendment No. 4\) Rules 2014 \(S.I. 2014/3296\)](#), rules 1(2), **9(b)** (with rule 15)
- F182** Rule 10.11(1)(c) inserted (11.1.2015) by [The Family Procedure \(Amendment No. 4\) Rules 2014 \(S.I. 2014/3296\)](#), rules 1(2), **9(c)** (with rule 15)
- F183** Words in rule 10.11 substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **38(b)** (with rule 137); S.I. 2014/954, **art. 2**
- F184** Words in rule 10.11 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **38(c)** (with rule 137); S.I. 2014/954, **art. 2**

**Marginal Citations**

- M76** [Section 47\(8\)](#) was amended by section 58(1) to and paragraphs 38(1) and (5) of Schedule 10 to the Domestic Violence, Crime and Victims Act 2004.
- M77** [Section 47](#) was amended by section 58(1) and (2) of and paragraphs 38(1) to (5) of Schedule 10 to and Schedule 11 to the Domestic Violence, Crime and Victims Act 2004.

**[F185] Enforcement of an order: requirement for a penal notice**

**10.12.** At the time when the order is drawn up, the court officer will—

- (a) where the order made is (or includes) a non-molestation order; or
- (b) where the order made is an occupation order and the court so directs,

issue a copy of the order, endorsed with or incorporating a notice as to the consequences of disobedience, for service in accordance with rule 10.6.

(For enforcement of an order by way of committal see Part 37 (rule 37.9 concerns the requirement for a judgment or order to do or not to do an act to contain a penal notice if it is to be enforceable by way of committal).)

**Textual Amendments**

- F185** Rules 10.12, 10.13 substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **15** (with rule 45)

**Enforcement of an undertaking**

**10.13.** Chapter 2 of Part 37 applies with the necessary modifications where an application is made to commit a person for breach of an undertaking.

(For enforcement of an undertaking by way of committal see rule 37.4(4).)]

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

#### Textual Amendments

**F185** Rules 10.12, 10.13 substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014](#) (S.I. 2014/667), [rules 1, 15](#) (with [rule 45](#))

### Power to adjourn the hearing for consideration of the penalty

**10.14.** [<sup>F186</sup>The court] may adjourn the hearing for consideration of the penalty to be imposed for any contempt of court found proved and such a hearing may be restored if the respondent does not comply with any conditions specified by the court.

(<sup>F187</sup> ... )

#### Textual Amendments

**F186** Words in rule 10.14 substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013](#) (S.I. 2013/3204), [rules 1, 39\(a\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

**F187** Words in rule 10.14 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013](#) (S.I. 2013/3204), [rules 1, 39\(b\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

### Hospital orders or guardianship orders under the Mental Health Act 1983

**10.15.**—(1) Where the [<sup>F188</sup>court] makes a hospital order under the Mental Health Act 1983 the court officer must—

- (a) send to the hospital any information which will be of assistance in dealing with the patient; and
- (b) inform the applicant when the respondent is being transferred to hospital.

(2) Where the [<sup>F189</sup>court] makes a guardianship order under the Mental Health Act 1983, the court officer must send any information which will be of assistance in dealing with the patient to—

- (a) the patient's guardian; and
- (b) where the guardian is a person other than the local services authority, the local services authority.

(<sup>F190</sup> ... )

#### Textual Amendments

**F188** Word in rule 10.15(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013](#) (S.I. 2013/3204), [rules 1, 40\(a\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

**F189** Word in rule 10.15(2) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013](#) (S.I. 2013/3204), [rules 1, 40\(a\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

**F190** Words in rule 10.15 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013](#) (S.I. 2013/3204), [rules 1, 40\(b\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

### Transfer directions under section 48 of the Mental Health Act 1983

**10.16.**—(1) Where a transfer direction given by the Secretary of State under section 48 of the Mental Health Act 1983 is in force in respect of a person remanded in custody by the [<sup>F191</sup>court], the court officer must notify—



- (a) the governor of the prison to which that person was remanded; and
- (b) the hospital where that person is detained,

of any committal hearing which that person is required to attend.

(2) The court officer must also give notice in writing of any further remand to the hospital where that person is detained.

(<sup>F192</sup> ...)

#### Textual Amendments

**F191** Word in rule 10.16(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 41\(a\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

**F192** Words in rule 10.16 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 41\(b\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

#### Recognizances

**10.17.**—(1) Where, in accordance with paragraph 2(1)(b)(ii) of Schedule 5 to the 1996 Act, the [<sup>F193</sup> court] fixes the amount of any recognizance with a view to it being taken subsequently, the recognizance may be taken by—

- (a) a [<sup>F194</sup> judge of the court];
- (b) a police officer of the rank of inspector or above or in charge of a police station; or
- (c) the governor or keeper of a prison where the arrested person is in custody.

(2) The person having custody of an applicant for bail must release that applicant if satisfied that the required recognizances have been taken.

(<sup>F195</sup> ...)

#### Textual Amendments

**F193** Word in rule 10.17(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 42\(a\)\(i\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

**F194** Words in rule 10.17(1)(a) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 42\(a\)\(ii\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

**F195** Words in rule 10.17 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 42\(b\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

## PART 11

### APPLICATIONS UNDER PART 4A OF THE FAMILY LAW ACT 1996

#### Scope and interpretation

**11.1.**—(1) The rules in this Part apply to proceedings <sup>F196</sup>... under Part 4A of the 1996 Act.

(2) In this Part—

“a forced marriage protection order” means an order under section 63A of the 1996 Act <sup>M78</sup>; and

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*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

“the person who is the subject of the proceedings” means the person who will be protected by the forced marriage protection order applied for or being considered by the court of its own initiative, if that order is made, or who is being protected by such an order.

#### Textual Amendments

**F196** Words in rule 11.1(1) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **43** (with rule 137); S.I. 2014/954, **art. 2**

#### Marginal Citations

**M78** [Section 63A](#) was inserted by section 1 of the [Forced Marriage \(Civil Protection\) Act 2007 \(c.20\)](#).

### Applications

**11.2.—(1)** An application for a forced marriage protection order may be made without notice.

(2) Where an application is made without notice, it must be supported by a sworn statement explaining why notice has not been given.

(3) An application for a forced marriage protection order made by an organisation must state—

- (a) the name and address of the person submitting the application; and
- (b) the position which that person holds in the organisation.

### Permission to apply

**11.3.—(1)** Where the permission of the court is required to apply for a forced marriage protection order, the person seeking permission must file—

- (a) a Part 18 application notice setting out—
  - (i) the reasons for the application, for the making of which permission is sought (“the proposed application”);
  - (ii) the applicant's connection with the person to be protected;
  - (iii) the applicant's knowledge of the circumstances of the person to be protected; and
  - (iv) the applicant's knowledge of the wishes and feelings of the person to be protected;
 and
- (b) a draft of the proposed application, together with sufficient copies for one to be served on each respondent and (if different) the person to be protected.

(2) As soon as practicable after receiving an application under paragraph (1), the court must—

- (a) grant the application; or
- (b) direct that a date be fixed for the hearing of the application and fix the date.

(3) The court officer must inform the following persons of the court's action under paragraph (2)

- (a) the applicant;
- (b) the respondent;
- (c) (if different) the person to be protected; and
- (d) any other person directed by the court.

(4) Where permission is granted to apply for a forced marriage protection order, the application must proceed in accordance with rule 11.2.

**Service of applications on notice**

**11.4.**—(1) Subject to paragraphs (3) and [<sup>F197</sup>(5)], where an application is made on notice, the applicant must serve a copy of the application, together with the notice of proceedings, personally on—

- (a) the respondent;
- (b) the person who is the subject of the proceedings (if that person is neither the applicant nor a respondent); and
- (c) any other person directed by the court,

not less than 2 days before the date on which the application will be heard.

(2) The court may abridge the period specified in paragraph (1).

(3) Service of the application must be effected by the court if the applicant so requests (this does not affect the court's power to order substituted service).

(4) Where the application is served on the person who is the subject of the proceedings, it must be accompanied by a notice informing that person—

- (a) how to apply to become a party to the proceedings; and
- (b) of that person's right to make representations in writing or orally at any hearing.

(5) Where the person who is the subject of proceedings is not the applicant and is—

- (a) a child;
- (b) a person, not being a party, who lacks or may lack capacity within the meaning of the 2005 Act; or
- (c) a protected party,

the court will give the directions about the persons who are to be served with the application.

(6) Where an application is served by the applicant, the applicant must file a certificate of service stating the date and time of personal service.

**Textual Amendments**

**F197** Word in rule 11.4(1) substituted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), [rules 1, 20](#) (with [rule 30](#))

**Transfer of proceedings**

<sup>F198</sup>**11.5.** . . . . .

**Textual Amendments**

**F198** Rule 11.5 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 44](#) (with [rule 137](#)); [S.I. 2014/954](#), [art. 2](#)

**Parties**

**11.6.**—(1) In proceedings under this Part, a person may file a Part 18 application notice for that person or another person to—

- (a) be joined as a party; or
- (b) cease to be a party.

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*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

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(2) As soon as practicable after receiving an application under paragraph (1), the court must do one of the following—

- (a) in the case only of an application under paragraph (1)(a), grant the application;
- (b) order that the application be considered at a hearing, and fix a date for the hearing; or
- (c) invite written representations as to whether the application should be granted, to be filed within a specified period, and upon expiry of that period act under sub-paragraph (a) or (b) as it sees fit.

(3) The court officer must inform the following persons of the court's action under paragraph (2)

- (a) the applicant under paragraph (1);
- (b) (if different) the applicant for the forced marriage protection order and the respondent to that application;
- (c) (if different) the person who is the subject of the proceedings; and
- (d) any other person directed by the court.

(4) The court may at any time direct—

- (a) that a person who would not otherwise be a respondent under these rules be joined as a party to the proceedings; or
- (b) that a party to the proceedings cease to be a party,

and such a direction may be made by the court of its own initiative as well as upon an application under paragraph (1).

(5) Where the court directs the addition or removal of a party, it may give consequential directions about—

- (a) service on a new party of a copy of the application for the forced marriage protection order and other relevant documents; and
- (b) the management of the proceedings.

### **Hearings and service of orders**

**11.7.—**(1) Any hearing relating to an application for a forced marriage protection order must be in private unless the court otherwise directs.

(2) The court may direct the withholding of any submissions made, or any evidence adduced, for or at any hearing in proceedings to which this Part applies—

- (a) in order to protect the person who is the subject of the proceedings or any other person; or
- (b) for any other good reason.

(3) The applicant must, as soon as reasonably practical, serve personally—

- (a) a copy of the order;
- (b) a copy of the record of the hearing; and
- (c) where the order is made without notice, a copy of the application together with any statement supporting it,

on the respondent, the person who is the subject of the proceedings (if neither the applicant nor a respondent), and any other person named in the order.

(4) The court must serve the documents listed in paragraph (3) if—

- (a) an applicant, acting in person, so requests; or
- (b) the court made the order of its own initiative.

### Orders made by the court of its own initiative

**11.8.**—(1) Where the court makes a forced marriage protection order of its own initiative under section 63C of the 1996 Act <sup>M79</sup>, it must set out in the order—

- (a) a summary of its reasons for making the order; and
  - (b) the names of the persons who are to be served with the order.
- (2) The court may order service of the order on—
- (a) any of the parties to the current proceedings;
  - (b) (if different) the person who is the subject of the proceedings; and
  - (c) any other person whom the court considers should be served.
- (3) The court must give directions as to how the order is to be served.

#### Marginal Citations

**M79** Section 63C was inserted by section 1 of the Forced Marriage (Civil Protection) Act 2007.

### Representations in respect of orders

**11.9.** Where the court makes an order [<sup>F199</sup>of a type referred to in rule 11.7 or 11.8], it may direct that a hearing (or further hearing) be held in order to consider any representations made by any of the persons named in, or directed to be served with, the order.

#### Textual Amendments

**F199** Words in rule 11.9 substituted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), rules 1, **21** (with rule 30)

### Applications to vary, extend or discharge an order

**11.10.** Rules 11.7 and 11.9 apply to applications to vary, extend or discharge a forced marriage protection order.

### Orders containing provisions to which a power of arrest is attached

**11.11.** Where the court makes a forced marriage protection order containing one or more provisions to which a power of arrest is attached (“relevant provision”)—

- (a) each relevant provision must be set out in a separate paragraph in the order; and
- (b) a paragraph containing a relevant provision must not include a provision of the order to which the power of arrest is not attached.

### Service where order contains a power of arrest

**11.12.**—(1) This rule applies where the court makes a forced marriage protection order consisting of or including a relevant provision (which has the meaning given in rule 11.11).

(2) The following documents must be delivered to the officer for the time being in charge of any police station for the address of the person being protected by the order or of such other police station as the court may specify—

- (a) the power of arrest form; and

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*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

- (b) a statement showing that the respondents and any persons directed by the court to be served with the order have been so served or informed of its terms (whether by being present when the order was made or by telephone or otherwise).
- (3) The documents referred to in paragraph (2) must be delivered by—
  - (a) the applicant, if the applicant is responsible for serving the order in accordance with rule 11.7(3); or
  - (b) the court officer, if the court is responsible for serving the order in accordance with rule 11.7(4) or a direction given under rule 11.8(3).
- (4) Where an order is made varying, extending or discharging any of the relevant provisions, the court officer must—
  - (a) immediately inform the officer who received a copy of the power of arrest form under paragraph (2) and, if the address of the person who is the subject of the proceedings has changed, the officer for the time being in charge of the police station for the new address; and
  - (b) deliver a copy of the order, together with a copy of the order referred to in paragraph (1), to any officer so informed.

#### **Application for issue of warrant for arrest**

**11.13.**—(1) An application under section 63J(2) of the 1996 Act <sup>M80</sup> for the issue of a warrant for the arrest of a person must be supported by a sworn statement.

(2) An application for the issue of a warrant for arrest made by a person who is neither the person who is the subject of the proceedings nor (if different) the person who applied for the order, shall be treated, in the first instance, as an application for permission to apply for the warrant to be issued, and the court shall either—

- (a) grant the application; or
- (b) direct that a date be fixed for the hearing of the application and fix a date.
- (3) The court officer must inform the following persons of the court's action under paragraph (2)
  - (a) the person applying for the issue of the warrant;
  - (b) the person being protected by the order; and
  - (c) any other person directed by the court.

#### **Marginal Citations**

**M80** Section 63J(2) was inserted by section 1 of the Forced Marriage (Civil Protection) Act 2007.

#### **Proceedings following arrest**

**11.14.**—(1) This rule applies where a person is arrested pursuant to—

- (a) a power of arrest attached to a provision of a forced marriage protection order; or
- (b) a warrant of arrest issued on an application under section 63J(2) of the 1996 Act.
- (2) The court before whom a person is brought following his arrest may—
  - (a) determine whether the facts and the circumstances which led to the arrest amounted to disobedience of the order; or
  - (b) adjourn the proceedings.

- (3) Where the proceedings are adjourned, the arrested person may be released and—
- (a) unless the court directs otherwise, be dealt with within 14 days of the day on which the person was arrested; and
  - (b) be given not less than 2 days' notice of the adjourned hearing.

(4) An application notice seeking the committal for contempt of court of the arrested person may be issued if the arrested person is not dealt with within the period mentioned in paragraph (3)(a).

(The powers of [<sup>F200</sup>the court] to remand in custody or on bail are contained in section 47 of and Schedule 5 to the 1996 Act <sup>M81</sup>.)

#### **Textual Amendments**

**F200** Words in rule 11.14 substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, 45 (with rule 137); S.I. 2014/954, art. 2

#### **Marginal Citations**

**M81** [Section 47](#) was inserted by section 1 of the Forced Marriage (Civil Protection) Act 2007.

### **[<sup>F201</sup>Enforcement of orders and undertakings**

**11.15.**—(1) At the time when the order is drawn up, the court officer will, where the order made is (or includes) a forced marriage protection order, issue a copy of the order, endorsed with or incorporating a notice as to the consequences of disobedience, for service in accordance with rule 11.7.

(2) Chapter 2 of Part 37 applies with the necessary modifications where an application is made to commit a person for breach of an undertaking.

(For enforcement of an order generally see Part 37 (rule 37.9 concerns the requirement for a judgment or order to do or not to do an act to contain a penal notice if it is to be enforceable by way of committal). For undertakings, see rule 37.4(4).)]

#### **Textual Amendments**

**F201** Rule 11.15 substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, 16 (with rule 45)

### **Power to adjourn the hearing for consideration of the penalty**

**11.16.** The court may adjourn the hearing for consideration of the penalty to be imposed for any contempt of court found proved and such hearing may be restored if the contemnor does not comply with any conditions specified by the court.

### **Hospital orders or guardianship orders under the Mental Health Act 1983**

**11.17.**—(1) Where the court makes a hospital order under the Mental Health Act 1983, the court officer must—

- (a) send to the hospital any information which will be of assistance in dealing with the patient; and
- (b) inform the persons directed by the court to be informed about when the patient is being transferred to hospital.

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*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

(2) Where the court makes a guardianship order under the Mental Health Act 1983, the court officer must send any information which will be of assistance in dealing with the patient to—

- (a) the patient's guardian; and
- (b) where the guardian is a person other than the local services authority, the local services authority.

### **Transfer directions under section 48 of the Mental Health Act 1983**

**11.18.**—(1) Where a transfer direction given by the Secretary of State under section 48 of the Mental Health Act 1983 is in force in respect of a person remanded in custody by the court, the court officer must notify—

- (a) the governor of the prison to which that person was remanded; and
- (b) the hospital where that person is detained,

of any committal hearing which that person is required to attend.

(2) The court officer must also give notice in writing of any further remand to the hospital where that person is detained.

### **Recognizances**

**11.19.**—(1) Where, in accordance with paragraph 2(1)(b)(ii) of Schedule 5 to the 1996 Act, the court fixes the amount of any recognizance with a view to it being taken subsequently, the recognizance may be taken by—

- (a) a [<sup>F202</sup>judge of the court];
- (b) a police officer of the rank of inspector or above or in charge of a police station; or
- (c) the governor or keeper of a prison where the arrested person is in the custody of that governor or keeper.

(2) The person having custody of an applicant for bail must release him if satisfied that the required recognizances have been taken.

#### **Textual Amendments**

**F202** Words in rule 11.19(1)(a) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **46** (with rule 137); S.I. 2014/954, **art. 2**

## **PART 12**

### **[<sup>F203</sup>CHILDREN PROCEEDINGS] EXCEPT PARENTAL ORDER PROCEEDINGS AND PROCEEDINGS FOR APPLICATIONS IN ADOPTION, PLACEMENT AND RELATED PROCEEDINGS**

#### **Textual Amendments**

**F203** Words in [Pt. 12](#) heading substituted (31.1.2013) by [The Family Procedure \(Amendment\) \(No.5\) Rules 2012 \(S.I. 2012/3061\)](#), rules 1, **5(a)**



## CHAPTER 1

### INTERPRETATION AND APPLICATION OF THIS PART

#### Application of this Part

12.1.—(1) The rules in this Part apply to—

- (a) emergency proceedings;
- (b) private law proceedings;
- (c) public law proceedings;
- (d) proceedings relating to the exercise of the court's inherent jurisdiction (other than applications for the court's permission to start such proceedings);
- (e) proceedings relating to child abduction and the recognition and enforcement of decisions relating to custody under the European Convention;
- (f) proceedings relating to the Council Regulation or the 1996 Hague Convention in respect of children; and
- (g) any other proceedings which may be referred to in a practice direction.

(Part 18 sets out the procedure for making an application for permission to bring proceedings.)

(Part 31 sets out the procedure for making applications for recognition and enforcement of judgments under the Council Regulation or the 1996 Hague Convention.)

(2) The rules in Chapter 7 of this Part also apply to family proceedings which are not within paragraph (1) but which otherwise relate wholly or mainly to the maintenance or upbringing of a minor.

#### Interpretation

12.2. In this Part—

“the 2006 Act” means the Childcare Act 2006 <sup>M82</sup>;

[<sup>F204</sup>“activity condition” has the meaning given to it by section 11C(2) of the 1989 Act;]

[<sup>F204</sup>“activity direction” has the meaning given to it by section 11A(3) of the 1989 Act;]

“advocate” means a person exercising a right of audience as a representative of, or on behalf of, a party;

“care proceedings” means proceedings for a care order under section 31(1)(a) of the 1989 Act;

[<sup>F205</sup>“Case Management Order” means an order in the form referred to in Practice Direction 12A;]

“child assessment order” has the meaning assigned to it by section 43(2) of the 1989 Act;

<sup>F206</sup>  
...

<sup>F206</sup>  
...

“contribution order” has the meaning assigned to it by paragraph 23(2) of Schedule 2 to the 1989 Act;

“education supervision order” has the meaning assigned to it by section 36(2) of the 1989 Act;

“emergency proceedings” means proceedings for—

- (a) the disclosure of information as to the whereabouts of a child under section 33 of the 1986 Act <sup>M83</sup>;

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*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

- (b) an order authorising the taking charge of and delivery of a child under section 34 of the 1986 Act<sup>M84</sup>;
- (c) an emergency protection order;
- (d) an order under section 44(9)(b) of the 1989 Act varying a direction in an emergency protection order given under section 44(6) of that Act;
- (e) an order under section 45(5) of the 1989 Act extending the period during which an emergency protection order is to have effect;
- (f) an order under section 45(8) of the 1989 Act discharging an emergency protection order;
- (g) an order under section 45(8A) of the 1989<sup>M85</sup> Act varying or discharging an emergency protection order in so far as it imposes an exclusion requirement on a person who is not entitled to apply for the order to be discharged;
- (h) an order under section 45(8B) of the 1989 Act<sup>M86</sup> varying or discharging an emergency protection order in so far as it confers a power of arrest attached to an exclusion requirement;
- (i) warrants under sections 48(9) and 102(1) of the 1989 Act and under section 79 of the 2006 Act<sup>M87</sup>; or
- (j) a recovery order under section 50 of the 1989 Act<sup>M88</sup>;

“emergency protection order” means an order under section 44 of the 1989 Act;

“enforcement order” has the meaning assigned to it by section 11J(2) of the 1989 Act;

“financial compensation order” means an order made under section 11O(2) of the 1989 Act;

“interim order” means an interim care order or an interim supervision order referred to in section 38(1) of the 1989 Act;

[<sup>F207</sup>“Part 4 proceedings” means proceedings for—

- (a) a care order, or the discharge of such an order, under section 39(1) of the 1989 Act;
- (b) an order giving permission to change a child’s surname or remove a child from the United Kingdom under section 33(7) of the 1989 Act;
- (c) a supervision order, the discharge or variation of such an order under section 39(2) of the 1989 Act, or the extension of such an order under paragraph 6(3) of Schedule 3 to that Act;
- (d) an order making provision regarding contact under section 34(2) to (4) of the 1989 Act or an order varying or discharging such an order under section 34(9) of that Act;
- (e) an education supervision order, the extension of an education supervision order under paragraph 15(2) of Schedule 3 to the 1989 Act, or the discharge of such an order under paragraph 17(1) of Schedule 3 to that Act;
- (f) an order varying directions made with an interim care order or interim supervision order under section 38(8)(b) of the 1989 Act;
- (g) an order under section 39(3) of the 1989 Act varying a supervision order in so far as it affects a person with whom the child is living but who is not entitled to apply for the order to be discharged;
- (h) an order under section 39(3A) of the 1989 Act varying or discharging an interim care order in so far as it imposes an exclusion requirement on a person who is not entitled to apply for the order to be discharged;
- (i) an order under section 39(3B) of the 1989 Act varying or discharging an interim care order in so far as it confers a power of arrest attached to an exclusion requirement; or

(j) the substitution of a supervision order for a care order under section 39(4) of the 1989 Act;]

“private law proceedings” means proceedings for—

- (a) [<sup>F208</sup>a section 8 order except a child arrangements order to which section 9(6B) of the 1989 Act applies with respect to a child who is in the care of a local authority;]
- (b) a parental responsibility order under sections 4(1)(c) <sup>M89</sup>, 4ZA(1)(c) <sup>M90</sup> or 4A(1)(b) of the 1989 Act <sup>M91</sup> or an order terminating parental responsibility under sections 4(2A), 4ZA(5) or 4A(3) of that Act;
- (c) an order appointing a child's guardian under section 5(1) of the 1989 Act or an order terminating the appointment under section 6(7) of that Act;
- (d) an order giving permission to change a child's surname or remove a child from the United Kingdom under sections 13(1) or 14C(3) of the 1989 Act;
- (e) a special guardianship order except where that order relates to a child who is subject of a care order;
- (f) an order varying or discharging such an order under section 14D of the 1989 Act <sup>M92</sup>;
- (g) an enforcement order;
- (h) a financial compensation order;
- (i) an order under paragraph 9 of Schedule A1 to the 1989 Act following a breach of an enforcement order;
- (j) an order under Part 2 of Schedule A1 to the 1989 Act revoking or amending an enforcement order; or
- (k) an order that a warning notice be attached to a [<sup>F209</sup>child arrangements order];

“public law proceedings” means [<sup>F210</sup>Part 4 proceedings and] proceedings for—

- (a) [<sup>F211</sup>a child arrangements order to which section 9(6B) of the 1989 Act applies with respect to a child who is in the care of a local authority;]
- (b) a special guardianship order relating to a child who is the subject of a care order;
- (c) a secure accommodation order under section 25 of the 1989 Act <sup>M93</sup>;
- (d) <sup>F212</sup> ...
- (n) a child assessment order, or the variation or discharge of such an order under section 43(12) of the 1989 Act;
- (o) an order permitting the local authority to arrange for any child in its care to live outside England and Wales under paragraph 19(1) of Schedule 2 to the 1989 Act;
- (p) a contribution order, or revocation of such an order under paragraph 23(8) of Schedule 2 to the 1989 Act;
- (q) an appeal under paragraph 8(1) of Schedule 8 to the 1989 Act;

“special guardianship order” has the meaning assigned to it by section 14A(1) of the 1989 Act <sup>M94</sup>;

“supervision order” has the meaning assigned to it by section 31(11) of the 1989 Act;

“supervision proceedings” means proceedings for a supervision order under section 31(1)(b) of the 1989 Act;

“warning notice” means a notice attached to an order pursuant to section 8(2) of the Children and Adoption Act 2006.

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*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

(The 1980 Hague Convention, the 1996 Hague Convention, the Council Regulation, and the European Convention are defined in rule 2.3.)

#### Textual Amendments

- F204** Words in rule 12.2 inserted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **15(a)**
- F205** Words in rule 12.2 substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **15(b)**
- F206** Words in rule 12.2 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **15(c)**
- F207** Words in rule 12.2 inserted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **15(d)**
- F208** Words in rule 12.2 substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **15(e)(i)**
- F209** Words in rule 12.2 substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **15(e)(ii)**
- F210** Words in rule 12.2 inserted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **15(f)(i)**
- F211** Words in rule 12.2 substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **15(f)(ii)**
- F212** Words in rule 12.2 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **15(f)(iii)**

#### Marginal Citations

- M82** 2006 c.21.
- M83** [Section 33](#) was amended by section 108(5) of and paragraph 62 of Schedule 13 to the Children Act 1989 and section 261(1) of and paragraph 124 of Schedule 27 to the Civil Partnership Act 2004.
- M84** [Section 34](#) was amended by section 108(5) of and paragraphs 62 and 70 of Schedule 13 to the Children Act 1989 and article 12(3) of [Children \(Northern Ireland Consequential Amendments\) Order 1995 \(S.I. 1995/756\)](#).
- M85** [Section 45\(8A\)](#) was inserted by section 52 of and paragraph 4 of Schedule 6 to the Family Law Act 1996.
- M86** [Section 45\(8B\)](#) was inserted by section 52 of and paragraph 4 of Schedule 6 to the Family Law Act 1996.
- M87** [Section 79](#) was amended by section 157 of and paragraphs 108 and 114(1) and (2) and (3)(b) of Schedule 14 to the [Education and Inspections Act 2006 \(c.40\)](#).
- M88** [Section 50](#) was amended by section 261(1) of and paragraph 131 of Schedule 27 to the Civil Partnership Act 2004.
- M89** [Section 4\(1\)\(c\)](#) was amended by section 111(1) and (2) of the Adoption and Children Act 2002 and section 56 of and paragraphs 21(1) and (2) of Schedule 6 to the [Welfare Reform Act 2009 \(c.29\)](#).
- M90** [Section 4ZA](#) was inserted by section 56 of and paragraph 2 of Schedule 6 to the Human Fertilisation and Embryology Act 2008.
- M91** [Section 4A\(1\)\(b\)](#) was amended by section 75(1) and (2) of the Civil Partnership Act 2004.
- M92** [Section 14D](#) was inserted by section 115(1) of the Adoption and Children Act 2002.
- M93** [Section 25](#) was amended by section 39 of and paragraphs 1 and 15 of Schedule 3 to the Children and Young Persons Act 2008 and section 24 of and paragraph 45 of Schedule 4 to the Access to Justice Act 1999.
- M94** [Section 14A\(1\)](#) was inserted by section 115(1) of the Adoption and Children Act 2002.

## CHAPTER 2

### GENERAL RULES

#### Who the parties are

**12.3.**—(1) In relation to the proceedings set out in column 1 of the following table, column 2 sets out who may make the application and column 3 sets out who the respondents to those proceedings will be.

<i>Proceedings for</i>	<i>Applicants</i>	<i>Respondents</i>
A parental responsibility order (section 4(1)(c), 4ZA(1)(c), or section 4A(1)(b) of the 1989 Act).	The child's father; the step parent; or the child's parent (being a woman who is a parent by virtue of section 43 of the Human Fertilisation and Embryology Act 2008 and who is not a person to whom section 1(3) of the Family Law Reform Act 1987 <sup>M95</sup> applies) (sections 4(1)(c), 4ZA(1)(c) and 4A(1)(b) of the 1989 Act).	Every person whom the applicant believes to have parental responsibility for the child; where the child is the subject of a care order, every person whom the applicant believes to have had parental responsibility immediately prior to the making of the care order; in the case of an application to extend, vary or discharge an order, the parties to the proceedings leading to the order which it is sought to have extended, varied or discharged; in the case of specified proceedings, the child.
An order terminating a parental responsibility order or agreement (section 4(2A), 4ZA(5) or section 4A(3) of the 1989 Act <sup>M96</sup>	Any person who has parental responsibility for the child; or with the court's permission, the child (section 4(3), 4ZA(6) and section 4A(3) of the 1989 Act).	As above.
An order appointing a guardian (section 5(1) of the 1989 Act <sup>M97</sup>	An individual who wishes to be appointed as guardian (section 5(1) of the 1989 Act).	As above.
An order terminating the appointment of a guardian (section 6(7) of the 1989 Act).	Any person who has parental responsibility for the child; or with the court's permission, the child (section 6(7) of the 1989 Act).	As above.

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A section 8 order.	Any person who is entitled to apply for a section 8 order with respect to the child (section 10(4) to (7) of the 1989 Act <sup>M98</sup> ); or with the court's permission, any person (section 10(2)(b) of the 1989 Act).	As above.
An enforcement order (section 11J of the 1989 Act <sup>M99</sup> ).	A person who is, for the purposes of the [ <sup>F213</sup> child arrangements order], a person with whom the child concerned lives or is to live; any person whose contact with the child concerned is provided for in the [ <sup>F213</sup> child arrangements order]; any individual subject to a condition under section 11(7)(b) of the 1989 Act or [ <sup>F214</sup> an activity] condition imposed by a [ <sup>F213</sup> child arrangements order]; or with the court's permission, the child (section 11J(5) of the 1989 Act).	The person the applicant alleges has failed to comply with the [ <sup>F213</sup> child arrangements order].
A financial compensation order (section 11O of the 1989 Act).	Any person who is, for the purposes of the [ <sup>F215</sup> child arrangements order], a person with whom the child concerned lives or is to live; any person whose contact with the child concerned is provided for in the [ <sup>F215</sup> child arrangements order]; any individual subject to a condition under section 11(7)(b) of the 1989 Act or [ <sup>F216</sup> an activity] condition imposed by a [ <sup>F215</sup> child arrangements order]; or with the court's permission, the child (section 11O(6) of the 1989 Act).	The person the applicant alleges has failed to comply with the [ <sup>F215</sup> child arrangements order].
An order permitting the child's name to be changed or the removal of the child from the United Kingdom (section 13(1), 14C(3) or 33(7) of the 1989 Act).	Any person (section 13(1), 14C(3), 33(7) of the 1989 Act).	As for a parental responsibility order.

A special guardianship order (section 14A of the 1989 Act).	Any guardian of the child; any individual [ <sup>F217</sup> who is named in a child arrangements order as a person with whom the child is to live;] any individual listed in subsection (5)(b) or (c) of section 10 (as read with subsection (10) of that section) of the 1989 Act; a local authority foster parent with whom the child has lived for a period of at least one year immediately preceding the application; or any person with the court's permission (section 14A(3) of the 1989 Act) (more than one such individual can apply jointly (section 14A(3) and (5) of that Act)).	As above, and if a care order is in force with respect to the child, the child.
Variation or discharge of a special guardianship order (section 14D of the 1989 Act <sup>M100</sup> ).	The special guardian (or any of them, if there is more than one); any individual [ <sup>F218</sup> who is named in a child arrangements order as a person with whom the child is to live;] the local authority designated in a care order with respect to the child; any individual within section 14D(1)(d) of the 1989 Act who has parental responsibility for the child; the child, any parent or guardian of the child and any step-parent of the child who has acquired, and has not lost, parental responsibility by virtue of section 4A of that Act with the court's permission; or any individual within section 14D(1)(d) of that Act who immediately before the making of the special guardianship order had, but no longer has, parental responsibility for the child with the court's permission.	As above.
A secure accommodation order (section 25 section of the 1989 Act).	The local authority which is looking after the child; or the Health Authority, [ <sup>F219</sup> Secretary of State, National Health Service Commissioning Board, clinical	As above.

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	commissioning group,] National Health Service Trust established under section 25 of the National Health Service Act 2006 <sup>M101</sup> or section 18(1) of the National Health Service (Wales) Act 2006 <sup>M102</sup> , National Health Service Foundation Trust or any local authority providing [ <sup>F220</sup> or arranging] accommodation for the child (unless the child is looked after by a local authority).	
A care or supervision order (section 31 of the 1989 Act).	Any local authority; the National Society for the Prevention of Cruelty to Children and any of its officers (section 31(1) of the 1989 Act); or any authorised person.	As above.
An order varying directions made with an interim care or interim supervision order (section 38(8)(b) of the 1989 Act).	The parties to proceedings in which directions are given under section 38(6) of the 1989 Act; or any person named in such a direction.	As above.
An order discharging a care order (section 39(1) of the 1989 Act).	Any person who has parental responsibility for the child; the child; or the local authority designated by the order (section 39(1) of the 1989 Act).	As above.
An order varying or discharging an interim care order in so far as it imposes an exclusion requirement (section 39(3A) of the 1989 Act).	A person to whom the exclusion requirement in the interim care order applies who is not entitled to apply for the order to be discharged (section 39(3A) of the 1989 Act).	As above.
An order varying or discharging an interim care order in so far as it confers a power of arrest attached to an exclusion requirement (section 39(3B) of the 1989 Act).	Any person entitled to apply for the discharge of the interim care order in so far as it imposes the exclusion requirement (section 39(3B) of the 1989 Act).	As above.



An order substituting a supervision order for a care order (section 39(4) of the 1989 Act).	Any person entitled to apply for a care order to be discharged under section 39(1) (section 39(4) of the 1989 Act).	As above.
A child assessment order (section 43(1) of the 1989 Act).	Any local authority; the National Society for the Prevention of Cruelty to Children and any of its officers; or any person authorised by order of the Secretary of State to bring the proceedings and any officer of a body who is so authorised (section 43(1) and (13) of the 1989 Act).	As above.
An order varying or discharging a child assessment order (section 43(12) of the 1989 Act).	The applicant for an order that has been made under section 43(1) of the 1989 Act; or the persons referred to in section 43(11) of the 1989 Act (section 43(12) of that Act).	As above.
An emergency protection order (section 44(1) of the 1989 Act).	Any person (section 44(1) of the 1989 Act).	As for a parental responsibility order.
An order extending the period during which an emergency protection order is to have effect (section 45(4) of the 1989 Act).	Any person who— has parental responsibility for a child as the result of an emergency protection order; and is entitled to apply for a care order with respect to the child (section 45(4) of the 1989 Act).	As above.
An order discharging an emergency protection order (section 45(8) of the 1989 Act).	The child; a parent of the child; any person who is not a parent of the child but who has parental responsibility for the child; or any person with whom the child was living before the making of the emergency protection order (section 45(8) of the 1989 Act).	As above.
An order varying or discharging an emergency protection order in so far as it imposes	A person to whom the exclusion requirement in the emergency protection order applies who is not entitled to apply for the emergency protection order to be discharged (section 45(8A) of the 1989 Act).	As above.

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the exclusion requirement (section 45(8A) of the 1989 Act).

An order varying or discharging an emergency protection order in so far as it confers a power of arrest attached to an exclusion requirement (section 45(8B) of the 1989 Act).

Any person entitled to apply for the discharge of the emergency protection order in so far as it imposes the exclusion requirement (section 45(8B) of the 1989 Act).

As above.

An emergency protection order by the police (section 46(7) of the 1989 Act).

The officer designated for the purposes of section 46(3)(e) of the 1989 Act (section 46(7) of the 1989 Act).

As above.

A warrant authorising a constable to assist in exercise of certain powers to search for children and inspect premises (section 48 of the 1989 Act).

Any person attempting to exercise powers under an emergency protection order who has been or is likely to be prevented from doing so by being refused entry to the premises concerned or refused access to the child concerned (section 48(9) of the 1989 Act).

As above.

A warrant authorising a constable to assist in exercise of certain powers to search for children and inspect premises (section 102 of the 1989 Act).

Any person attempting to exercise powers under the enactments mentioned in section 102(6) of the 1989 Act who has been or is likely to be prevented from doing so by being refused entry to the premises concerned or refused access to the child concerned (section 102(1) of that Act).

As above.

An order revoking an enforcement order (paragraph 4 of Schedule A1 to the 1989 Act).

The person subject to the enforcement order.

The person who was the applicant for the enforcement order; and, where the child was a party to the proceedings in which the enforcement order was made, the child.

An order amending an enforcement order (paragraphs

The person subject to the enforcement order.

The person who was the applicant for the enforcement order.

5 to 7 of Schedule A1 to the 1989 Act).		(Rule 12.33 makes provision about applications under paragraph 5 of Schedule A1 to the 1989 Act.)
An order following breach of an enforcement order (paragraph 9 of Schedule A1 to the 1989 Act).	Any person who is, for [ <sup>F221</sup> the purposes of the child arrangements order], the person with whom the child lives or is to live; any person whose contact with the child concerned is [ <sup>F222</sup> provided for in the child arrangements order]; any individual subject to a condition under section 11(7)(b) of the 1989 Act or [ <sup>F223</sup> an activity condition imposed by a child arrangements order;]; or with the court's permission, the child (paragraph 9 of Schedule A1 to the 1989 Act).	The person the applicant alleges has failed to comply with the unpaid work requirement imposed by an enforcement order; and where the child was a party to the proceedings in which the enforcement order was made, the child.
An order permitting the local authority to arrange for any child in its care to live outside England and Wales (Schedule 2, paragraph 19(1), to the 1989 Act).	The local authority (Schedule 2, paragraph 19(1), to the 1989 Act).	As for a parental responsibility order.
A contribution order (Schedule 2, paragraph 23(1), to the 1989 Act).	The local authority (Schedule 2, paragraph 23(1), to the 1989 Act).	As above and the contributor.
An order revoking a contribution order (Schedule 2, paragraph 23(8), to the 1989 Act).	The contributor; or the local authority.	As above.
An order relating to contact with the child in care and any named person (section 34(2) of the 1989 Act) or permitting the local authority to refuse contact	The local authority; or the child (section 34(2) or 34(4) of the 1989 Act).	As above; and the person whose contact with the child is the subject of the application.

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(section 34(4) of that Act).

An order relating to contact with the child in care (section 34(3) of the 1989 Act).

The child's parents;  
any guardian or special guardian of the child;  
any person who by virtue of section 4A of the 1989 Act has parental responsibility for the child;  
[<sup>F224</sup>where there was a child arrangements order in force with respect to the child immediately before the care order was made, any person named in that order as a person with whom the child was to live;]  
a person who by virtue of an order made in the exercise of the High Court's inherent jurisdiction with respect to children had care of the child immediately before the care order was made (section 34(3)(a) of the 1989 Act); or  
with the court's permission, any person (section 34(3) (b) of that Act).

As above; and  
the person whose contact with the child is the subject of the application.

An order varying or discharging an order for contact with a child in care under section 34 (section 34(9) of the 1989 Act).

The local authority;  
the child; or  
any person named in the order (section 34(9) of the 1989 Act).

As above; and  
the person whose contact with the child is the subject of the application.

An education supervision order (section 36 of the 1989 Act).

Any local authority (section 36(1) of the 1989 Act).

As above; and  
the child.

An order varying or discharging a supervision order (section 39(2) of the 1989 Act).

Any person who has parental responsibility for the child;  
the child; or  
the supervisor (section 39(2) of the 1989 Act).

As above; and  
the supervisor.

An order varying a supervision order in so far as it affects the person with whom the child is living

The person with whom the child is living who is not entitled to apply for the order to be discharged (section 39(3) of the 1989 Act).

As above; and  
the supervisor.

(section 39(3) of the 1989 Act).

An order varying a direction under section 44(6) of the 1989 Act in an emergency protection order (section 44(9)(b) of that Act).

The parties to the application for the emergency protection order in respect of which it is sought to vary the directions; the children's guardian; the local authority in whose area the child is ordinarily resident; or any person who is named in the directions.

As above, and the parties to the application for the order in respect of which it is sought to vary the directions; any person who was caring for the child prior to the making of the order; and any person [<sup>F225</sup>named in a child arrangements order as a person with whom the child is to spend time or otherwise have contact and who] is affected by the direction which it is sought to have varied.

A recovery order (section 50 of the 1989 Act).

Any person who has parental responsibility for the child by virtue of a care order or an emergency protection order; or where the child is in police protection the officer designated for the purposes of section 46(3)(e) of the 1989 Act (section 50(4) of the 1989 Act).

As above; and the person whom the applicant alleges to have effected or to have been or to be responsible for the taking or keeping of the child.

An order discharging an education supervision order (Schedule 3, paragraph 17(1), to the 1989 Act).

The child concerned; a parent of the child; or the local authority concerned (Schedule 3, paragraph 17(1), to the 1989 Act).

As above; and the local authority concerned; and the child.

An order extending an education supervision order (Schedule 3, paragraph, 15(2), to the 1989 Act).

The local authority in whose favour the education supervision order was made (Schedule 3, paragraph 15(2), to the 1989 Act).

As above; and the child.

An appeal under paragraph (8) of Schedule 8 to the 1989 Act.

A person aggrieved by the matters listed in paragraph 8(1) of Schedule 8 to the 1989 Act.

The appropriate local authority.

An order for the disclosure of information as to the whereabouts of a child under section 33 of the 1986 Act.

Any person with a legitimate interest in proceedings for an order under Part 1 of the 1986 Act; or a person who has registered an order made elsewhere in the United Kingdom or a specified dependent territory.

Any person alleged to have information as to the whereabouts of the child.

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An order authorising the taking charge of and delivery of a child under section 34 of the 1986 Act.	The person to whom the child is to be given up under section 34(1) of the 1986 Act.	As above; and the person who is required to give up the child in accordance with section 34(1) of the 1986 Act.
An order relating to the exercise of the court's inherent jurisdiction (including wardship proceedings).	A local authority (with the court's permission); any person with a genuine interest in or relation to the child; or the child (wardship proceedings only).	The parent or guardian of the child; any other person who has an interest in or relationship to the child; and the child (wardship proceedings only and with the court's permission as described at rule 12.37).
A warrant under section 79 of the 2006 Act authorising any constable to assist Her Majesty's Chief Inspector for Education, Children's Services and Skills in the exercise of powers conferred on him by section 77 of the 2006 Act.	Her Majesty's Chief Inspector for Education, Children's Services and Skills.	Any person preventing or likely to prevent Her Majesty's Chief Inspector for Education, Children's Services and Skills from exercising powers conferred on him by section 77 of the 2006 Act.
An order in respect of a child under the 1980 Hague Convention.	Any person, institution or body who claims that a child has been removed or retained in breach of rights of custody or claims that there has been a breach of rights of access in relation to the child.	The person alleged to have brought the child into the United Kingdom; the person with whom the child is alleged to be; any parent or guardian of the child who is within the United Kingdom and is not otherwise a party; any person in whose favour a decision relating to custody has been made if that person is not otherwise a party; and any other person who appears to the court to have sufficient interest in the welfare of the child.
An order concerning the recognition and enforcement of decisions relating to custody under	Any person who has a court order giving that person rights of custody in relation to the child.	As above.

the European Convention.

An application for the High Court to request transfer of jurisdiction under Article 15 of the Council Regulation or Article 9 of the 1996 Hague Convention (rule 12.65).	Any person with sufficient interest in the welfare of the child and who would be entitled to make a proposed application in relation to that child, or who intends to seek the permission of the court to make such application if the transfer is agreed.	As directed by the court in accordance with rule 12.65.
An application under rule 12.71 for a declaration as to the existence, or extent, of parental responsibility under Article 16 of the 1996 Convention.	Any interested person including a person who holds, or claims to hold, parental responsibility for the child under the law of another State which subsists in accordance with Article 16 of the 1996 Hague Convention following the child becoming habitually resident in a territorial unit of the United Kingdom.	Every person whom the applicant believes to have parental responsibility for the child; any person whom the applicant believes to hold parental responsibility for the child under the law of another State which subsists in accordance with Article 16 of the 1996 Hague Convention following the child becoming habitually resident in a territorial unit of the United Kingdom; and where the child is the subject of a care order, every person whom the applicant believes to have had parental responsibility immediately prior to the making of the care order.
A warning notice.	The person who is, for the purposes of the [F226child arrangements order], the person with whom the child concerned lives or is to live; the person whose contact with the child concerned is provided for in the [F226child arrangements order]; any individual subject to a condition under section 11(7)(b) of the 1989 Act or [F227an activity] condition imposed by the [F226child arrangements order]; or with the court's permission, the child.	Any person who was a party to the proceedings in which the [F226child arrangements order] was made. (Rule 12.33 makes provision about applications for warning notices).

(2) The court will direct that a person with parental responsibility be made a party to proceedings where that person requests to be one.

(3) Subject to rule 16.2, the court may at any time direct that—

(a) any person or body be made a party to proceedings; or

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(b) a party be removed.

(4) If the court makes a direction for the addition or removal of a party under this rule, it may give consequential directions about—

- (a) the service of a copy of the application form or other relevant documents on the new party;
- (b) the management of the proceedings.

(5) In this rule—

“a local authority foster parent” has the meaning assigned to it by section 23(3) of the 1989 Act; and

“care home”, “independent hospital”, “local authority” and [F228“clinical commissioning group”] have the meanings assigned to them by section 105 of the 1989 Act.

(Part 16 contains the rules relating to the representation of children.)

#### **Textual Amendments**

- F213** Words in rule 12.3(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 16\(a\)\(i\)](#)
- F214** Words in rule 12.3(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 16\(a\)\(ii\)](#)
- F215** Words in rule 12.3(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 16\(b\)\(i\)](#)
- F216** Words in rule 12.3(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 16\(b\)\(ii\)](#)
- F217** Words in rule 12.3(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 16\(c\)](#)
- F218** Words in rule 12.3(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 16\(d\)](#)
- F219** Words in rule 12.3(1) substituted (1.4.2013) by [The National Treatment Agency \(Abolition\) and the Health and Social Care Act 2012 \(Consequential, Transitional and Saving Provisions\) Order 2013 \(S.I. 2013/235\), art. 1\(2\), Sch. 2 para. 156\(a\)\(i\)](#)
- F220** Words in rule 12.3(1) inserted (1.4.2013) by [The National Treatment Agency \(Abolition\) and the Health and Social Care Act 2012 \(Consequential, Transitional and Saving Provisions\) Order 2013 \(S.I. 2013/235\), art. 1\(2\), Sch. 2 para. 156\(a\)\(ii\)](#)
- F221** Words in rule 12.3(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 16\(e\)\(i\)](#)
- F222** Words in rule 12.3(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 16\(e\)\(ii\)](#)
- F223** Words in rule 12.3(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 16\(e\)\(iii\)](#)
- F224** Words in rule 12.3(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 16\(f\)](#)
- F225** Words in rule 12.3(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 16\(g\)](#)
- F226** Words in rule 12.3(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 16\(h\)\(i\)](#)
- F227** Words in rule 12.3(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 16\(h\)\(ii\)](#)
- F228** Words in rule 12.3(5) substituted (1.4.2013) by [The National Treatment Agency \(Abolition\) and the Health and Social Care Act 2012 \(Consequential, Transitional and Saving Provisions\) Order 2013 \(S.I. 2013/235\), art. 1\(2\), Sch. 2 para. 156\(b\)](#)



**Marginal Citations**

- M95** Section 1(3) was inserted by section 56 of and paragraphs 24(1) and (2) of Schedule 6 to the Human Fertilisation and Embryology Act 2008.
- M96** Section 4A(3) was inserted by section 112 of the Adoption and Children Act 2002.
- M97** Section 5(1) was amended by section 115(2), and (4)(a)(i) and (ii) of the Adoption and Children Act 2002.
- M98** Section 10(4) was amended by section 139(1) of and paragraphs 54, 56(a) and (b) of Schedule 3 to the Adoption and Children Act 2002. Section 10(5) was inserted by section 77 of the Civil Partnership Act 2004. Section 10(5A) was inserted by section 139(1) and paragraphs 54 and 56(c) of Schedule 3 to the Adoption and Children Act 2002. Section 10(5B) was inserted by section 36 of the Children and Young Persons Act 2008. Section 10(7A) was inserted by section 139(1) of and paragraphs 54 and 56(d) of Schedule 3 to the Adoption and Children Act 2002.
- M99** Section 11J was inserted by section 4(1) of the [Children and Adoption Act 2006 \(c.20\)](#).
- M100** Section 14D was inserted by section 115(1) of the Adoption and Children Act 2002.
- M101** [2006 c.4](#).
- M102** [2006 c.42](#).

**Notice of proceedings to person with foreign parental responsibility**

**12.4.**—(1) This rule applies where a child is subject to proceedings to which this Part applies and —

- (a) a person holds or is believed to hold parental responsibility for the child under the law of another State which subsists in accordance with Article 16 of the 1996 Hague Convention following the child becoming habitually resident in a territorial unit of the United Kingdom; and
- (b) that person is not otherwise required to be joined as a respondent under rule 12.3.

(2) The applicant shall give notice of the proceedings to any person to whom the applicant believes paragraph (1) applies in any case in which a person whom the applicant believed to have parental responsibility under the 1989 Act would be a respondent to those proceedings in accordance with rule 12.3.

(3) The applicant and every respondent to the proceedings shall provide such details as they possess as to the identity and whereabouts of any person they believe to hold parental responsibility for the child in accordance with paragraph (1) to the court officer, upon making, or responding to the application as appropriate.

(4) Where the existence of a person who is believed to have parental responsibility for the child in accordance with paragraph (1) only becomes apparent to a party at a later date during the proceedings, that party must notify the court officer of those details at the earliest opportunity.

(5) Where a person to whom paragraph (1) applies receives notice of proceedings, that person may apply to the court to be joined as a party using the Part 18 procedure.

**What the court will do when the application has been issued**

**12.5.**—<sup>F229</sup>(1) When <sup>F230</sup>... proceedings [<sup>F231</sup>other than public law proceedings] have been issued the court will consider—

- (a) setting a date for—
  - (i) a directions appointment;
  - (ii) in private law proceedings, a First Hearing Dispute Resolution Appointment; [<sup>F232</sup>or]
  - <sup>F233</sup>(iii) .....

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(iv) the hearing of the application <sup>F234</sup>....,

and if the court sets a date it will do so in accordance with rule 12.13 and [<sup>F235</sup>Practice Direction 12B];

- (b) giving any of the directions listed in rule 12.12 or, where Chapter 6, section 1 applies, rule 12.48; and
- (c) doing anything else which is set out in [<sup>F236</sup>Practice Direction 12B] or any other practice direction.

[<sup>F237</sup>(Practice Direction 12A sets out details relating to the Case Management Hearing. Practice Direction 12B supplementing this Part sets out details relating to the First Hearing Dispute Resolution Appointment.)]

[<sup>F238</sup>(2) When Part 4 proceedings and in so far as practicable other public law proceedings have been issued the court will—

- (a) set a date for the Case Management Hearing in accordance with Practice Direction 12A;
- (b) set a date for the hearing of an application for an interim order if necessary;
- (c) give any directions listed in rule 12.12; and
- (d) do anything else which is set out in Practice Direction 12A.]

#### Textual Amendments

- F229** Rule 12.5 renumbered as rule 12.5(1) (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 17\(a\)](#)
- F230** Word in rule 12.5(1) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 17\(b\)](#)
- F231** Words in rule 12.5(1) inserted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 17\(c\)](#)
- F232** Word in rule 12.5(1)(a)(ii) inserted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 17\(d\)](#)
- F233** Rule 12.5(1)(a)(iii) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 17\(e\)](#)
- F234** Words in rule 12.5(1)(a)(iv) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 17\(f\)](#)
- F235** Words in rule 12.5(1)(a) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 17\(g\)](#)
- F236** Words in rule 12.5(1)(c) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 17\(h\)](#)
- F237** Words in rule 12.5(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 17\(j\)](#)
- F238** Rule 12.5(2) inserted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 17\(i\)](#)

#### Children's guardian, solicitor and reports under section 7 of the 1989 Act

**12.6.** [<sup>F239</sup>Within a day of the issue of Part 4 proceedings or the transfer of Part 4 Proceedings to the court and as] soon as practicable after the issue of [<sup>F240</sup>other] proceedings or the transfer of the [<sup>F241</sup>other] proceedings to the court, the court will—

- (a) in specified proceedings, appoint a children's guardian under rule 16.3(1) unless—

- (i) such an appointment has already been made by the court which made the transfer and is subsisting; or
- (ii) the court considers that such an appointment is not necessary to safeguard the interests of the child;
- (b) where section 41(3) of the 1989 Act applies, consider whether a solicitor should be appointed to represent the child, and if so, appoint a solicitor accordingly;
- (c) consider whether to ask an officer of the service or a Welsh family proceedings officer for advice relating to the welfare of the child;
- (d) consider whether a report relating to the welfare of the child is required, and if so, request such a report in accordance with section 7 of the 1989 Act.

(Part 16 sets out the rules relating to representation of children.)

#### Textual Amendments

**F239** Words in rule 12.6 substituted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **18(a)**

**F240** Word in rule 12.6 inserted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **18(b)**

**F241** Word in rule 12.6 inserted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **18(c)**

#### What a court officer will do

**12.7.**—(1) As soon as practicable after the issue of proceedings the court officer will return to the applicant the copies of the application together with the forms referred to in Practice Direction 5A.

(2) As soon as practicable after the issue of proceedings or the transfer of proceedings to the court or at any other stage in the proceedings the court officer will—

- (a) give notice of any hearing set by the court to the applicant; and
- (b) do anything else set out in Practice Directions 12A or 12B or any other practice direction.

#### <sup>F242</sup>Service

**12.8.**—(1) After the issue of proceedings under this Part, the documents specified in paragraph (5) must be served on the respondent or respondents.

(2) In section 8 private law proceedings, service under paragraph (1) will be effected by the court officer, unless—

- (a) the applicant requests to do so; or
- (b) the court directs the applicant to do so.

(3) In this Rule, “section 8 private law proceedings” are proceedings for a section 8 order except proceedings for a child arrangements order to which section 9(6B) of the 1989 Act applies with respect to a child who is in the care of a local authority.

(4) In any other proceedings to which this Part applies, service under paragraph (1) must be effected by the applicant.

- (5) The documents are—
- (a) the application together with the documents referred to in Practice Direction 12C; and
  - (b) notice of any hearing set by the court.

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(6) Service under this rule must be carried out in accordance with Practice Direction 12C.

(7) The general rules about service in Part 6 apply but are subject to this rule.

[<sup>F243</sup>(Practice Direction 12C (Service of Application in Children Proceedings) provides that in Part 4 proceedings (except proceedings for an interim order) the minimum number of days prior to the Case Management Hearing for service of the application and accompanying documents is 7 days. The Court has discretion to extend or shorten this time (see rule 4.1(3)(a)).]]

**Textual Amendments**

**F242** Rule 12.8 substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **19**

**F243** Words in rule 12.8 inserted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **20**

**Request for transfer from magistrates' court to county court or to another magistrates' court**

<sup>F244</sup>**12.9.** . . . . .

**Textual Amendments**

**F244** Rule 12.9 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **47** (with rule 137); S.I. 2014/954, **art. 2**

**Procedure following refusal of magistrates' court to order transfer**

<sup>F245</sup>**12.10.** . . . . .

**Textual Amendments**

**F245** Rule 12.10 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **47** (with rule 137); S.I. 2014/954, **art. 2**

**Transfer of proceedings from one court to another court**

<sup>F246</sup>**12.11.** . . . . .

**Textual Amendments**

**F246** Rule 12.11 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **47** (with rule 137); S.I. 2014/954, **art. 2**

**Directions**

**12.12.**—(1) This rule does not apply to proceedings under Chapter 6 of this Part.

(2) At any stage in the proceedings, the court may give directions about the conduct of the proceedings including—

- (a) the management of the case;

- (b) the timetable for steps to be taken between the giving of directions and the final hearing;
  - (c) the joining of a child or other person as a party to the proceedings in accordance with rules 12.3(2) and (3);
  - (d) the attendance of the child;
  - (e) the appointment of a children's guardian or of a solicitor under section 41(3) of the 1989 Act;
  - (f) the appointment of a litigation friend;
  - (g) the service of documents;
  - (h) the filing of evidence including experts' reports; and
  - (i) the exercise by an officer of the Service, Welsh family proceedings officer or local authority officer of any duty referred to in rule 16.38(1)
- (3) Paragraph (4) applies where—
- (a) an officer of the Service or a Welsh family proceedings officer has filed a report or a risk assessment as a result of exercising a duty referred to in rule 16.38(1)(a); or
  - (b) a local authority officer has filed a report as a result of exercising a duty referred to in rule 16.38(1)(b).
- (4) The court may—
- (a) give directions setting a date for a hearing at which that report or risk assessment will be considered; and
  - (b) direct that the officer who prepared the report or risk assessment attend any such hearing.
- (5) The court may exercise the powers in paragraphs (2) and (4) on an application or of its own initiative.
- (6) Where the court proposes to exercise its powers of its own initiative the procedure set out in rule 4.3(2) to (6) applies.
- (7) Directions of a court which are still in force immediately prior to the transfer of proceedings to another court will continue to apply following the transfer subject to—
- (a) any changes of terminology which are required to apply those directions to the court to which the proceedings are transferred; and
  - (b) any variation or revocation of the direction.
- (8) The court or court officer will—
- (a) take a note of the giving, variation or revocation of a direction under this rule; and
  - (b) as soon as practicable serve a copy of the note on every party.
- (Rule 12.48 provides for directions in proceedings under the 1980 Hague Convention and the European Convention.)

### **Setting dates for hearings and setting or confirming the timetable and date for the final hearing**

**12.13.**—(1) At the—

- (a) transfer to a court of proceedings;
- (b) postponement or adjournment of any hearing; or
- (c) conclusion of any hearing at which the proceedings are not finally determined,

the court will set a date for the proceedings to come before the court again for the purposes of giving directions or for such other purposes as the court directs.

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- (2) At any hearing the court may—
  - (a) confirm a date for the final hearing or the week within which the final hearing is to begin (where a date or period for the final hearing has already been set);
  - (b) set a timetable for the final hearing unless a timetable has already been fixed, or the court considers that it would be inappropriate to do so; or
  - (c) set a date for the final hearing or a period within which the final hearing of the application is to take place.
- (3) The court officer will notify the parties of—
  - (a) the date of a hearing fixed in accordance with paragraph (1);
  - (b) the timetable for the final hearing; and
  - (c) the date of the final hearing or the period in which it will take place.
- (4) Where the date referred to in paragraph (1) is set at the transfer of proceedings, the date will be as soon as possible after the transfer.
- (5) The requirement in paragraph (1) to set a date for the proceedings to come before the court again is satisfied by the court setting or confirming a date for the final hearing.

### **Attendance at hearings**

**12.14.**—(1) This rule does not apply to proceedings under Chapter 6 of this Part except for proceedings for a declaration under rule 12.71.

(2) Unless the court directs otherwise and subject to paragraph (3), the persons who must attend a hearing are—

- (a) any party to the proceedings;
- (b) any litigation friend for any party or legal representative instructed to act on that party's behalf; and
- (c) any other person directed by the court or required by Practice Directions 12A or 12B or any other practice direction to attend.

(3) Proceedings or any part of them will take place in the absence of a child who is a party to the proceedings if—

- (a) the court considers it in the interests of the child, having regard to the matters to be discussed or the evidence likely to be given; and
- (b) the child is represented by a children's guardian or solicitor.

(4) When considering the interests of the child under paragraph (3) the court will give—

- (a) the children's guardian;
- (b) the solicitor for the child; and
- (c) the child, if of sufficient understanding,

an opportunity to make representations.

(5) Subject to paragraph (6), where at the time and place appointed for a hearing, the applicant appears but one or more of the respondents do not, the court may proceed with the hearing.

(6) The court will not begin to hear an application in the absence of a respondent unless the court is satisfied that—

- (a) the respondent received reasonable notice of the date of the hearing; or
- (b) the circumstances of the case justify proceeding with the hearing.

(7) Where, at the time and place appointed for a hearing one or more of the respondents appear but the applicant does not, the court may—

- (a) refuse the application; or
- (b) if sufficient evidence has previously been received, proceed in the absence of the applicant.

(8) Where at the time and place appointed for a hearing neither the applicant nor any respondent appears, the court may refuse the application.

(9) Paragraphs (5) to (8) do not apply to a hearing where the court—

- (a) is considering—
  - (i) whether to make [<sup>F247</sup>an activity] direction or to attach [<sup>F247</sup>an activity] condition to a [<sup>F248</sup>child arrangements order]; or
  - (ii) an application for a financial compensation order, an enforcement order or an order under paragraph 9 of Schedule A1 to the 1989 Act following a breach of an enforcement order; and
- (b) has yet to obtain sufficient evidence from, or in relation to, the person who may be the subject of the direction, condition or order to enable it to determine the matter.

(10) Nothing in this rule affects the provisions of Article 18 of the Council Regulation in cases to which that provision applies. (The Council Regulation makes provision in Article 18 for the court to stay proceedings where the respondent is habitually resident in another Member State of the European Union and has not been adequately served with the proceedings as required by that provision.)

#### Textual Amendments

**F247** Words in rule 12.14(9) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 21\(a\)](#)

**F248** Words in rule 12.14(9) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 21\(b\)](#)

### Steps taken by the parties

**12.15.** If—

- (a) the parties or any children's guardian agree proposals for the management of the proceedings (including a proposed date for the final hearing or a period within which the final hearing is to take place); and
- (b) the court considers that the proposals are suitable,

it may approve them without a hearing and give directions in the terms proposed.

[<sup>F249</sup>(Practice Direction 12A gives guidance as to the application of this rule to Part 4 proceedings in the light of the period that is for the time being allowed under section 32(1)(a)(ii) of the 1989 Act)]

#### Textual Amendments

**F249** Words in rule 12.15 inserted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 22](#)

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Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)

**Applications without notice**

12.16.—(1) This rule applies to—

- (a) proceedings for a section 8 order;
- (b) emergency proceedings; and
- (c) proceedings relating to the exercise of the court's inherent jurisdiction (other than an application for the court's permission to start such proceedings and proceedings for collection, location and passport orders where Chapter 6 applies).

(2) An application in proceedings referred to in paragraph (1) may <sup>F250</sup>... be made without notice in which case the applicant must file the application—

- (a) where the application is made by telephone, the next business day after the making of the application; or
- (b) in any other case, at the time when the application is made.

<sup>F251</sup>(3) .....

(4) Where—

- (a) a section 8 order;
- (b) an emergency protection order;
- (c) an order for the disclosure of information as to the whereabouts of a child under section 33 of the 1986 Act; or
- (d) an order authorising the taking charge of and delivery of a child under section 34 of the 1986 Act,

is made without notice, the applicant must serve a copy of the application on each respondent within 48 hours after the order is made.

(5) Within 48 hours after the making of an order without notice, the applicant must serve a copy of the order on—

- (a) the parties, unless the court directs otherwise;
- (b) any person who has actual care of the child or who had such care immediately prior to the making of the order; and
- (c) in the case of an emergency protection order and a recovery order, the local authority in whose area the child lives or is found.

(6) Where the court refuses to make an order on an application without notice it may direct that the application is made on notice in which case the application will proceed in accordance with rules 12.13 to 12.15.

(7) Where the hearing takes place outside the hours during which the court office is normally open, the court or court officer will take a note of the proceedings. (Practice Direction 12E (Urgent Business) provides further details of the procedure for out of hours applications. See also Practice Direction 12D (Inherent Jurisdiction (including Wardship Proceedings).) (Rule 12.47 provides for without-notice applications in proceedings under Chapter 6, section 1 of this Part, (proceedings under the 1980 Hague Convention and the European Convention).)

**Textual Amendments**

**F250** Words in rule 12.16(2) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 48\(a\)](#) (with [rule 137](#)); [S.I. 2014/954](#), [art. 2](#)

**F251** Rule 12.16(3) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 48\(b\)](#) (with [rule 137](#)); [S.I. 2014/954](#), [art. 2](#)



### Investigation under section 37 of the 1989 Act

**12.17.**—(1) This rule applies where a direction is given to an appropriate authority by the court under section 37(1) of the 1989 Act.

- (2) On giving the direction the court may adjourn the proceedings.
- (3) As soon as practicable after the direction is given the court will record the direction.
- (4) As soon as practicable after the direction is given the court officer will—
  - (a) serve the direction on—
    - (i) the parties to the proceedings in which the direction is given; and
    - (ii) the appropriate authority where it is not a party;
  - (b) serve any documentary evidence directed by the court on the appropriate authority.

(5) Where a local authority informs the court of any of the matters set out in section 37(3)(a) to (c) of the 1989 Act it will do so in writing.

(6) Unless the court directs otherwise, the court officer will serve a copy of any report to the court under section 37 of the 1989 Act on the parties. (Section 37 of the 1989 Act refers to the appropriate authority and section 37(5) of that Act sets out which authority should be named in a particular case.)

### Disclosure of a report under section 14A(8) or (9) of the 1989 Act

**12.18.**—(1) In proceedings for a special guardianship order, the local authority must file the report under section 14A(8) or (9) of the 1989 Act <sup>M103</sup> within the timetable fixed by the court.

(2) The court will consider whether to give a direction that the report under section 14A(8) or (9) of the 1989 Act be disclosed to each party to the proceedings.

(3) Before giving a direction for the report to be disclosed, the court must consider whether any information should be deleted from the report.

(4) The court may direct that the report must not be disclosed to a party.

(5) The court officer must serve a copy of the report in accordance with any direction under paragraph (2).

(6) In paragraph (3), information includes information which a party has declined to reveal under rule 29.1(1).

#### Marginal Citations

**M103** Sections 14A(8) and (9) were inserted by section 115(1) of the Adoption and Children Act 2002.

### Additional evidence

**12.19.**—(1) This rule applies to proceedings for a section 8 order or a special guardianship order.

(2) Unless the court directs otherwise, a party must not—

- (a) file or serve any document other than in accordance with these rules or any practice direction;
- (b) in completing a form prescribed by these rules or any practice direction, give information or make a statement which is not required or authorised by that form; or
- (c) file or serve at a hearing—
  - (i) any witness statement of the substance of the oral evidence which the party intends to adduce; or

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*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

(ii) any copy of any document (including any experts' report) which the party intends to rely on.

(3) Where a party fails to comply with the requirements of this rule in relation to any witness statement or other document, the party cannot seek to rely on that statement or other document unless the court directs otherwise.

**Expert evidence-examination of child**

<sup>F252</sup>**12.20.** . . . . .

**Textual Amendments**  
F252 Rule 12.20 omitted (31.1.2013) by virtue of [The Family Procedure \(Amendment\) \(No.5\) Rules 2012 \(S.I. 2012/3061\)](#), rules 1, 4

**Hearings**

**12.21.**—(1) The court may give directions about the order of speeches and the evidence at a hearing.

(2) Subject to any directions given under paragraph (1), the parties and the children's guardian must adduce their evidence at a hearing in the following order—

- (a) the applicant;
- (b) any party with parental responsibility for the child;
- (c) other respondents;
- (d) the children's guardian;
- (e) the child, if the child is a party to proceedings and there is no children's guardian.

CHAPTER 3

SPECIAL PROVISIONS ABOUT PUBLIC LAW PROCEEDINGS

<sup>F253</sup>**Timetable for the proceedings**

**12.22.** In public law proceedings other than Part 4 proceedings, in so far as practicable the court will draw up the timetable for the proceedings or revise that timetable with a view to disposing of the application without delay and in any event within 26 weeks beginning with the date on which the application is issued.

(In relation to Part 4 proceedings, section 32(1)(a) of the 1989 Act requires the court to draw up a timetable with a view to disposing of the application without delay and in any event within 26 weeks beginning with the day on which the application is issued.)]

**Textual Amendments**  
F253 Rule 12.22 substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, 23

[<sup>F254</sup> **Application of rules 12.24 to 12.26C**

**12.23.** Rules 12.24 to 12.26C apply to Part 4 proceedings and in so far as practicable other public law proceedings.]

**Textual Amendments**

**F254** Rule 12.23 substituted (22.4.2014) by The Family Procedure (Amendment No. 3) Rules 2014 (S.I. 2014/843), art. 1, **rule 24**

**Directions**

- 12.24.** The court will direct the parties to—
- (a) monitor compliance with the court's directions; and
  - (b) tell the court or court officer about—
    - (i) any failure to comply with a direction of the court; and
    - (ii) any other delay in the proceedings.

[<sup>F255</sup> **The Case Management Hearing and the Issues Resolution Hearing**

- 12.25.—**(1) The court will conduct the Case Management Hearing with the objective of—
- (a) confirming the level of judge to which the proceedings have been allocated;
  - (b) drawing up a timetable for the proceedings including the time within which the proceedings are to be resolved;
  - (c) identifying the issues; and
  - (d) giving directions in accordance with rule 12.12 and Practice Direction 12A to manage the proceedings.
- (2) The court may hold a further Case Management Hearing only where this hearing is necessary to fulfil the objectives of the Case Management Hearing set out in paragraph (1).
- (3) The court will conduct the Issues Resolution Hearing with the objective of—
- (a) identifying the remaining issues in the proceedings;
  - (b) as far as possible resolving or narrowing those issues; and
  - (c) giving directions to manage the proceedings to the final hearing in accordance with rule 12.12 and Practice Direction 12A.
- (4) Where it is possible for all the issues in the proceedings to be resolved at the Issues Resolution Hearing, the court may treat the Issues Resolution Hearing as a final hearing and make orders disposing of the proceedings.
- (5) The court may set a date for the Case Management Hearing, a further Case Management Hearing and the Issues Resolution Hearing at the times referred to in Practice Direction 12A.
- (6) The matters which the court will consider at the hearings referred to in this rule are set out in Practice Direction 12A.

(Rule 25.6 (experts: when to apply for the court's permission) provides that unless the court directs otherwise, parties must apply for the court's permission as mentioned in section 13(1), (3) and (5) of the 2014 Act as soon as possible and in Part 4 proceedings and in so far as practicable other public law proceedings no later than the Case Management Hearing.)]

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

#### Textual Amendments

**F255** Rule 12.25 substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **25**

#### [<sup>F256</sup> Discussion between advocates

**12.26.**—(1) When setting a date for the Case Management Hearing or the Issues Resolution Hearing the court will direct a discussion between the parties’ advocates to—

- (a) discuss the provisions of a draft of the Case Management Order; and
- (b) consider any other matter set out in Practice Direction 12A.

(2) Where there is a litigant in person the court will give directions about how that person may take part in the discussions between the parties’ advocates.

(3) Unless the court directs otherwise—

- (a) any discussion between advocates must take place no later than 2 days before the Case Management Hearing; and
- (b) a draft of the Case Management Order must be filed with the court no later than 11a.m. on the day before the Case Management Hearing.

(4) Unless the court directs otherwise—

- (a) any discussion between advocates must take place no later than 7 days before the Issues Resolution Hearing; and
- (b) a draft of the Case Management Order must be filed with the court no later than 11a.m. on the day before the Issues Resolution Hearing.

(5) For the purposes of this rule “advocate” includes a litigant in person.]

#### Textual Amendments

**F256** Rule 12.26 substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **26**

#### [<sup>F257</sup> Application for extension of the time limit for disposing of the application

**12.26A.**—(1) An application requesting the court to grant an extension must state—

- (a) the reasons for the request;
- (b) the period of extension being requested; and
- (c) a short explanation of—
  - (i) why it is necessary for the request to be granted to enable the court to resolve the proceedings justly;
  - (ii) the impact which any ensuing timetable revision would have on the welfare of the child to whom the application relates;
  - (iii) the impact which any ensuing timetable revision would have on the duration and conduct of the proceedings; and
  - (iv) the reasons for the grant or refusal of any previous request for extension.

(2) Part 18 applies to an application requesting the grant of an extension.

(3) In this rule

“ensuing timetable revision” has the meaning given to it by section 32(6) of the 1989 Act;  
“extension” means an extension of the period for the time being allowed under section 32(1)(a)(ii) of the 1989 Act which is to end no more than 8 weeks after the later of the times referred to in section 32(8) of that Act.

**Textual Amendments**

**F257** Rules 12.26A-12.26C inserted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, 27

**Disapplication of rule 4.1(3)(a) court’s power to extend or shorten the time for compliance with a rule**

**12.26B.** Rule 4.1(3)(a) does not apply to any period that is for the time being allowed under section 32(1)(a)(ii) of the 1989 Act.

**Textual Amendments**

**F257** Rules 12.26A-12.26C inserted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, 27

**Extension of time limit: reasons for court’s decision**

**12.26C.—**(1) When refusing or granting an extension of the period that is for the time being allowed under section 32(1)(a)(ii) in the case of the application, the court will announce its decision and—

- (a) the reasons for that decision; and
- (b) where an extension is granted or refused, a short explanation of the impact which the decision would have on the welfare of the child.

(2) The court office will supply a copy of the order granting or refusing the extension including the reasons for the court’s decision and the period of any extension and short explanation given under paragraph (1)(b) to—

- (a) the parties; and
- (b) any person who has actual care of the child who is the subject of the proceedings.]

**Textual Amendments**

**F257** Rules 12.26A-12.26C inserted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, 27

**Matters prescribed for the purposes of the Act**

**12.27.—**(1) Proceedings for an order under any of the following provisions of the 1989 Act—

- (a) a secure accommodation order under section 25;
- (b) an order giving permission to change a child's surname or remove a child from the United Kingdom under section 33(7);

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*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

- (c) an order permitting the local authority to arrange for any child in its care to live outside England and Wales under paragraph 19(1) of Schedule 2;
- (d) the extension or further extension of a supervision order under paragraph 6(3) of Schedule 3;
- (e) appeals against the determination of proceedings of a kind set out in sub-paragraphs (a) to (d);

are specified for the purposes of section 41 of that Act in accordance with section 41(6)(i) of that Act.

(2) The persons listed as applicants in the table set out in rule 12.3 to proceedings for the variation of directions made with interim care or interim supervision orders under section 38(8) of the 1989 Act are the prescribed class of persons for the purposes of that section.

(3) The persons listed as applicants in the table set out in rule 12.3 to proceedings for the variation of a direction made under section 44(6) of the 1989 Act in an emergency protection order are the prescribed class of persons for the purposes of section 44(9) of that Act.

### **Exclusion requirements: interim care orders and emergency protection orders**

**12.28.**—(1) This rule applies where the court includes an exclusion requirement in an interim care order or an emergency protection order.

- (2) The applicant for an interim care order or emergency protection order must—
  - (a) prepare a separate statement of the evidence in support of the application for an exclusion requirement;
  - (b) serve the statement personally on the relevant person with a copy of the order containing the exclusion requirement (and of any power of arrest which is attached to it);
  - (c) inform the relevant person of that person's right to apply to vary or discharge the exclusion requirement.

(3) Where a power of arrest is attached to an exclusion requirement in an interim care order or an emergency protection order, the applicant will deliver—

- (a) a copy of the order; and
- (b) a statement showing that the relevant person has been served with the order or informed of its terms (whether by being present when the order was made or by telephone or otherwise),

to the officer for the time being in charge of the police station for the area in which the dwelling-house in which the child lives is situated (or such other police station as the court may specify).

(4) Rules 10.6(2) and 10.10 to 10.17 will apply, with the necessary modifications, for the service, variation, discharge and enforcement of any exclusion requirement to which a power of arrest is attached as they apply to an order made on an application under Part 4 of the 1996 Act.

(5) The relevant person must serve the parties to the proceedings with any application which that person makes for the variation or discharge of the exclusion requirement.

- (6) Where an exclusion requirement ceases to have effect whether—
  - (a) as a result of the removal of a child under section 38A(10) or 44A(10) of the 1989 Act<sup>M104</sup>;
  - (b) because of the discharge of the interim care order or emergency protection order; or
  - (c) otherwise,

the applicant must inform—

- (i) the relevant person;
- (ii) the parties to the proceedings;
- (iii) any officer to whom a copy of the order was delivered under paragraph (3); and

(iv) (where necessary) the court.

(7) Where the court includes an exclusion requirement in an interim care order or an emergency protection order of its own motion, paragraph (2) will apply with the omission of any reference to the statement of the evidence.

(8) In this rule, “the relevant person” has the meaning assigned to it by sections 38A(2) and 44A(2) of the 1989 Act.

#### Marginal Citations

**M104** Sections 38A(10) and 44A(10) were inserted by section 52 of and paragraphs 1 and 3 of Schedule 6 to the Family Law Act 1996.

#### Notification of consent

**12.29.**—(1) Consent for the purposes of the following provisions of the 1989 Act—

- (a) section 16(3) <sup>M105</sup>;
- (b) section 38A(2)(b)(ii) or 44A(2)(b)(ii); or
- (c) paragraph 19(3)(c) or (d) of Schedule 2,

must be given either—

- (i) orally to the court; or
- (ii) in writing to the court signed by the person giving consent.

(2) Any written consent for the purposes of section 38A(2) or 44A(2) of the 1989 Act must include a statement that the person giving consent—

- (a) is able and willing to give to the child the care which it would be reasonable to expect a parent to give; and
- (b) understands that the giving of consent could lead to the exclusion of the relevant person from the dwelling-house in which the child lives.

#### Marginal Citations

**M105** Paragraph (a) was repealed by sections 6(1), (2), 15(2) of and Schedule 3 to the Children and Adoption Act 2006.

#### Proceedings for secure accommodation orders: copies of reports

**12.30.** In proceedings under section 25 of the 1989 Act, the court will, if practicable, arrange for copies of all written reports filed in the case to be made available before the hearing to—

- (a) the applicant;
- (b) the parent or guardian of the child to whom the application relates;
- (c) any legal representative of the child;
- (d) the children's guardian; and
- (e) the child, unless the court directs otherwise,

and copies of the reports may, if the court considers it desirable, be shown to any person who is entitled to notice of any hearing in accordance with Practice Direction 12C.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

## CHAPTER 4

### SPECIAL PROVISIONS ABOUT PRIVATE LAW PROCEEDINGS

#### The First Hearing Dispute Resolution Appointment

**12.31.**—(1) The court may set a date for the First Hearing Dispute Resolution Appointment after the proceedings have been issued.

(2) The court officer will give notice of any of the dates so fixed to the parties. (Provisions relating to the timing of and issues to be considered at the First Hearing Dispute Resolution Appointment are contained in Practice Direction 12B.)

#### Answer

**12.32.** A respondent must file and serve on the parties an answer to the application for an order in private law proceedings within 14 days beginning with the date on which the application is served.

#### Applications for warning notices or applications to amend enforcement orders by reason of change of residence

**12.33.**—(1) This rule applies in relation to an application <sup>F258</sup>... for—

- (a) a warning notice to be attached to a [<sup>F259</sup>child arrangements] order; or
- (b) an order under paragraph 5 of Schedule A1 to the 1989 Act to amend an enforcement order by reason of change of residence.

(2) The application must be made without notice.

(3) The court may deal with the application without a hearing.

(4) If the court decides to deal with the application at a hearing, rules 12.5, 12.7 and 12.8 will apply.

#### Textual Amendments

**F258** Words in rule 12.33 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 49](#) (with [rule 137](#)); [S.I. 2014/954](#), [art. 2](#)

**F259** Words in rule 12.33 substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), [rules 1, 28](#)

#### Service of a risk assessment

**12.34.**—(1) Where an officer of the Service or a Welsh family proceedings officer has filed a risk assessment with the court, subject to paragraph (2), the court officer will as soon as practicable serve copies of the risk assessment on each party.

(2) Before serving the risk assessment, the court must consider whether, in order to prevent a risk of harm to the child, it is necessary for—

- (a) information to be deleted from a copy of the risk assessment before that copy is served on a party; or
- (b) service of a copy of the risk assessment (whether with information deleted from it or not) on a party to be delayed for a specified period,

and may make directions accordingly.



## Service of enforcement orders or orders amending or revoking enforcement orders

- 12.35.**—(1) Paragraphs (2) and (3) apply where [<sup>F260</sup>the court] makes—
- (a) an enforcement order; or
  - (b) an order under paragraph 9(2) of Schedule A1 to the 1989 Act (enforcement order made following a breach of an enforcement order).
- (2) As soon as practicable after an order has been made, a copy of it must be served by the court officer on—
- (a) the parties, except the person against whom the order is made;
  - (b) the officer of the Service or the Welsh family proceedings officer who is to comply with a request under section 11M of the 1989 Act <sup>M106</sup> to monitor compliance with the order; and
  - (c) the responsible officer.
- (3) Unless the court directs otherwise, the applicant must serve a copy of the order personally on the person against whom the order is made.
- (4) The court officer must send a copy of an order made under paragraph 4, 5, 6 or 7 of Schedule A1 to the 1989 Act (revocation or amendment of an enforcement order) to—
- (a) the parties;
  - (b) the officer of the Service or the Welsh family proceedings officer who is to comply with a request under section 11M of the 1989 Act to monitor compliance with the order;
  - (c) the responsible officer; and
  - (d) in the case of an order under paragraph 5 of Schedule A1 to the 1989 Act (amendment of enforcement order by reason of change of residence), the responsible officer in the former local justice area.
- (5) In this rule, “responsible officer” has the meaning given in paragraph 8(8) of Schedule A1 to the 1989 Act.

### Textual Amendments

**F260** Words in rule 12.35(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 50](#) (with [rule 137](#)); [S.I. 2014/954](#), [art. 2](#)

### Marginal Citations

**M106** [Section 11M](#) was inserted by section 4(1) of the Children and Adoption Act 2006.

## CHAPTER 5

### SPECIAL PROVISIONS ABOUT INHERENT JURISDICTION PROCEEDINGS

#### Where to start proceedings

**12.36.**—(1) An application for proceedings under the Inherent Jurisdiction of the court must be started in the High Court.

(2) Wardship proceedings, except applications for an order that a child be made or cease to be a ward of court, may be transferred to the [<sup>F261</sup>family court] unless the issues of fact or law make them more suitable for hearing in the High Court. (The question of suitability for hearing in the High Court is explained in Practice Direction 12D (Inherent Jurisdiction (including Wardship Proceedings)).)

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

### Textual Amendments

**F261** Words in rule 12.36(2) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 51](#) (with [rule 137](#)); [S.I. 2014/954](#), [art. 2](#)

### Child as respondent to wardship proceedings

**12.37.**—(1) A child who is the subject of wardship proceedings must not be made a respondent to those proceedings unless the court gives permission following an application under paragraph (2).

(2) Where nobody other than the child would be a suitable respondent to wardship proceedings, the applicant may apply without notice for permission to make the wardship application—

- (a) without notice; or
- (b) with the child as the respondent.

### Registration requirements

**12.38.** The court officer will send a copy of every application for a child to be made a ward of court to the principal registry for recording in the register of wards.

### Notice of child's whereabouts

**12.39.**—(1) Every respondent, other than a child, must file with the acknowledgment of service a notice stating—

- (a) the respondent's address; and
- (b) either—
  - (i) the whereabouts of the child; or
  - (ii) that the respondent is unaware of the child's whereabouts if that is the case.

(2) Unless the court directs otherwise, the respondent must serve a copy of that notice on the applicant.

(3) Every respondent other than a child must immediately notify the court in writing of—

- (a) any subsequent changes of address; or
- (b) any change in the child's whereabouts,

and, unless the court directs otherwise, serve a copy of that notice on the applicant.

(4) In this rule a reference to the whereabouts of a child is a reference to—

- (a) the address at which the child is living;
- (b) the person with whom the child is living; and
- (c) any other information relevant to where the child may be found.

### Enforcement of orders in wardship proceedings

**12.40.** The High Court may secure compliance with any direction relating to a ward of court by an order addressed to the tipstaff. (The role of the tipstaff is explained in Practice Direction 12D (Inherent Jurisdiction (including Wardship Proceedings)).)

### **Child ceasing to be ward of court**

**12.41.**—(1) A child who, by virtue of section 41(2) of the Senior Courts Act 1981, automatically becomes a ward of court on the making of a wardship application will cease to be a ward on the determination of the application unless the court orders that the child be made a ward of court.

(2) Nothing in paragraph (1) affects the power of the court under section 41(3) of the Senior Courts Act 1981 to order that any child cease to be a ward of court.

### **Adoption of a child who is a ward of court**

**12.42.** An application for permission—

- (a) to start proceedings to adopt a child who is a ward of court;
- (b) to place such a child for adoption with parental consent; or
- (c) to start proceedings for a placement order in relation to such a child,

may be made without notice in accordance with Part 18.

## **CHAPTER 6**

### **PROCEEDINGS UNDER THE 1980 HAGUE CONVENTION, THE EUROPEAN CONVENTION, THE COUNCIL REGULATION, AND THE 1996 HAGUE CONVENTION**

#### **Scope**

**12.43.** This Chapter applies to —

- (a) [<sup>F262</sup>children proceedings] under the 1980 Hague Convention or the European Convention; and
- (b) applications relating to the Council Regulation or the 1996 Hague Convention in respect of children.

#### **Textual Amendments**

**F262** Words in rule. 12.43(a) substituted (31.1.2013) by [The Family Procedure \(Amendment\) \(No.5\) Rules 2012 \(S.I. 2012/3061\)](#), rules 1, **5(b)**

## **SECTION 1**

### *Proceedings under the 1980 Hague Convention or the European Convention*

#### **Interpretation**

**12.44.** In this section—

“the 1985 Act” means the Child Abduction and Custody Act 1985;

“Central Authority” means, in relation to England and Wales, the Lord Chancellor;

“Contracting State” has the meaning given in—

- (a) section 2 of the 1985 Act in relation to the 1980 Hague Convention; and
- (b) section 13 of the 1985 Act in relation to the European Convention; and

“decision relating to custody” has the same meaning as in the European Convention.

(“the 1980 Hague Convention” and the “the European Convention” are defined in rule 2.3)

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*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

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### **Where to start proceedings**

**12.45.** Every application under the 1980 Hague Convention or the European Convention must be—

- (a) made in the High Court and issued in the principal registry; and
- (b) heard by a Judge of the High Court unless the application is;
  - (i) to join a respondent; or
  - (ii) to dispense with service or extend the time for acknowledging service.

### **Evidence in support of application**

**12.46.** Where the party making an application under this section does not produce the documents referred to in Practice Direction 12F, the court may—

- (a) fix a time within which the documents are to be produced;
- (b) accept equivalent documents; or
- (c) dispense with production of the documents if the court considers it has sufficient information.

### **Without-notice applications**

**12.47.**—(1) This rule applies to applications—

- (a) commencing or in proceedings under this section;
- (b) for interim directions under section 5 or 19 of the 1985 Act <sup>M107</sup>;
- (c) for the disclosure of information about the child and for safeguarding the child's welfare, under rule 12.57;
- (d) for the disclosure of relevant information as to where the child is, under section 24A of the 1985 Act <sup>M108</sup>; or
- (e) for a collection order, location order or passport order.

(2) Applications under this rule may be made without notice, in which case the applicant must file the application—

- (a) where the application is made by telephone, the next business day after the making of the application; or
- (b) in any other case, at the time when the application is made.

(3) Where an order is made without notice, the applicant must serve a copy of the order on the other parties as soon as practicable after the making of the order, unless the court otherwise directs.

(4) Where the court refuses to make an order on an application without notice, it may direct that the application is made on notice.

(5) Where any hearing takes place outside the hours during which the court office is usually open—

- (a) if the hearing takes place by telephone, the applicant's solicitors will, if practicable, arrange for the hearing to be recorded; and
- (b) in all other cases, the court or court officer will take a note of the proceedings.

(Practice Direction 12E (Urgent Business) provides further details of the procedure for out of hours applications. See also Practice Direction 12D (Inherent Jurisdiction (including Wardship Proceedings)).)

### Marginal Citations

**M107 Section 5** was amended by section 115(2), (4)(a) (i), (4)(b) and 4(c) of the Adoption and Children Act 2002.

**M108 Section 24A** was inserted by section 67(4) of the Family Law Act 1986.

### Directions

**12.48.**—(1) As soon as practicable after an application to which this section applies has been made, the court may give directions as to the following matters, among others—

- (a) whether service of the application may be dispensed with;
- (b) whether the proceedings should be transferred to another court under rule 12.54;
- (c) expedition of the proceedings or any part of the proceedings (and any direction for expedition may specify a date by which the court must issue its final judgment in the proceedings or a specified part of the proceedings);
- (d) the steps to be taken in the proceedings and the time by which each step is to be taken;
- (e) whether the child or any other person should be made a party to the proceedings;
- (f) if the child is not made a party to the proceedings, the manner in which the child's wishes and feelings are to be ascertained, having regard to the child's age and maturity and in particular whether an officer of the Service or a Welsh family proceedings officer should report to the court for that purpose;
- (g) where the child is made a party to the proceedings, the appointment of a children's guardian for that child unless a children's guardian has already been appointed;
- (h) the attendance of the child or any other person before the court;
- (i) the appointment of a litigation friend for a child or for any protected party, unless a litigation friend has already been appointed;
- (j) the service of documents;
- (k) the filing of evidence including expert evidence; and
- (l) whether the parties and their representatives should meet at any stage of the proceedings and the purpose of such a meeting.

(Rule 16.2 provides for when the court may make the child a party to the proceedings and rule 16.4 for the appointment of a children's guardian for the child who is made a party. Rule 16.5 (without prejudice to rule 16.6) requires a child who is a party to the proceedings but not the subject of those proceedings to have a litigation friend.)

(2) Directions of a court which are in force immediately prior to the transfer of proceedings to another court under rule 12.54 will continue to apply following the transfer subject to—

- (a) any changes of terminology which are required to apply those directions to the court to which the proceedings are transferred; and
- (b) any variation or revocation of the directions.

(3) The court or court officer will—

- (a) take a note of the giving, variation or revocation of directions under this rule; and
- (b) as soon as practicable serve a copy of the directions order on every party.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

**Answer**

**12.49.**—(1) Subject to paragraph (2) and to any directions given under rule 12.48, a respondent must file and serve on the parties an answer to the application within 7 days beginning with the date on which the application is served.

(2) The court may direct a longer period for service where the respondent has been made a party solely on one of the following grounds—

- (a) a decision relating to custody has been made in the respondent's favour; or
- (b) the respondent appears to the court to have sufficient interest in the welfare of the child.

**Filing and serving written evidence**

**12.50.**—(1) The respondent to an application to which this section applies may file and serve with the answer a statement verified by a statement of truth, together with any further evidence on which the respondent intends to rely.

(2) The applicant may, within 7 days beginning with the date on which the respondent's evidence was served under paragraph (1), file and serve a statement in reply verified by a statement of truth, together with any further evidence on which the applicant intends to rely.

**Adjournment**

**12.51.** The court will not adjourn the hearing of an application to which this section applies for more than 21 days at at any one time.

**Stay of proceedings upon notification of wrongful removal etc.**

**12.52.**—(1) In this rule and in rule 12.53—

- (a) “relevant authority” means —
  - (i) the High Court;
  - (ii) [<sup>F263</sup>the family court];
  - <sup>F264</sup>(iii) . . . . .
  - (iv) the Court of Session;
  - (v) a sheriff court;
  - [<sup>F265</sup>(vi) a children’s hearing within the meaning of the Children’s Hearings (Scotland) Act 2011;]
  - (vii) the High Court in Northern Ireland;
  - (viii) a county court in Northern Ireland;
  - (ix) a court of summary jurisdiction in Northern Ireland;
  - (x) the Royal Court of Jersey;
  - (xi) a court of summary jurisdiction in Jersey;
  - (xii) the High Court of Justice of the Isle of Man;
  - (xiii) a court of summary jurisdiction in the Isle of Man; or
  - (xiv) the Secretary of State; and
- (b) “rights of custody” has the same meaning as in the 1980 Hague Convention.

(2) Where a party to proceedings under the 1980 Hague Convention knows that an application relating to the merits of rights of custody is pending in or before a relevant authority, that party must

file within the proceedings under the 1980 Hague Convention a concise statement of the nature of that application, including the relevant authority in or before which it is pending.

(3) On receipt of a statement filed in accordance with paragraph (2) above, a court officer will notify the relevant authority in or before which the application is pending and will subsequently notify the relevant authority of the result of the proceedings.

(4) On receipt by the relevant authority of a notification under paragraph (3) from the High Court or equivalent notification from the Court of Session, the High Court in Northern Ireland or the High Court of Justice of the Isle of Man—

- (a) all further proceedings in the action will be stayed<sup>(GL)</sup> unless and until the proceedings under the 1980 Hague Convention in the High Court, Court of Session, the High Court in Northern Ireland or the High Court of Justice of the Isle of Man are dismissed; and
- (b) the parties to the action will be notified by the court officer of the stay<sup>(GL)</sup> and dismissal.

#### Textual Amendments

**F263** Words in rule 12.52(1)(a) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\), rules 1, 52\(a\)](#) (with rule 137); S.I. 2014/954, [art. 2](#)

**F264** Words in rule 12.52(1)(a) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\), rules 1, 52\(b\)](#) (with rule 137); S.I. 2014/954, [art. 2](#)

**F265** Rule 12.52(1)(a)(vi) substituted (24.6.2013) by [The Children's Hearings \(Scotland\) Act 2011 \(Consequential and Transitional Provisions and Savings\) Order 2013 \(S.I. 2013/1465\), art. 1\(2\), Sch. 1 para. 28](#); S.S.I. 2013/195, [art. 2](#)

#### Stay of proceedings where application made under s.16 of the 1985 Act (registration of decisions under the European Convention)

**12.53.**—(1) A person who—

- (a) is a party to—
  - (i) proceedings under section 16 of the 1985 Act; or
  - (ii) proceedings as a result of which a decision relating to custody has been registered under section 16 of the 1985 Act; and
- (b) knows that an application is pending under—
  - (i) section 20(2) of the 1985 Act;
  - (ii) Article 21(2) of the Child Abduction and Custody (Jersey) Law 2005; or
  - (iii) section 42(2) of the Child Custody Act 1987 (an Act of Tynwald),

must file within the proceedings under section 16 of the 1985 Act a concise statement of the nature of the pending application.

(2) On receipt of a statement filed in accordance with paragraph (1) above, a court officer will notify the relevant authority in or before which the application is pending and will subsequently notify the relevant authority of the result of the proceedings.

(3) On receipt by the relevant authority of a notification under paragraph (2) from the High Court or equivalent notification from the Court of Session, the High Court in Northern Ireland or the High Court of Justice of the Isle of Man, the court officer will notify the parties to the action.

#### Transfer of proceedings

**12.54.**—(1) At any stage in proceedings under the 1985 Act the court may-

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

- (a) of its own initiative; or
  - (b) on the application of a party with a minimum of two days' notice;
- order that the proceedings be transferred to a court listed in paragraph (4).
- (2) Where the court makes an order for transfer under paragraph (1)—
    - (a) the court will state its reasons on the face of the order;
    - (b) a court officer will send a copy of the order, the application and the accompanying documents (if any) and any evidence to the court to which the proceedings are transferred; and
    - (c) the costs of the proceedings both before and after the transfer will be at the discretion of the court to which the proceedings are transferred.
  - (3) Where proceedings are transferred to the High Court from a court listed in paragraph (4), a court officer will notify the parties of the transfer and the proceedings will continue as if they had been commenced in the High Court.
  - (4) The listed courts are the Court of Session, the High Court in Northern Ireland, the Royal Court of Jersey or the High Court of Justice of the Isle of Man.

#### **Revocation and variation of registered decisions**

**12.55.**—(1) This rule applies to decisions which—

- (a) have been registered under section 16 of the 1985 Act; and
- (b) are subsequently varied or revoked by an authority in the Contracting State in which they were made.

(2) The court will, on cancelling the registration of a decision which has been revoked, notify—

- (a) the person appearing to the court to have care of the child;
- (b) the person on whose behalf the application for registration of the decision was made; and
- (c) any other party to the application.

(3) The court will, on being informed of the variation of a decision, notify—

- (a) the party appearing to the court to have care of the child; and
- (b) any party to the application for registration of the decision;

and any such person may apply to make representations to the court before the registration is varied.

(4) Any person appearing to the court to have an interest in the proceedings may apply for the registration of a decision for the cancellation or variation of the decision referred to in paragraph (1).

#### **The central index of decisions registered under the 1985 Act**

**12.56.** A central index of decisions registered under section 16 of the 1985 Act, together with any variation of those decisions made under section 17 of that Act, will be kept by the principal registry.

#### **Disclosure of information in proceedings under the European Convention**

**12.57.** At any stage in proceedings under the European Convention the court may, if it has reason to believe that any person may have relevant information about the child who is the subject of those proceedings, order that person to disclose such information and may for that purpose order that the person attend before it or file affidavit<sup>(GL)</sup> evidence.



## SECTION 2

### *Applications relating to the Council Regulation and the 1996 Hague Convention*

#### Interpretation

**12.58.**—(1) In this section —

F266  
...

“Contracting State” means a State party to the 1996 Hague Convention;

[<sup>F267</sup>“domestic Central Authority” means—

- (a) where the matter relates to the Council Regulation, the Lord Chancellor;
- (b) where the matter relates to the 1996 Hague Convention in England, the Lord Chancellor;
- (c) where the matter relates to the 1996 Hague Convention in Wales, the Welsh Ministers;]

“judgment” has the meaning given in Article 2(4) of the Council Regulation;

“Member State” means a Member State bound by the Council Regulation or a country which has subsequently adopted the Council Regulation;

“parental responsibility” has the meaning given in —

- (a) Article 2(7) of the Council Regulation in relation to proceedings under that Regulation; and
- (b) Article 1(2) of the 1996 Hague Convention in relation to proceedings under that Convention; and

“seised” has the meaning given in Article 16 of the Council Regulation.

(2) In rules 12.59 to 12.70, references to the court of another member State or Contracting State include authorities within the meaning of “court” in Article 2(1) of the Council Regulation, and authorities of Contracting States which have jurisdiction to take measures directed to the protection of the person or property of the child within the meaning of the 1996 Hague Convention.

#### Textual Amendments

**F266** Words in rule 12.58 omitted (30.9.2012) by virtue of [The Family Procedure \(Amendment No. 3\) Rules 2012 \(S.I. 2012/2046\)](#), rules 1, **4(a)**

**F267** Words in rule 12.58 inserted (30.9.2012) by [The Family Procedure \(Amendment No. 3\) Rules 2012 \(S.I. 2012/2046\)](#), rules 1, **4(b)**

#### **Procedure under Article 11(6) of the Council Regulation where the court makes a non-return order under Article 13 of the 1980 Hague Convention**

**12.59.**—(1) Where the court makes an order for the non-return of a child under Article 13 of the 1980 Hague Convention, it must immediately transmit the documents referred to in Article 11(6) of the Council Regulation —

- (a) directly to the court with jurisdiction or the central authority in the Member State where the child was habitually resident immediately before the wrongful removal to, or wrongful retention in, England and Wales; or
- (b) to the [<sup>F268</sup>domestic Central Authority] for onward transmission to the court with jurisdiction or the central authority in the other Member State mentioned in subparagraph (a).

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

(2) The documents required by paragraph (1) must be transmitted by a method which, in the case of direct transmission to the court with jurisdiction in the other Member State, ensures and, in any other case, will not prevent, their receipt by that court within one month of the date of the non-return order.

#### Textual Amendments

**F268** Words in rule 12.59 substituted (30.9.2012) by [The Family Procedure \(Amendment No. 3\) Rules 2012 \(S.I. 2012/2046\)](#), rules 1, 5

#### Procedure under Article 11(7) of the Council Regulation where the court receives a non-return order made under Article 13 of the 1980 Hague Convention by a court in another Member State

**12.60.**—(1) This rule applies where the court receives an order made by a court in another Member State for the non-return of a child.

(2) In this rule, the order for non-return of the child and the papers transmitted with that order from the court in the other Member State are referred to as “the non-return order”.

(3) Where, at the time of receipt of the non-return order, the court is already seized of a question of parental responsibility in relation to the child, —

- (a) the court officer shall immediately —
  - (i) serve copies of the non-return order on each party to the proceedings in which a question of parental responsibility in relation to the child is at issue; and
  - (ii) where the non-return order was received directly from the court or the central authority in the other Member State, transmit to the [<sup>F269</sup>domestic Central Authority] a copy of the non-return order.
- (b) the court shall immediately invite the parties to the 1980 Hague Convention proceedings to file written submissions in respect of the question of custody by a specified date, or to attend a hearing to consider the future conduct of the proceedings in the light of the non-return order.

(4) Where, at the time of receipt of the non-return order, the court is not already seized of the question of parental responsibility in relation to the child, it shall immediately—

- (a) open a court file in respect of the child and assign a court reference to the file;
- (b) serve a copy of the non-return order on each party to the proceedings before the court in the Member State which made that order;
- (c) invite each party to file, within 3 months of notification to that party of receipt of the non-return order, submissions in the form of—
  - (i) an application for an order under—
    - (aa) the 1989 Act; or
    - (bb) (in the High Court only) an application under the inherent jurisdiction in respect of the child; or
  - (ii) where permission is required to make an application for the order in question, an application for that permission;
- (d) where the non-return order was received directly from the court or central authority in the other Member State, transmit to the [<sup>F269</sup>domestic Central Authority] a copy of the non-return order.

(5) In a case to which paragraph (4) applies where no application is filed within the 3 month period provided for by paragraph (4)(c) the court must close its file in respect of the child. (Enforcement of a subsequent judgment requiring the return of the child, made under Article 11(8) by a court examining custody of the child under Article 11(7), is dealt with in Part 31 below.)

#### Textual Amendments

**F269** Words in rule 12.60 substituted (30.9.2012) by [The Family Procedure \(Amendment No. 3\) Rules 2012 \(S.I. 2012/2046\)](#), rules 1, 5

### Transfer of proceedings under Article 15 of the Council Regulation or under Article 8 of the 1996 Hague Convention

**12.61.**—(1) Where the court is considering the transfer of proceedings to the court of another Member State or Contracting State under rules 12.62 to 12.64 it will—

- (a) fix a date for a hearing for the court to consider the question of transfer; and
- (b) give directions as to the manner in which the parties may make representations.

(2) The court may, with the consent of all parties, deal with the question of transfer without a hearing.

(3) Directions which are in force immediately prior to the transfer of proceedings to a court in another Member State or Contracting State under rules 12.62 to 12.64 will continue to apply until the court in that other State accepts jurisdiction in accordance with the provisions of the Council Regulation or the 1996 Hague Convention (as appropriate), subject to any variation or revocation of the directions.

(4) The court or court officer will—

- (a) take a note of the giving, variation or revocation of directions under this rule; and
- (b) as soon as practicable serve a copy of the directions order on every party.

(5) A register of all applications and requests for transfer of jurisdiction to or from another Member State or Contracting State will be kept by the principal registry.

### Application by a party for transfer of the proceedings

**12.62.**—(1) A party may apply to the court under Article 15(1) of the Council Regulation or under Article 8(1) of the 1996 Hague Convention —

- (a) to stay<sup>(GL)</sup> the proceedings or a specified part of the proceedings and to invite the parties to introduce a request before a court of another Member State or Contracting State; or
- (b) to make a request to a court of another Member State or another Contracting State to assume jurisdiction for the proceedings, or a specified part of the proceedings.

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

- (a) to the court in which the relevant parental responsibility proceedings are pending; and
- (b) using the Part 18 procedure.

(3) The applicant must file the application notice and serve it on the respondents—

- (a) where the application is also made under Article 11 of the Council Regulation, not less than 5 days, and
- (b) in any other case, not less than 42 days,

before the hearing of the application.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

### **Application by a court of another Member State or another Contracting State for transfer of the proceedings**

**12.63.**—(1) This rule applies where a court of another Member State or another Contracting State makes an application under Article 15(2)(c) of the Council Regulation or under Article 9 of the 1996 Hague Convention that the court having jurisdiction in relation to the proceedings transfer the proceedings or a specific part of the proceedings to the applicant court.

(2) When the court receives the application, the court officer will—

- (a) as soon as practicable, notify the [<sup>F270</sup>domestic Central Authority] of the application; and
- (b) serve the application, and notice of the hearing on all other parties in England and Wales not less than 5 days before the hearing of the application.

#### **Textual Amendments**

**F270** Words in rule 12.63 substituted (30.9.2012) by [The Family Procedure \(Amendment No. 3\) Rules 2012 \(S.I. 2012/2046\)](#), rules 1, 5

### **Exercise by the court of its own initiative of powers to seek to transfer the proceedings**

**12.64.**—(1) The court having jurisdiction in relation to the proceedings may exercise its powers of its own initiative under Article 15 of the Council Regulation or Article 8 of the 1996 Hague Convention in relation to the proceedings or a specified part of the proceedings.

(2) Where the court proposes to exercise its powers, the court officer will give the parties not less than 5 days' notice of the hearing.

### **Application to High Court to make request under Article 15 of the Council Regulation or Article 9 of the 1996 Hague Convention to request transfer of jurisdiction**

**12.65.**—(1) An application for the court to request transfer of jurisdiction in a matter concerning a child from another Member State or another Contracting State under Article 15 of the Council Regulation, or Article 9 of the 1996 Hague Convention (as the case may be) must be made to the principal registry and heard in the High Court.

(2) An application must be made without notice to any other person and the court may give directions about joining any other party to the application.

(3) Where there is agreement between the court and the court or competent authority to which the request under paragraph (1) is made to transfer the matter to the courts of England and Wales, the court will consider with that other court or competent authority the specific timing and conditions for the transfer.

(4) Upon receipt of agreement to transfer jurisdiction from the court or other competent authority in the Member State, or Contracting State to which the request has been made, the court officer will serve on the applicant a notice that jurisdiction has been accepted by the courts of England and Wales.

(5) The applicant must attach the notice referred to in paragraph (3) to any subsequent application in relation to the child.

(6) Nothing in this rule requires an application with respect to a child commenced following a transfer of jurisdiction to be made to or heard in the High Court.

(7) Upon allocation, the court to which the proceedings are allocated must immediately fix a directions hearing to consider the future conduct of the case.

### **Procedure where the court receives a request from the authorities of another Member State or Contracting State to assume jurisdiction in a matter concerning a child**

**12.66.**—(1) Where any court other than the High Court receives a request to assume jurisdiction in a matter concerning a child from a court or other authority which has jurisdiction in another Member State or Contracting State, that court must immediately refer the request to a Judge of the High Court for a decision regarding acceptance of jurisdiction to be made.

(2) Upon the High Court agreeing to the request under paragraph (1), the court officer will notify the parties to the proceedings before the other Member State or Contracting State of that decision, and the case must be allocated as if the application had been made in England and Wales.

(3) Upon allocation, the court to which the proceedings are allocated must immediately fix a directions hearing to consider the future conduct of the case.

(4) The court officer will serve notice of the directions hearing on all parties to the proceedings in the other Member State or Contracting State no later than 5 days before the date of that hearing.

### **Service of the court's order or request relating to transfer of jurisdiction under the Council Regulation or the 1996 Hague Convention**

**12.67.** The court officer will serve an order or request relating to transfer of jurisdiction on all parties, the Central Authority of the other Member State or Contracting State, and the [<sup>F271</sup>domestic Central Authority].

#### **Textual Amendments**

**F271** Words in rule 12.67 substituted (30.9.2012) by [The Family Procedure \(Amendment No. 3\) Rules 2012 \(S.I. 2012/2046\)](#), rules 1, 5

### **Questions as to the court's jurisdiction or whether the proceedings should be stayed**

**12.68.**—(1) If at any time after issue of the application it appears to the court that under any of Articles 16 to 18 of the Council Regulation it does not or may not have jurisdiction to hear an application, or that under Article 19 of the Council Regulation or Article 13 of the 1996 Hague Convention it is or may be required to stay<sup>(GL)</sup> the proceedings or to decline jurisdiction, the court must—

- (a) stay<sup>(GL)</sup> the proceedings; and
- (b) fix a date for a hearing to determine jurisdiction or whether there should be a stay<sup>(GL)</sup> or other order.

(2) The court officer will serve notice of the hearing referred to at paragraph (1)(b) on the parties to the proceedings.

(3) The court must, in writing—

- (a) give reasons for its decision under paragraph (1); and
- (b) where it makes a finding of fact, state such finding.

(4) The court may with the consent of all the parties deal with any question as to the jurisdiction of the court, or as to whether the proceedings should be stayed<sup>(GL)</sup>, without a hearing.

### **Request for consultation as to contemplated placement of child in England and Wales**

**12.69.**—(1) This rule applies to a request made —

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

- (a) under Article 56 of the Council Regulation, by a court in another Member State; or
- (b) under Article 33 of the 1996 Hague Convention by a court in another Contracting State for consultation on or consent to the contemplated placement of a child in England and Wales.
- (2) Where the court receives a request directly from a court in another Member State or Contracting State, the court shall, as soon as practicable after receipt of the request, notify the [F272domestic Central Authority] of the request and take the appropriate action under paragraph (4).
- (3) Where it appears to the court officer that no proceedings relating to the child are pending before a court in England and Wales, the court officer must inform the [F272domestic Central Authority] of that fact and forward to the Central Authority all documents relating to the request sent by the court in the other Member State or Contracting State.
- (4) Where the court receives a request forwarded by the [F272domestic Central Authority], the court must, as soon as practicable after receipt of the request, either—
- (a) where proceedings relating to the child are pending before the court, fix a directions hearing; or
- (b) where proceedings relating to the child are pending before another court in England and Wales, send a copy of the request to that court.

#### **Textual Amendments**

**F272** Words in rule 12.69 substituted (30.9.2012) by [The Family Procedure \(Amendment No. 3\) Rules 2012 \(S.I. 2012/2046\)](#), rules 1, 5

#### **Request made by court in England and Wales for consultation as to contemplated placement of child in another Member State or Contracting State**

**12.70.**—(1) This rule applies where the court is contemplating the placement of a child in another Member State under Article 56 of the Council Regulation or another Contracting State under Article 33 of the 1996 Hague Convention, and proposes to send a request for consultation with or for the consent of the central authority or other authority having jurisdiction in the other State in relation to the contemplated placement.

(2) In this rule, a reference to “the request” includes a reference to a report prepared for purposes of Article 33 of the 1996 Hague Convention where the request is made under that Convention.

(3) Where the court sends the request directly to the central authority or other authority having jurisdiction in the other State, it shall at the same time send a copy of the request to the [F273domestic Central Authority].

(4) The court may send the request to the [F273domestic Central Authority] for onward transmission to the central authority or other authority having jurisdiction in the other Member State.

(5) The court should give consideration to the documents which should accompany the request. (See Chapters 1 to 3 of this Part generally, for the procedure governing applications for an order under paragraph 19(1) of Schedule 2 to the 1989 Act permitting a local authority to arrange for any child in its care to live outside England and Wales.) (Part 14 sets out the procedure governing applications for an order under section 84 (giving parental responsibility prior to adoption abroad) of the Adoption and Children Act 2002.)

### Textual Amendments

**F273** Words in rule 12.70 substituted (30.9.2012) by [The Family Procedure \(Amendment No. 3\) Rules 2012 \(S.I. 2012/2046\)](#), rules 1, 5

## Application for a declaration as to the extent, or existence, of parental responsibility in relation to a child under Article 16 of the 1996 Hague Convention

**12.71.**—(1) Any interested person may apply for a declaration —

- (a) that a person has, or does not have, parental responsibility for a child; or
- (b) as to the extent of a person's parental responsibility for a child,

where the question arises by virtue of the application of Article 16 of the 1996 Hague Convention.

(2) An application for a declaration as to the extent, or existence of a person's parental responsibility for a child by virtue of Article 16 of the 1996 Hague Convention must be made in the principal registry and heard in the High Court.

(3) An application for a declaration referred to in paragraph (1) may not be made where the question raised is otherwise capable of resolution in any other family proceedings in respect of the child.

## CHAPTER 7

### COMMUNICATION OF INFORMATION: [F274]CHILDREN PROCEEDINGS]

### Textual Amendments

**F274** Words in [Pt. 12 Ch. 7](#) heading substituted (31.1.2013) by [The Family Procedure \(Amendment\) \(No.5\) Rules 2012 \(S.I. 2012/3061\)](#), rules 1, 5(a)

## Interpretation

**12.72.** <sup>F275</sup>In this Chapter “independent reviewing officer” means a person appointed in respect of a child in accordance with regulation 2A of the Review of Children's Cases Regulations 1991 <sup>M109</sup>, or regulation 3 of the Review of Children's Cases (Wales) Regulations 2007 <sup>M110</sup>.

### Textual Amendments

**F275** Rule 12.72(1) renumbered as rule 12.72 (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), rules 1, 22 (with rule 30)

### Marginal Citations

**M109** S.I. 1991/895.

**M110** S.I. 2007/307.

## Communication of information: general

**12.73.**—(1) For the purposes of the law relating to contempt of court, information relating to proceedings held in private (whether or not contained in a document filed with the court) may be communicated—

- (a) where the communication is to—

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*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

- (i) a party;
  - (ii) the legal representative of a party;
  - (iii) a professional legal adviser;
  - (iv) an officer of the service or a Welsh family proceedings officer;
  - (v) the welfare officer;
  - (vi) [<sup>F276</sup>the Director of Legal Aid Casework (within the meaning of section 4 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012)];
  - (vii) an expert whose instruction by a party has been authorised by the court for the purposes of the proceedings;
  - (viii) a professional acting in furtherance of the protection of children;
  - (ix) an independent reviewing officer appointed in respect of a child who is, or has been, subject to proceedings to which this rule applies;
- (b) where the court gives permission; or
- (c) subject to any direction of the court, in accordance with rule 12.75 and Practice Direction 12G.

(2) Nothing in this Chapter permits the communication to the public at large, or any section of the public, of any information relating to the proceedings.

(3) Nothing in rule 12.75 and Practice Direction 12G permits the disclosure of an unapproved draft judgment handed down by any court.

**Textual Amendments**

**F276** Words in rule 12.73(1)(a)(vi) substituted (1.4.2013) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Consequential, Transitional and Saving Provisions\) Regulations 2013 \(S.I. 2013/534\)](#), reg. 1, **Sch. para. 22(a)** (with reg. 14(2))

**Instruction of experts**

<sup>F277</sup>**12.74.** .....

**Textual Amendments**

**F277** [Rule 12.74](#) omitted (31.1.2013) by virtue of [The Family Procedure \(Amendment\) \(No.5\) Rules 2012 \(S.I. 2012/3061\)](#), rules 1, 4

**Communication of information for purposes connected with the proceedings**

**12.75.**—(1) A party or the legal representative of a party, on behalf of and upon the instructions of that party, may communicate information relating to the proceedings to any person where necessary to enable that party—

- (a) by confidential discussion, to obtain support, advice or assistance in the conduct of the proceedings;
- [<sup>F278</sup>(b) to attend a mediation information and assessment meeting, or to engage in mediation or other forms of non-court dispute resolution;]
- (c) to make and pursue a complaint against a person or body concerned in the proceedings; or



- (d) to make and pursue a complaint regarding the law, policy or procedure relating to a category of proceedings to which this Part applies.
- (2) Where information is communicated to any person in accordance with paragraph (1)(a) of this rule, no further communication by that person is permitted.
- (3) When information relating to the proceedings is communicated to any person in accordance with paragraphs (1)(b),(c) or (d) of this rule—
- (a) the recipient may communicate that information to a further recipient, provided that—
- (i) the party who initially communicated the information consents to that further communication; and
- (ii) the further communication is made only for the purpose or purposes for which the party made the initial communication; and
- (b) the information may be successively communicated to and by further recipients on as many occasions as may be necessary to fulfil the purpose for which the information was initially communicated, provided that on each such occasion the conditions in sub-paragraph (a) are met.

**Textual Amendments**

**F278** Rule 12.75(1)(b) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), [rules 1, 29](#)

## PART 13

### PROCEEDINGS UNDER SECTION 54 OF THE HUMAN FERTILISATION AND EMBRYOLOGY ACT 2008

#### Interpretation and application

**13.1.**—(1) A reference in this Part to the 2002 Act is a reference to that Act as applied with modifications by the Human Fertilisation and Embryology (Parental Order) Regulations 2010.

(2) In this Part—

“the other parent” means any person who is a parent of the child but is not one of the applicants or the woman who carried the child (including any man who is the father by virtue of section 35 or 36 of the 2008 Act or any woman who is a parent by virtue of section 42 or 43 of that Act);

“parental order” means an order under section 54 of the 2008 Act;

“parental order proceedings” means proceedings for the making of a parental order under the 2008 Act or an order under any provision of the 2002 Act;

“parental order reporter” means an officer of the service or a Welsh family proceedings officer appointed to act on behalf of a child who is the subject of parental order proceedings;

[<sup>F279</sup>“provision for contact” means—

(i) contact provision contained in a child arrangements order under section 8 of the 1989 Act, or

(ii) an order under section 34 of the 1989 Act;]

(3) Except where the contrary intention appears, the rules in this Part apply to parental order proceedings.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

#### Textual Amendments

**F279** Words in rule 13.1(2) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **30**

### Application of Part 12

**13.2.** Rules <sup>F280</sup>... 12.19 and 12.21 apply as appropriate, with any necessary modifications, to parental order proceedings.

#### Textual Amendments

**F280** Words in rule 13.2 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **53** (with rule 137); S.I. 2014/954, **art. 2**

### Who the parties are

**13.3.—**(1) An application for a parental order may be made by such of the following who satisfy the conditions set out in section 54(1) of the 2008 Act—

- (a) a husband and wife;
- (b) civil partners of each other; or
- (c) two persons who are living as partners in an enduring family relationship and are not within the prohibited degrees of relationship in relation to each other.

(2) The respondents to an application for a parental order are—

- (a) the woman who carried the child;
- (b) the other parent (if any);
- (c) any person in whose favour there is provision for contact; and
- (d) any other person or body with parental responsibility for the child at the date of the application.

(3) The court will direct that a person with parental responsibility for the child be made a party to proceedings where that person requests to be one.

(4) The court may at any time direct that—

- (a) any other person or body be made a respondent to the proceedings; or
- (b) a respondent be removed from the proceedings.

(5) If the court makes a direction for the addition or removal of a party, it may give consequential directions about—

- (a) serving a copy of the application form on any new respondent;
- (b) serving relevant documents on the new party; and
- (c) the management of the proceedings.

### Notice of proceedings to person with foreign parental responsibility

**13.4.—**(1) This rule applies where a child is subject to proceedings to which this Part applies and at the date of the application –

- (a) a person holds or is believed to hold parental responsibility for the child under the law of another State which subsists in accordance with Article 16 of the 1996 Hague Convention following the child becoming habitually resident in a territorial unit of the United Kingdom; and
  - (b) that person is not otherwise required to be joined as a respondent under rule 13.3.
- (2) The applicant shall give notice of the proceedings to any person to whom the applicant believes paragraph (1) applies.
- (3) The applicant and every respondent to the proceedings shall provide such details as they possess as to the identity and whereabouts of any person they believe to hold parental responsibility for the child in accordance with paragraph (1) to the court officer, upon making, or responding to the application as appropriate.
- (4) Where the existence of such a person only becomes apparent to a party at a later date during the proceedings, that party must notify the court officer of those details at the earliest opportunity.
- (5) Where a person to whom paragraph (1) applies receives notice of proceedings, that person may apply to the court to be joined as a party using the Part 18 procedure.

### **What the court or a court officer will do when the application has been issued**

**13.5.**—(1) As soon as practicable after the issue of proceedings—

- (a) the court will—
  - (i) if section 48(1) of the 2002 Act applies (restrictions on making parental orders), consider whether it is proper to hear the application;
  - (ii) subject to paragraph (2), set a date for the first directions hearing;
  - (iii) appoint a parental order reporter; and
  - (iv) set a date for the hearing of the application; and
- (b) a court officer will—
  - (i) return to the applicants the copies of the application together with any other documents the applicant is required to serve; and
  - (ii) send a certified copy of the entry in the register of live births to the parental order reporter.

(2) Where it considers it appropriate the court may, instead of setting a date for a first directions appointment, give the directions provided for in rule 13.9

### **Service of the application and other documents**

**13.6.**—(1) The applicants must, within 14 days before the hearing or first directions hearing, serve on the respondents —

- (a) the application;
- (b) a form for acknowledging service; and
- (c) a notice of proceedings.

(2) The applicants must serve a notice of proceedings on any local authority or voluntary organisation that has at any time provided accommodation for the child.

### **Acknowledgement**

**13.7.** Within 7 days of the service of an application for a parental order, each respondent must file an acknowledgment of service and serve it on all the other parties.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

### **Date for first directions hearing**

**13.8.** Unless the court directs otherwise, the first directions hearing must be within 4 weeks beginning with the date on which the application is issued.

### **The first directions hearing**

**13.9.—**(1) At the first directions hearing in the proceedings the court will—

- (a) fix a timetable for the filing of—
  - (i) any report from a parental order reporter;
  - (ii) if a statement of facts has been filed, any amended statement of facts; and
  - (iii) any other evidence;
- (b) give directions relating to the report of the parental order reporter and other evidence;
- (c) consider whether any other person should be a party to the proceedings and, if so, give directions in accordance with rule 13.3(3) or (4) joining that person as a party;
- (d) give directions relating to the appointment of a litigation friend for any protected party unless a litigation friend has already been appointed;
- [<sup>F281</sup>(e) consider, in accordance with rule 29.17, whether the case needs to be transferred to another court and, if so, give appropriate directions;]
- (f) give directions about—
  - (i) tracing the other parent or the woman who carried the child;
  - (ii) service of documents;
  - (iii) subject to paragraph (2), disclosure as soon as possible of information and evidence to the parties; and
  - (iv) the final hearing.

(2) Rule 13.12 (reports of the parental order reporter and disclosure to parties) applies to any direction given under paragraph (1)(f)(iii) as it applies to a direction given under rule 13.12(1).

(3) The parties or their legal representatives must attend the first directions hearing unless the court directs otherwise.

(4) Directions may also be given at any stage in the proceedings—

- (a) of the court's own initiative; or
- (b) on the application of a party or the parental order reporter.

(5) Where the court proposes to exercise its powers in paragraph (1) of its own initiative the procedure set out in rule 4.3(2) to (7) applies.

(6) For the purposes of giving directions or for such purposes as the court directs—

- (a) the court may set a date for a further directions hearing or other hearing; and
- (b) the court officer will give notice of any date so fixed to the parties and to the parental order reporter.

(7) Directions of a court which are still in force immediately prior to the transfer of proceedings to another court shall continue to apply following the transfer subject to—

- (a) any changes of terminology which are required to apply those directions to the court to which the proceedings are transferred; and
- (b) any variation or revocation of the direction.

(8) The court or court officer will—

- (a) take a note of the giving, variation or revocation of a direction under this rule; and
  - (b) as soon as practicable serve a copy of the note on every party.
- (9) After the first directions hearing the court will monitor compliance by the parties with the court's timetable and directions.

#### Textual Amendments

**F281** Rule 13.9(1)(e) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 54](#) (with [rule 137](#)); [S.I. 2014/954](#), [art. 2](#)

#### Where the agreement of the other parent or the woman who carried the child is not required

**13.10.**—(1) This rule applies where the agreement of the other parent or the woman who carried the child to the making of the parental order is not required as the person in question cannot be found or is incapable of giving agreement.

- (2) The applicants must—
  - (a) state that the agreement is not required in the application form, or at any later stage by filing a written note with the court;
  - (b) file a statement of facts setting out a summary of the history of the case and any other facts to satisfy the court that the other parent or the woman who carried the child cannot be found or is incapable of giving agreement.
- (3) On receipt of the application form or written note—
  - (a) a court officer will—
    - (i) unless the other parent or the woman who carried the child cannot be found, inform the other parent or the woman who carried the child that their agreement is not required;
    - (ii) send a copy of the statement of facts filed in accordance with paragraph (2)(b) to—
      - (aa) the other parent unless the other parent cannot be found;
      - (bb) the woman who carried the child unless the woman cannot be found; and
      - (cc) the parental order reporter; and
  - (b) if the applicants consider that the other parent or the woman who carried the child is incapable of giving agreement the court will consider whether to—
    - (i) appoint a litigation friend for the other parent or the woman who carried the child under rule 15.6(1) or
    - (ii) give directions for an application to be made under rule 15.6(3), unless a litigation friend is already appointed for the other parent or the woman who carried the child.

#### Agreement

**13.11.**—(1) Unless the court directs otherwise, the agreement of the other parent or the woman who carried the child to the making of the parental order may be given in the form referred to in Practice Direction 5A or a form to the like effect.

(2) Any form of agreement executed in Scotland must be witnessed by a Justice of the Peace or a Sheriff.

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*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

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(3) Any form of agreement executed in Northern Ireland must be witnessed by a Justice of the Peace.

(4) Any form of agreement executed outside the United Kingdom must be witnessed by—

- (a) any person for the time being authorised by law in the place where the document is executed to administer an oath for any judicial or other legal purpose;
- (b) a British Consular officer;
- (c) a notary public; or
- (d) if the person executing the document is serving in any of the regular armed forces of the Crown, an officer holding a commission in any of those forces.

### **Reports of the parental order reporter and disclosure to the parties**

**13.12.**—(1) The court will consider whether to give a direction that a confidential report of the parental order reporter be disclosed to each party to the proceedings.

(2) Before giving such a direction the court will consider whether any information should be deleted including information which discloses the particulars referred to in rule 29.1(1) where a party has given notice under rule 29.1(2) (disclosure of personal details).

(3) The court may direct that the report shall not be disclosed to a party.

### **Notice of final hearing**

**13.13.** A court officer will give notice to the parties and to the parental order reporter—

- (a) of the date and place where the application will be heard; and
- (b) of the fact that, unless the person wishes or the court requires, the person need not attend.

### **The final hearing**

**13.14.**—(1) Any person who has been given notice in accordance with rule 13.13 may attend the final hearing and be heard on the question of whether an order should be made.

(2) The court may direct that any person must attend a final hearing.

### **Proof of identity of the child**

**13.15.**—(1) Unless the contrary is shown, the child referred to in the application will be deemed to be the child referred to in the form of agreement to the making of the parental order where the conditions in paragraph (2) apply.

(2) The conditions are—

- (a) the application identifies the child by reference to a full certified copy of an entry in the registers of live-births;
- (b) the form of agreement identifies the child by reference to a full certified copy of an entry in the registers of live-births attached to the form; and
- (c) the copy of the entry in the registers of live-births referred to in sub-paragraph (a) is the same or relates to the same entry in the registers of live-births as the copy of the entry in the registers of live-births attached to the form of agreement.

(3) Where the precise date of the child's birth is not proved to the satisfaction of the court, the court will determine the probable date of birth.

(4) The probable date of the child's birth may be specified in the parental order as the date of the child's birth.

- (5) Where the child's place of birth cannot be proved to the satisfaction of the court—
- (a) the child may be treated as having been born in [<sup>F282</sup>the registration district and sub-district in which the court is sitting] where it is probable that the child may have been born in—
    - (i) the United Kingdom;
    - (ii) the Channel Islands; or
    - (iii) the Isle of Man; or
  - (b) in any other case, the particulars of the country of birth may be omitted from the parental order.

#### Textual Amendments

**F282** Words in rule 13.15(5)(a) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 55](#) (with [rule 137](#)); [S.I. 2014/954](#), [art. 2](#)

#### Disclosing information to an adult who was subject to a parental order

**13.16.**—(1) Subject to paragraph (2), the person who is subject to the parental order has the right to receive from the court which made the parental order a copy of the following—

- (a) the application form for a parental order (but not the documents attached to that form);
- (b) the parental order and any other orders relating to the parental order proceedings;
- (c) a transcript of the court's decision; and
- (d) a report made to the court by the parental order reporter.

(2) The court will not provide a copy of a document or order referred to in paragraph (1) unless the person making the request has completed the certificate relating to counselling in the form for that purpose referred to in Practice Direction 5A.

(3) This rule does not apply to a person under the age of 18 years.

#### Application for recovery orders

**13.17.**—[<sup>F283</sup>(1) An application for any of the orders referred to in section 41(2) of the 2002 Act (recovery orders) may be made without notice, in which case the applicant must file the application—

- (a) where the application is made by telephone, the next business day after the making of the application; or
- (b) in any other case, at the time when the application is made.]

(2) Where the court refuses to make an order on an application without notice it may direct that the application is made on notice in which case the application shall proceed in accordance with rules 13.1 to 13.14.

(3) The respondents to an application under this rule are—

- (a) in a case where parental order proceedings are pending, all parties to those proceedings;
- (b) any person having parental responsibility for the child;
- (c) any person in whose favour there is provision for contact;
- (d) any person who was caring for the child immediately prior to the making of the application; and
- (e) any person whom the applicant alleges to have effected, or to have been or to be responsible for, the taking or keeping of the child.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

### Textual Amendments

**F283** Rule 13.17(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 56](#) (with [rule 137](#)); [S.I. 2014/954](#), [art. 2](#)

## Keeping of registers, custody, inspection and disclosure of documents and information

**13.18.**—<sup>F284</sup>(1) .....

(2) All documents relating to parental order proceedings and related proceedings under the 2002 Act <sup>F285</sup> ... must, while they are in the custody of the court, be kept in a place of special security.

(3) Any person who obtains any information in the course of, or relating to, parental order proceedings must treat that information as confidential and must only disclose it if—

- (a) the disclosure is necessary for the proper exercise of that person's duties; or
- (b) the information is requested by—
  - (i) a court or public authority (whether in Great Britain or not) having power to determine parental order proceedings and related matters, for the purpose of that court or authority discharging its duties relating to those proceedings and matters; or
  - (ii) a person who is authorised in writing by the Secretary of State to obtain the information for the purposes of research.

### Textual Amendments

**F284** Rule 13.18(1) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 57\(a\)](#) (with [rule 137](#)); [S.I. 2014/954](#), [art. 2](#)

**F285** Words in rule 13.18(2) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 57\(b\)](#) (with [rule 137](#)); [S.I. 2014/954](#), [art. 2](#)

## Documents held by the court not to be inspected or copied without the court's permission

**13.19.** Subject to the provisions of these rules, any practice direction or any direction given by the court—

- (a) no document or order held by the court in parental order proceedings and related proceedings under the 2002 Act will be open to inspection by any person; and
- (b) no copy of any such document or order, or of an extract from any such document or order, shall be taken by or given to any person.

## Orders

**13.20.**—(1) A parental order takes effect from the date when it is made, or such later date as the court may specify.

(2) In proceedings in Wales a party may request that an order be drawn up in Welsh as well as English.

## Copies of orders

**13.21.**—(1) Within 7 days beginning with the date on which the final order was made in proceedings, or such shorter time as the court may direct, a court officer will send—

- (a) a copy of the order to the applicant;



- (b) a copy, which is sealed<sup>(GL)</sup>, authenticated with the stamp of the court or certified as a true copy of a parental order, to the Registrar General;
- (c) a notice of the making or refusal of—
  - (i) the final order; or
  - (ii) an order quashing or revoking a parental order or allowing an appeal against an order in proceedings,to every respondent and, with the permission of the court, any other person.
- (2) The court officer will also send notice of the making of a parental order to—
  - (a) any court in Great Britain which appears to the court officer to have made any such order as is referred to in section 46(2) of the 2002 Act (order relating to parental responsibility for, and maintenance of, the child); and
  - (b) the principal registry, if it appears to the court officer that a parental responsibility agreement has been recorded at the principal registry.
- (3) A copy of any final order may be sent to any other person with the permission of the court.
- (4) The court officer will send a copy of any order made during the course of the proceedings to all the parties to those proceedings unless the court directs otherwise.
- (5) If an order has been drawn up in Welsh as well as in English in accordance with rule 13.20(2), any reference in this rule to sending an order is to be taken as a reference to sending both the Welsh and English orders.

#### Amendment and revocation of orders

**13.22.**—(1) This rule applies to an application under paragraph 4 of Schedule 1 to the 2002 Act (amendment of a parental order and revocation of direction).

<sup>F286</sup>(2) .....

(3) Subject to paragraph (4), an application may be made without serving a copy of the application notice.

(4) The court may direct that an application notice be served on such persons as it thinks fit.

(5) Where the court makes an order granting the application, a [<sup>F287</sup>court officer] shall send the Registrar General a notice—

- (a) specifying the amendments; or
- (b) informing the Registrar General of the revocation,

giving sufficient particulars of the order to enable the Registrar General to identify the case.

#### Textual Amendments

**F286** Rule 13.22(2) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 58\(a\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

**F287** Words in rule 13.22(5) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 58\(b\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

## PART 14

### PROCEDURE FOR APPLICATIONS IN ADOPTION, PLACEMENT AND RELATED PROCEEDINGS

#### Application of this Part and interpretation

14.1.—(1) The rules in this Part apply to the following proceedings—

- (a) adoption proceedings;
- (b) placement proceedings; and
- (c) proceedings for—
  - (i) the making of [<sup>F288</sup>an] order under section 26 [<sup>F289</sup>or an order under section 51A(2) (a)] of the 2002 Act <sup>M111</sup>;
  - [<sup>F290</sup>(aa) the making of an order under section 51A(2)(b) of the 2002 Act;]
  - (ii) the variation or revocation of [<sup>F291</sup>—
    - (aa) an order under section 27 of the 2002 Act; or
    - (bb) an order under section 51A(2) of the 2002 Act in accordance with section 51B(1)(c);]
  - (iii) an order giving permission to change a child's surname or remove a child from the United Kingdom under section 28(2) and (3) of the 2002 Act;
  - (iv) a section 84 order;
  - (v) a section 88 direction;
  - (vi) a section 89 order; or
  - (vii) any other order that may be referred to in a practice direction.

(2) In this Part—

“Central Authority” means—

- (a) in relation to England, the Secretary of State; and
- (b) in relation to Wales, the Welsh Ministers;

“Convention adoption order” means an adoption order under the 2002 Act which, by virtue of regulations under section 1 of the Adoption (Intercountry Aspects) Act 1999 <sup>M112</sup> (regulations giving effect to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, concluded at the Hague on 29th May 1993), is made as a Convention adoption order;

“guardian” means—

- (a) a guardian (other than the guardian of the estate of a child) appointed in accordance with section 5 of the 1989 Act <sup>M113</sup>; and
- (b) a special guardian within the meaning of section 14A of the 1989 Act <sup>M114</sup>;

[<sup>F292</sup>“provision for contact” has the meaning given to it in rule 13.1(2);]

“section 88 direction” means a direction given by the High Court under section 88 of the 2002 Act that section 67(3) of that Act (status conferred by adoption) does not apply or does not apply to any extent specified in the direction.

**Textual Amendments**

- F288** Word in rule 14.1(1)(c)(i) substituted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **31(a)(i)**
- F289** Words in rule 14.1(1)(c)(i) inserted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **31(a)(ii)**
- F290** Rule 14.1(1)(c)(i)(aa) inserted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **31(b)**
- F291** Words in rule 14.1(1)(c)(ii) substituted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **31(c)**
- F292** Words in rule 14.1(2) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **31(d)**

**Marginal Citations**

- M111** [Section 26](#) was amended by section 15(1) of and paragraphs 13 and 14(1) to (3) of Schedule 2 to the Children and Adoption Act 2006.
- M112** [1999 c. 18](#) Section 1 was inserted by section 120(1) of and paragraph 10 of Schedule 2 to the Adoption and Children (Scotland) Act 2007 ([2007 asp 4](#)).
- M113** [Section 5](#) was amended by section 115(2), (4)(a)(i),(ii),(4)(b) and (4)(c) of the Adoption and Children Act 2002.
- M114** [Section 14A](#) was inserted by section 115 of the Adoption and Children Act 2002.

**[<sup>F293</sup> Application for a serial number**

**14.2.—(1)** This rule applies where—

- (a) any application in proceedings is made by a person who intends to adopt a child; or
- (b) an adoption order in respect of the child has been made and an application is made for—
  - (i) a contact order under section 51A(2)(a) of the 2002 Act;
  - (ii) an order prohibiting contact with the child under section 51A(2)(b) of the 2002 Act; or
  - (iii) the variation or revocation of an order under section 51A(2) of the 2002 Act in accordance with section 51B(1)(c).

(2) If, before proceedings have started, the person intending to adopt the child requests a court officer to assign a serial number to identify the person in connection with proceedings in order for the person's identity to be kept confidential in those proceedings, a serial number will be assigned.

(3) If a person in whose favour an adoption order has been made requests a court officer to assign a serial number to keep the identity of the person confidential in proceedings referred to in paragraph (1)(b), a serial number will be so assigned.

(4) The court may at any time direct that a serial number assigned to a person under paragraph (2) or (3) must be removed.

(5) If a serial number has been assigned to a person under paragraph (2) or (3)—

- (a) the court officer will ensure that any notice sent in accordance with these rules does not contain information which discloses, or is likely to disclose, the identity of that person to any other party to that application who is not already aware of that person's identity; and
- (b) the proceedings on the application will be conducted with a view to securing that the person is not seen by or made known to any party who is not already aware of the person's identity except with the person's consent.]

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

### Textual Amendments

**F293** Rule 14.2 substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **32**

### Who the parties are

**14.3.—(1)** In relation to the proceedings set out in column 1 of the following table, column 2 sets out who the application may be made by and column 3 sets out who the respondents to those proceedings will be.

<i>Proceedings for</i>	<i>Applicants</i>	<i>Respondents</i>
An adoption order (section 46 of the 2002 Act).	The prospective adopters (sections 50 and 51 of the 2002 Act) M115	Each parent who has parental responsibility for the child unless that parent has given notice under section 20(4)(a) of the 2002 Act (statement of wish not to be informed of any application for an adoption order) which has effect; any guardian of the child unless that guardian has given notice under section 20(4)(a) of the 2002 Act (statement of wish not to be informed of any application for an adoption order) which has effect; any person in whose favour there is provision for contact; any adoption agency having parental responsibility for the child under section 25 of the 2002 Act; any adoption agency which has taken part at any stage in the arrangements for adoption of the child; any local authority to whom notice under section 44 of the 2002 Act (notice of intention to adopt or apply for a section 84 order) has been given; any local authority or voluntary organisation which has parental responsibility for, is looking after or is caring for, the child; and the child where— — permission has been granted to a parent or guardian to oppose the making of the adoption order (section 47(3) or 47(5) of the 2002 Act); — the child opposes the making of an adoption order; — a children and family reporter recommends that it is in the best

		interests of the child to be a party to the proceedings and that recommendation is accepted by the court; — the child is already an adopted child; — any party to the proceedings or the child is opposed to the arrangements for allowing any person contact with the child, or a person not being allowed contact with the child after the making of the adoption order; — the application is for a Convention adoption order or a section 84 order; — the child has been brought into the United Kingdom in the circumstances where section 83(1) of the 2002 Act applies (restriction on bringing children in); — the application is for an adoption order other than a Convention adoption order and the prospective adopters intend the child to live in a country or territory outside the British Islands after the making of the adoption order; or — the prospective adopters are relatives of the child.
A section 84 order.	The prospective adopters asking for parental responsibility prior to adoption abroad.	As for an adoption order.
A placement order (section 21 of the 2002 Act).	A local authority (section 22 of the 2002 Act).	Each parent who has parental responsibility for the child; any guardian of the child; any person in whose favour an order under the 1989 Act is in force in relation to the child; any adoption agency or voluntary organisation which has parental responsibility for, is looking after, or is caring for, the child; the child; and the parties or any persons who are or have been parties to proceedings for a care order in respect of the child where those proceedings have led to the application for the placement order.
An order varying a placement order (section 23 of the 2002 Act).	The joint application of the local authority authorised by the placement order to place the child for adoption and the local authority which is to be substituted for that	The parties to the proceedings leading to the placement order which it is sought to have varied except the child who was the subject of those proceedings; and

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	authority (section 23 of the 2002 Act).	any person in whose favour there is provision for contact.
An order revoking a placement order (section 24 of the 2002 Act).	The child; the local authority authorised to place the child for adoption; or where the child is not placed for adoption by the authority, any other person who has the permission of the court to apply (section 24 of the 2002 Act).	The parties to the proceedings leading to the placement order which it is sought to have revoked; and any person in whose favour there is provision for contact.
[ <sup>F294</sup> An order under section 26 of the 2002 Act].	The child; the adoption agency; any parent, guardian or relative; any person in whose favour there was provision for contact under the 1989 Act which ceased to have effect on an adoption agency being authorised to place a child for adoption, or placing a child for adoption who is less than six weeks old (section 26(1) of the 2002 Act); [ <sup>F295</sup> if a child arrangements order was in force immediately before the adoption agency was authorised to place the child for adoption or (as the case may be) placed the child for adoption at a time when he or she was less than six weeks old, any person named in the order as a person with whom the child was to live;] a person who by virtue of an order made in the exercise of the High Court's inherent jurisdiction with respect to children had care of the child immediately before that time; or any person who has the permission of the court to make the application (section 26 of the 2002 Act).	The adoption agency authorised to place the child for adoption or which has placed the child for adoption; the person with whom the child lives or is to live; each parent with parental responsibility for the child; any guardian of the child; and the child where— — the adoption agency authorised to place the child for adoption or which has placed the child for adoption or a parent with parental responsibility for the child opposes the making of [ <sup>F296</sup> the order] under section 26 of the 2002 Act; — the child opposes the making of [ <sup>F296</sup> the order] under section 26 of the 2002 Act; — existing provision for contact is to be revoked; — relatives of the child do not agree to the arrangements for allowing any person contact with the child, or a person not being allowed contact with the child; or — the child is suffering or is at risk of suffering harm within the meaning of the 1989 Act.
An order varying or revoking [ <sup>F297</sup> an order under section 26 of the 2002 Act] (section 27 of the 2002 Act).	The child; the adoption agency; or any person named in [ <sup>F298</sup> the order] (section 27(1) of the 2002 Act).	The parties to the proceedings leading to [ <sup>F298</sup> the order] which it is sought to have varied or revoked; and any person named in [ <sup>F298</sup> the order].
An order permitting the child's name to be changed or the	Any person including the adoption agency or the local authority authorised to place, or which has	The parties to proceedings leading to any placement order;

removal of the child from the United Kingdom (section 28(2) and (3) of the 2002 Act).	placed, the child for adoption (section 28(2) of the 2002 Act).	the adoption agency authorised to place the child for adoption or which has placed the child for adoption; any prospective adopters with whom the child is living; each parent with parental responsibility for the child; and any guardian of the child.
[ <sup>F299</sup> A contact order under section 51A(2)(a) of the 2002 Act.	The child; or any person who has obtained the court's leave to make the application.	A person who has applied for the adoption order or in whose favour the adoption order is or has been made; and  Any adoption agency having parental responsibility for the child under section 25 of the 2002 Act.
An order prohibiting the person named in the order from having contact with the child (section 51A(2)(b) of the 2002 Act).	A person who has applied for the adoption order or in whose favour the adoption order is or has been made;  the child; or  any person who has obtained the court's leave to make the application.	A person against whom an application is made who—  (but for the child's adoption) would be related to the child by blood (including half-blood), marriage or civil partnership;  is a former guardian of the child;  is a person who had parental responsibility for the child immediately before the making of the adoption order;  is a person who was entitled to make an application for an order under section 26 of the 2002 Act in respect of the child (contact with children placed or to be placed for adoption) by virtue of subsection (3)(c), (d) or (e) of that section;  is a person with whom the child has lived for a period of at least one year; and  any adoption agency having parental responsibility for the child under section 25 of the 2002 Act.
The variation or revocation of a contact order or an order prohibiting	The child;  a person in whose favour the adoption order was made; or	The parties to the proceedings leading to the contact order or an order prohibiting contact which it is sought to have varied or revoked; and

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contact under section 51A(2) of the 2002 Act (section 51B(1)(c) of that Act).	a person named in the order.	any person named in the contact order or the order prohibiting contact.]
A section 88 direction.	The adopted child; the adopters; any parent; or any other person.	The adopters; the parents; the adoption agency; the local authority to whom notice under section 44 of the 2002 Act (notice of intention to apply for a section 84 order) has been given; and the Attorney-General.
A section 89 order.	The adopters; the adopted person; any parent; the relevant Central Authority; the adoption agency; the local authority to whom notice under section 44 of the 2002 Act (notice of intention to adopt or apply for a section 84 order) has been given; the Secretary of State for the Home Department; or any other person.	The adopters; the parents; the adoption agency; and the local authority to whom notice under section 44 of the 2002 Act (notice of intention to adopt or apply for a section 84 order) has been given.

(2) The court may at any time direct that a child, who is not already a respondent to proceedings, be made a respondent to proceedings where—

- (a) the child—
  - (i) wishes to make an application; or
  - (ii) has evidence to give to the court or a legal submission to make which has not been given or made by any other party; or
- (b) there are other special circumstances.

(3) The court may at any time direct that—

- (a) any other person or body be made a respondent to proceedings; or
- (b) a party be removed.

(4) If the court makes a direction for the addition or removal of a party, it may give consequential directions about—

- (a) serving a copy of the application form on any new respondent;
- (b) serving relevant documents on the new party; and
- (c) the management of the proceedings.

#### **Textual Amendments**

**F294** Words in rule 14.3(1) Table substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **34(a)(i)**



- F295** Words in rule 14.3(1) Table substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 34\(a\)\(iii\)](#)
- F296** Words in rule 14.3(1) Table substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 34\(a\)\(ii\)](#)
- F297** Words in rule 14.3(1) Table substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 34\(b\)\(i\)](#)
- F298** Words in rule 14.3(1) Table substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 34\(b\)\(ii\)](#)
- F299** Words in rule 14.3 Table inserted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 33](#)

#### **Marginal Citations**

- M115** [Section 51](#) was amended by section 79(1), (4) and (5) of the Civil Partnership Act 2004 and by section 56 of and paragraphs 39(1), (2) and (3) of Schedule 6 to the Human Fertilisation and Embryology Act 2008.

### **Notice of proceedings to person with foreign parental responsibility**

**14.4.—**(1) This rule applies where a child is subject to proceedings to which this Part applies and –

- (a) a parent of the child holds or is believed to hold parental responsibility for the child under the law of another State which subsists in accordance with Article 16 of the 1996 Hague Convention following the child becoming habitually resident in a territorial unit of the United Kingdom; and
- (b) that parent is not otherwise required to be joined as a respondent under rule 14.3.

(2) The applicant shall give notice of the proceedings to any parent to whom the applicant believes paragraph (1) applies in any case in which a person who was a parent with parental responsibility under the 1989 Act would be a respondent to the proceedings in accordance with rule 14.3.

(3) The applicant and every respondent to the proceedings shall provide such details as they possess as to the identity and whereabouts of any parent they believe to hold parental responsibility for the child in accordance with paragraph (1) to the court officer, upon making, or responding to the application as appropriate.

(4) Where the existence of such a parent only becomes apparent to a party at a later date during the proceedings, that party must notify the court officer of those details at the earliest opportunity.

(5) Where a parent to whom paragraph (1) applies receives notice of proceedings, that parent may apply to the court to be joined as a party using the Part 18 procedure.

#### **Who is to serve**

**14.5.—**(1) The general rules about service in Part 6 are subject to this rule.

(2) In proceedings to which this Part applies, a document which has been issued or prepared by a court officer will be served by the court officer except where—

- (a) a practice direction provides otherwise; or
- (b) the court directs otherwise.

(3) Where a court officer is to serve a document, it is for the court to decide which of the methods of service specified in rule 6.23 is to be used.

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### **What the court or a court officer will do when the application has been issued**

- 14.6.—**(1) As soon as practicable after the application has been issued in proceedings—
- (a) the court will—
    - (i) if section 48(1) of the 2002 Act (restrictions on making adoption orders) applies, consider whether it is proper to hear the application;
    - (ii) subject to paragraph (4), set a date for the first directions hearing;
    - (iii) appoint a children's guardian in accordance with rule 16.3(1);
    - (iv) appoint a reporting officer in accordance with rule 16.30;
    - (v) consider whether a report relating to the welfare of the child is required, and if so, request such a report in accordance with rule 16.33;
    - (vi) set a date for the hearing of the application; and
    - (vii) do anything else that may be set out in a practice direction; and
  - (b) a court officer will—
    - (i) subject to receiving confirmation in accordance with paragraph (2)(b)(ii), give notice of any directions hearing set by the court to the parties and to any children's guardian, reporting officer or children and family reporter;
    - (ii) serve a copy of the application form (but, subject to sub-paragraphs (iii) and (iv), not the documents attached to it) on the persons referred to in Practice Direction 14A;
    - (iii) send a copy of the certified copy of the entry in the register of live-births or Adopted Children Register and any health report attached to an application for an adoption order to—
      - (aa) any children's guardian, reporting officer or children and family reporter; and
      - (bb) the local authority to whom notice under section 44 of the 2002 Act (notice of intention to adopt or apply for a section 84 order) has been given;
    - (iv) if notice under rule 14.9(2) has been given (request to dispense with consent of parent or guardian), in accordance with that rule inform the parent or guardian of the request and send a copy of the statement of facts to—
      - (aa) the parent or guardian;
      - (bb) any children's guardian, reporting officer or children and family reporter;
      - (cc) any local authority to whom notice under section 44 of the 2002 Act (notice of intention to adopt or apply for a section 84 order) has been given; and
      - (dd) any adoption agency which has placed the child for adoption; and
    - (v) do anything else that may be set out in a practice direction.
- (2) In addition to the matters referred to in paragraph (1), as soon as practicable after an application for an adoption order or a section 84 order has been issued the court or the court officer will—
- (a) where the child is not placed for adoption by an adoption agency—
    - (i) ask either the Service or the Assembly to file any relevant form of consent to an adoption order or a section 84 order; and
    - (ii) ask the local authority to prepare a report on the suitability of the prospective adopters if one has not already been prepared; and
  - (b) where the child is placed for adoption by an adoption agency, ask the adoption agency to—
    - (i) file any relevant form of consent to—

- (aa) the child being placed for adoption;
  - (bb) an adoption order;
  - (cc) a future adoption order under section 20 of the 2002 Act; or
  - (dd) a section 84 order;
  - (ii) confirm whether a statement has been made under section 20(4)(a) of the 2002 Act (statement of wish not to be informed of any application for an adoption order) and if so, to file that statement;
  - (iii) file any statement made under section 20(4)(b) of the 2002 Act (withdrawal of wish not to be informed of any application for an adoption order) as soon as it is received by the adoption agency; and
  - (iv) prepare a report on the suitability of the prospective adopters if one has not already been prepared.
- (3) In addition to the matters referred to in paragraph (1), as soon as practicable after an application for a placement order has been issued—
- (a) the court will consider whether a report giving the local authority's reasons for placing the child for adoption is required, and if so, will direct the local authority to prepare such a report; and
  - (b) the court or the court officer will ask either the Service or the Assembly to file any form of consent to the child being placed for adoption.
- (4) Where it considers it appropriate the court may, instead of setting a date for a first directions hearing, give the directions provided for by rule 14.8.

#### **Date for first directions hearing**

**14.7.** Unless the court directs otherwise, the first directions hearing must be within 4 weeks beginning with the date on which the application is issued.

#### **The first directions hearing**

- 14.8.**—(1) At the first directions hearing in the proceedings the court will—
- (a) fix a <sup>F300</sup>timetable for the proceedings including a] timetable for the filing of—
    - (i) any report relating to the suitability of the applicants to adopt a child;
    - (ii) any report from the local authority;
    - (iii) any report from a children's guardian, reporting officer or children and family reporter;
    - (iv) if a statement of facts has been filed, any amended statement of facts;
    - (v) any other evidence, and
    - (vi) give directions relating to the reports and other evidence;
  - (b) consider whether the child or any other person should be a party to the proceedings and, if so, give directions in accordance with rule 14.3(2) or (3) joining that child or person as a party;
  - (c) give directions relating to the appointment of a litigation friend for any protected party or child who is a party to, but not the subject of, proceedings unless a litigation friend has already been appointed;
  - (d) consider <sup>F301</sup>in accordance with rule 29.17] whether the case needs to be transferred to another court and, if so, give directions to transfer the proceedings to another court <sup>F302</sup>...;

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- (e) give directions about—
- (i) tracing parents or any other person the court considers to be relevant to the proceedings;
  - (ii) service of documents;
  - (iii) subject to paragraph (2), disclosure as soon as possible of information and evidence to the parties; and
  - (iv) the final hearing.

(<sup>F303</sup>Under Part 3] the court may also direct that the case be adjourned if it considers that [<sup>F304</sup>non-court dispute resolution] is appropriate.)

(2) Rule 14.13(2) applies to any direction given under paragraph (1)(e)(iii) as it applies to a direction given under rule 14.13(1).

(3) In addition to the matters referred to in paragraph (1), the court will give any of the directions listed in Practice Direction 14B in proceedings for—

- (a) a Convention adoption order;
- (b) a section 84 order;
- (c) a section 88 direction;
- (d) a section 89 order; or
- (e) an adoption order where section 83(1) of the 2002 Act applies (restriction on bringing children in).

(4) The parties or their legal representatives must attend the first directions hearing unless the court directs otherwise.

(5) Directions may also be given at any stage in the proceedings—

- (a) of the court's own initiative; or
- (b) on the application of a party or any children's guardian or, where the direction concerns a report by a reporting officer or children and family reporter, the reporting officer or children and family reporter.

(6) For the purposes of giving directions or for such purposes as the court directs—

- (a) the court may set a date for a further directions hearing or other hearing; and
- (b) the court officer will give notice of any date so fixed to the parties and to any children's guardian, reporting officer or children and family reporter.

(7) After the first directions hearing the court will monitor compliance by the parties with the court's timetable and directions.

#### Textual Amendments

**F300** Words in rule 14.8(1)(a) inserted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 35\(a\)](#)

**F301** Words in rule 14.8(1)(d) inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\), rules 1, 59\(a\)](#) (with rule 137); [S.I. 2014/954, art. 2](#)

**F302** Words in rule 14.8(1)(d) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\), rules 1, 59\(b\)](#) (with rule 137); [S.I. 2014/954, art. 2](#)

**F303** Words in rule 14.8(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 35\(b\)\(i\)](#)

**F304** Words in rule 14.8(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 35\(b\)\(ii\)](#)

### **Requesting the court to dispense with the consent of any parent or guardian**

**14.9.**—(1) This rule applies where the applicant wants to ask the court to dispense with the consent of any parent or guardian of a child to—

- (a) the child being placed for adoption;
  - (b) the making of an adoption order except a Convention adoption order; or
  - (c) the making of a section 84 order.
- (2) The applicant requesting the court to dispense with the consent must—
- (a) give notice of the request in the application form or at any later stage by filing a written request setting out the reasons for the request; and
  - (b) file a statement of facts setting out a summary of the history of the case and any other facts to satisfy the court that—
    - (i) the parent or guardian cannot be found or is incapable of giving consent; or
    - (ii) the welfare of the child requires the consent to be dispensed with.

(3) If a serial number has been assigned to the applicant under rule 14.2, the statement of facts supplied under paragraph (2)(b) must be framed so that it does not disclose the identity of the applicant.

- (4) On receipt of the notice of the request—
- (a) a court officer will—
    - (i) inform the parent or guardian of the request unless the parent or guardian cannot be found; and
    - (ii) send a copy of the statement of facts filed in accordance with paragraph (2)(b) to—
      - (aa) the parent or guardian unless the parent or guardian cannot be found;
      - (bb) any children's guardian, reporting officer or children and family reporter;
      - (cc) any local authority to whom notice under section 44 of the 2002 Act (notice of intention to adopt or apply for a section 84 order) has been given; and
      - (dd) any adoption agency which has placed the child for adoption; and
  - (b) if the applicant considers that the parent or guardian is incapable of giving consent, the court will consider whether to—
    - (i) appoint a litigation friend for the parent or guardian under rule 15.6(1); or
    - (ii) give directions for an application to be made under rule 15.6(3),
    - (iii) unless a litigation friend is already appointed for that parent or guardian.

### **Consent**

**14.10.**—(1) Consent of any parent or guardian of a child—

- (a) under section 19 of the 2002 Act, to the child being placed for adoption; and
- (b) under section 20 of the 2002 Act, to the making of a future adoption order,

must be given in the form referred to in Practice Direction 5A or a form to the like effect.

- (2) Subject to paragraph (3), consent—
- (a) to the making of an adoption order; or
  - (b) to the making of a section 84 order,

may be given in the form referred to in Practice Direction 5A or a form to the like effect or otherwise as the court directs.

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(3) Any consent to a Convention adoption order must be in a form which complies with the internal law relating to adoption of the Convention country of which the child is habitually resident.

(4) Any form of consent executed in Scotland must be witnessed by a Justice of the Peace or a Sheriff.

(5) Any form of consent executed in Northern Ireland must be witnessed by a Justice of the Peace.

(6) Any form of consent executed outside the United Kingdom must be witnessed by—

(a) any person for the time being authorised by law in the place where the document is executed to administer an oath for any judicial or other legal purpose;

(b) a British Consular officer;

(c) a notary public; or

(d) if the person executing the document is serving in any of the regular armed forces of the Crown, an officer holding a commission in any of those forces.

### **Reports by the adoption agency or local authority**

**14.11.**—(1) The adoption agency or local authority must file the report on the suitability of the applicant to adopt a child within the timetable fixed by the court.

(2) A local authority that is directed to prepare a report on the placement of the child for adoption must file that report within the timetable fixed by the court.

(3) The reports must cover the matters specified in Practice Direction 14C.

(4) The court may at any stage request a further report or ask the adoption agency or local authority to assist the court in any other manner.

(5) A court officer will send a copy of any report referred to in this rule to any children's guardian, reporting officer or children and family reporter.

(6) A report to the court under this rule is confidential.

### **Health reports**

**14.12.**—(1) Reports by a registered medical practitioner (“health reports”) made not more than 3 months earlier on the health of the child and of each applicant must be attached to an application for an adoption order or a section 84 order except where—

(a) the child was placed for adoption with the applicant by an adoption agency;

(b) the applicant or one of the applicants is a parent of the child; or

(c) the applicant is the partner of a parent of the child.

(2) Health reports must contain the matters set out in Practice Direction 14D.

(3) A health report is confidential.

### **Confidential reports to the court and disclosure to the parties**

**14.13.**—(1) The court will consider whether to give a direction that a confidential report be disclosed to each party to the proceedings.

(2) Before giving such a direction the court will consider whether any information should be deleted including information which—

(a) discloses, or is likely to disclose, the identity of a person who has been assigned a serial number under rule 14.2(2) [<sup>F305</sup>or (3)]; or

(b) discloses the particulars referred to in rule 29.1(1) where a party has given notice under rule 29.1(2) (disclosure of personal details).

- (3) The court may direct that the report will not be disclosed to a party.

#### Textual Amendments

**F305** Words in rule 14.13(2)(a) inserted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), [rules 1, 36](#)

### Communication of information relating to proceedings

**14.14.** For the purposes of the law relating to contempt of court, information (whether or not it is recorded in any form) relating to proceedings held in private may be communicated—

- (a) where the court gives permission;
- (b) unless the court directs otherwise, in accordance with Practice Direction 14E; or
- (c) where the communication is to—
  - (i) a party;
  - (ii) the legal representative of a party;
  - (iii) a professional legal adviser;
  - (iv) an officer of the service or a Welsh family proceedings officer;
  - (v) a welfare officer;
  - (vi) [<sup>F306</sup>the Director of Legal Aid Casework (within the meaning of section 4 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012)];
  - (vii) an expert whose instruction by a party has been authorised by the court for the purposes of the proceedings; or
  - (viii) a professional acting in furtherance of the protection of children.

#### Textual Amendments

**F306** Words in [rule 14.14\(c\)\(vi\)](#) substituted (1.4.2013) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Consequential, Transitional and Saving Provisions\) Regulations 2013 \(S.I. 2013/534\)](#), [reg. 1](#), [Sch. para. 22\(b\)](#) (with [reg. 14\(2\)](#))

### Notice of final hearing

**14.15.** A court officer will give notice to the parties, any children's guardian, reporting officer or children and family reporter and to any other person to whom a practice direction may require such notice to be given—

- (a) of the date and place where the application will be heard; and
- (b) of the fact that, unless the person wishes or the court requires, the person need not attend.

### The final hearing

**14.16.—**(1) Any person who has been given notice in accordance with rule 14.15 may attend the final hearing and, subject to paragraph (2), be heard on the question of whether an order should be made.

(2) A person whose application for the permission of the court to oppose the making of an adoption order under section 47(3) or (5) of the 2002 Act has been refused is not entitled to be heard on the question of whether an order should be made.

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(3) Any member or employee of a party which is a local authority, adoption agency or other body may address the court at the final hearing if authorised to do so.

(4) The court may direct that any person must attend a final hearing.

(5) Paragraphs (6) and (7) apply to—

- (a) an adoption order;
- (b) a section 84 order; or
- (c) a section 89 order.

(6) Subject to paragraphs (7) and (8), the court cannot make an order unless the applicant and the child personally attend the final hearing.

(7) The court may direct that the applicant or the child need not attend the final hearing.

(8) In a case of adoption by a couple under section 50 of the 2002 Act, the court may make an adoption order after personal attendance of one only of the applicants if there are special circumstances.

(9) The court cannot make a placement order unless a legal representative of the applicant attends the final hearing.

### **Proof of identity of the child**

**14.17.**—(1) Unless the contrary is shown, the child referred to in the application will be deemed to be the child referred to in the form of consent—

- (a) to the child being placed for adoption;
- (b) to the making of an adoption order; or
- (c) to the making of a section 84 order,

where the conditions in paragraph (2) apply.

(2) The conditions are—

- (a) the application identifies the child by reference to a full certified copy of an entry in the registers of live-births;
- (b) the form of consent identifies the child by reference to a full certified copy of an entry in the registers of live-births attached to the form; and
- (c) the copy of the entry in the registers of live-births referred to in sub-paragraph (a) is the same or relates to the same entry in the registers of live-births as the copy of the entry in the registers of live-births attached to the form of consent.

(3) Where the child is already an adopted child paragraph (2) will have effect as if for the references to the registers of live-births there were substituted references to the Adopted Children Register.

(4) Subject to paragraph (7), where the precise date of the child's birth is not proved to the satisfaction of the court, the court will determine the probable date of birth.

(5) The probable date of the child's birth may be specified in the placement order, adoption order or section 84 order as the date of the child's birth.

(6) Subject to paragraph (7), where the child's place of birth cannot be proved to the satisfaction of the court—

- (a) the child may be treated as having been born in [F307 the registration district and sub-district in which the court sits] where it is probable that the child may have been born in—
  - (i) the United Kingdom;
  - (ii) the Channel Islands; or



- (iii) the Isle of Man; or
  - (b) in any other case, the particulars of the country of birth may be omitted from the placement order, adoption order or section 84 order.
- (7) A placement order identifying the probable date and place of birth of the child will be sufficient proof of the date and place of birth of the child in adoption proceedings and proceedings for a section 84 order.

#### Textual Amendments

**F307** Words in rule 14.17(6)(a) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **60** (with rule 137); S.I. 2014/954, **art. 2**

#### Disclosing information to an adopted adult

**14.18.**—(1) The adopted person has the right, on request, to receive from the court which made the adoption order a copy of the following—

- (a) the application form for an adoption order (but not the documents attached to that form);
- (b) the adoption order and any other orders relating to the adoption proceedings;
- (c) orders [<sup>F308</sup>containing any provision for contact] with the child after the adoption order was made; and
- (d) any other document or order referred to in Practice Direction 14F.

(2) The court will remove any protected information from any copy of a document or order referred to in paragraph (1) before the copies are given to the adopted person.

(3) This rule does not apply to an adopted person under the age of 18 years.

(4) In this rule “protected information” means information which would be protected information under section 57(3) of the 2002 Act if the adoption agency gave the information and not the court.

#### Textual Amendments

**F308** Words in rule 14.18(1)(c) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **37**

#### Translation of documents

**14.19.**—(1) Where a translation of any document is required for the purposes of proceedings for a Convention adoption order the translation must—

- (a) unless the court directs otherwise, be provided by the applicant; and
- (b) be signed by the translator to certify that the translation is accurate.

(2) This rule does not apply where the document is to be served in accordance with the Service Regulation.

#### Application for recovery orders

**14.20.**—[<sup>F309</sup>(1) An application for any of the orders referred to in section 41(2) of the 2002 Act (recovery orders) may be made without notice, in which case the applicant must file the application—

- (a) where the application is made by telephone, the next business day after the making of the application; or

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- (b) in any other case, at the time when the application is made.]
- (2) Where the court refuses to make an order on an application without notice it may direct that the application is made on notice in which case the application will proceed in accordance with rules 14.1 to 14.17.
- (3) The respondents to an application under this rule are—
- (a) in a case where—
    - (i) placement proceedings;
    - (ii) adoption proceedings; or
    - (iii) proceedings for a section 84 order,
 are pending, all parties to those proceedings;
  - (b) any adoption agency authorised to place the child for adoption or which has placed the child for adoption;
  - (c) any local authority to whom notice under section 44 of the 2002 Act (notice of intention to adopt or apply for a section 84 order) has been given;
  - (d) any person having parental responsibility for the child;
  - (e) any person in whose favour there is provision for contact;
  - (f) any person who was caring for the child immediately prior to the making of the application; and
  - (g) any person whom the applicant alleges to have effected, or to have been or to be responsible for, the taking or keeping of the child.

#### **Textual Amendments**

**F309** Rule 14.20(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **61** (with rule 137); S.I. 2014/954, **art. 2**

#### **Inherent jurisdiction and fathers without parental responsibility**

**14.21.** Where no proceedings have started an adoption agency or local authority may ask the High Court for directions on the need to give a father without parental responsibility notice of the intention to place a child for adoption.

#### **Timing of applications for section 89 order**

**14.22.** An application for a section 89 order must be made within 2 years beginning with the date on which—

- (a) the Convention adoption or Convention adoption order; or
- (b) the overseas adoption or determination under section 91 of the 2002 Act,

to which it relates was made.

#### **Custody of documents**

**14.23.** All documents relating to proceedings under the 2002 Act must, while they are in the custody of the court, be kept in a place of special security.

## Documents held by the court not to be inspected or copied without the court's permission

**14.24.** Subject to the provisions of these rules, any practice direction or any direction given by the court—

- (a) no document or order held by the court in proceedings under the 2002 Act will be open to inspection by any person; and
- (b) no copy of any such document or order, or of an extract from any such document or order, will be taken by or given to any person.

## Orders

**14.25.**—(1) An order takes effect from the date when it is made, or such later date as the court may specify.

(2) In proceedings in Wales a party may request that an order be drawn up in Welsh as well as English.

[<sup>F310</sup>(Rule 37.9 makes provision for the court to endorse an order prohibiting contact under section 51A(2)(b) of the 2002 Act with a penal notice on the application of the person entitled to enforce the order.)]

### Textual Amendments

**F310** Words in rule 14.25 inserted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **38**

## Copies of orders

**14.26.**—(1) Within 7 days beginning with the date on which the final order was made in proceedings, or such shorter time as the court may direct, a court officer will send—

- (a) a copy of the order to the applicant;
- (b) a copy, which is sealed<sup>(GL)</sup>, authenticated with the stamp of the court or certified as a true copy, of—
  - (i) an adoption order;
  - (ii) a section 89 order; or
  - (iii) an order quashing or revoking an adoption order or allowing an appeal against an adoption order,to the Registrar General;
- (c) a copy of a Convention adoption order to the relevant Central Authority;
- (d) a copy of a section 89 order relating to a Convention adoption order or a Convention adoption to the—
  - (i) relevant Central Authority;
  - (ii) adopters;
  - (iii) adoption agency; and
  - (iv) local authority;
- (e) unless the court directs otherwise, [<sup>F311</sup>a copy of an] under section 26 of the 2002 Act or a [<sup>F312</sup>variation or revocation of such] order under section 27 of the 2002 Act to the—
  - (i) person with whom the child is living;

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- (ii) adoption agency; and
  - (iii) local authority; <sup>F313</sup>...
- [<sup>F314</sup>(ee) unless the court directs otherwise, a copy of a contact order under section 51A(2)(a) of the 2002 Act, an order prohibiting contact under section 51A(2)(b) of that Act or a variation or revocation of such orders under section 51B(1)(c) of that Act to the parties to the proceedings; and]
- (f) a notice of the making or refusal of—
    - (i) the final order; or
    - (ii) an order quashing or revoking an adoption order or allowing an appeal against an order in proceedings,
 to every respondent and, with the permission of the court, any other person.
- (2) The court officer will also send notice of the making of an adoption order or a section 84 order to—
- (a) any court in Great Britain which appears to the court officer to have made any such order as is referred to in section 46(2) of the 2002 Act (order relating to parental responsibility for, and maintenance of, the child); and
  - (b) the principal registry, if it appears to the court officer that a parental responsibility agreement has been recorded at the principal registry.
- (3) A copy of any final order may be sent to any other person with the permission of the court.
- (4) The court officer will send a copy of any order made during the course of the proceedings to the following persons or bodies, unless the court directs otherwise—
- (a) all the parties to those proceedings;
  - (b) any children and family reporter appointed in those proceedings;
  - (c) any adoption agency or local authority which has prepared a report on the suitability of an applicant to adopt a child;
  - (d) any local authority which has prepared a report on placement for adoption.
- (5) If an order has been drawn up in Welsh as well as English in accordance with rule 14.25(2) any reference in this rule to sending an order is to be taken as a reference to sending both the Welsh and English orders.

#### Textual Amendments

- F311** Words in rule 14.26(1)(e) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 39\(a\)\(i\)](#)
- F312** Words in rule 14.26(1)(e) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 39\(a\)\(ii\)](#)
- F313** Word in rule 14.26(1)(e) omitted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 39\(b\)](#)
- F314** Rule 14.26(1)(ee) inserted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 39\(b\)](#)

#### Amendment and revocation of orders

- 14.27.**—(1) Subject to paragraph (2), an application under—
- (a) section 55 of the 2002 Act <sup>M116</sup> (revocation of adoptions on legitimation); or

- (b) paragraph 4 of Schedule 1 to the 2002 Act (amendment of adoption order and revocation of direction),
- may be made without serving a copy of the application notice.
- (2) The court may direct that an application notice be served on such persons as it thinks fit.
- (3) Where the court makes an order granting the application, a court officer will send the Registrar General a notice—
- (a) specifying the amendments; or
- (b) informing the Registrar General of the revocation,
- giving sufficient particulars of the order to enable the Registrar General to identify the case.

**Marginal Citations**

**M116** Section 55 was amended by section 109(1) of and paragraph 412 of Schedule 8 to the Courts Act 2003.

**Keeping registers in the family proceedings court**

<sup>F315</sup>14.28. ....

**Textual Amendments**

**F315** Rule 14.28 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013](#) (S.I. 2013/3204), rules 1, **62** (with rule 137); S.I. 2014/954, **art. 2**

**PART 15**

**REPRESENTATION OF PROTECTED PARTIES**

**Application of this Part**

**15.1.** This Part contains special provisions which apply in proceedings involving protected parties.

**Requirement for litigation friend in proceedings**

**15.2.** A protected party must have a litigation friend to conduct proceedings on that party's behalf.

**Stage of proceedings at which a litigation friend becomes necessary**

**15.3.—(1)** A person may not without the permission of the court take any step in proceedings except—

- (a) filing an application form; or
- (b) applying for the appointment of a litigation friend under rule 15.6,

until the protected party has a litigation friend.

(2) If during proceedings a party lacks capacity (within the meaning of the 2005 Act) to continue to conduct proceedings, no party may take any step in proceedings without the permission of the court until the protected party has a litigation friend.

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(3) Any step taken before a protected party has a litigation friend has no effect unless the court orders otherwise.

#### **Who may be a litigation friend for a protected party without a court order**

**15.4.**—(1) This rule does not apply if the court has appointed a person to be a litigation friend.

(2) A person with authority as a deputy to conduct the proceedings in the name of a protected party or on that party's behalf is entitled to be the litigation friend of the protected party in any proceedings to which that person's authority extends.

(3) If there is no person with authority as a deputy to conduct the proceedings in the name of a protected party or on that party's behalf, a person may act as a litigation friend if that person—

- (a) can fairly and competently conduct proceedings on behalf of the protected party;
- (b) has no interest adverse to that of the protected party; and
- (c) subject to paragraph (4), undertakes to pay any costs which the protected party may be ordered to pay in relation to the proceedings, subject to any right that person may have to be repaid from the assets of the protected party.

(4) Paragraph (3)(c) does not apply to the Official Solicitor. (“deputy” is defined in rule 2.3.)

#### **How a person becomes a litigation friend without a court order**

**15.5.**—(1) If the court has not appointed a litigation friend, a person who wishes to act as a litigation friend must follow the procedure set out in this rule.

(2) A person with authority as a deputy to conduct the proceedings in the name of a protected party or on that party's behalf must file an official copy<sup>(GL)</sup> of the order, declaration or other document which confers that person's authority to act.

(3) Any other person must file a certificate of suitability stating that that person satisfies the conditions specified in rule 15.4(3).

(4) A person who is to act as a litigation friend must file—

- (a) the document conferring that person's authority to act; or
- (b) the certificate of suitability,

at the time when that person first takes a step in the proceedings on behalf of the protected party.

(5) A court officer will send the certificate of suitability to every person on whom, in accordance with rule 6.28, the application form should be served.

(6) This rule does not apply to the Official Solicitor.

#### **How a person becomes a litigation friend by court order**

**15.6.**—(1) The court may, if the person to be appointed so consents, make an order appointing—

- (a) a person other than the Official Solicitor; or
- (b) the Official Solicitor,

as a litigation friend.

(2) An order appointing a litigation friend may be made by the court of its own initiative or on the application of—

- (a) a person who wishes to be a litigation friend; or
- (b) a party to the proceedings.

(3) The court may at any time direct that a party make an application for an order under paragraph (2).

(4) An application for an order appointing a litigation friend must be supported by evidence.

(5) Unless the court directs otherwise, a person appointed under this rule to be a litigation friend for a protected party will be treated as a party for the purpose of any provision in these rules requiring a document to be served on, or sent to, or notice to be given to, a party to the proceedings.

(6) Subject to rule 15.4(4), the court may not appoint a litigation friend under this rule unless it is satisfied that the person to be appointed complies with the conditions specified in rule 15.4(3).

### **Court's power to change litigation friend and to prevent person acting as litigation friend**

**15.7.**—(1) The court may—

- (a) direct that a person may not act as a litigation friend;
- (b) terminate a litigation friend's appointment; or
- (c) appoint a new litigation friend in substitution for an existing one.

(2) An application for an order or direction under paragraph (1) must be supported by evidence.

(3) Subject to rule 15.4(4), the court may not appoint a litigation friend under this rule unless it is satisfied that the person to be appointed complies with the conditions specified in rule 15.4(3).

### **Appointment of litigation friend by court order – supplementary**

**15.8.**—(1) A copy of the application for an order under rule 15.6 or 15.7 must be sent by a court officer to—

- (a) every person on whom, in accordance with rule 6.28, the application form should be served; and
- (b) unless the court directs otherwise, the protected party.

(2) A copy of an application for an order under rule 15.7 must also be sent to—

- (a) the person who is the litigation friend, or who is purporting to act as the litigation friend when the application is made; and
- (b) the person, if not the applicant, who it is proposed should be the litigation friend.

### **Procedure where appointment of litigation friend comes to an end**

**15.9.**—(1) When a party ceases to be a protected party, the litigation friend's appointment continues until it is brought to an end by a court order.

(2) An application for an order under paragraph (1) may be made by—

- (a) the former protected party;
- (b) the litigation friend; or
- (c) a party.

(3) On the making of an order under paragraph (1), the court officer will send a notice to the other parties stating that the appointment of the protected party's litigation friend to act has ended.

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## **PART 16**

### **REPRESENTATION OF CHILDREN AND REPORTS IN PROCEEDINGS INVOLVING CHILDREN**

#### **CHAPTER 1**

##### **APPLICATION OF THIS PART**

###### **Application of this Part**

###### **16.1.** This Part—

- (a) sets out when the court will make a child a party in family proceedings; and
- (b) contains special provisions which apply in proceedings involving children.

#### **CHAPTER 2**

##### **CHILD AS PARTY IN FAMILY PROCEEDINGS**

###### **When the court may make a child a party to proceedings**

**16.2.**—(1) The court may make a child a party to proceedings if it considers it is in the best interests of the child to do so.

- (2) This rule does not apply to a child who is the subject of proceedings—
  - (a) which are specified proceedings; or
  - (b) to which Part 14 applies.

(The Practice Direction 16A sets out the matters which the court will take into consideration before making a child a party under this rule.)

#### **CHAPTER 3**

##### **WHEN A CHILDREN'S GUARDIAN OR LITIGATION FRIEND WILL BE APPOINTED**

###### **Appointment of a children's guardian in specified proceedings or proceedings to which Part 14 applies**

**16.3.**—(1) Unless it is satisfied that it is not necessary to do so to safeguard the interests of the child, the court must appoint a children's guardian for a child who is—

- (a) the subject of; and
- (b) a party to,

proceedings—

- (i) which are specified proceedings; or
- (ii) to which Part 14 applies.

(Rules 12.6 and 14.6 set out the point in the proceedings when the court will appoint a children's guardian in specified proceedings and proceedings to which Part 14 applies respectively.)

- (2) At any stage in the proceedings—
  - (a) a party may apply, without notice to the other parties unless the court directs otherwise, for the appointment of a children's guardian; or
  - (b) the court may of its own initiative appoint a children's guardian.



(3) Where the court refuses an application under paragraph (2)(a) it will give reasons for the refusal and the court or a court officer will—

- (a) record the refusal and the reasons for it; and
- (b) as soon as practicable, notify the parties and either the Service or the Assembly of a decision not to appoint a children's guardian.

(4) When appointing a children's guardian the court will consider the appointment of anyone who has previously acted as a children's guardian of the same child.

(5) Where the court appoints a children's guardian in accordance with this rule, the provisions of Chapter 6 of this Part apply.

**Appointment of a children's guardian in proceedings not being specified proceedings or proceedings to which Part 14 applies**

**16.4.**—(1) Without prejudice to rule 8.42 or 16.6, the court must appoint a children's guardian for a child who is the subject of proceedings, which are not proceedings of a type referred to in rule 16.3(1), if—

- (a) the child is an applicant in the proceedings;
- (b) a provision in these rules provides for the child to be a party to the proceedings; or
- (c) the court has made the child a party in accordance with rule 16.2.

(2) The provisions of Chapter 7 of this Part apply where the appointment of a children's guardian is required in accordance with paragraph (1). (“children's guardian” is defined in rule 2.3.)

**Requirement for a litigation friend**

**16.5.**—(1) Without prejudice to rule 16.6, where a child is—

- (a) a party to proceedings; but
- (b) not the subject of those proceedings,

the child must have a litigation friend to conduct proceedings on the child's behalf.

(2) The provisions of Chapter 5 of this Part apply where a litigation friend is required in accordance with paragraph (1).

CHAPTER 4

WHERE A CHILDREN'S GUARDIAN OR LITIGATION FRIEND IS NOT REQUIRED

**Circumstances in which a child does not need a children's guardian or litigation friend**

**16.6.**—(1) Subject to paragraph (2), a child may conduct proceedings without a children's guardian or litigation friend where the proceedings are proceedings—

- (a) under the 1989 Act;
- (b) to which Part 11 (applications under Part 4A of the Family Law Act 1996) or Part 14 (applications in adoption, placement and related proceedings) of these rules apply; or
- (c) relating to the exercise of the court's inherent jurisdiction with respect to children,

and one of the conditions set out in paragraph (3) is satisfied.

(2) Paragraph (1) does not apply where the child is the subject of and a party to proceedings—

- (a) which are specified proceedings; or
- (b) to which Part 14 applies.

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- (3) The conditions referred to in paragraph (1) are that either—
- (a) the child has obtained the court's permission; or
  - (b) a solicitor—
    - (i) considers that the child is able, having regard to the child's understanding, to give instructions in relation to the proceedings; and
    - (ii) has accepted instructions from that child to act for that child in the proceedings and, if the proceedings have begun, the solicitor is already acting.
- (4) An application for permission under paragraph (3)(a) may be made by the child without notice.
- (5) Where a child—
- (a) has a litigation friend or children's guardian in proceedings to which this rule applies; and
  - (b) wishes to conduct the remaining stages of the proceedings without the litigation friend or children's guardian,

the child may apply to the court, on notice to the litigation friend or children's guardian, for permission for that purpose and for the removal of the litigation friend or children's guardian.

(6) The court will grant an application under paragraph (3)(a) or (5) if it considers that the child has sufficient understanding to conduct the proceedings concerned or proposed without a litigation friend or children's guardian.

(7) In exercising its powers under paragraph (6) the court may require the litigation friend or children's guardian to take such part in the proceedings as the court directs.

(8) The court may revoke any permission granted under paragraph (3)(a) where it considers that the child does not have sufficient understanding to participate as a party in the proceedings concerned without a litigation friend or children's guardian.

(9) Where a solicitor is acting for a child in proceedings without a litigation friend or children's guardian by virtue of paragraph (3)(b) and either of the conditions specified in paragraph (3)(b)(i) or (ii) cease to be fulfilled, the solicitor must inform the court immediately.

- (10) Where—
- (a) the court revokes any permission under paragraph (8); or
  - (b) either of the conditions specified in paragraph (3)(b)(i) or (ii) is no longer fulfilled,

the court may, if it considers it necessary in order to protect the interests of the child concerned, appoint a person to be that child's litigation friend or children's guardian.

## CHAPTER 5

### LITIGATION FRIEND

#### **Application of this Chapter**

**16.7.** This Chapter applies where a child must have a litigation friend to conduct proceedings on the child's behalf in accordance with rule 16.5.

#### **Stage of proceedings at which a litigation friend becomes necessary**

**16.8.—(1)** This rule does not apply in relation to a child who is conducting proceedings without a litigation friend in accordance with rule 16.6.

- (2) A person may not without the permission of the court take any step in proceedings except—
- (a) filing an application form; or
  - (b) applying for the appointment of a litigation friend under rule 16.11,

until the child has a litigation friend.

(3) Any step taken before a child has a litigation friend has no effect unless the court orders otherwise.

#### **Who may be a litigation friend for a child without a court order**

**16.9.**—(1) This rule does not apply if the court has appointed a person to be a litigation friend.

(2) A person may act as a litigation friend if that person—

- (a) can fairly and competently conduct proceedings on behalf of the child;
- (b) has no interest adverse to that of the child; and
- (c) subject to paragraph (3), undertakes to pay any costs which the child may be ordered to pay in relation to the proceedings, subject to any right that person may have to be repaid from the assets of the child.

(3) Paragraph (2)(c) does not apply to the Official Solicitor, an officer of the Service or a Welsh family proceedings officer.

#### **How a person becomes a litigation friend without a court order**

**16.10.**—(1) If the court has not appointed a litigation friend, a person who wishes to act as such must file a certificate of suitability stating that that person satisfies the conditions specified in rule 16.9(2).

(2) The certificate of suitability must be filed at the time when the person who wishes to act as litigation friend first takes a step in the proceedings on behalf of the child.

(3) A court officer will send the certificate of suitability to every person on whom, in accordance with rule 6.28, the application form should be served.

(4) This rule does not apply to the Official Solicitor, an officer of the Service or a Welsh family proceedings officer.

#### **Appointment of litigation friend by the court**

**16.11.**—(1) The court may, if the person to be appointed consents, make an order appointing as a litigation friend—

- (a) the Official Solicitor;
- (b) an officer of the Service or a Welsh family proceedings officer; or
- (c) some other person.

(2) An order appointing a litigation friend may be made by the court of its own initiative or on the application of—

- (a) a person who wishes to be a litigation friend; or
- (b) a party to the proceedings.

(3) The court may at any time direct that a party make an application for an order under paragraph (2).

(4) An application for an order appointing a litigation friend must be supported by evidence.

(5) Unless the court directs otherwise, a person appointed under this rule to be a litigation friend for a child will be treated as a party for the purpose of any provision in these rules requiring a document to be served on, or sent to, or notice to be given to, a party to the proceedings.

(6) Subject to rule 16.9(3), the court may not appoint a litigation friend under this rule unless it is satisfied that the person to be appointed complies with the conditions specified in rule 16.9(2).

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(7) This rule is without prejudice to rule 16.6.

### **Court's power to change litigation friend and to prevent person acting as litigation friend**

**16.12.**—(1) The court may—

- (a) direct that a person may not act as a litigation friend;
- (b) terminate a litigation friend's appointment; or
- (c) appoint a new litigation friend in substitution for an existing one.

(2) An application for an order or direction under paragraph (1) must be supported by evidence.

(3) Subject to rule 16.9(3), the court may not appoint a litigation friend under this rule unless it is satisfied that the person to be appointed complies with the conditions specified in rule 16.9(2).

### **Appointment of litigation friend by court order – supplementary**

**16.13.**—(1) A copy of the application for an order under rule 16.11 or 16.12 must be sent by a court officer to every person on whom, in accordance with rule 6.28, the application form should be served.

(2) A copy of an application for an order under rule 16.12 must also be sent to—

- (a) the person who is the litigation friend, or who is purporting to act as the litigation friend when the application is made; and
- (b) the person, if not the applicant, who it is proposed should be the litigation friend.

### **Powers and duties of litigation friend**

**16.14.**—(1) The litigation friend—

- (a) has the powers and duties set out in Practice Direction 16A; and
- (b) must exercise those powers and duties in accordance with Practice Direction 16A.

(2) Where the litigation friend is an officer of the Service or a Welsh family proceedings officer, rule 16.20 applies as it applies to a children's guardian appointed in accordance with Chapter 6.

### **Procedure where appointment of litigation friend comes to an end**

**16.15.**—(1) When a child who is not a protected party reaches the age of 18, a litigation friend's appointment comes to an end.

(2) A court officer will send a notice to the other parties stating that the appointment of the child's litigation friend to act has ended.

## CHAPTER 6

### CHILDREN'S GUARDIAN APPOINTED UNDER RULE 16.3

#### **Application of this Chapter**

**16.16.** This Chapter applies where the court must appoint a children's guardian in accordance with rule 16.3.

#### **Who may be a children's guardian**

**16.17.** Where the court is appointing a children's guardian under rule 16.3 it will appoint an officer of the Service or a Welsh family proceedings officer.

### **What the court or a court officer will do once the court has made a decision about appointing a children's guardian**

**16.18.**—(1) Where the court appoints a children's guardian under rule 16.3 a court officer will record the appointment and, as soon as practicable, will—

- (a) inform the parties and either the Service or the Assembly; and
- (b) unless it has already been sent, send the children's guardian a copy of the application and copies of any document filed with the court in the proceedings.

(2) A court officer has a continuing duty to send the children's guardian a copy of any other document filed with the court during the course of the proceedings.

### **Termination of the appointment of the children's guardian**

**16.19.**—(1) The appointment of a children's guardian under rule 16.3 continues for such time as is specified in the appointment or until terminated by the court.

(2) When terminating an appointment in accordance with paragraph (1), the court will give reasons for doing so, a note of which will be taken by the court or a court officer.

### **Powers and duties of the children's guardian**

**16.20.**—(1) The children's guardian is to act on behalf of the child upon the hearing of any application in proceedings to which this Chapter applies with the duty of safeguarding the interests of the child.

(2) The children's guardian must also provide the court with such other assistance as it may require.

(3) The children's guardian, when carrying out duties in relation to specified proceedings, other than placement proceedings, must have regard to the principle set out in section 1(2) and the matters set out in section 1(3)(a) to (f) of the 1989 Act as if for the word “court” in that section there were substituted the words “children's guardian”.

(4) The children's guardian, when carrying out duties in relation to proceedings to which Part 14 applies, must have regard to the principle set out in section 1(3) and the matters set out in section 1(4)(a) to (f) of the 2002 Act as if for the word “court” in that section there were substituted the words “children's guardian”.

(5) The children's guardian's duties must be exercised in accordance with Practice Direction 16A.

(6) A report to the court by the children's guardian is confidential.

### **Where the child instructs a solicitor or conducts proceedings on the child's own behalf**

**16.21.**—(1) Where it appears to the children's guardian that the child—

- (a) is instructing a solicitor direct; or
- (b) intends to conduct and is capable of conducting the proceedings on that child's own behalf,

the children's guardian must inform the court of that fact.

(2) Where paragraph (1) applies the children's guardian—

- (a) must perform such additional duties as the court may direct;
- (b) must take such part in the proceedings as the court may direct; and
- (c) may, with the permission of the court, have legal representation in the conduct of those duties.

## CHAPTER 7

### CHILDREN'S GUARDIAN APPOINTED UNDER RULE 16.4

#### **Application of this Chapter**

**16.22.** This Chapter applies where the court must appoint a children's guardian under rule 16.4.

#### **Stage of proceedings at which a children's guardian becomes necessary**

**16.23.**—(1) This rule does not apply in relation to a child who is conducting proceedings without a children's guardian in accordance with rule 16.6.

(2) A person may not without the permission of the court take any step in proceedings except—

- (a) filing an application form; or
- (b) applying for the appointment of a children's guardian under rule 16.24,

until the child has a children's guardian.

(3) Any step taken before a child has a children's guardian has no effect unless the court orders otherwise.

#### **Appointment of a children's guardian**

**16.24.**—(1) The court may make an order appointing as a children's guardian, an officer of the Service or a Welsh family proceedings officer or, if the person to be appointed consents —

- (a) a person other than the Official Solicitor; or
- (b) the Official Solicitor.

(2) An order appointing a children's guardian may be made by the court of its own initiative or on the application of—

- (a) a person who wishes to be a children's guardian; or
- (b) a party to the proceedings.

(3) The court may at any time direct that a party make an application for an order under paragraph (2).

(4) An application for an order appointing a children's guardian must be supported by evidence.

(5) The court may not appoint a children's guardian under this rule unless it is satisfied that that person—

- (a) can fairly and competently conduct proceedings on behalf of the child;
- (b) has no interest adverse to that of the child; and
- (c) subject to paragraph (6), undertakes to pay any costs which the child may be ordered to pay in relation to the proceedings, subject to any right that person may have to be repaid from the assets of the child.

(6) Paragraph (5)(c) does not apply to the Official Solicitor, an officer of the Service or a Welsh family proceedings officer.

(7) This rule is without prejudice to rule 16.6 and rule 9.11. (Rule 9.11 provides for a child to be separately represented in certain applications for a financial remedy.)

#### **Court's power to change children's guardian and to prevent person acting as children's guardian**

**16.25.**—(1) The court may—

- (a) direct that a person may not act as a children's guardian;
  - (b) terminate the appointment of a children's guardian; or
  - (c) appoint a new children's guardian in substitution for an existing one.
- (2) An application for an order or direction under paragraph (1) must be supported by evidence.
- (3) Subject to rule 16.24(6), the court may not appoint a children's guardian under this rule unless it is satisfied that the person to be appointed complies with the conditions specified in rule 16.24(5).

#### **Appointment of children's guardian by court order – supplementary**

**16.26.**—(1) A copy of the application for an order under rule 16.24 or 16.25 must be sent by a court officer to every person on whom, in accordance with rule 6.28, the application form should be served.

- (2) A copy of an application for an order under rule 16.25 must also be sent to—
- (a) the person who is the children's guardian, or who is purporting to act as the children's guardian when the application is made; and
  - (b) the person, if not the applicant, who it is proposed should be the children's guardian.

#### **Powers and duties of children's guardian**

**16.27.**—(1) The children's guardian—

- (a) has the powers and duties set out in Practice Direction 16A; and
- (b) must exercise those powers and duties in accordance with Practice Direction 16A.

(2) Where the children's guardian is an officer of the Service or a Welsh family proceedings officer, rule 16.20 applies to a children's guardian appointed in accordance with this Chapter as it applies to a children's guardian appointed in accordance with Chapter 6.

#### **Procedure where appointment of children's guardian comes to an end**

**16.28.**—(1) When a child reaches the age of 18, the appointment of a children's guardian comes to an end.

(2) A court officer will send a notice to the other parties stating that the appointment of the child's children's guardian to act has ended.

### **CHAPTER 8**

#### **DUTIES OF SOLICITOR ACTING FOR THE CHILD**

##### **Solicitor for child**

**16.29.**—(1) Subject to paragraphs (2) and (4), a solicitor appointed—

- (a) under section 41(3) of the 1989 Act; or
- (b) by the children's guardian in accordance with the Practice Direction 16A,

must represent the child in accordance with instructions received from the children's guardian.

(2) If a solicitor appointed as mentioned in paragraph (1) considers, having taken into account the matters referred to in paragraph (3), that the child—

- (a) wishes to give instructions which conflict with those of the children's guardian; and
- (b) is able, having regard to the child's understanding, to give such instructions on the child's own behalf,

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the solicitor must conduct the proceedings in accordance with instructions received from the child.

- (3) The matters the solicitor must take into account for the purposes of paragraph (2) are—
- (a) the views of the children's guardian; and
  - (b) any direction given by the court to the children's guardian concerning the part to be taken by the children's guardian in the proceedings.
- (4) Where—
- (a) no children's guardian has been appointed; and
  - (b) the condition in section 41(4)(b) of the 1989 Act is satisfied,

a solicitor appointed under section 41(3) of the 1989 Act must represent the child in accordance with instructions received from the child.

(5) Where a solicitor appointed as mentioned in paragraph (1) receives no instructions under paragraphs (1), (2) or (4), the solicitor must represent the child in furtherance of the best interests of the child.

(6) A solicitor appointed under section 41(3) of the 1989 Act or by the children's guardian in accordance with Practice Direction 16A must serve documents, and accept service of documents, on behalf of the child in accordance with rule 6.31 and, where the child has not been served separately and has sufficient understanding, advise the child of the contents of any document so served.

- (7) Where the child wishes an appointment of a solicitor—
- (a) under section 41(3) of the 1989 Act; or
  - (b) by the children's guardian in accordance with the Practice Direction 16A,

to be terminated—

- (i) the child may apply to the court for an order terminating the appointment; and
- (ii) the solicitor and the children's guardian will be given an opportunity to make representations.

(8) Where the children's guardian wishes an appointment of a solicitor under section 41(3) of the 1989 Act to be terminated—

- (a) the children's guardian may apply to the court for an order terminating the appointment; and
- (b) the solicitor and, if of sufficient understanding, the child, will be given an opportunity to make representations.

(9) When terminating an appointment in accordance with paragraph (7) or (8), the court will give its reasons for so doing, a note of which will be taken by the court or a court officer.

(10) The court or a court officer will record the appointment under section 41(3) of the 1989 Act or the refusal to make the appointment.

## CHAPTER 9

### REPORTING OFFICER

#### **When the court appoints a reporting officer**

**16.30.** In proceedings to which Part 14 applies, the court will appoint a reporting officer where—

- (a) it appears that a parent or guardian of the child is willing to consent to the placing of the child for adoption, to the making of an adoption order or to a section 84 order; and
- (b) that parent or guardian is in England or Wales.



### **Appointment of the same reporting officer in respect of two or more parents or guardians**

**16.31.** The same person may be appointed as the reporting officer for two or more parents or guardians of the child.

### **The duties of the reporting officer**

**16.32.—**(1) The reporting officer must witness the signature by a parent or guardian on the document in which consent is given to—

- (a) the placing of the child for adoption;
  - (b) the making of an adoption order; or
  - (c) the making of a section 84 order.
- (2) The reporting officer must carry out such other duties as are set out in Practice Direction 16A.
- (3) A report to the court by the reporting officer is confidential.
- (4) The reporting officer's duties must be exercised in accordance with Practice Direction 16A.

## CHAPTER 10

### CHILDREN AND FAMILY REPORTER AND WELFARE OFFICER

### **Request by court for a welfare report in respect of the child**

**16.33.—**(1) Where the court is considering an application for an order in proceedings, the court may ask—

- (a) in proceedings to which Parts 12 and 14 apply, a children and family reporter; or
- (b) in proceedings to which Part 12 applies, a welfare officer,

to prepare a report on matters relating to the welfare of the child, and, in this rule, the person preparing the report is called “the officer”.

- (2) It is the duty of the officer to—
- (a) comply with any request for a report under this rule; and
  - (b) provide the court with such other assistance as it may require.
- (3) A report to the court under this rule is confidential.
- (4) The officer, when carrying out duties in relation to proceedings under the 1989 Act, must have regard to the principle set out in section 1(2) and the matters set out in section 1(3)(a) to (f) of that Act as if for the word “court” in that section there were substituted the words “children and family reporter” or “welfare officer” as the case may be.
- (5) A party may question the officer about oral or written advice tendered by that officer to the court.
- (6) The court officer will notify the officer of a direction given at a hearing at which—
- (a) the officer is not present; and
  - (b) the welfare report is considered.
- (7) The officer's duties must be exercised in accordance with Practice Direction 16A (“children and family reporter” and “welfare officer” are defined in rule 2.3)

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## CHAPTER 11

### PARENTAL ORDER REPORTER

#### **When the court appoints a parental order reporter**

**16.34.** In proceedings to which Part 13 applies, the court will appoint a parental order reporter in accordance with rule 13.5.

#### **Powers and duties of the parental order reporter**

**16.35.**—(1) The parental order reporter is to act on behalf of the child upon the hearing of any application in proceedings to which Part 13 applies with the duty of safeguarding the interests of the child.

(2) The parental order reporter must—

- (a) investigate the matters set out in sections 54(1) to (8) of the 2008 Act;
- (b) so far as the parental order reporter considers necessary, investigate any matter contained in the application form or other matter which appears relevant to the making of the parental order; and
- (c) advise the court on whether there is any reason under section 1 of the 2002 Act (as applied with modifications by the Human Fertilisation and Embryology (Parental Orders) Regulations 2010) to refuse the parental order.

(3) The parental order reporter must also provide the court with such other assistance as it may require.

(4) The parental order reporter's duties must be exercised in accordance with Practice Direction 16A.

(5) A report to the court by the parental order reporter is confidential.

## CHAPTER 12

### SUPPLEMENTARY APPOINTMENT PROVISIONS

#### **Persons who may not be appointed as children's guardian, reporting officer or children and family reporter**

**16.36.**—(1) In [<sup>F316</sup>specified proceedings (except where paragraph (2) applies),] adoption proceedings or proceedings for a section 84 order or a section 89 order, no person may be appointed as a children's guardian, reporting officer or children and family reporter who—

- (a) is a member, officer or servant of a local authority which is a party to the proceedings;
- (b) is, or has been, a member, officer or servant of a local authority or voluntary organisation who has been directly concerned in that capacity in arrangements relating to the care, accommodation or welfare of the child during the 5 years prior to the start of the proceedings; or
- (c) is a serving probation officer who has, in that capacity, been previously concerned with the child or the child's family.

(2) In placement proceedings, a person described in paragraph (1)(b) or (c) may not be appointed as a children's guardian, reporting officer or children and family reporter.

### Textual Amendments

**F316** Words in rule 16.36(1) inserted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), rules 1, 23 (with rule 30)

## Appointment of the same person as children's guardian, reporting officer and children and family reporter

**16.37.** The same person may be appointed to act as one or more of the following—

- (a) the children's guardian;
- (b) the reporting officer; and
- (c) the children and family reporter.

### CHAPTER 13

#### OFFICERS OF THE SERVICE, WELSH FAMILY PROCEEDINGS OFFICERS AND LOCAL AUTHORITY OFFICERS: FURTHER DUTIES

## Officers of the Service, Welsh family proceedings officers and local authority officers acting under certain duties

**16.38.—**(1) This rule applies when—

- (a) an officer of the Service or a Welsh family proceedings officer is acting under a duty in accordance with—
  - (i) section 11E(7) of the 1989 Act <sup>M117</sup> (providing the court with information as to the making of [<sup>F317</sup>an] activity direction or [<sup>F317</sup>an] activity condition);
  - (ii) section 11G(2) of the 1989 Act <sup>M118</sup> (monitoring compliance with [<sup>F318</sup>an] activity direction or [<sup>F318</sup>an] activity condition);
  - (iii) section 11H(2) of the 1989 Act <sup>M119</sup> (monitoring compliance with a [<sup>F319</sup>child arrangements] order);
  - (iv) section 11L(5) of the 1989 Act (providing the court with information as to the making of an enforcement order);
  - (v) section 11M(1) of the 1989 Act (monitoring compliance with an enforcement order);
  - (vi) section 16(6) of the 1989 Act <sup>M120</sup> (providing a report to the court in accordance with a direction in a family assistance order); and
  - (vii) section 16A of the 1989 Act <sup>M121</sup> (making a risk assessment); and
- (b) a local authority officer is acting under a duty in accordance with section 16(6) of the 1989 Act (providing a report to the court in accordance with a direction in a family assistance order).

(2) In this rule,—

- (a) “<sup>F320</sup>... activity direction”, “<sup>F320</sup>... activity condition” and “enforcement order” have the meanings given in rule 12.2; and
- (b) references to “the officer” are to the officer of the Service, Welsh family proceedings officer or local authority officer referred to in paragraph (1).

(3) In exercising the duties referred to in paragraph (1), the officer must have regard to the principle set out in section 1(2) of the 1989 Act and the matters set out in section 1(3)(a) to (f) of

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the 1989 Act as if for the word “court” in that section there were substituted the words “officer of the Service, Welsh family proceedings officer or local authority officer”.

(4) The officer's duties referred to in paragraph (1) must be exercised in accordance with Practice Direction 16A.

#### Textual Amendments

- F317** Word in rule 16.38(1)(a)(i) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 40\(a\)](#)
- F318** Word in rule 16.38(1)(a)(ii) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 40\(b\)](#)
- F319** Words in rule 16.38(1)(a)(iii) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 40\(c\)](#)
- F320** Word in rule 16.38(2)(a) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 41](#)

#### Marginal Citations

- M117** [Section 11E](#) was inserted by section 1 of the Children and Adoption Act 2006.
- M118** [Section 11G](#) was inserted by section 1 of the Children and Adoption Act 2006.
- M119** [Section 11H](#) was inserted by section 1 of the Children and Adoption Act 2006.
- M120** [Section 16\(6\)](#) was amended by section 6(1) and (5) of the Children and Adoption Act 2006.
- M121** [Section 16A](#) was inserted by section 7 of the Children and Adoption Act 2006.

## CHAPTER 14

### ENFORCEMENT ORDERS AND FINANCIAL COMPENSATION ORDERS: PERSONS NOTIFIED

#### Application for enforcement orders and financial compensation orders: duties of the person notified

**16.39.**—(1) This rule applies where a person who was the child's children's guardian, litigation friend or legal representative in the proceedings in which a [<sup>F321</sup>child arrangements] order was made has been notified of an application for an enforcement order or for a financial compensation order as required by Practice Direction 12C.

- (2) The person who has been notified of the application must—
- consider whether it is in the best interests of the child for the child to be made a party to the proceedings for an enforcement order or a financial compensation order (as applicable); and
  - before the date fixed for the first hearing in the case notify the court, orally or in writing, of the opinion reached on the question, together with the reasons for this opinion.

(3) In this rule, “enforcement order” and “financial compensation order” have the meanings given in rule 12.2.

#### Textual Amendments

- F321** Words in rule 16.39(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\), rules 1, 42](#)

## PART 17

### STATEMENTS OF TRUTH

#### [<sup>F322</sup> Interpretation

17.1.—[<sup>F323</sup>(1)] In this Part “statement of case” has the meaning given to it in Part 4 except that a statement of case does not include—

- (a) an application for a matrimonial or a civil partnership order or an answer to such an application;
- (b) an application under Article 56 of the Maintenance Regulation made on the form in Annex VI or VII to that Regulation[<sup>F324</sup>;

[<sup>F325</sup>(c) an application under Article 10 of the 2007 Hague Convention using the Financial Circumstances Form.]

[<sup>F326</sup>(2) In this rule, “Financial Circumstances Form” has the meaning given to it in rule 9.3(1).] (Rule 4.1 defines “statement of case” for the purposes of Part 4.)]

#### Textual Amendments

**F322** Rule 17.1 substituted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), rules 1, **14**

**F323** Rule 17.1 renumbered as rule 17.1(1) (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), rules 1, **14(a)**

**F324** Rule 17.1(b): semicolon substituted for full stop (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), rules 1, **14(b)**

**F325** Rule 17.1(c) inserted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), rules 1, **14(c)**

**F326** Rule 17.1(2) inserted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), rules 1, **14(d)**

#### Documents to be verified by a statement of truth

17.2.—(1) Subject to paragraph (9), the following documents must be verified by a statement of truth—

- (a) a statement of case;
- (b) a witness statement;
- (c) an acknowledgement of service in a claim begun by the Part 19 procedure;
- (d) a certificate of service;

[<sup>F327</sup>(e) .....

(f) a statement of information filed under rule 9.26(1)(b); and

(g) any other document where a [<sup>F328</sup>court order,] rule or practice direction requires it.

(2) Where a statement of case is amended, the amendments must be verified by a statement of truth unless the court orders otherwise.

(3) [<sup>F329</sup>Subject to paragraph (10), if] an applicant wishes to rely on matters set out in the application form or application notice as evidence, the application form or notice must be verified by a statement of truth.

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- (4) Subject to paragraph (5), a statement of truth is a statement that—
- (a) the party putting forward the document;
  - (b) in the case of a witness statement, the maker of the witness statement; or
  - (c) in the case of a certificate of service, the person who signs the certificate,
- believes the facts stated in the document are true.
- (5) If a party is conducting proceedings with a litigation friend, the statement of truth in—
- (a) a statement of case; or
  - (b) an application notice,
- is a statement that the litigation friend believes the facts stated in the document being verified are true.
- (6) The statement of truth must be signed by—
- (a) in the case of a statement of case—
    - (i) the party or litigation friend; or
    - (ii) the legal representative on behalf of the party or litigation friend; and
  - (b) in the case of a witness statement <sup>F330</sup> ..., the maker of the statement.
- (7) A statement of truth, which is not contained in the document which it verifies, must clearly identify that document.
- (8) A statement of truth in a statement of case may be made by—
- (a) a person who is not a party; or
  - (b) by two parties jointly,
- where this is permitted by a practice direction.
- (9) An application that does not contain a statement of facts need not be verified by a statement of truth. (Practice Direction 17A sets out the form of statement of truth.)
- <sup>F331</sup>(10) Notwithstanding paragraph (3), and subject to any direction given under rule 9.14(2A) or rule 9.19(2A), the court may permit a party to rely upon matters set out in an application form which has not been verified by a statement of truth as evidence where the application has been made under—
- (a) Article 56 of the Maintenance Regulation on the form in Annex VI or VII to that Regulation; or
  - (b) Article 10 of the 2007 Hague Convention on an Article 11 form.]

#### Textual Amendments

- F327** Rule 17.2(1)(e) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **43(a)**
- F328** Words in rule 17.2(1)(g) inserted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), rules 1, **15(a)**
- F329** Words in rule 17.2(3) substituted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), rules 1, **15(b)**
- F330** Words in rule 17.2(6)(b) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **43(b)**
- F331** Rule 17.2(10) inserted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), rules 1, **15(c)**

**Failure to verify a statement of case**

- 17.3.—(1) If a party fails to verify that party's statement of case by a statement of truth—
  - (a) the statement of case shall remain effective unless struck out; but
  - (b) the party may not rely on the statement of case as evidence of any of the matters set out in it.
- (2) The court may strike out<sup>(GL)</sup> a statement of case which is not verified by a statement of truth.
- (3) Any party may apply for an order under paragraph (2).

**Failure to verify a witness statement**

17.4. If the maker of a witness statement fails to verify the witness statement by a statement of truth, the court may direct that it shall not be admissible as evidence.

**Power of the court to require a document to be verified**

- 17.5.—(1) The court may order a person who has failed to verify a document in accordance with rule 17.2 to verify the document.
- (2) Any party may apply for an order under paragraph (1).

**False statements**

- 17.6.—(1) Proceedings for contempt of court may be brought against a person who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.
- (2) Proceedings under this rule may be brought only—
  - (a) by the Attorney General; or
  - (b) with the permission of the court.
- <sup>F332</sup>(3) .....

**Textual Amendments**  
**F332** Rule 17.6(3) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 63](#) (with [rule 137](#)); [S.I. 2014/954](#), [art. 2](#)

**PART 18**

**PROCEDURE FOR OTHER APPLICATIONS IN PROCEEDINGS**

**Types of application for which Part 18 procedure may be followed**

- 18.1.—(1) The Part 18 procedure is the procedure set out in this Part.
- (2) An applicant may use the Part 18 procedure if the application is made—
  - (a) in the course of existing proceedings;
  - (b) to start proceedings except where some other Part of these rules prescribes the procedure to start proceedings; or
  - (c) in connection with proceedings which have been concluded.
- (3) Paragraph (2) does not apply—

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*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

- (a) to applications where any other rule in any other Part of these rules sets out the procedure for that type of application;
- (b) if a practice direction provides that the Part 18 procedure may not be used in relation to the type of application in question.

### **Applications for permission to start proceedings**

**18.2.** An application for permission to start proceedings must be made to the court where the proceedings will be started if permission is granted.

[<sup>F333</sup>(Rule 5.4 makes general provision in relation to the court in which proceedings should be started.)]

#### **Textual Amendments**

**F333** Words in rule 18.2 inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **64** (with rule 137); S.I. 2014/954, **art. 2**

### **Respondents to applications under this Part**

- 18.3.—**(1) The following persons are to be respondents to an application under this Part—
- (a) where there are existing proceedings or the proceedings have been concluded—
    - (i) the parties to those proceedings; and
    - (ii) if the proceedings are proceedings under Part 11, the person who is the subject of those proceedings;
  - (b) where there are no existing proceedings—
    - (i) if notice has been given under section 44 of the 2002 Act (notice of intention to adopt or apply for an order under section 84 of that Act), the local authority to whom notice has been given; and
    - (ii) if an application is made for permission to apply for an order in proceedings, any person who will be a party to the proceedings brought if permission is granted; and
  - (c) any other person as the court may direct.

### **Application notice to be filed**

- 18.4.—**(1) Subject to paragraph (2), the applicant must file an application notice.
- (2) An applicant may make an application without filing an application notice if—
- (a) this is permitted by a rule or practice direction; or
  - (b) the court dispenses with the requirement for an application notice.

### **Notice of an application**

- 18.5.—**(1) Subject to paragraph (2), a copy of the application notice must be served on—
- (a) each respondent;
  - (b) in relation to proceedings under Part 11, the person who is, or, in the case of an application to start proceedings, it is intended will be, the subject of the proceedings; and
  - (c) in relation to proceedings under Parts 12 and 14, the children's guardian (if any).



(2) An application may be made without serving a copy of the application notice if this is permitted by—

- (a) a rule;
- (b) a practice direction; or
- (c) the court.

(Rule 18.8 deals with service of a copy of the application notice.)

### **Time when an application is made**

**18.6.** When an application must be made within a specified time, it is so made if the court receives the application notice within that time.

### **What an application notice must include**

**18.7.—**(1) An application notice must state—

- (a) what order the applicant is seeking; and
- (b) briefly, why the applicant is seeking the order.

(2) A draft of the order sought must be attached to the application notice. (Part 17 requires an application notice to be verified by a statement of truth if the applicant wishes to rely on matters set out in his application as evidence.)

### **Service of a copy of an application notice**

**18.8.—**(1) Subject to rule 2.4, a copy of the application notice must be served in accordance with the provisions of Part 6—

- (a) as soon as practicable after it is filed; and
- (b) in any event—
  - (i) where the application is for an <sup>F334</sup>... order under rule 9.7 at least 14 days; and
  - (ii) in any other case, at least 7 days;before the court is to deal with the application.

(2) The applicant must, when filing the application notice, file a copy of any written evidence in support.

(3) If a copy of an application notice is served by a court officer it must be accompanied by—

- (a) a notice of the date and place where the application will be heard;
- (b) a copy of any witness statement in support; and
- (c) a copy of the draft order which the applicant has attached to the application.

(4) If—

- (a) an application notice is served; but
  - (b) the period of notice is shorter than the period required by these rules or a practice direction,
- the court may direct that, in the circumstances of the case, sufficient notice has been given and hear the application.

(5) This rule does not require written evidence—

- (a) to be filed if it has already been filed; or
- (b) to be served on a party on whom it has already been served.

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**Textual Amendments**

**F334** Word in rule 18.8(1)(b)(i) omitted (8.7.2013) by virtue of [The Family Procedure \(Amendment No. 2\) Rules 2013 \(S.I. 2013/1472\)](#), rules 1, 5

**Applications which may be dealt with without a hearing**

**18.9.**—(1) The court may deal with an application without a hearing if—

- (a) the court does not consider that a hearing would be appropriate; or
- (b) the parties agree as to the terms of the order sought or the parties agree that the court should dispose of the application without a hearing and the court does not consider that a hearing would be appropriate.

(2) Where—

- (a) an application is made for permission to make an application in proceedings under the 1989 Act; and
- (b) the court refuses the application without a hearing in accordance with paragraph (1)(a),

the court must, at the request of the applicant, re-list the application and fix a date for a hearing.

<sup>F335</sup>(3) .....

**Textual Amendments**

**F335** Rule 18.9(3) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, 65 (with rule 137); S.I. 2014/954, art. 2

**Service of application notice following court order where application made without notice**

**18.10.**—(1) This rule applies where the court has disposed of an application which it permitted to be made without service of a copy of the application notice.

(2) Where the court makes an order, whether granting or dismissing the application, a copy of the application notice and any evidence in support must unless the court orders otherwise, be served with the order on—

- (a) all the parties in proceedings; and
- (b) in relation to proceedings under Part 11, the person who is, or, in the case of an application to start proceedings, it is intended will be, the subject of the proceedings.

(3) The order must contain a statement of the right to make an application to set aside<sup>(GL)</sup> or vary the order under rule 18.11.

**Application to set aside or vary order made without notice**

**18.11.**—(1) A person who was not served with a copy of the application notice before an order was made under rule 18.10 may apply to have the order set aside<sup>(GL)</sup> or varied.

(2) An application under this rule must be made within 7 days beginning with the date on which the order was served on the person making the application.

**Power of the court to proceed in the absence of a party**

**18.12.**—(1) Where the applicant or any respondent fails to attend the hearing of an application, the court may proceed in the absence of that person.

(2) Where—

- (a) the applicant or any respondent fails to attend the hearing of an application; and
- (b) the court makes an order at the hearing,

the court may, on application or of its own initiative, re-list the application.

<sup>F336</sup>(3) .....

**Textual Amendments**  
**F336** Rule 18.12(3) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 65](#) (with [rule 137](#)); [S.I. 2014/954](#), [art. 2](#)

**Dismissal of totally without merit applications**

**18.13.** If the <sup>F337</sup>... court dismisses an application (including an application for permission to appeal) and it considers that the application is totally without merit—

- (a) the court's order must record that fact; and
- (b) the court must at the same time consider whether it is appropriate to make a civil restraint order.

**Textual Amendments**  
**F337** Words in rule 18.13 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 66](#) (with [rule 137](#)); [S.I. 2014/954](#), [art. 2](#)

**PART 19**

**ALTERNATIVE PROCEDURE FOR APPLICATIONS**

**Types of application for which Part 19 procedure may be followed**

**19.1.**—(1) The Part 19 procedure is the procedure set out in this Part.

(2) An applicant may use the Part 19 procedure where the Part 18 procedure does not apply and—

- (a) there is no form prescribed by a rule or referred to in Practice Direction 5A in which to make the application;
- (b) the applicant seeks the court's decision on a question which is unlikely to involve a substantial dispute of fact; or
- (c) paragraph (5) applies.

(3) The court may at any stage direct that the application is to continue as if the applicant had not used the Part 19 procedure and, if it does so, the court may give any directions it considers appropriate.

(4) Paragraph (2) does not apply if a practice direction provides that the Part 19 procedure may not be used in relation to the type of application in question.

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- (5) A rule or practice direction may, in relation to a specified type of proceedings—
- (a) require or permit the use of the Part 19 procedure; and
  - (b) disapply or modify any of the rules set out in this Part as they apply to those proceedings.

#### **Applications for which the Part 19 procedure must be followed**

- 19.2.**—(1) The Part 19 procedure must be used in an application made in accordance with—
- (a) section 60(3) of the 2002 Act (order to prevent disclosure of information to an adopted person);
  - (b) section 79(4) of the 2002 Act (order for Registrar General to give any information referred to in section 79(3) of the 2002 Act); and
  - (c) rule 14.21 (directions of High Court regarding fathers without parental responsibility).
- (2) The respondent to an application made in accordance with paragraph (1)(b) is the Registrar General.

#### **Contents of the application**

- 19.3.** Where the applicant uses the Part 19 procedure, the application must state—
- (a) that this Part applies;
  - (b) either—
    - (i) the question which the applicant wants the court to decide; or
    - (ii) the order which the applicant is seeking and the legal basis of the application for that order;
  - (c) if the application is being made under an enactment, what that enactment is;
  - (d) if the applicant is applying in a representative capacity, what that capacity is; and
  - (e) if the respondent appears or is to appear in a representative capacity, what that capacity is.
- (Part 17 requires a statement of case to be verified by a statement of truth.)

#### **Issue of application without naming respondents**

- 19.4.**—(1) A practice direction may set out circumstances in which an application may be issued under this Part without naming a respondent.
- (2) The practice direction may set out those cases in which an application for permission must be made by application notice before the application is issued.
- (3) The application for permission—
- (a) need not be served on any other person; and
  - (b) must be accompanied by a copy of the application which the applicant proposes to issue.
- (4) Where the court gives permission, it will give directions about the future management of the application.

#### **Acknowledgment of service**

- 19.5.**—(1) Subject to paragraph(2), each respondent must—
- (a) file an acknowledgment of service within 14 days beginning with the date on which the application is served; and
  - (b) serve the acknowledgment of service on the applicant and any other party.

(2) If the application is to be served out of the jurisdiction, the respondent must file and serve an acknowledgment of service within the period set out in Practice Direction 6B.

(3) The acknowledgment of service must—

- (a) state whether the respondent contests the application;
- (b) state, if the respondent seeks a different order from that set out in the application, what that order is; and
- (c) be signed by the respondent or the respondent's legal representative.

### **Consequence of not filing an acknowledgment of service**

**19.6.**—(1) This rule applies where—

- (a) the respondent has failed to file an acknowledgment of service; and
- (b) the time period for doing so has expired.

(2) The respondent may attend the hearing of the application but may not take part in the hearing unless the court gives permission.

### **Filing and serving written evidence**

**19.7.**—(1) The applicant must, when filing the application, file the written evidence on which the applicant intends to rely.

(2) The applicant's evidence must be served on the respondent with the application.

(3) A respondent who wishes to rely on written evidence must file it when filing the acknowledgment of service.

(4) A respondent who files written evidence must also, at the same time, serve a copy of that evidence on the other parties.

(5) Within 14 days beginning with the date on which a respondent's evidence was served on the applicant, the applicant may file further written evidence in reply.

(6) An applicant who files further written evidence must also, within the same time limit, serve a copy of that evidence on the other parties.

### **Evidence – general**

**19.8.**—(1) No written evidence may be relied on at the hearing of the application unless—

- (a) it has been served in accordance with rule 19.7; or
- (b) the court gives permission.

(2) The court may require or permit a party to give oral evidence at the hearing.

(3) The court may give directions requiring the attendance for cross-examination<sup>(GL)</sup> of a witness who has given written evidence. (Rule 22.1 contains a general power for the court to control evidence.)

### **Procedure where respondent objects to use of the Part 19 procedure**

**19.9.**—(1) A respondent who contends that the Part 19 procedure should not be used because—

- (a) there is a substantial dispute of fact; and
- (b) the use of the Part 19 procedure is not required or permitted by a rule or practice direction,

must state the reasons for that contention when filing the acknowledgment of service.

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*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

(2) When the court receives the acknowledgment of service and any written evidence, it will give directions as to the future management of the case. (Rule 19.7 requires a respondent who wishes to rely on written evidence to file it when filing the acknowledgment of service.) (Rule 19.1(3) allows the court to make an order that the application continue as if the applicant had not used the Part 19 procedure.)

## PART 20

### INTERIM REMEDIES AND SECURITY FOR COSTS

#### CHAPTER 1

#### INTERIM REMEDIES

#### Scope of this Part

<sup>F338</sup> 20.1. ....

#### Textual Amendments

**F338** Rule 20.1 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, [67](#) (with rule 137); S.I. 2014/954, [art. 2](#)

#### Orders for interim remedies

**20.2.**—(1) The court may grant the following interim remedies—

- (a) an interim injunction<sup>(GL)</sup>;
- (b) an interim declaration;
- (c) an order—
  - (i) for the detention, custody or preservation of relevant property;
  - (ii) for the inspection of relevant property;
  - (iii) for the taking of a sample of relevant property;
  - (iv) for the carrying out of an experiment on or with relevant property;
  - (v) for the sale of relevant property which is of a perishable nature or which for any other good reason it is desirable to sell quickly; and
  - (vi) for the payment of income from relevant property until an application is decided;
- (d) an order authorising a person to enter any land or building in the possession of a party to the proceedings for the purposes of carrying out an order under sub-paragraph (c);
- (e) an order under section 4 of the Torts (Interference with Goods) Act 1977 <sup>M122</sup> to deliver up goods;
- (f) an order (referred to as a ‘freezing injunction<sup>(GL)</sup>’)—
  - (i) restraining a party from removing from the jurisdiction assets located there; or
  - (ii) restraining a party from dealing with any assets whether located within the jurisdiction or not;

- (g) an order directing a party to provide information about the location of relevant property or assets or to provide information about relevant property or assets which are or may be the subject of an application for a freezing injunction<sup>(GL)</sup>;
- (h) an order (referred to as a “search order”) under section 7 of the Civil Procedure Act 1997<sup>M123</sup> (order requiring a party to admit another party to premises for the purpose of preserving evidence etc.);
- (i) an order under section 34 of the Senior Courts Act 1981<sup>M124</sup> or section 53 of the County Courts Act 1984<sup>M125</sup> (order in certain proceedings for disclosure of documents or inspection of property against a non-party);
- (j) an order for a specified fund to be paid into court or otherwise secured, where there is a dispute over a party's right to the fund;
- (k) an order permitting a party seeking to recover personal property to pay money into court pending the outcome of the proceedings and directing that, if money is paid into court, the property must be given up to that party;
- (l) an order directing a party to prepare and file accounts relating to the dispute;
- (m) an order directing any account to be taken or inquiry to be made by the court.

(2) In paragraph (1)(c) and (g), ‘relevant property’ means property (including land) which is the subject of an application or as to which any question may arise on an application.

(3) The fact that a particular kind of interim remedy is not listed in paragraph (1) does not affect any power that the court may have to grant that remedy.

#### Marginal Citations

**M122** 1977 c. 32.

**M123** Section 7 of the [Civil Procedure Act 1997 \(c.12\)](#) was amended by section 261(1) of and paragraph 154 of Schedule 27 to the Civil Partnership Act 2004.

**M124** 1981 c.54. Section 34 was amended by section 148(3) of and Schedule 4 to the County Courts Act 1984 and article 5(b) of the [Civil Procedure \(Modification of Enactments\) Order 1998 \(S.I. 1998/2940\)](#).

**M125** Section 53 was amended by article 6(c)(i) of the Civil Procedure (Modification of Enactments) Order 1998 and section 10 of and paragraph 2(2) of Schedule 2 to the [Civil Procedure Act 1997 \(c.12\)](#) and by section 125(3) of and paragraph 44 of Schedule 18 to the Courts and Legal Services Act 1990.

#### Time when an order for an interim remedy may be made

**20.3.**—(1) An order for an interim remedy may be made at any time, including—

- (a) before proceedings are started; and
- (b) after judgment has been given.

(Rule 5.3 provides that proceedings are started when the court issues an application form.)

(2) However—

- (a) paragraph (1) is subject to any rule, practice direction or other enactment which provides otherwise; and
- (b) the court may grant an interim remedy before an application has been started only if—
  - (i) the matter is urgent; or
  - (ii) it is otherwise desirable to do so in the interests of justice.

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(3) Where the court grants an interim remedy before an application has been started, it will give directions requiring an application to be started.

(4) The court need not direct that an application be started where the application is made under section 33 of the Senior Courts Act 1981 or section 52 of the County Courts Act 1984<sup>M126</sup> (order for disclosure, inspection etc. before starting an application).

#### **Marginal Citations**

**M126** Section 52 was amended by section 10 of and paragraph 2(2) of Schedule 2 to the Civil Procedure Act 1997 and by article 6(b) of the Civil Procedure (Modification of Enactments) Order 1998 and by section 125(3) of and paragraph 43 of Schedule 18 to the Courts and Legal Services Act 1990.

#### **How to apply for an interim remedy**

**20.4.**—(1) The court may grant an interim remedy on an application made without notice if it appears to the court that there are good reasons for not giving notice.

(2) An application for an interim remedy must be supported by evidence, unless the court orders otherwise.

(3) If the applicant makes an application without giving notice, the evidence in support of the application must state the reasons why notice has not been given. (Part 4 lists general case-management powers of the court.) (Part 18 contains general rules about making an application.)

#### **Interim injunction to cease if application is stayed**

**20.5.** If—

- (a) the court has granted an interim injunction<sup>(GL)</sup> other than a freezing injunction<sup>(GL)</sup>; and
- (b) the application is stayed<sup>(GL)</sup> other than by agreement between the parties,

the interim injunction<sup>(GL)</sup> will be set aside<sup>(GL)</sup> unless the court orders that it should continue to have effect even though the application is stayed<sup>(GL)</sup>.

## CHAPTER 2

### SECURITY FOR COSTS

#### **Security for costs**

**20.6.**—(1) A respondent to any application may apply under this Chapter of this Part for security for costs of the proceedings. (Part 4 provides for the court to order payment of sums into court in other circumstances.)

(2) An application for security for costs must be supported by written evidence.

(3) Where the court makes an order for security for costs, it will—

- (a) determine the amount of security; and
- (b) direct—
  - (i) the manner in which; and
  - (ii) the time within which,
 the security must be given.



### Conditions to be satisfied

- 20.7.**—(1) The court may make an order for security for costs under rule 20.6 if—
- (a) it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and
  - (b) either—
    - (i) one or more of the conditions in paragraph (2) applies; or
    - (ii) an enactment permits the court to require security for costs.
- (2) The conditions are—
- (a) the applicant is—
    - (i) resident out of the jurisdiction; but
    - (ii) not resident in a Brussels Contracting State, [<sup>F339</sup>a State bound by the Lugano Convention,]<sup>F340</sup> a State bound by the 2007 Hague Convention which is an EEA State,] a Regulation State [<sup>F341</sup>or a Maintenance Regulation State], as defined in section 1(3) of the Civil Jurisdiction and Judgments Act 1982 [<sup>F342</sup>, <sup>F343</sup>...] or a Member State bound by the Council Regulation;
  - (b) the applicant has changed address since the application was started with a view to evading the consequences of the litigation;
  - (c) the applicant failed to give an address in the application form, or gave an incorrect address in that form;
  - (d) the applicant has taken steps in relation to the applicant's assets that would make it difficult to enforce an order for costs against the applicant.
- (3) The court may not make an order for security for costs under rule 20.6 in relation to the costs of proceedings under the 1980 Hague Convention.

(Rule 4.4 allows the court to strike out<sup>(GL)</sup> a statement of case.)

[<sup>F344</sup>(“EEA State” is defined in Schedule 1 to the Interpretation Act 1978).]

#### Textual Amendments

- F339** Words in rule 20.7(2)(a)(ii) substituted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), [rules 1, 24\(a\)](#) (with [rule 30](#))
- F340** Words in [rule 20.7\(2\)\(a\)\(ii\)](#) inserted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), [rules 1, 16\(a\)](#)
- F341** Words in rule 20.7(2)(a)(ii) inserted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), [rules 1, 24\(b\)](#) (with [rule 30](#))
- F342** Words in rule 20.7(2)(a)(ii) inserted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), [rules 1, 15](#)
- F343** Words in rule 20.7(2)(a)(ii) omitted (6.4.2012) by virtue of [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), [rules 1, 24\(e\)](#) (with [rule 30](#))
- F344** Words in [rule 20.7\(2\)](#) inserted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), [rules 1, 16\(b\)](#)

### Security for costs of an appeal

- 20.8.** The court may order security for costs of an appeal against—
- (a) an appellant;

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(b) a respondent who also appeals,  
on the same grounds as it may order security for costs against an applicant under this Part.

## **PART 21**

### **MISCELLANEOUS RULES ABOUT DISCLOSURE AND INSPECTION OF DOCUMENTS**

#### **Interpretation**

- 21.1.**—(1) A party discloses a document by stating that the document exists or has existed.
- (2) Inspection of a document occurs when a party is permitted to inspect a document disclosed by another person.
- (3) For the purposes of disclosure and inspection—
- (a) “document” means anything in which information of any description is recorded; and
  - (b) “copy” in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly.

#### **Orders for disclosure against a person not a party**

- 21.2.**—(1) This rule applies where an application is made to the court under any Act for disclosure by a person who is not a party to the proceedings.
- (2) The application—
- (a) may be made without notice; and
  - (b) must be supported by evidence.
- (3) The court may make an order under this rule only where disclosure is necessary in order to dispose fairly of the proceedings or to save costs.
- (4) An order under this rule must—
- (a) specify the documents or the classes of documents which the respondent must disclose; and
  - (b) require the respondent, when making disclosure, to specify any of those documents—
    - (i) which are no longer in the respondent's control; or
    - (ii) in respect of which the respondent claims a right or duty to withhold inspection.
- (5) Such an order may—
- (a) require the respondent to indicate what has happened to any documents which are no longer in the respondent's control; and
  - (b) specify the time and place for disclosure and inspection.
- (6) An order under this rule must not compel a person to produce any document which that person could not be compelled to produce at the final hearing.
- (7) This rule does not limit any other power which the court may have to order disclosure against a person who is not a party to proceedings. (Rule 35.3 contains provisions in relation to the disclosure and inspection of evidence arising out of mediation of cross-border disputes.)

### **Claim to withhold inspection or disclosure of a document**

**21.3.**—(1) A person may apply, without notice, for an order permitting that person to withhold disclosure of a document on the ground that disclosure would damage the public interest.

(2) Unless the court otherwise orders, an order of the court under paragraph (1)—

- (a) must not be served on any other person; and
- (b) must not be open to inspection by any other person.

(3) A person who wishes to claim a right or a duty to withhold inspection of a document, or part of a document, must state in writing—

- (a) the right or duty claimed; and
- (b) the grounds on which that right or duty is claimed.

(4) The statement referred to in paragraph (3) must be made to the person wishing to inspect the document.

(5) A party may apply to the court to decide whether a claim made under paragraph (3) should be upheld.

(6) Where the court is deciding an application under paragraph (1) or (5) it may—

- (a) require the person seeking to withhold disclosure or inspection of a document to produce that document to the court; and
- (b) invite any person, whether or not a party, to make representations.

(7) An application under paragraph (1) or (5) must be supported by evidence.

(8) This Part does not affect any rule of law which permits or requires a document to be withheld from disclosure or inspection on the ground that its disclosure or inspection would damage the public interest.

## **PART 22**

### **EVIDENCE**

#### **CHAPTER 1**

#### **GENERAL RULES**

### **Power of court to control evidence**

**22.1.**—(1) The court may control the evidence by giving directions as to—

- (a) the issues on which it requires evidence;
- (b) the nature of the evidence which it requires to decide those issues; and
- (c) the way in which the evidence is to be placed before the court.

(2) The court may use its power under this rule to exclude evidence that would otherwise be admissible.

(3) The court may permit a party to adduce evidence, or to seek to rely on a document, in respect of which that party has failed to comply with the requirements of this Part.

(4) The court may limit cross-examination<sup>(GL)</sup>.

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### **Evidence of witnesses – general rule**

**22.2.**—(1) The general rule is that any fact which needs to be proved by the evidence of witnesses is to be proved—

- (a) at the final hearing, by their oral evidence; and
  - (b) at any other hearing, by their evidence in writing.
- (2) The general rule does not apply—
- (a) to proceedings under Part 12 for secure accommodation orders, interim care orders or interim supervision orders; or
  - (b) where an enactment, any of these rules, a practice direction or a court order provides to the contrary.

(Section 45(7) of the Children Act 1989 (emergency protection orders) is an example of an enactment which makes provision relating to the evidence that a court may take into account when hearing an application.)

### **Evidence by video link or other means**

**22.3.** The court may allow a witness to give evidence through a video link or by other means.

### **Witness statements**

**22.4.**—(1) A witness statement is a written statement signed by a person which contains the evidence which that person would be allowed to give orally.

(2) A witness statement must comply with the requirements set out in the Practice Direction 22A. (Part 17 requires a witness statement to be verified by a statement of truth.)

### **Service of witness statements for use at the final hearing**

**22.5.**—(1) The court may give directions as to service on the other parties of any witness statement of the oral evidence on which a party intends to rely in relation to any issues of fact to be decided at the final hearing.

- (2) The court may give directions as to—
- (a) the order in which witness statements are to be served; and
  - (b) whether or not the witness statements are to be filed.

(3) Where the court directs that a court officer is to serve a witness statement on the other parties, any reference in this Chapter to a party serving a witness statement is to be read as including a reference to a court officer serving the statement.

### **Use at the final hearing of witness statements which have been served**

**22.6.**—(1) If a party—

- (a) has served a witness statement; and
  - (b) wishes to rely at the final hearing on the evidence of the witness who made the statement,
- that party must call the witness to give oral evidence unless the court directs otherwise or the party puts the statement in as hearsay evidence. (Part 23 (miscellaneous rules about evidence) contains provisions about hearsay evidence.)

(2) The witness statement of a witness called to give oral evidence under paragraph (1) is to stand as the evidence in chief<sup>(GL)</sup> of that witness unless the court directs otherwise.

- (3) A witness giving oral evidence at the final hearing may with the permission of the court—
- (a) amplify his witness statement; and
  - (b) give evidence in relation to new matters which have arisen since the witness statement was served on the other parties.
- (4) The court will give permission under paragraph (3) only if it considers that there is good reason not to confine the evidence of the witness to the contents of the witness statement.
- (5) If a party who has served a witness statement does not—
- (a) call the witness to give evidence at the final hearing; or
  - (b) put the witness statement in as hearsay evidence,
- any other party may put the witness statement in as hearsay evidence.

### Evidence at hearings other than the final hearing

**22.7.**—(1) Subject to paragraph(2), the general rule is that evidence at hearings other than the final hearing is to be by witness statement unless the court, any other rule, a practice direction or any other enactment requires otherwise.

- (2) At hearings other than the final hearing, a party may rely on the matters set out in that party's—
- (a) application form;
  - (b) application notice; or
  - (c) answer,

if the application form, application notice or answer, as the case may be, is verified by a statement of truth [<sup>F345</sup>or if the court gives that party permission to do so without such verification].

#### Textual Amendments

**F345** Words in [rule 22.7\(2\)](#) inserted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), [rules 1, 17](#)

### Order for cross-examination

**22.8.**—(1) Where, at a hearing other than the final hearing, evidence is given in writing, any party may apply to the court for permission to cross-examine<sup>(GL)</sup> the person giving the evidence.

(2) If the court gives permission under paragraph (1) but the person in question does not attend, that person's evidence may not be used unless the court directs otherwise. (Rules 35.3 and 35.4 contain rules in relation to evidence arising out of mediation of cross-border disputes.)

### Witness summaries

**22.9.**—(1) A party who—

- (a) is required to serve a witness statement for use at any hearing; but
- (b) is unable to obtain one,

may apply, without notice, for permission to serve a witness summary instead.

(2) A witness summary is a summary of—

- (a) the evidence, if known, which would otherwise be included in a witness statement; or
- (b) if the evidence is not known, the matters about which the party serving the witness summary proposes to question the witness.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

(3) Unless the court directs otherwise, a witness summary must include the name and address of the intended witness.

(4) Unless the court directs otherwise, a witness summary must be served within the period in which a witness statement would have had to be served.

(5) Where a party serves a witness summary, so far as practicable rules 22.4(2) (form of witness statements), 22.5 (service of witness statements for use at the final hearing) and 22.6(3) (amplifying witness statements) apply to the summary.

**Consequence of failure to serve witness statement**

**22.10.** If a witness statement for use at the final hearing is not served in respect of an intended witness within the time specified by the court, then the witness may not be called to give oral evidence unless the court gives permission.

**Cross-examination on a witness statement**

**22.11.** A witness who is called to give evidence at the final hearing may be cross-examined<sup>(GL)</sup> on the witness statement, whether or not the statement or any part of it was referred to during the witness's evidence in chief<sup>(GL)</sup>.

**Affidavit evidence**

**22.12.—(1)** Evidence must be given by affidavit<sup>(GL)</sup> instead of or in addition to a witness statement if this is required by the court, a provision contained in any other rule, a practice direction or any other enactment.

<sup>F346</sup>(2) .....  
(<sup>F347</sup> ... )

**Textual Amendments**  
**F346** Rule 22.12(2) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 68](#) (with [rule 137](#)); [S.I. 2014/954](#), [art. 2](#)  
**F347** Words in rule 22.12 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 68](#) (with [rule 137](#)); [S.I. 2014/954](#), [art. 2](#)

**Form of affidavit**

**22.13.** An affidavit<sup>(GL)</sup> must comply with the requirements set out in the Practice Direction 22A.

**Affidavit made outside the jurisdiction**

**22.14.** A person may make an affidavit<sup>(GL)</sup> outside the jurisdiction in accordance with—

- (a) this Part; or
- (b) the law of the place where the affidavit<sup>(GL)</sup> is made.

**Notice to admit facts**

**22.15.—(1)** A party may serve notice on another party requiring the other party to admit the facts, or the part of the case of the serving party, specified in the notice.

- (2) A notice to admit facts must be served no later than 21 days before the final hearing.
- (3) Where the other party makes any admission in answer to the notice, the admission may be used against that party only—
  - (a) in the proceedings in which the notice to admit is served; and
  - (b) by the party who served the notice.
- (4) The court may allow a party to amend or withdraw any admission made by that party on such terms as it thinks just.

#### **Notice to admit or produce documents**

**22.16.**—(1) A party to whom a document is disclosed is deemed to admit the authenticity of that document unless notice is served by that party that the party wishes the document to be proved at the final hearing.

- (2) A notice to prove a document must be served—
  - (a) by the latest date for serving witness statements; or
  - (b) within 7 days beginning with the date of service of the document, whichever is later.

#### **Notarial acts and instruments**

**22.17.** A notarial act or instrument may be received in evidence without further proof as duly authenticated in accordance with the requirements of law unless the contrary is proved.

### **CHAPTER 2**

#### **RULES APPLYING ONLY TO PARTICULAR PROCEEDINGS**

#### **Scope of this Chapter**

**22.18.** This Chapter of this Part applies to affidavits<sup>(GL)</sup> and affirmations as it applies to witness statements.

#### **Availability of witness statements for inspection during the final hearing**

**22.19.**—(1) This rule applies to proceedings under Part 7 (matrimonial and civil partnership proceedings).

- (2) A witness statement which stands as evidence in chief<sup>(GL)</sup> is open to inspection during the course of the final hearing unless the court directs otherwise.
- (3) Any person may ask for a direction that a witness statement is not open to inspection.
- (4) The court will not make a direction under paragraph (2) unless it is satisfied that a witness statement should not be open to inspection because of—
  - (a) the interests of justice;
  - (b) the public interest;
  - (c) the nature of any expert medical evidence in the statement;
  - (d) the nature of any confidential information (including information relating to personal financial matters) in the statement; or
  - (e) the need to protect the interests of any child or protected party.
- (5) The court may exclude from inspection words or passages in the witness statement.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

### Use of witness statements for other purposes

**22.20.**—(1) This rule applies to proceedings under Part 7 (matrimonial and civil partnership proceedings) or Part 9 (financial remedies).

(2) Except as provided by this rule, a witness statement may be used only for the purpose of the proceedings in which it is served.

(3) Paragraph (2) does not apply if and to the extent that—

- (a) the court gives permission for some other use; or
- (b) the witness statement has been put in evidence at a hearing held in public.

## PART 23

### MISCELLANEOUS RULES ABOUT EVIDENCE

#### Scope and interpretation of this Part

**23.1.** Rules 23.2 to 23.6 apply to evidence to which the Children (Admissibility of Hearsay Evidence) Order 1993 <sup>M127</sup> does not apply.

#### Marginal Citations

M127 S.I. 1993/621.

#### Notice of intention to rely on hearsay evidence

**23.2.**—(1) Where a party intends to rely on hearsay evidence at the final hearing and either—

- (a) that evidence is to be given by a witness giving oral evidence; or
- (b) that evidence is contained in a witness statement of a person who is not being called to give oral evidence,

that party complies with section 2(1)(a) of the Civil Evidence Act 1995 <sup>M128</sup> by serving a witness statement on the other parties in accordance with the court's directions.

(2) Where paragraph (1)(b) applies, the party intending to rely on the hearsay evidence must, when serving the witness statement—

- (a) inform the other parties that the witness is not being called to give oral evidence; and
- (b) give the reason why the witness will not be called.

(3) In all other cases where a party intends to rely on hearsay evidence at the final hearing, that party complies with section 2(1)(a) of the Civil Evidence Act 1995 by serving a notice on the other parties which—

- (a) identifies the hearsay evidence;
- (b) states that the party serving the notice proposes to rely on the hearsay evidence at the final hearing; and
- (c) gives the reason why the witness will not be called.

(4) The party proposing to rely on the hearsay evidence must—

- (a) serve the notice no later than the latest date for serving witness statements; and
- (b) if the hearsay evidence is to be in a document, supply a copy to any party who requests it.



**Marginal Citations**

M128 1995 c.38.

**Circumstances in which notice of intention to rely on hearsay evidence is not required**

**23.3.** Section 2(1) of the Civil Evidence Act 1995 (duty to give notice of intention to rely on hearsay evidence) does not apply—

- (a) to evidence at hearings other than final hearings;
- (b) to an affidavit<sup>(GL)</sup> or witness statement which is to be used at the final hearing but which does not contain hearsay evidence; or
- (c) where the requirement is excluded by a practice direction.

**Power to call witness for cross-examination on hearsay evidence**

**23.4.—**(1) Where a party—

- (a) proposes to rely on hearsay evidence; and
- (b) does not propose to call the person who made the original statement to give oral evidence, the court may, on the application of any other party, permit that party to call the maker of the statement to be cross-examined<sup>(GL)</sup> on the contents of the statement.

(2) An application for permission to cross-examine<sup>(GL)</sup> under this rule must be made within 14 days beginning with the date on which a notice of intention to rely on the hearsay evidence was served on the applicant. (Rules 35.3 and 35.4 contain rules in relation to evidence arising out of mediation of cross-border disputes.)

**Credibility**

**23.5.—**(1) Where a party proposes to rely on hearsay evidence, but—

- (a) does not propose to call the person who made the original statement to give oral evidence; and
- (b) another party wishes to call evidence to attack the credibility of the person who made the statement,

the party who so wishes must give notice of that intention to the party who proposes to give the hearsay statement in evidence.

(2) A party must give notice under paragraph (1) within 14 days after the date on which a hearsay notice relating to the hearsay evidence was served on that party.

**Use of plans, photographs and models etc as evidence**

**23.6.—**(1) This rule applies to—

- (a) evidence (such as a plan, photograph or model) which is not—
  - (i) contained in a witness statement, affidavit<sup>(GL)</sup> or expert's report;
  - (ii) to be given orally at the final hearing; or
  - (iii) evidence of which prior notice must be given under rule 23.2; and
- (b) documents which may be received in evidence without further proof under section 9 of the Civil Evidence Act 1995.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

(2) Except as provided below, section 2(1)(a) of the Civil Evidence Act 1995 (notice of proposal to adduce hearsay evidence) does not apply to evidence falling within paragraph (1).

(3) Such evidence is not receivable at the final hearing unless the party intending to rely on it (in this rule, “the party”) has—

- (a) served it or, in the case of a model, a photograph of it with an invitation to inspect the original, on the other party in accordance with this rule; or
- (b) complied with such directions as the court may give for serving the evidence on, or for giving notice under section 2(1)(a) of the Civil Evidence Act 1995 in respect of the evidence to, the other party.

(4) Where the party intends to use the evidence as evidence of any fact then, except where paragraph (6) applies, the party must serve the evidence not later than the latest date for serving witness statements.

(5) The party must serve the evidence at least 21 days before the hearing at which the party proposes to rely on it if—

- (a) there are not to be witness statements; or
- (b) the party intends to put in the evidence solely in order to disprove an allegation made in a witness statement.

(6) Where the evidence forms part of expert evidence, the party must serve the evidence when the expert's report is served on the other party.

(7) Where the evidence is being produced to the court for any reason other than as part of factual or expert evidence, the party must serve the evidence at least 21 days before the hearing at which the party proposes to rely on it.

(8) Where the court directs a party to give notice that the party intends to put in the evidence, the court may direct that every other party be given an opportunity to inspect it and to agree to its admission without further proof.

#### **Evidence of finding on question of foreign law**

**23.7.**—(1) This rule sets out the procedure which must be followed by a party (in this rule, “the party”) who intends to put in evidence a finding on a question of foreign law by virtue of section 4(2) of the Civil Evidence Act 1972.

- (2) The party must give any other party notice of that intention.
- (3) The party must give the notice—
  - (a) if there are to be witness statements, not later than the latest date for serving them; or
  - (b) otherwise, not less than 21 days before the hearing at which the party proposes to put the finding in evidence.
- (4) The notice must—
  - (a) specify the question on which the finding was made; and
  - (b) enclose a copy of a document where it is reported or recorded.

#### **Evidence of consent of trustee to act**

**23.8.** In proceedings to which Part 9 (financial remedies) applies, a document purporting to contain the written consent of a person to act as trustee and to bear that person's signature verified by some other person is evidence of such consent.

**Note of oral evidence** <sup>F348</sup>...

**23.9.** In proceedings [<sup>F349</sup>in the family court before a lay justice or lay justices], the justices' clerk or the court shall keep a note of the substance of the oral evidence given at a directions appointment or at a hearing of any proceedings.

**Textual Amendments**

**F348** Words in rule 23.9 heading omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **17(a)** (with rule 45)

**F349** Words in rule 23.9 substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **17(b)** (with rule 45)

**PART 24**

WITNESSES, DEPOSITIONS GENERALLY AND TAKING OF EVIDENCE IN MEMBER STATES OF THE EUROPEAN UNION

CHAPTER 1

WITNESSES AND DEPOSITIONS

**Scope of this Chapter**

**24.1.**—(1) This Chapter provides—

- (a) for the circumstances in which a person may be required to attend court to give evidence or to produce a document; and
- (b) for a party to obtain evidence before a hearing to be used at the hearing.

<sup>F350</sup>(2) .....

(Rules 34.16 to 34.21 and 34.24 of the CPR apply to incoming requests for evidence.)

**Textual Amendments**

**F350** Rule 24.1(2) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **69** (with rule 137); S.I. 2014/954, **art. 2**

**Witness summonses**

**24.2.**—(1) A witness summons is a document issued by the court requiring a witness to—

- (a) attend court to give evidence; or
  - (b) produce documents to the court.
- (2) A witness summons must be in the form set out in Practice Direction 24A.
- (3) There must be a separate witness summons for each witness.
- (4) A witness summons may require a witness to produce documents to the court either—
- (a) on the date fixed for a hearing; or
  - (b) on such date as the court may direct.

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*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

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(5) The only documents that a summons under this rule can require a person to produce before a hearing are documents which that person could be required to produce at the hearing. (Rules 35.3 and 35.4 contain rules in relation to evidence arising out of mediation of cross-border disputes.)

### **Issue of a witness summons**

- 24.3.**—(1) A witness summons is issued on the date entered on the summons by the court.
- (2) A party must obtain permission from the court where that party wishes to—
- (a) have a summons issued less than 7 days before the date of the final hearing;
  - (b) have a summons issued for a witness to attend court to give evidence or to produce documents on any date except the date fixed for the final hearing; or
  - (c) have a summons issued for a witness to attend court to give evidence or to produce documents at any hearing except the final hearing.
- (3) A witness summons must be issued by—
- (a) the court where the case is proceeding; or
  - (b) the court where the hearing in question will be held.
- (4) The court may set aside<sup>(GL)</sup> or vary a witness summons issued under this rule.

### **Time for serving a witness summons**

- 24.4.**—(1) The general rule is that a witness summons is binding if it is served at least 7 days before the date on which the witness is required to attend before the court.
- (2) The court may direct that a witness summons is binding although it is served less than 7 days before the date on which the witness is required to attend before the court.
- (3) A witness summons which is—
- (a) served in accordance with this rule; and
  - (b) requires the witness to attend court to give evidence,

is binding until the conclusion of the hearing at which the attendance of the witness is required. (Rules 35.3 and 35.4 contain rules in relation to evidence arising out of mediation of cross-border disputes.)

### **Who is to serve a witness summons**

- 24.5.**—(1) Subject to paragraph (2), a witness summons is to be served by the party on whose behalf it is issued unless that party indicates in writing, when asking the court to issue the summons, that that party wishes the court to serve it instead.
- (2) In proceedings to which Part 14 (procedure for applications in adoption, placement and related proceedings) applies, a witness summons is to be served by the court unless the court directs otherwise.
- (3) Where the court is to serve the witness summons, the party on whose behalf it is issued must deposit, in the court office, the money to be paid or offered to the witness under rule 24.6.

### **Right of witness to travelling expenses and compensation for loss of time**

- 24.6.** At the time of service of a witness summons the witness must be offered or paid—
- (a) a sum reasonably sufficient to cover the expenses of the witness in travelling to and from the court; and

- (b) such sum by way of compensation for loss of time as may be specified in Practice Direction 24A.

### **Evidence by deposition**

**24.7.**—(1) A party may apply for an order for a person to be examined before the hearing takes place.

(2) A person from whom evidence is to be obtained following an order under this rule is referred to as a ‘deponent’ and the evidence is referred to as a ‘deposition’.

(3) An order under this rule is for a deponent to be examined on oath before—

- (a) a judge;
- (b) an examiner of the court; or
- (c) such other person as the court appoints.

(Rule 24.14 makes provision for the appointment of examiners of the court.)

(4) The order may require the production of any document which the court considers is necessary for the purposes of the examination.

(5) The order must state the date, time and place of the examination.

(6) At the time of service of the order the deponent must be offered or paid—

- (a) a sum reasonably sufficient to cover the expenses of the deponent in travelling to and from the place of examination; and
- (b) such sum by way of compensation for loss of time as may be specified in Practice Direction 24A.

(7) Where the court makes an order for a deposition to be taken, it may also order the party who obtained the order to serve a witness statement or witness summary in relation to the evidence to be given by the person to be examined. (Part 22 (evidence) contains the general rules about witness statements and witness summaries.) (Rules 35.3 and 35.4 contain rules in relation to evidence arising out of mediation of cross-border disputes.)

### **Conduct of examination**

**24.8.**—(1) Subject to any directions contained in the order for examination, the examination must be conducted in the same way as if the witness were giving evidence at a final hearing.

(2) If all the parties are present, the examiner may conduct the examination of a person not named in the order for examination if all the parties and the person to be examined consent.

(3) In defended proceedings under Part 7 (matrimonial and civil partnership proceedings), the examiner may conduct the examination in private if of the view that it is appropriate to do so.

(4) Save in proceedings to which paragraph (3) applies, the examiner will conduct the examination in private unless of the view that it is not appropriate to do so.

(5) The examiner must ensure that the evidence given by the witness is recorded in full.

(6) The examiner must send a copy of the deposition—

- (a) to the person who obtained the order for the examination of the witness; and
- (b) to the court where the case is proceeding.

(7) The court will give directions as to service of the deposition on the other party.

### **Enforcing attendance of witness**

**24.9.**—(1) If a person served with an order to attend before an examiner—

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*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

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- (a) fails to attend; or
- (b) refuses to be sworn for the purpose of the examination or to answer any lawful question or produce any document at the examination,

a certificate of that person's failure or refusal, signed by the examiner, must be filed by the party requiring the deposition.

(2) On the certificate being filed, the party requiring the deposition may apply to the court for an order requiring that person to attend or to be sworn or to answer any question or produce any document, as the case may be.

(3) An application for an order under this rule may be made without notice.

(4) The court may order the person against whom an order is made under this rule to pay any costs resulting from that person's failure or refusal. (Rules 35.3 and 35.4 contain rules in relation to evidence arising out of mediation of cross-border disputes. Rule 35.4(1)(d) relates specifically to this rule.)

### **Use of deposition at a hearing**

**24.10.**—(1) A deposition ordered under rule 24.7 may be given in evidence at a hearing unless the court orders otherwise.

(2) A party intending to put in evidence a deposition at a hearing must file notice of intention to do so on the court and the court will give directions about serving the notice on every other party.

(3) The party must file the notice at least 21 days before the day fixed for the hearing.

(4) The court may require a deponent to attend the hearing and give evidence orally.

(5) Where a deposition is given in evidence at the final hearing, it is treated as if it were a witness statement for the purposes of rule 22.19 (availability of witness statements for inspection). (Rules 35.3 and 35.4 contain rules in relation to evidence arising out of mediation of cross-border disputes. Rule 35.4(1)(e) relates specifically to this rule.)

### **Restrictions on subsequent use of deposition taken for the purpose of any hearing except the final hearing**

**24.11.**—(1) This rule applies to proceedings under Part 7 (matrimonial and civil partnership proceedings) or Part 9 (financial remedies).

(2) Where the court orders a party to be examined about that party's or any other assets for the purpose of any hearing except the final hearing, the deposition may be used only for the purpose of the proceedings in which the order was made.

(3) However it may be used for some other purpose—

- (a) by the party who was examined;
- (b) if the party who was examined agrees; or
- (c) if the court gives permission.

### **Where a person to be examined is out of the jurisdiction – letter of request**

**24.12.**—(1) This rule applies where a party wishes to take a deposition from a person who is—

- (a) out of the jurisdiction; and
- (b) not in a Regulation State within the meaning of Chapter 2 of this Part.

(2) The High Court may order the issue of a letter of request to the judicial authorities of the country in which the proposed deponent is.

(3) A letter of request is a request to a judicial authority to take the evidence of that person, or arrange for it to be taken.

(4) The High Court may make an order under this rule in relation to [<sup>F351</sup>family court] proceedings.

(5) If the government of a country allows a person appointed by the High Court to examine a person in that country, the High Court may make an order appointing a special examiner for that purpose.

(6) A person may be examined under this rule on oath or affirmation or in accordance with any procedure permitted in the country in which the examination is to take place.

(7) If the High Court makes an order for the issue of a letter of request, the party who sought the order must file—

(a) the following documents and, except where paragraph (8) applies, a translation of them—

(i) a draft letter of request;

(ii) a statement of the issues relevant to the proceedings; and

(iii) a list of questions or the subject matter of questions to be put to the person to be examined; and

(b) an undertaking to be responsible for the Secretary of State's expenses.

(8) There is no need to file a translation if—

(a) English is one of the official languages of the country where the examination is to take place; or

(b) a practice direction has specified that country as a country where no translation is necessary.

(Rules 35.3 and 35.4 contain rules in relation to evidence arising out of mediation of cross-border disputes. Rule 35.4(1)(f) relates specifically to this rule.)

#### Textual Amendments

**F351** Words in rule 24.12(4) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **70** (with rule 137); S.I. 2014/954, **art. 2**

#### Fees and expenses of examiner of the court

**24.13.**—(1) An examiner of the court may charge a fee for the examination.

(2) The examiner need not send the deposition to the court unless the fee is paid.

(3) The examiner's fees and expenses must be paid by the party who obtained the order for examination.

(4) If the fees and expenses due to an examiner are not paid within a reasonable time, the examiner may report that fact to the court.

(5) The court may order the party who obtained the order for examination to deposit in the court office a specified sum in respect of the examiner's fees and, where it does so, the examiner will not be asked to act until the sum has been deposited.

(6) An order under this rule does not affect any decision as to the party who is ultimately to bear the costs of the examination.

#### Examiners of the court

**24.14.**—(1) The Lord Chancellor will appoint persons to be examiners of the court.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

(2) The persons appointed must be barristers or solicitor-advocates who have been practising for a period of not less than 3 years.

(3) The Lord Chancellor may revoke an appointment at any time.

## CHAPTER 2

### TAKING OF EVIDENCE – MEMBER STATES OF THE EUROPEAN UNION

#### Interpretation

**24.15.** In this Chapter—

“designated court” has the meaning given in Practice Direction 24A;

“Regulation State” has the same meaning as ‘Member State’ in the Taking of Evidence Regulation, that is all Member States except Denmark;

“the Taking of Evidence Regulation” means Council Regulation (EC) No. 1206/2001 of 28 May 2001 on co-operation between the courts of the Member States in the taking of evidence in civil or commercial matters.

#### Where a person to be examined is in another Regulation State

**24.16.**—(1) This rule applies where a party wishes to take a deposition from a person who is—

- (a) outside the jurisdiction; and
- (b) in a Regulation State.

(2) The court may order the issue of a request to a designated court (‘the requested court’) in the Regulation State in which the proposed deponent is.

(3) If the court makes an order for the issue of a request, the party who sought the order must file—

- (a) a draft Form A as set out in the annex to the Taking of Evidence Regulation (request for the taking of evidence);
- (b) except where paragraph (4) applies, a translation of the form;
- (c) an undertaking to be responsible for costs sought by the requested court in relation to—
  - (i) fees paid to experts and interpreters; and
  - (ii) where requested by that party, the use of special procedures or communications technology; and
- (d) an undertaking to be responsible for the court's expenses.

(4) There is no need to file a translation if—

- (a) English is one of the official languages of the Regulation State where the examination is to take place; or
- (b) the Regulation State has indicated, in accordance with the Taking of Evidence Regulation, that English is a language which it will accept.

(5) Where article 17 of the Taking of Evidence Regulation (direct taking of evidence by the requested court) allows evidence to be taken directly in another Regulation State, the court may make an order for the submission of a request in accordance with that article.

(6) If the court makes an order for the submission of a request under paragraph (5), the party who sought the order must file—

- (a) a draft Form I as set out in the annex to the Taking of Evidence Regulation (request for direct taking of evidence);
- (b) except where paragraph (4) applies, a translation of the form; and



- (c) an undertaking to be responsible for the court's expenses.

## [<sup>F352</sup>PART 25

### EXPERTS AND ASSESSORS

#### Textual Amendments

**F352** Pt. 25 substituted (31.1.2013) by [The Family Procedure \(Amendment\) \(No.5\) Rules 2012 \(S.I. 2012/3061\)](#), rule 1, [Sch.](#)

#### Duty to restrict expert evidence

<sup>F353</sup>**25.1.** . . . . .

#### Textual Amendments

**F353** Rule 25.1 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, [44](#)

#### Interpretation

**25.2.**—(1) In this Part—

<sup>F354</sup>  
...

“children proceedings” means—

- (a) proceedings referred to in rules 12.1 and 14.1 and any other proceedings which relate wholly or mainly to the maintenance or upbringing of a minor;
- (b) applications for permission to start proceedings mentioned in paragraph (a); and
- (c) applications made in the course of proceedings mentioned in paragraph (a);

“expert” means a person who provides expert evidence for use in proceedings;

[<sup>F355</sup>(Section 13(8) of the 2014 Act provides for what is not included in reference to providing expert evidence or putting expert evidence before the court in children proceedings)]

<sup>F356</sup>  
...

“single joint expert” means a person who provides expert evidence for use in proceedings on behalf of two or more of the parties (including the applicant) to the proceedings.

[<sup>F357</sup>(2) The meaning of “children proceedings” in paragraph (1) is the prescribed meaning for the purposes of section 13(9) of the 2014 Act.]

(Regulation 3 of the Restriction on the Preparation of Adoption Reports Regulations 2005 (S.I. 2005/1711) sets out which persons are within a prescribed description for the purposes of section 94(1) of the 2002 Act.)

#### Textual Amendments

**F354** Words in rule 25.2 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, [45\(a\)](#)

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

- F355** Words in rule 25.2 inserted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **45(b)**
- F356** Words in rule 25.2 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **45(c)**
- F357** Rule 25.2(2) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **45(d)**

### Experts-overriding duty to the court

**25.3.**—(1) It is the duty of experts to help the court on matters within their expertise.

(2) This duty overrides any obligation to the person from whom experts have received instructions or by whom they are paid.

(Particular duties of an expert are set out in Practice Direction 25B (The Duties of an Expert, the Expert's Report and Arrangements for an Expert to Attend Court.)

### [<sup>F358</sup>Control of expert evidence in proceedings other than children proceedings

**25.4.**—(1) This rule applies to proceedings other than children proceedings.

(2) A person may not without the permission of the court put expert evidence (in any form) before the court.

(3) The court may give permission as mentioned in paragraph (2) only if the court is of the opinion that the expert evidence is necessary to assist the court to resolve the proceedings.

(Provision relating to the control of expert evidence in children proceedings is contained in section 13 of the 2014 Act.)]

#### Textual Amendments

- F358** Rule 25.4 substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **46**

### Further provisions about the court's power to restrict expert evidence

**25.5.**—[<sup>F359</sup>(1) When deciding whether to give permission as mentioned in section 13(1), (3) or (5) of the 2014 Act or to give a direction under 38(6) of the 1989 Act in children proceedings, the court is to have regard in particular to any failure to comply with rule 25.6 or any direction of the court about expert evidence.]

[<sup>F360</sup>(1A) The matter referred to in paragraph (1) is a prescribed matter for the purposes of section 13(7)(h) of the 2014 Act and section 38(7B) of the 1989 Act.]

(2) When deciding whether to give permission as mentioned in rule 25.4(1) in proceedings other than children proceedings, the court is to have regard in particular to—

- (a) the issues to which the expert evidence would relate;
- (b) the questions which the court would require the expert to answer;
- (c) the impact which giving permission would be likely to have on the timetable, duration and conduct of the proceedings;
- (d) any failure to comply with rule 25.6 or any direction of the court about expert evidence; and
- (e) the cost of the expert evidence.

#### Textual Amendments

- F359** Rule 25.5(1) substituted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, [47\(a\)](#)
- F360** Rule 25.5(1A) inserted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, [47\(b\)](#)

#### When to apply for the court's permission

<sup>F361</sup>**25.6.** Unless the court directs otherwise, parties must apply for the court's permission as mentioned in section 13(1), (3) or (5) of the 2014 Act or rule 25.4(2) as soon as possible and—

- (a) in Part 4 proceedings referred to in rule 12.2 and in so far as practicable other public law proceedings referred to in that rule, no later than a Case Management Hearing;
- (b) in private law proceedings referred to in rule 12.2, no later than the First Hearing Dispute Resolution Appointment;
- (c) in adoption proceedings and placement proceedings, no later than the first directions hearing;
- (d) in proceedings for a financial remedy, no later than the first appointment; and
- (e) in a defended case referred to in rule 7.1(3), no later than any Case Management Hearing directed by the court under rule 7.20.]

#### Textual Amendments

- F361** Rule 25.6 substituted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, [48](#)

#### What an application notice requesting the court's permission must include

**25.7.**—(1) Part 18 applies to an application for the court's permission as mentioned in <sup>F362</sup>section 13(1), (3) or (5) of the 2014 Act or] rule 25.4 <sup>F362</sup>(2)].

- (2) In any proceedings—
  - (a) the application notice requesting the court's permission as mentioned in <sup>F363</sup>section 13(1), (3) or (5) of the 2014 Act or] rule 25.4 <sup>F363</sup>(2)] must state—
    - (i) the field in which the expert evidence is required;
    - (ii) where practicable, the name of the proposed expert;
    - (iii) the issues to which the expert evidence is to relate;
    - (iv) whether the expert evidence could be obtained from a single joint expert;
    - (v) the other matters set out in Practice Direction 25C or 25D, as the case may be; and
  - (b) a draft of the order sought is to be attached to the application notice requesting the court's permission and that draft order must set out the matters specified in Practice Direction 25C or 25D, as the case may be.
- (3) In children proceedings, an application notice requesting the court's permission as mentioned in <sup>F364</sup>section 13(1), (3) or (5) of the 2014 Act] must, in addition to the matters specified in paragraph (2)(a), state the questions which the expert is to be required to answer.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

#### Textual Amendments

- F362** Words in rule 25.7(1) inserted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **49(a)**
- F363** Words in rule 25.7(2)(a) inserted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **49(b)**
- F364** Words in rule 25.7(3) substituted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **49(c)**

#### Where permission is granted

**25.8.**—(1) In any proceedings, where the court grants permission as mentioned in [<sup>F365</sup>section 13(1), (3) or (5) of the 2014 Act or] rule 25.4 [<sup>F365</sup>(2)]—

- (a) it will grant permission only in relation to the expert named or the field identified in the application notice requesting the court’s permission; and
- (b) the court will give directions specifying the date by which the expert is to provide a written report.

(2) In children proceedings, in addition to the directions in paragraph (1)(b), the court will give directions—

- (a) approving the questions which the expert is required to answer;
- (b) specifying the date by which the expert is to receive the letter of instruction.

#### Textual Amendments

- F365** Words in rule 25.8(1) inserted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **50**

#### General requirement for expert evidence to be given in a written report

**25.9.**—(1) Expert evidence is to be given in a written report unless the court directs otherwise.

(2) The court will not direct an expert to attend a hearing unless it is necessary to do so in the interests of justice.

#### Written questions to experts

**25.10.**—(1) A party may put written questions about an expert’s report to—

- (a) an expert instructed by another party; or
- (b) a single joint expert appointed under rule 25.11.

(2) Unless the court directs otherwise or a practice direction provides otherwise, written questions under paragraph (1)—

- (a) must be proportionate;
- (b) may be put once only;
- (c) must be put within 10 days beginning with the date on which the expert’s report was served;
- (d) must be for the purpose only of clarification of the report; and
- (e) must be copied and sent to the other parties at the same time as they are sent to the expert.

(3) An expert’s answers to questions put in accordance with paragraph (1)—

- (a) must be given within the timetable specified by the court; and
  - (b) are treated as part of the expert's report.
- (4) Where—
- (a) a party has put a written question to an expert instructed by another party; and
  - (b) the expert does not answer that question,

the court may make one or both of the following orders in relation to the party who instructed the expert—

- (i) that the party may not rely on the evidence of that expert; or
- (ii) that the party may not recover the fees and expenses of that expert from any other party.

### **Court's power to direct that evidence is to be given by a single joint expert**

**25.11.**—(1) Where two or more parties wish to put expert evidence before the court on a particular issue, the court may direct that the evidence on that issue is to be given by a single joint expert.

(2) Where the parties who wish to put expert evidence before the court (“the relevant parties”) cannot agree who should be the single joint expert, the court may—

- (a) select the expert from a list prepared or identified by the relevant parties; or
- (b) direct that the expert be selected in such other manner as the court may direct.

### **Instructions to a single joint expert**

**25.12.**—(1) Where the court gives a direction under rule 25.11(1) for a single joint expert to be used, the instructions are to be contained in a jointly agreed letter unless the court directs otherwise.

(2) Where the instructions are to be contained in a jointly agreed letter, in default of agreement the instructions may be determined by the court on the written request of any relevant party copied to the other relevant parties.

(3) Where the court permits the relevant parties to give separate instructions to a single joint expert, each instructing party must, when giving instructions to the expert, at the same time send a copy of the instructions to the other relevant parties.

(4) The court may give directions about—

- (a) the payment of the expert's fees and expenses; and
- (b) any inspection, examination or assessments which the expert wishes to carry out.

(5) The court may, before an expert is instructed, limit the amount that can be paid by way of fees and expenses to the expert.

(6) Unless the court directs otherwise, the relevant parties are jointly and severally liable for the payment of the expert's fees and expenses.

### **Power of court to direct a party to provide information**

**25.13.**—(1) Subject to paragraph (2), where a party has access to information which is not reasonably available to another party, the court may direct the party who has access to the information to—

- (a) prepare and file a document recording the information; and
- (b) serve a copy of that document on the other party.

(2) In proceedings under Part 14 (procedure for applications in adoption, placement and related proceedings), a court officer will send a copy of the document recording the information to the other party.

### **Contents of report**

**25.14.**—(1) An expert's report must comply with the requirements set out in Practice Direction 25B.

(2) At the end of an expert's report there must be a statement that the expert understands and has complied with the expert's duty to the court.

(3) The instructions to the expert are not privileged against disclosure.  
(Rule 21.1 explains what is meant by disclosure.)

### **Use by one party of expert's report disclosed by another**

**25.15.** Where a party has disclosed an expert's report, any party may use that expert's report as evidence at any hearing where an issue to which the report relates is being considered.

### **Discussions between experts**

**25.16.**—(1) The court may, at any stage, direct a discussion between experts for the purpose of requiring the experts to—

- (a) identify and discuss the expert issues in the proceedings; and
- (b) where possible, reach an agreed opinion on those issues.

(2) The court may specify the issues which the experts must discuss.

(3) The court may direct that following a discussion between the experts they must prepare a statement for the court setting out those issues on which—

- (a) they agree; and
- (b) they disagree, with a summary of their reasons for disagreeing.

### **Expert's right to ask court for directions**

**25.17.**—(1) Experts may file written requests for directions for the purpose of assisting them in carrying out their functions.

(2) Experts must, unless the court directs otherwise, provide copies of the proposed requests for directions under paragraph (1)—

- (a) to the party instructing them, at least 7 days before they file the requests; and
- (b) to all other parties, at least 4 days before they file them.

(3) The court, when it gives directions, may also direct that a party be served with a copy of the directions.

### **Copies of orders and other documents**

**25.18.** Unless the court directs otherwise, a copy of any order or other document affecting an expert filed with the court after the expert has been instructed, must be served on the expert by the party who instructed the expert or, in the case of a single joint expert, the party who was responsible for instructing the expert, within 2 days of that party receiving the order or other document.

### **Action after final hearing**

**25.19.**—(1) Within 10 business days after the final hearing, the party who instructed the expert or, in the case of a single joint expert, the party who was responsible for instructing the expert, must inform the expert in writing about the court's determination and the use made by the court of the expert's evidence.

(2) Unless the court directs otherwise, the party who instructed the expert or, in the case of the single joint expert, the party who was responsible for instructing the expert, must send to the expert a copy of the court’s final order <sup>F366</sup>, any transcript or written record of the court’s decision, and its reasons for reaching its decision, within 10 business days from the date when the party received the order and any such transcript or record.]<sup>F367</sup> ...

<sup>F368</sup>(a) .....

<sup>F369</sup>(b) .....

within 10 business days from the date when that party received the order and transcript or reasons.

**Textual Amendments**

**F366** Words in rule 25.19(2) inserted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **51(a)**

**F367** Word in rule 25.19(2) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **51(b)**

**F368** Rule 25.19(2)(a) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **51(b)**

**F369** Rule 25.19(2)(b) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), rules 1, **51(b)**

**Assessors**

**25.20.**—(1) This rule applies where the court appoints one or more persons under section 70 of the Senior Courts Act 1981 <sup>F370</sup> ... as an assessor.

(2) An assessor will assist the court in dealing with a matter in which the assessor has skill and experience.

(3) The assessor will take such part in the proceedings as the court may direct and in particular the court may direct an assessor to—

(a) prepare a report for the court on any matter at issue in the proceedings; and

(b) attend the whole or any part of the hearing to advise the court on any such matter.

(4) If the assessor prepares a report for the court before the hearing has begun—

(a) the court will send a copy to each of the parties; and

(b) the parties may use it at the hearing.

(5) Unless the court directs otherwise, an assessor will be paid at the daily rate payable for the time being to a fee-paid deputy district judge of the principal registry and an assessor’s fees will form part of the costs of the proceedings.

(6) The court may order any party to deposit in the court office a specified sum in respect of an assessor’s fees and, where it does so, the assessor will not be asked to act until the sum has been deposited.

(7) Paragraphs (5) and (6) do not apply where the remuneration of the assessor is to be paid out of money provided by Parliament.]

**Textual Amendments**

**F370** Words in rule 25.20(1) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **18** (with rule 45)

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## PART 26

### CHANGE OF SOLICITOR

#### Solicitor acting for a party

**26.1.** Where the address for service of a party is the business address of that party's solicitor, the solicitor will be considered to be acting for that party until the provisions of this Part have been complied with. (Part 6 contains provisions about the address for service.)

#### Change of solicitor – duty to give notice

**26.2.**—(1) This rule applies where—

- (a) a party for whom a solicitor is acting wants to change solicitor;
- (b) a party, after having conducted the application in person, appoints a solicitor to act for that party (except where the solicitor is appointed only to act as an advocate for a hearing); or
- (c) a party, after having conducted the application by a solicitor, intends to act in person.

(2) Where this rule applies, the party or the party's solicitor (where one is acting) must—

- (a) serve notice of the change on—
  - (i) every other party; and
  - (ii) where paragraph (1)(a) or (c) applies, the former solicitor; and
- (b) file notice of the change.

(3) Except where a serial number has been assigned under rule 14.2 or the name or address of a party is not being revealed in accordance with rule 29.1, the notice must state the party's new address for service.

(4) The notice filed at court must state that notice has been served as required by paragraph (2) (a) or, where rule 2.4 applies, in accordance with the court's directions given under that rule.

(5) Subject to paragraph (6), where a party has changed solicitor or intends to act in person, the former solicitor will be considered to be the party's solicitor unless and until—

- (a) notice is filed and served in accordance with paragraph (2)(a) or, where rule 2.4 applies, in accordance with the court's directions given under that rule; or
- (b) the court makes an order under rule 26.3 and the order is served as required by paragraph (3) of that rule.

(6) Where the certificate of a [<sup>F371</sup>legally aided person] (in this rule “C”) [<sup>F372</sup>is revoked or withdrawn]—

- (a) the solicitor who acted for C will cease to be the solicitor acting in the case as soon as the retainer is determined under [<sup>F373</sup>regulation 24 or 41 of the Civil Legal Aid (Procedure) Regulations 2012]; and
- (b) if C wishes to continue—
  - (i) where C appoints a solicitor to act on C's behalf, paragraph (2) will apply as if C had previously conducted the application in person; and
  - (ii) where C wants to act in person, C must give an address for service, in accordance with rule 6.26, unless the court directs otherwise.

(7) In this rule—

<sup>F374</sup>  
...



“certificate” means a certificate issued [<sup>F375</sup>under the Civil Legal Aid (Procedure) Regulations 2012]; and

[<sup>F376</sup>“legally aided person” means a person to whom civil legal services (within the meaning of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012) have been made available under arrangements made for the purposes of that Part of that Act.]

F374 ...

#### Textual Amendments

- F371** Words in rule 26.2(6) substituted (1.4.2013) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Consequential, Transitional and Saving Provisions) Regulations 2013 (S.I. 2013/534), reg. 1, **Sch. para. 22(c)(i)** (with reg. 14(2))
- F372** Words in rule 26.2(6) substituted (1.4.2013) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Consequential, Transitional and Saving Provisions) Regulations 2013 (S.I. 2013/534), reg. 1, **Sch. para. 22(c)(ii)** (with reg. 14(2))
- F373** Words in rule 26.2(6)(a) substituted (1.4.2013) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Consequential, Transitional and Saving Provisions) Regulations 2013 (S.I. 2013/534), reg. 1, **Sch. para. 22(c)(iii)** (with reg. 14(2))
- F374** Words in rule 26.2(7) omitted (1.4.2013) by virtue of The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Consequential, Transitional and Saving Provisions) Regulations 2013 (S.I. 2013/534), reg. 1, **Sch. para. 22(c)(v)** (with reg. 14(2))
- F375** Words in rule 26.2(7) substituted (1.4.2013) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Consequential, Transitional and Saving Provisions) Regulations 2013 (S.I. 2013/534), reg. 1, **Sch. para. 22(c)(iv)** (with reg. 14(2))
- F376** Words in rule 26.2(7) inserted (1.4.2013) by virtue of The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Consequential, Transitional and Saving Provisions) Regulations 2013 (S.I. 2013/534), reg. 1, **Sch. para. 22(c)(v)** (with reg. 14(2))

#### Order that a solicitor has ceased to act

**26.3.—**(1) A solicitor may apply for an order declaring that that solicitor has ceased to be the solicitor acting for—

- (a) a party; or
- (b) a children's guardian.

(2) Where an application is made under this rule—

- (a) notice of the application must be given to the party, or children's guardian, for whom the solicitor is acting, unless the court directs otherwise; and
- (b) the application must be supported by evidence.

(3) Where the court makes an order declaring that a solicitor has ceased to act, a court officer will serve a copy of the order on—

- (a) every party to the proceedings; and
- (b) where applicable, a children's guardian.

#### Removal of solicitor who has ceased to act on application of another party

**26.4.—**(1) Where—

- (a) a solicitor who has acted for a party—
  - (i) has died;

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*Status: Point in time view as at 11/01/2015.*

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- (ii) has become bankrupt;
  - (iii) has ceased to practise; or
  - (iv) cannot be found; and
- (b) the party has not given notice of a change of solicitor or notice of intention to act in person as required by rule 26.2(2),

any other party may apply for an order declaring that the solicitor has ceased to be the solicitor acting for the other party in the case.

(2) Where an application is made under this rule, notice of the application must be given to the party to whose solicitor the application relates unless the court directs otherwise.

(3) Where the court makes an order made under this rule, a court officer will serve a copy of the order on every other party to the proceedings.

## PART 27

### HEARINGS AND DIRECTIONS APPOINTMENTS

#### Application of this Part

**27.1.** This Part is subject to any enactment, any provision in these rules or a practice direction. (Rule 27.4(7) makes additional provision in relation to requirements to stay proceedings where the respondent does not appear and a relevant European regulation or international convention applies)

#### Reasons for a decision <sup>[F377]</sup>: proceedings before a lay justice or justices

- 27.2.**—(1) This rule applies to proceedings <sup>[F378]</sup>in the family court before a lay justice or justices].
- (2) After a hearing, the court will make its decision as soon as is practicable.
  - (3) The court must give written reasons for its decision.
  - (4) Paragraphs (5) and (6) apply where the functions of the court are being performed by—
    - (a) two or three lay justices; or
    - (b) by a single lay justice in accordance with these rules and Practice Direction 2A.
  - (5) The justices' clerk must, before the court makes an order or refuses an application or request, make notes of—
    - (a) the names of the <sup>[F379]</sup>lay justice or justices constituting the court by which the decision is made; and
    - (b) in consultation with the <sup>[F380]</sup>lay justice or justices, the reasons for the court's decision.
  - (6) The justices' clerk must make a written record of the reasons for the court's decision.
  - (7) When making an order or refusing an application, the court, or one of the <sup>[F381]</sup>lay justices constituting the court by which the decision is made, will announce its decision and—
    - (a) the reasons for that decision; or
    - (b) a short explanation of that decision.
  - (8) Subject to any other rule or practice direction, the court officer will supply a copy of the order and the reasons for the court's decision to the persons referred to in paragraph (9)—
    - (a) by close of business on the day when the court announces its decision; or

- (b) where that time is not practicable and the proceedings are on notice, no later than 72 hours from the time when the court announced its decision.
- (9) The persons referred to in paragraph (8) are—
  - (a) the parties (unless the court directs otherwise);
  - (b) any person who has actual care of a child who is the subject of proceedings, or who had such care immediately prior to the making of the order;
  - (c) in the case of an emergency protection order and a recovery order, the local authority in whose area the child lives or is found;
  - (d) in proceedings to which Part 14 applies—
    - (i) an adoption agency or local authority which has prepared a report on the suitability of the applicant to adopt a child;
    - (ii) a local authority which has prepared a report on the placement of the child for adoption;
  - (e) any other person who has requested a copy if the court is satisfied that it is required in connection with an appeal or possible appeal.

<sup>F382</sup>(10) .....

**Textual Amendments**

- F377** Words in rule 27.2 heading substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **19(a)** (with rule 45)
- F378** Words in rule 27.2(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **19(b)** (with rule 45)
- F379** Word in rule 27.2(5)(a) inserted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **19(c)(i)** (with rule 45)
- F380** Word in rule 27.2(5)(b) inserted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **19(c)(ii)** (with rule 45)
- F381** Word in rule 27.2(7) inserted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **19(d)** (with rule 45)
- F382** Rule 27.2(10) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **19(e)** (with rule 45)

**Attendance at hearing or directions appointment**

**27.3.** Unless the court directs otherwise, a party shall attend a hearing or directions appointment of which that party has been given notice.

**Proceedings in the absence of a party**

**27.4.—(1)** Proceedings or any part of them shall take place in the absence of any party, including a party who is a child, if—

- (a) the court considers it in the interests of the party, having regard to the matters to be discussed or the evidence likely to be given; and
- (b) the party is represented by a children's guardian or solicitor,

and when considering the interests of a child under sub-paragraph (a) the court shall give the children's guardian, the solicitor for the child and, if of sufficient understanding and the court thinks it appropriate, the child, an opportunity to make representations.

Status: Point in time view as at 11/01/2015.

Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)

(2) Subject to paragraph (3), where at the time and place appointed for a hearing or directions appointment the applicant appears but one or more of the respondents do not, the court may proceed with the hearing or appointment.

- (3) The court shall not begin to hear an application in the absence of a respondent unless—
  - (a) it is proved to the satisfaction of the court that the respondent received reasonable notice of the date of the hearing; or
  - (b) the court is satisfied that the circumstances of the case justify proceeding with the hearing.

(4) Where, at the time and place appointed for a hearing or directions appointment, one or more of the respondents appear but the applicant does not, the court may refuse the application or, if sufficient evidence has previously been received, proceed in the absence of the applicant.

(5) Where, at the time and place appointed for a hearing or directions appointment, neither the applicant nor any respondent appears, the court may refuse the application.

(6) Paragraphs (2) to (5) do not apply to a hearing to which paragraphs (5) to (8) of rule 12.14 do not apply by virtue of paragraph (9) of that rule.

(7) Nothing in this rule affects any provision of a European regulation or international convention by which the United Kingdom is bound which requires a court to stay proceedings where a respondent in another State has not been adequately served with proceedings in accordance with the requirements of that regulation or convention.

**Application to set aside judgment or order following failure to attend**

**27.5.**—(1) Where a party does not attend a hearing or directions appointment and the court gives judgment or makes an order against him, the party who failed to attend may apply for the judgment or order to be set aside<sup>(GL)</sup>.

- (2) An application under paragraph (1) must be supported by evidence.
- (3) Where an application is made under paragraph (1), the court may grant the application only if the applicant—
  - (a) acted promptly on finding out that the court had exercised its power to enter judgment or make an order against the applicant;
  - (b) had a good reason for not attending the hearing or directions appointment; and
  - (c) has a reasonable prospect of success at the hearing or directions appointment.

<sup>F383</sup>(4) .....

**Textual Amendments**

**F383** Rule 27.5(4) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 71](#) (with [rule 137](#)); [S.I. 2014/954](#), [art. 2](#)

**Court bundles and place of filing of documents and bundles**

**27.6.**—(1) The provisions of Practice Direction 27A must be followed for the preparation of court bundles and for other related matters in respect of hearings and directions appointments.

<sup>F384</sup>(2) .....

<sup>F385</sup>(3) .....

(<sup>F386</sup> ...)

### Textual Amendments

- F384** Rule 27.6(2) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013](#) (S.I. 2013/3204), [rules 1, 71](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)
- F385** Rule 27.6(3) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013](#) (S.I. 2013/3204), [rules 1, 71](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)
- F386** Words in rule 27.6 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013](#) (S.I. 2013/3204), [rules 1, 71](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

### Representation of companies or other corporations

**27.7.** A company or other corporation may be represented at a hearing or directions appointment by an employee if—

- (a) the employee has been authorised by the company or corporation to appear at the hearing or directions appointment on its behalf; and
- (b) the court gives permission.

### Impounded documents

**27.8.—**(1) Documents impounded by order of the court must not be released from the custody of the court except in compliance with—

- (a) a court order; or
- (b) a written request made by a Law Officer or the Director of Public Prosecutions.

(2) A document released from the custody of the court under paragraph (1)(b) must be released into the custody of the person who requested it.

(3) Documents impounded by order of the court, while in the custody of the court, may not be inspected except by a person authorised to do so by a court order.

### Official shorthand note etc of proceedings

**27.9.—**(1) Unless the judge directs otherwise, an official shorthand note will be taken at the hearing in open court of proceedings pending in the High Court.

(2) An official shorthand note may be taken of any other proceedings before a judge if directions for the taking of such a note are given by the Lord Chancellor.

(3) The shorthand writer will sign the note and certify it to be a correct shorthand note of the proceedings and will retain the note unless directed by the district judge to forward it to the court.

(4) On being so directed, the shorthand writer will furnish the court with a transcript of the whole or such part of the shorthand note as may be directed.

(5) Any party, any person who has intervened in the proceedings, the Queen's Proctor or, where a declaration of parentage has been made under section 55A of the 1986 Act, the Registrar General is entitled to require from the shorthand writer a transcript of the shorthand note, and the shorthand writer will, at the request of any person so entitled, supply that person with a transcript of the whole or any part of the note on payment of the shorthand writer's charges authorised by any scheme in force providing for the taking of official shorthand notes of legal proceedings.

(6) Save as permitted by this rule, the shorthand writer will not, without the permission of the court, furnish the shorthand note or a transcript of the whole or any part of it to anyone.

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*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

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(7) In these rules, references to a shorthand note include references to a record of the proceedings made by mechanical means and in relation to such a record references to the shorthand writer include the person responsible for transcribing the record.

### **Hearings in private**

**27.10.**—(1) Proceedings to which these rules apply will be held in private, except—

- (a) where these rules or any other enactment provide otherwise;
- (b) subject to any enactment, where the court directs otherwise.

(2) For the purposes of these rules, a reference to proceedings held “in private” means proceedings at which the general public have no right to be present.

### **Attendance at private hearings**

**27.11.**—(1) This rule applies when proceedings are held in private, except in relation to —

- (a) hearings conducted for the purpose of judicially assisted conciliation or negotiation;
- (b) proceedings to which the following provisions apply—
  - (i) Part 13 (proceedings under section 54 of the Human Fertilisation and Embryology Act 2008);
  - (ii) Part 14 (procedure for applications in adoption, placement and related proceedings); and
  - (iii) any proceedings identified in a practice direction as being excepted from this rule.

(2) When this rule applies, no person shall be present during any hearing other than—

- (a) an officer of the court;
- (b) a party to the proceedings;
- (c) a litigation friend for any party, or legal representative instructed to act on that party's behalf;
- (d) an officer of the service or Welsh family proceedings officer;
- (e) a witness;
- (f) duly accredited representatives of news gathering and reporting organisations; and
- (g) any other person whom the court permits to be present.

(3) At any stage of the proceedings the court may direct that persons within paragraph (2)(f) shall not attend the proceedings or any part of them, where satisfied that—

- (a) this is necessary—
  - (i) in the interests of any child concerned in, or connected with, the proceedings;
  - (ii) for the safety or protection of a party, a witness in the proceedings, or a person connected with such a party or witness; or
  - (iii) for the orderly conduct of the proceedings; or
- (b) justice will otherwise be impeded or prejudiced.

(4) The court may exercise the power in paragraph (3) of its own initiative or pursuant to representations made by any of the persons listed in paragraph (5), and in either case having given to any person within paragraph (2)(f) who is in attendance an opportunity to make representations.

(5) At any stage of the proceedings, the following persons may make representations to the court regarding restricting the attendance of persons within paragraph (2)(f) in accordance with paragraph (3)—

- (a) a party to the proceedings;
  - (b) any witness in the proceedings;
  - (c) where appointed, any children's guardian;
  - (d) where appointed, an officer of the service or Welsh family proceedings officer, on behalf of the child the subject of the proceedings;
  - (e) the child, if of sufficient age and understanding.
- (6) This rule does not affect any power of the court to direct that witnesses shall be excluded until they are called for examination.
- (7) In this rule “duly accredited” refers to accreditation in accordance with any administrative scheme for the time being approved for the purposes of this rule by the Lord Chancellor.

## PART 28

### COSTS

#### Costs

**28.1.** The court may at any time make such order as to costs as it thinks just.

#### Application of other rules

**28.2.—**(1) Subject to rule 28.3 <sup>F387</sup> ..., [<sup>F388</sup>Parts 44 (except rules 44.2(2) and (3) and 44.10(2) and (3)), 46 and 47 and rule 45.8] of the CPR apply to costs in proceedings, with the following modifications—

[<sup>F389</sup>(a) in the definition of “authorised court officer” in rule 44.1(1), for the words in subparagraph (i) substitute “the family court”];

<sup>F390</sup>(b) .....

(c) in accordance with any provisions in Practice Direction 28A; and

(d) any other necessary modifications.

<sup>F391</sup>(2) .....

#### Textual Amendments

**F387** Words in rule 28.2(1) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **72(a)(i)** (with rule 137); S.I. 2014/954, **art. 2**

**F388** Words in rule 28.2(1) substituted (1.4.2013) by [The Family Procedure \(Amendment\) Rules 2013 \(S.I. 2013/530\)](#), rules 1, **3(a)(i)**

**F389** Rule 28.2(1)(a) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **72(a)(ii)** (with rule 137); S.I. 2014/954, **art. 2**

**F390** Rule 28.2(1)(b) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **72(a)(iii)** (with rule 137); S.I. 2014/954, **art. 2**

**F391** Rule 28.2(2) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **72(b)** (with rule 137); S.I. 2014/954, **art. 2**

#### Costs in financial remedy proceedings

**28.3.—**(1) This rule applies in relation to financial remedy proceedings.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

- (2) Rule <sup>F392</sup>44.2(1), (4) and (5) of the CPR do not apply to financial remedy proceedings.
- (3) <sup>F393</sup>Rules 44.2(6) to (8) and 44.12] of the CPR apply to an order made under this rule as they apply to an order made under rule 44.3 of the CPR.
- (4) In this rule –
- (a) “costs” has the same meaning as in rule <sup>F394</sup>44.1(1)(c)] of the CPR; and
  - (b) “financial remedy proceedings” means proceedings for—
    - (i) a financial order except an order for maintenance pending suit, an order for maintenance pending outcome of proceedings, an interim periodical payments order <sup>F395</sup>, an order for payment in respect of legal services] or any other form of interim order for the purposes of rule 9.7(1)(a), (b), (c) and (e);
    - (ii) an order under Part 3 of the 1984 Act;
    - (iii) an order under Schedule 7 to the 2004 Act;
    - (iv) an order under section 10(2) of the 1973 Act <sup>M129</sup>;
    - (v) an order under section 48(2) of the 2004 Act.
- (5) Subject to paragraph (6), the general rule in financial remedy proceedings is that the court will not make an order requiring one party to pay the costs of another party.
- (6) The court may make an order requiring one party to pay the costs of another party at any stage of the proceedings where it considers it appropriate to do so because of the conduct of a party in relation to the proceedings (whether before or during them).
- (7) In deciding what order (if any) to make under paragraph (6), the court must have regard to—
- (a) any failure by a party to comply with these rules, any order of the court or any practice direction which the court considers relevant;
  - (b) any open offer to settle made by a party;
  - (c) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
  - (d) the manner in which a party has pursued or responded to the application or a particular allegation or issue;
  - (e) any other aspect of a party's conduct in relation to proceedings which the court considers relevant; and
  - (f) the financial effect on the parties of any costs order.
- (8) No offer to settle which is not an open offer to settle is admissible at any stage of the proceedings, except as provided by rule 9.17.

#### **Textual Amendments**

- F392** Word in rule 28.3(2) substituted (1.4.2013) by [The Family Procedure \(Amendment\) Rules 2013 \(S.I. 2013/530\)](#), rules 1, **4(a)**
- F393** Words in rule 28.3(3) substituted (1.4.2013) by [The Family Procedure \(Amendment\) Rules 2013 \(S.I. 2013/530\)](#), rules 1, **4(b)**
- F394** Word in rule 28.3(4)(a) substituted (1.4.2013) by [The Family Procedure \(Amendment\) Rules 2013 \(S.I. 2013/530\)](#), rules 1, **4(c)**
- F395** Words in rule 28.3(4)(b)(i) inserted (8.7.2013) by [The Family Procedure \(Amendment No. 2\) Rules 2013 \(S.I. 2013/1472\)](#), rules 1, **6**



**Marginal Citations**

**M129** Section 10(2) has been prospectively repealed by section 66(3) of and Schedule 10 to the Family Law Act 1996.

**Wasted costs orders in the magistrates' court: appeals**

<sup>F396</sup>**28.4.** . . . . .

**Textual Amendments**

**F396** Rule 28.4 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 73](#) (with [rule 137](#)); [S.I. 2014/954](#), [art. 2](#)

**PART 29**

**MISCELLANEOUS**

**Personal details**

**29.1.**—(1) Unless the court directs otherwise, a party is not required to reveal—

- (a) the party's home address or other contact details;
- (b) the address or other contact details of any child;
- (c) the name of a person with whom the child is living, if that person is not the applicant; or
- (d) in relation to an application under section 28(2) of the 2002 Act (application for permission to change the child's surname), the proposed new surname of the child.

(2) Where a party does not wish to reveal any of the particulars in paragraph (1), that party must give notice of those particulars to the court and the particulars will not be revealed to any person unless the court directs otherwise.

(3) Where a party changes home address during the course of proceedings, that party must give notice of the change to the court.

**Disclosure of information under the 1991 Act**

**29.2.** Where the [<sup>F397</sup>Secretary of State] requires a person mentioned in regulation 3(1), 4(2) or 6(2)(a) of the Child Support Information Regulations 2008 <sup>M130</sup> to furnish information or evidence for a purpose mentioned in regulation 4(1) of those Regulations, nothing in these rules will—

- (a) prevent that person from furnishing the information or evidence sought; or
- (b) require that person to seek permission of the court before doing so.

**Textual Amendments**

**F397** Words in [rule 29.2](#) substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), [art. 1\(2\)](#), [Sch. para. 125\(c\)](#)

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*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

### **Marginal Citations**

**M130 S.I. 2008/2551.**

### **Method of giving notice**

**29.3.**—(1) Unless directed otherwise, a notice which is required by these rules to be given to a person must be given—

- (a) in writing; and
- (b) in a manner in which service may be effected in accordance with Part 6.

(2) Rule 6.33 applies to a notice which is required by these rules to be given to a child as it applies to a document which is to be served on a child.

### **Withdrawal of applications in proceedings**

**29.4.**—(1) This rule applies to applications in proceedings—

- (a) under Part 7;
- (b) under Parts 10 to 14 or under any other Part where the application relates to the welfare or upbringing of a child or;
- (c) where either of the parties is a protected party.

(2) Where this rule applies, an application may only be withdrawn with the permission of the court.

(3) Subject to paragraph (4), a person seeking permission to withdraw an application must file a written request for permission setting out the reasons for the request.

(4) The request under paragraph (3) may be made orally to the court if the parties are present.

(5) A court officer will notify the other parties of a written request.

(6) The court may deal with a written request under paragraph (3) without a hearing if the other parties, and any other persons directed by the court, have had an opportunity to make written representations to the court about the request.

### **The Human Rights Act 1998**

**29.5.**—(1) In this rule—

“the 1998 Act” means the Human Rights Act 1998;

“Convention right” has the same meaning as in the 1998 Act; and

“declaration of incompatibility” means a declaration of incompatibility under section 4 of the 1998 Act<sup>M131</sup>.

(2) A party who seeks to rely on any provision of or right arising under the 1998 Act or seeks a remedy available under that Act must inform the court in that party's application or otherwise in writing specifying—

- (a) the Convention right which it is alleged has been infringed and details of the alleged infringement; and
- (b) the relief sought and whether this includes a declaration of incompatibility.

(3) The High Court may not make a declaration of incompatibility unless 21 days' notice, or such other period of notice as the court directs, has been given to the Crown.

(4) Where notice has been given to the Crown, a Minister, or other person permitted by the 1998 Act, will be joined as a party on giving notice to the court.

(5) Where a claim is made under section 7(1) of the 1998 Act (claim that public authority acted unlawfully) in respect of a judicial act—

- (a) that claim must be set out in the application form or the appeal notice; and
- (b) notice must be given to the Crown.

(6) Where paragraph (4) applies and the appropriate person (as defined in section 9(5) of the 1998 Act) has not applied within 21 days, or such other period as the court directs, beginning with the date on which the notice to be joined as a party was served, the court may join the appropriate person as a party.

(7) On any application concerning a committal order, if the court ordering the release of the person concludes that that person's Convention rights have been infringed by the making of the order to which the application or appeal relates, the judgment or order should so state, but if the court does not do so, that failure will not prevent another court from deciding the matter.

(8) Where by reason of a rule, practice direction or court order the Crown is permitted or required—

- (a) to make a witness statement;
- (b) to swear an affidavit<sup>(GL)</sup>;
- (c) to verify a document by a statement of truth; or
- (d) to discharge any other procedural obligation,

that function will be performed by an appropriate officer acting on behalf of the Crown, and the court may if necessary nominate an appropriate officer.

(Practice Direction 29A (Human Rights – Joining the Crown) makes provision for the notices mentioned in this rule.)

#### Marginal Citations

**M131** Section 4 was amended by section 40(4) of and paragraphs 66(1) and (2) of Schedule 9 to the Constitutional Reform Act 2005 and section 378(1) and paragraph 156 of Schedule 16 to the Armed Forces Act 2006 and section 67(1) of and paragraph 43 of Schedule 6 to the Mental Capacity Act 2005.

#### Documents in proceedings concerning gender recognition

**29.6.**—(1) This rule applies to all documents in proceedings brought under—

- (a) section 12(g) or (h) of, or paragraph 11(1)(e) of Schedule 1 to, the 1973 Act<sup>M132</sup>; or
- (b) the Gender Recognition Act 2004.

(2) Documents to which this rule applies must, while they are in the custody of the court, be kept in a place of special security.

#### Marginal Citations

**M132** Section 12(g) was amended by section 148 of and paragraph 34 of Schedule 4 to the Mental Health Act 1983 and section 4(4) of and paragraphs 1 and 2 of Schedule 2 to the Gender Recognition Act 2004.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

### **Stamping or sealing court documents**

**29.7.**—(1) A court officer must, when issuing the following documents, seal<sup>(GL)</sup>, or otherwise authenticate them with the stamp of the court—

- (a) the application form;
- (b) an order; and
- (c) any other document which a rule or practice direction requires the court officer to seal<sup>(GL)</sup> or stamp.

(2) The court officer may place the seal<sup>(GL)</sup> or the stamp on the document—

- (a) by hand; or
- (b) by printing a facsimile of the seal<sup>(GL)</sup> on the document whether electronically or otherwise.

(3) A document purporting to bear the court's seal<sup>(GL)</sup> or stamp will be admissible in evidence without further proof.

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

**29.8.**—(1) This rule applies where an application is made for an order which, in the opinion of the court, it would be prevented from making under section 8 or 9 of the 1991 Act and in this rule, “the matter” means the question of whether or not the court would be so prevented.

(2) The court will consider the matter without holding a hearing.

(3) Where the court officer receives the opinion of the court, as mentioned in paragraph (1), the court officer must send a notice to the applicant of that opinion.

(4) Paragraphs (5) to (11) apply where the court officer sends a notice under paragraph (3).

(5) Subject to paragraph (6), no requirement of these rules apply except the requirements—

- (a) of this rule;
- (b) as to service of the application by the court officer; and
- (c) as to any procedural step to be taken following the making of an application of the type in question.

(6) The court may direct that the requirements of these rules apply, or apply to such extent or with such modifications as are set out in the direction.

(7) If the applicant informs the court officer, within 14 days of the date of the notice, that the applicant wishes to persist with the application, the court will give appropriate directions for the matter to be heard and determined and may provide for the hearing to be without notice.

(8) Where directions are given in accordance with paragraph (7), the court officer must—

- (a) inform the applicant of the directions;
- (b) send a copy of the application to the other parties;
- (c) if the hearing is to be without notice, inform the other parties briefly—
  - (i) of the nature and effect of the notice given to the applicant under paragraph (3);
  - (ii) that the matter is being resolved without a hearing on notice; and
  - (iii) that they will be notified of the result; and
- (d) if the hearing is to be on notice, inform the other parties of—
  - (i) the circumstances which led to the directions being given; and
  - (ii) the directions.

(9) If the applicant does not inform the court officer as mentioned in paragraph (7), the application shall be treated as having been withdrawn.

(10) Where—

- (a) the matter is heard in accordance with directions given under paragraph (7); and
- (b) the court determines that it would be prevented, under section 8 or 9 of the 1991 Act, from making the order sought by the applicant,

the court will dismiss the application.

(11) Where the court dismisses the application—

- (a) the court must give its reasons in writing; and
- (b) the court officer must send a copy of the reasons to the parties.

### **Modification of rule 29.8 where the application is not freestanding**

**29.9.**—(1) Where the court officer sends a notice under rule 29.8(3) in relation to an application which is contained in another document (“the document”) which contains material extrinsic to the application—

- (a) subject to paragraph (2), the document will be treated as if it did not contain the application in respect of which the notice was served; and
- (b) the court officer, when sending copies of the documents to the respondents under any provision of these rules, must attach—
  - (i) a copy of the notice under rule 29.8(3); and
  - (ii) a notice informing the respondents of the effect of paragraph (1)(a).

(2) If the court determines that it is not prevented by section 8 or 9 of the 1991 Act from making the order sought by the application, the court—

- (a) must direct that the document shall be treated as if it contained the application; and
- (b) may give such directions as it considers appropriate for the subsequent conduct of the proceedings.

### **Standard requirements**

**29.10.**—(1) Every judgment or order must state the name and judicial title of the person who made it.

(2) Every judgment or order must—

- (a) bear the date on which it is given or made; and
- (b) be sealed<sup>(GL)</sup> by the court.

### **Drawing up and filing of judgments and orders**

**29.11.**—(1) Except as provided by a rule or a practice direction, every judgment or order will be drawn up by the court unless—

- (a) the court orders a party to draw it up;
- (b) a party, with the permission of the court, agrees to draw it up; or
- (c) the court dispenses with the need to draw it up.

(2) The court may direct that—

- (a) a judgment or an order drawn up by a party must be checked by the court before it is sealed<sup>(GL)</sup>; or

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

- (b) before a judgment or an order is drawn up by the court, the parties must file an agreed statement of its terms.
- (3) Where a judgment or an order is to be drawn up by a party—
  - (a) that party must file it no later than 7 days after the date on which the court ordered or gave permission for the order to be drawn up so that it can be sealed by the court; and
  - (b) if that party fails to file it within that period, any other party may draw it up and file it.

**[<sup>F398</sup> Access to and inspection of documents retained in court**

**29.12.**—(1) Except as provided by this rule or by any other rule or Practice Direction, no document filed or lodged in the court office shall be open to inspection by any person without the permission of the court, and no copy of any such document shall be taken by, or issued to, any person without such permission.

(2) A copy of an order made in open court will be issued to any person who requests it.

(3) Subject to rules 14.24 and 29.1(2) and to any direction given by the court, a party to any family proceedings, or the legal representative, children’s guardian or litigation friend for a party in any family proceedings, may have a search made for, and may inspect, and obtain a copy of, any document filed or lodged in the court office in those proceedings.

(4) Any person who intends to make an application in relation to a child under the 1980 Hague Convention in a Contracting State (as defined in rule 12.44) other than the United Kingdom shall, if the court is satisfied that that person intends to make such an application, be entitled to obtain a copy bearing the seal<sup>(GL)</sup> of the court of any order made in relation to the child under the 1989 Act or under the inherent jurisdiction, whether or not that person was a party to the proceedings in which the order was made.]

**Textual Amendments**

**F398** Rule 29.12 substituted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), rules 1, **25** (with rule 30)

**Service of judgments and orders**

**29.13.**—(1) The court officer must, unless the court directs otherwise, serve a copy of a judgment or an order made in family proceedings to every party affected by it.

(2) Where a judgment or an order has been drawn up by a party and is to be served by the court officer the party who drew it up must file a copy to be retained at court and sufficient copies for service on all the parties.

(3) A party in whose favour an order is made need not prove that a copy of the order has reached a party to whom it is required to be sent under this rule.

(4) This rule does not affect the operation of any rule or enactment which requires an order to be served in a particular way

**Power to require judgment or order to be served on a party as well as the party's solicitor**

**29.14.** Where the party on whom a judgment or order is served is acting by a solicitor, the court may order the judgment or order to be served on the party as well as on the party's solicitor.

### **When judgment or order takes effect**

**29.15.** A judgment or order takes effect from the day when it is given or made, or such later date as the court may specify.

### **Correction of errors in judgments and orders**

**29.16.**—(1) The court may at any time correct an accidental slip or omission in a judgment or order.

(2) A party may apply for a correction without notice.

### **[<sup>F399</sup>Transfer of proceedings**

**29.17.**—(1) Subject to paragraph (3), a court may transfer a case to another court, either of its own initiative or on the application of one of the parties if—

- (a) the parties consent to the transfer;
- (b) the court has held a hearing to determine whether a transfer should be ordered; or
- (c) paragraph (2) applies.

(2) A court may transfer a case without a hearing if—

- (a) the court has notified the parties in writing that it intends to order a transfer; and
- (b) no party has, within 14 days of the notification being sent, requested a hearing to determine whether a transfer should be ordered.

(3) A case may not be transferred from the family court to the High Court unless—

- (a) the decision to transfer was made by a judge sitting in the family court who is a person to whom paragraph (4) applies; or
- (b) one or more of the circumstances specified in Practice Direction 29C applies.

(4) This paragraph applies to a person who is—

- (a) the President of the Family Division;
- (b) an ordinary judge of the Court of Appeal (including the vice-president, if any, of either division of that court);
- (c) a puisne judge of the High Court.

#### **Textual Amendments**

**F399** Rules 29.17, 29.18 inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 74](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

### **Application for change of area**

**29.18.** The Part 18 procedure applies to an application to the family court for existing proceedings to be heard in a different Designated Family Judge area.

(Her Majesty's Courts and Tribunals Service publishes information to enable Designated Family Judge areas to be identified.)]

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

#### Textual Amendments

**F399** Rules 29.17, 29.18 inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 74](#) (with [rule 137](#)); [S.I. 2014/954](#), [art. 2](#)

#### [<sup>F400</sup> Allocation of proceedings to another level of judge

- 29.19.**—(1) Paragraphs (2) and (3) apply where there has been allocation without a hearing.
- (2) A party may request the court to reconsider allocation at a hearing.
- (3) Unless the court directs otherwise, a party may make a request referred to in paragraph (2)—
- (a) at any hearing where that party first has notice of allocation; or
  - (b) in writing no later than 2 days before the first hearing in the proceedings after the party receives notice of allocation.
- (4) When the party requests the court to reconsider allocation in accordance with paragraph (3) (b), the party must at the same time notify other parties of the request in writing.
- (5) The court may reconsider allocation of its own initiative.
- (6) Rule 4.3 does not apply to allocation without a hearing.
- (7) In this rule “allocation” means allocation of proceedings other than appeal proceedings to a level of judge.]

#### Textual Amendments

**F400** Rule 29.19 inserted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), [rules 1, 20](#) (with [rule 45](#))

## PART 30

### APPEALS

#### Scope and interpretation

- 30.1.**—(1) The rules in this Part apply to appeals to—
- (a) the High Court; and
  - (b) [<sup>F401</sup>the family court].
- (2) This Part does not apply to an appeal in detailed assessment proceedings against a decision of an authorised court officer.
- (Rules [<sup>F402</sup>47.21 to 47.24] of the CPR deal with appeals against a decision of an authorised court officer in detailed assessment proceedings.)
- (3) In this Part—
- “appeal court” means the court to which an appeal is made;
  - “appeal notice” means an appellant's or respondent's notice;
  - “appellant” means a person who brings or seeks to bring an appeal;
  - [<sup>F403</sup>“costs judge” means —



- (a) the Chief Taxing Master;
- (b) a taxing master of the Senior Courts; or
- (c) a person appointed to act as deputy for the person holding office referred to in paragraph (b) or to act as temporary additional officer for any such office;

“district judge” means —

- (a) the Senior District Judge of the Family Division
- (b) a district judge of the Principal Registry of the Family Division;
- (c) a person appointed to act as deputy for the person holding office referred to in paragraph (b) or to act as temporary additional officer for any such office;
- (d) a district judge;
- (e) a deputy district judge appointed under section 102 of the Senior Courts Act 1981 or section 8 of the County Courts Act 1984; or
- (f) a District Judge (Magistrates’ Courts);]

“lower court” means the court from which, or the person from whom, the appeal lies; and

“respondent” means—

- (a) a person other than the appellant who was a party to the proceedings in the lower court and who is affected by the appeal; and
- (b) a person who is permitted by the appeal court to be a party to the appeal.

(4) This Part is subject to any rule, enactment or practice direction which sets out special provisions with regard to any particular category of appeal.

#### Textual Amendments

- F401** Words in rule 30.1(1)(b) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), [rules 1, 21\(a\)](#) (with [rule 45](#))
- F402** Words in rule 30.1 substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), [rules 1, 21\(b\)](#) (with [rule 45](#))
- F403** Words in rule 30.1(3) inserted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), [rules 1, 21\(c\)](#) (with [rule 45](#))

#### Parties to comply with the practice direction

**30.2.** All parties to an appeal must comply with Practice Direction 30A.

#### Permission

**30.3.—**(1) An appellant or respondent requires permission to appeal—

- (a) against a decision in proceedings where the decision appealed against was made by a district judge or a costs judge, unless paragraph (2) applies; or
  - (b) as provided by Practice Direction 30A.
- (2) Permission to appeal is not required where the appeal is against—
- (a) a committal order; or
  - (b) a secure accommodation order under section 25 of the 1989 Act.
- (3) An application for permission to appeal may be made—
- (a) to the lower court at the hearing at which the decision to be appealed was made; or

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(b) to the appeal court in an appeal notice.

(Rule 30.4 sets out the time limits for filing an appellant's notice at the appeal court. Rule 30.5 sets out the time limits for filing a respondent's notice at the appeal court. Any application for permission to appeal to the appeal court must be made in the appeal notice (see rules 30.4(1) and 30.5(3).)

(4) Where the lower court refuses an application for permission to appeal, a further application for permission to appeal may be made to the appeal court.

(5) [F404 Subject to paragraph (5A), where] the appeal court, without a hearing, refuses permission to appeal, the person seeking permission may request the decision to be reconsidered at a hearing.

[F405 (5A) Where a judge of the High Court or [F406 in the family court, a judge of the High Court or] a Designated Family Judge refuses permission to appeal without a hearing and considers that the application is totally without merit, the judge may make an order that the person seeking permission may not request the decision to be reconsidered at a hearing.

(5B) Rule 4.3(5) will not apply to an order that the person seeking permission may not request the decision to be reconsidered at a hearing made under paragraph (5A).]

(6) A request under paragraph (5) must be filed within 7 days beginning with the date on which the notice that permission has been refused was served.

(7) Permission to appeal may be given only where—

- (a) the court considers that the appeal would have a real prospect of success; or
- (b) there is some other compelling reason why the appeal should be heard.

(8) An order giving permission may—

- (a) limit the issues to be heard; and
- (b) be made subject to conditions.

F407 (9) .....

**Textual Amendments**

**F404** Words in rule 30.3(5) substituted (1.4.2013) by The Family Procedure (Amendment) Rules 2013 (S.I. 2013/530), rules 1, 5(a)

**F405** Rule 30.3(5A)(5B) inserted (1.4.2013) by The Family Procedure (Amendment) Rules 2013 (S.I. 2013/530), rules 1, 5(b)

**F406** Words in rule 30.3(5A) inserted (22.4.2014) by The Family Procedure (Amendment No. 2) Rules 2014 (S.I. 2014/667), rules 1, 22(a) (with rule 45)

**F407** Rule 30.3(9) omitted (22.4.2014) by virtue of The Family Procedure (Amendment No. 2) Rules 2014 (S.I. 2014/667), rules 1, 22(b) (with rule 45)

**Appellant's notice**

**30.4.**—(1) Where the appellant seeks permission from the appeal court it must be requested in the appellant's notice.

(2) Subject to paragraph (3), the appellant must file the appellant's notice at the appeal court within —

- (a) such period as may be directed by the lower court (which may be longer or shorter than the period referred to in sub-paragraph (b)); or
- (b) where the court makes no such direction, 21 days after the date of the decision of the lower court against which the appellant wishes to appeal.

[F408 (3) Where the appeal is against —

- (a) a case management decision; or
- (b) an order under section 38(1) of the 1989 Act,

the appellant must file the appellant’s notice within 7 days beginning with the date of the decision of the lower court.]

(4) Unless the appeal court orders otherwise, an appellant's notice must be served on each respondent and the persons referred to in paragraph (5)—

- (a) as soon as practicable; and
- (b) in any event not later than 7 days,

after it is filed.

(5) The persons referred to in paragraph (4) are—

- (a) any children's guardian, welfare officer, or children and family reporter;
- (b) a local authority who has prepared a report under section 14A(8) or (9) of the 1989 Act;
- (c) an adoption agency or local authority which has prepared a report on the suitability of the applicant to adopt a child;
- (d) a local authority which has prepared a report on the placement of the child for adoption; and

<sup>F409</sup>(e) .....

**Textual Amendments**

**F408** Rule 30.4(3) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **23(a)** (with rule 45)

**F409** Rule 30.4(5)(e) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **23(b)** (with rule 45)

**Respondent's notice**

**30.5.—**(1) A respondent may file and serve a respondent's notice.

(2) A respondent who—

- (a) is seeking permission to appeal from the appeal court; or
- (b) wishes to ask the appeal court to uphold the order of the lower court for reasons different from or additional to those given by the lower court,

must file a respondent's notice.

(3) Where the respondent seeks permission from the appeal court it must be requested in the respondent's notice.

(4) [<sup>F410</sup>Subject to paragraph (4A), a respondent’s notice] must be filed within—

- (a) such period as may be directed by the lower court; or
- (b) where the court makes no such direction, 14 days beginning with the date referred to in paragraph (5).

[<sup>F411</sup>(4A) Where the appeal is against a case management decision, a respondent’s notice must be filed within—

- (a) such period as may be directed by the lower court; or
- (b) where the court makes no such direction, 7 days beginning with the date referred to in paragraph (5).]

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- (5) The date referred to in paragraph (4) is—
- (a) the date on which the respondent is served with the appellant's notice where—
    - (i) permission to appeal was given by the lower court; or
    - (ii) permission to appeal is not required;
  - (b) the date on which the respondent is served with notification that the appeal court has given the appellant permission to appeal; or
  - (c) the date on which the respondent is served with notification that the application for permission to appeal and the appeal itself are to be heard together.
- (6) Unless the appeal court orders otherwise, a respondent's notice must be served on the appellant, any other respondent and the persons referred to in rule 30.4(5)—
- (a) as soon as practicable; and
  - (b) in any event not later than 7 days,
- after it is filed.
- (7) Where there is an appeal against an order under section 38(1) of the 1989 Act—
- (a) a respondent may not, in that appeal, bring an appeal from the order or ask the appeal court to uphold the order of the lower court for reasons different from or additional to those given by the lower court; and
  - (b) paragraphs (2) and (3) do not apply.

#### Textual Amendments

**F410** Words in rule 30.5(4) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), [rules 1, 24\(a\)](#) (with [rule 45](#))

**F411** Rule 30.5(4A) inserted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), [rules 1, 24\(b\)](#) (with [rule 45](#))

### Grounds of appeal

**30.6.** The appeal notice must state the grounds of appeal.

### Variation of time

**30.7.—(1)** An application to vary the time limit for filing an appeal notice must be made to the appeal court.

- (2) The parties may not agree to extend any date or time limit set by—
- (a) these rules;
  - (b) Practice Direction 30A; or
  - (c) an order of the appeal court or the lower court.

(Rule 4.1(3)(a) provides that the court may extend or shorten the time for compliance with a rule, practice direction or court order (even if an application for extension is made after the time for compliance has expired).) (Rule 4.1(3)(c) provides that the court may adjourn or bring forward a hearing.)

### Stay

**30.8.** Unless the appeal court or the lower court orders otherwise, an appeal does not operate as a stay<sup>(GL)</sup> of any order or decision of the lower court.

### Amendment of appeal notice

**30.9.** An appeal notice may not be amended without the permission of the appeal court.

### Striking out appeal notices and setting aside or imposing conditions on permission to appeal

**30.10.**—(1) The appeal court may—

- (a) strike out<sup>(GL)</sup> the whole or part of an appeal notice;
- (b) set aside<sup>(GL)</sup> permission to appeal in whole or in part;
- (c) impose or vary conditions upon which an appeal may be brought.

(2) The court will only exercise its powers under paragraph (1) where there is a compelling reason for doing so.

(3) Where a party was present at the hearing at which permission was given that party may not subsequently apply for an order that the court exercise its powers under paragraphs (1)(b) or (1)(c).

### Appeal court's powers

**30.11.**—(1) In relation to an appeal the appeal court has all the powers of the lower court. (Rule 30.1(4) provides that this Part is subject to any enactment that sets out special provisions with regard to any particular category of appeal.)

(2) The appeal court has power to—

- (a) affirm, set aside<sup>(GL)</sup> or vary any order or judgment made or given by the lower court;
- (b) refer any application or issue for determination by the lower court;
- (c) order a new hearing;
- (d) make orders for the payment of interest;
- (e) make a costs order.

(3) The appeal court may exercise its powers in relation to the whole or part of an order of the lower court. (Rule 4.1 contains general rules about the court's case management powers.)

(4) If the appeal court—

- (a) refuses an application for permission to appeal;
- (b) strikes out an appellant's notice; or
- (c) dismisses an appeal,

and it considers that the application, the appellant's notice or the appeal is totally without merit, the provisions of paragraph (5) must be complied with.

(5) Where paragraph (4) applies—

- (a) the court's order must record the fact that it considers the application, the appellant's notice or the appeal to be totally without merit; and
- (b) the court must at the same time consider whether it is appropriate to make a civil restraint order.

### Hearing of appeals

**30.12.**—(1) Every appeal will be limited to a review of the decision of the lower court unless—

- (a) an enactment or practice direction makes different provision for a particular category of appeal; or

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- (b) the court considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing.
- (2) Unless it orders otherwise, the appeal court will not receive—
  - (a) oral evidence; or
  - (b) evidence which was not before the lower court.
- (3) The appeal court will allow an appeal where the decision of the lower court was—
  - (a) wrong; or
  - (b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court.
- (4) The appeal court may draw any inference of fact which it considers justified on the evidence.
- (5) At the hearing of the appeal a party may not rely on a matter not contained in that party's appeal notice unless the appeal court gives permission.

#### **Assignment of appeals to the Court of Appeal**

**30.13.**—(1) Where the court from or to which an appeal is made or from which permission to appeal is sought (“the relevant court”) considers that—

- (a) an appeal which is to be heard by a county court or the High Court would raise an important point of principle or practice; or
- (b) there is some other compelling reason for the Court of Appeal to hear it,

the relevant court may order the appeal to be transferred to the Court of Appeal.

[<sup>F412</sup>(2) Paragraph (1) does not allow an application for permission to appeal to be transferred to the Court of Appeal.]

#### **Textual Amendments**

**F412** Rule 30.13(2) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), [rules 1, 25](#) (with [rule 45](#))

#### **Reopening of final appeals**

- 30.14.**—(1) The High Court will not reopen a final determination of any appeal unless—
- (a) it is necessary to do so in order to avoid real injustice;
  - (b) the circumstances are exceptional and make it appropriate to reopen the appeal; and
  - (c) there is no alternative effective remedy.
- (2) In paragraphs (1), (3), (4) and (6), “appeal” includes an application for permission to appeal.
- (3) This rule does not apply to appeals to [<sup>F413</sup>the family court].
- (4) Permission is needed to make an application under this rule to reopen a final determination of an appeal.
- (5) There is no right to an oral hearing of an application for permission unless, exceptionally, the judge so directs.
- (6) The judge will not grant permission without directing the application to be served on the other party to the original appeal and giving that party an opportunity to make representations.
- (7) There is no right of appeal or review from the decision of the judge on the application for permission, which is final.

(8) The procedure for making an application for permission is set out in Practice Direction 30A.

#### Textual Amendments

**F413** Words in rule 30.14(3) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, 26 (with rule 45)

## PART 31

REGISTRATION OF ORDERS UNDER THE COUNCIL REGULATION, THE CIVIL PARTNERSHIP (JURISDICTION AND RECOGNITION OF JUDGMENTS) REGULATIONS 2005 <sup>[F414]</sup>, THE MARRIAGE (SAME SEX COUPLES) (JURISDICTION AND RECOGNITION OF JUDGMENTS) REGULATIONS 2014] AND UNDER THE HAGUE CONVENTION 1996

#### Textual Amendments

**F414** Words in Pt. 31 heading inserted (13.3.2014) by [The Family Procedure \(Amendment\) Rules 2014 \(S.I. 2014/524\)](#), rules 1, 5

### Scope

**31.1.** This Part applies to proceedings for the recognition, non-recognition and registration of—

- (a) judgments to which the Council Regulation applies;
- (b) measures to which the 1996 Hague Convention applies; <sup>F415</sup> ...
- (c) judgments to which the Jurisdiction and Recognition of Judgments Regulations apply, and which relate to dissolution or annulment of overseas relationships entitled to be treated as a civil partnership, or legal separation of the same <sup>[F416]</sup>; and]

<sup>[F417]</sup>(d) judgments to which the 2014 Regulations apply and which relate to divorce, or annulment of a marriage of a same sex couple or the judicial separation of the same]

#### Textual Amendments

**F415** Word in rule 31.1(b) omitted (13.3.2014) by virtue of [The Family Procedure \(Amendment\) Rules 2014 \(S.I. 2014/524\)](#), rules 1, 6(a)

**F416** Word in rule 31.1(c) (13.3.2014) by [The Family Procedure \(Amendment\) Rules 2014 \(S.I. 2014/524\)](#), rules 1, 6(b)

**F417** Rule 31.1(d) inserted (13.3.2014) by [The Family Procedure \(Amendment\) Rules 2014 \(S.I. 2014/524\)](#), rules 1, 6(c)

### Interpretation

**31.2.—**(1) In this Part —

- (a) “judgment” is to be construed —
  - (i) in accordance with the definition in Article 2(4) of the Council Regulation where it applies;

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- (ii) in accordance with regulation 6 of the Jurisdiction and Recognition of Judgments Regulations where those Regulations apply; <sup>F418</sup> ...
- (iii) as meaning any measure taken by an authority with jurisdiction under Chapter II of the 1996 Hague Convention where that Convention applies; [<sup>F419</sup>or]
- [<sup>F420</sup>(iv) in accordance with regulation 4(1)(a) of The Marriage (Same Sex Couples) (Jurisdiction and Recognition of Judgments) Regulations 2014 where those Regulations apply.]
- (b) “the Jurisdiction and Recognition of Judgments Regulations” means the Civil Partnership (Jurisdiction and Recognition of Judgments) Regulations 2005 <sup>M133</sup>;
- [<sup>F421</sup>(ba) “the 2014 Regulations” means the Marriage (Same Sex Couples) (Jurisdiction and Recognition of Judgments) Regulations 2014]
- (c) “Member State” means —
  - (i) where registration, recognition or non-recognition is sought of a judgment under the Council Regulation, a Member State of the European Union which is bound by that Regulation or a country which has subsequently adopted it;
  - (ii) where recognition is sought of a judgment to which the Jurisdiction and Recognition of Judgments Regulations apply, a Member State of the European Union to which Part II of those Regulations applies;
  - [<sup>F422</sup>(iii) where recognition is sought of a judgment to which the 2014 Regulations apply, a member State of the European Union to which Part II of those Regulations applies.]
- (d) “Contracting State” means a State, other than a Member State within the meaning of (c) above, in relation to which the 1996 Hague Convention is in force as between that State and the United Kingdom; and
- (e) “parental responsibility” —
  - (i) where the Council Regulation applies, has the meaning given in Article 2(7) of that Regulation; and
  - (ii) where the 1996 Hague Convention applies, has the meaning given in Article 1(2) of that Convention.

(2) References in this Part to registration are to the registration of a judgment in accordance with the provisions of this Part.

#### Textual Amendments

- F418** Word in rule 31.2(1)(a)(ii) omitted (13.3.2014) by virtue of [The Family Procedure \(Amendment\) Rules 2014 \(S.I. 2014/524\)](#), rules 1, **7(a)**
- F419** Word in rule 31.2(1)(a)(iii) inserted (13.3.2014) by [The Family Procedure \(Amendment\) Rules 2014 \(S.I. 2014/524\)](#), rules 1, **7(b)**
- F420** Rule 31.2(1)(a)(iv) inserted (13.3.2014) by [The Family Procedure \(Amendment\) Rules 2014 \(S.I. 2014/524\)](#), rules 1, **7(c)**
- F421** Rule 31.2(1)(ba) inserted (13.3.2014) by [The Family Procedure \(Amendment\) Rules 2014 \(S.I. 2014/524\)](#), rules 1, **7(d)**
- F422** Rule 31.2(1)(c)(iii) inserted (13.3.2014) by [The Family Procedure \(Amendment\) Rules 2014 \(S.I. 2014/524\)](#), rules 1, **7(e)**

#### Marginal Citations

- M133** [S.I. 2005/3334](#).



## Where to start proceedings

**31.3.**—(1) Every application under this Part, except for an application under rule 31.18 for a certified copy of a judgment, or under rule 31.20 for rectification of a certificate issued under Articles 41 or 42, must be made to the principal registry.

(2) Nothing in this rule prevents the determination of an issue of recognition as an incidental question by any court in proceedings, in accordance with Article 21(4) of the Council Regulation.

(3) Notwithstanding paragraph (1), where recognition of a judgment is raised as an incidental question in proceedings under the 1996 Hague Convention [<sup>F423</sup>] the Jurisdiction and Recognition of Judgments Regulations [<sup>F424</sup> or the 2014 Regulations] the court hearing those proceedings may determine the question of recognition.

### Textual Amendments

**F423** Rule 31.3(3): comma substituted for word (13.3.2014) by virtue of [The Family Procedure \(Amendment\) Rules 2014 \(S.I. 2014/524\)](#), rules 1, **8(a)**

**F424** Words in rule 31.3(3) inserted (13.3.2014) by [The Family Procedure \(Amendment\) Rules 2014 \(S.I. 2014/524\)](#), rules 1, **8(b)**

## Application for registration, recognition or non-recognition of a judgment

**31.4.**—(1) Any interested person may apply to the court for an order that the judgment be registered, recognised or not recognised.

(2) Except for an application under rule 31.7, an application for registration, recognition or non-recognition must be —

- (a) made to a district judge of the principal registry; and
- (b) in the form, and supported by the documents and the information required by a practice direction.

## Documents – supplementary

**31.5.**—(1) Except as regards a copy of a judgment required by Article 37(1)(a) of the Council Regulation, where the person making an application under this Part does not produce the documents required by rule 31.4(2)(b) the court may —

- (a) fix a time within which the documents are to be produced;
- (b) accept equivalent documents; or
- (c) dispense with production of the documents if the court considers it has sufficient information.

(2) This rule does not apply to applications under rule 31.7.

## Directions

**31.6.**—(1) As soon as practicable after an application under this Part has been made, the court may (subject to the requirements of the Council Regulation) give such directions as it considers appropriate, including as regards the following matters —

- (a) whether service of the application may be dispensed with;
- (b) expedition of the proceedings or any part of the proceedings (and any direction for expedition may specify a date by which the court must give its decision);
- (c) the steps to be taken in the proceedings and the time by which each step is to be taken;

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- (d) the service of documents; and
- (e) the filing of evidence.
- (2) The court or court officer will —
  - (a) record the giving, variation or revocation of directions under this rule; and
  - (b) as soon as practicable serve a copy of the directions order on every party.

**Recognition and enforcement under the Council Regulation of a judgment given in another Member State relating to rights of access or under Article 11(8) for the return of the child to that State**

- 31.7.**—(1) This rule applies where a judgment has been given in another Member State —
- (a) relating to rights of access: or
  - (b) under Article 11(8) of the Council Regulation for the return of a child to that State,
- which has been certified, in accordance with Article 41(2) or 42(2) as the case may be, by the judge in the court of origin.
- (2) An application for recognition or enforcement of the judgment must be —
    - (a) made in writing to a district judge of the principal registry; and
    - (b) accompanied by a copy of the certificate issued by the judge in the court of origin.
  - (3) The application may be made without notice.
  - (4) Rules 31.5 and 31.8 to 31.17 do not apply to an application made under this rule.
  - (5) Nothing in this rule shall prevent a holder of parental responsibility from seeking recognition and enforcement of a judgment in accordance with the provisions of rules 31.8 to 31.17.

**Registration for enforcement or order for non-recognition of a judgment**

- 31.8.**—(1) This rule applies where an application is made for an order that a judgment given in another Member State, or a Contracting State, should be registered, or should not be recognised, except where rule 31.7 applies.
- (2) where the application is made for an order that the judgment should be registered —
    - (a) upon receipt of the application, and subject to any direction given by the court under rule 31.6, the court officer will serve the application on the person against whom registration is sought;
    - (b) the court will not accept submissions from either the person against whom registration is sought or any child in relation to whom the judgment was given.
  - (3) Where the application is for an order that the judgment should not be recognised —
    - (a) upon receipt of the application, and subject to any direction given by the court under rule 31.6, the court officer will serve the application on the person in whose favour judgment was given;
    - (b) the person in whose favour the judgment was given must file an answer to the application and serve it on the applicant —
      - (i) within 1 month of service of the application; or
      - (ii) if the applicant is habitually resident in another Member State, within two months of service of the application.
  - (4) In cases to which the 1996 Hague Convention applies and the Council Regulation does not apply, the court may extend the time set out in subparagraph (3)(b)(ii) on account of distance.

(5) The person in whose favour the judgment was given may request recognition or registration of the judgment in their answer, and in that event must comply with 31.4(2)(b), to the extent that such documents, information and evidence are not already contained in the application for non-recognition.

(6) If, in a case to which the Council Regulation applies, the person in whose favour the judgment was given fails to file an answer as required by paragraph (3), the court will act in accordance with the provisions of Article 18 of the Council Regulation.

(7) If, in a case to which the 1996 Hague Convention applies and the Service Regulation does not, the person in whose favour the judgment was given fails to file an answer as required by paragraph (3) —

- (a) where the Hague Convention of 15th November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters applies, the court shall apply Article 15 of that Convention; and
- (b) in all other cases, the court will not consider the application unless —
  - (i) it is proved to the satisfaction of the court that the person in whose favour judgment was given was served with the application within a reasonable period of time to arrange his or her response; or
  - (ii) the court is satisfied that the circumstances of the case justify proceeding with consideration of the application.

(8) In a case to which the Jurisdiction and Recognition of Judgments Regulations [<sup>F425</sup> or the 2014 Regulations] apply, if the person in whose favour judgment was given fails to file an answer as required by paragraph (3), the court will apply the Service Regulation where that regulation applies, and if it does not —

- (a) where the Hague Convention of 15th November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters applies, the court shall apply Article 15 of that Convention; and
- (b) in all other cases, the court will apply the provisions of paragraph (7)(b).

#### Textual Amendments

**F425** Words in [rule 31.8\(8\)](#) inserted (13.3.2014) by [The Family Procedure \(Amendment\) Rules 2014 \(S.I. 2014/524\)](#), [rules 1, 9](#)

### Stay of recognition proceedings by reason of an appeal

**31.9.** Where recognition or non-recognition of a judgment given in another Member State or Contracting State is sought, or is raised as an incidental question in other proceedings, the court may stay the proceedings —

- (a) if an ordinary appeal against the judgment has been lodged; or
- (b) if the judgment was given in the Republic of Ireland, if enforcement of the judgment is suspended there by reason of an appeal.

### Effect of refusal of application for a decision that a judgment should not be recognised

**31.10.** Where the court refuses an application for a decision that a judgment should not be recognised, the court may —

- (a) direct that the decision to refuse the application is to be treated as a decision that the judgment be recognised; or

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*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

- (b) treat the answer under paragraph (3)(b) of rule 31.8 as an application that the judgment be registered for enforcement if paragraph (5) of that rule is complied with and order that the judgment be registered for enforcement in accordance with rule 31.11.

### **Notification of the court's decision on an application for registration or non-recognition**

**31.11.**—(1) Where the court has —

- (a) made an order on an application for an order that a judgment should be registered for enforcement; or
- (b) refused an application that a judgment should not be recognised and ordered under rule 31.10 that the judgment be registered for enforcement,

the court officer will as soon as practicable take the appropriate action under paragraph (2) or (3).

(2) If the court refuses the application for the judgment to be registered for enforcement, the court officer will serve the order on the applicant and the person against whom judgment was given in the state of origin.

(3) If the court orders that the judgment should be registered for enforcement, the court officer will —

- (a) register the judgment in the central index of judgments kept by the principal registry;
- (b) confirm on the order that the judgment has been registered; and
- (c) serve on the parties the court's order endorsed with the court officer's confirmation that the judgment has been registered.

(4) A sealed order of the court endorsed in accordance with paragraph (3)(b) will constitute notification that the judgment has been registered under Article 28(2) of the Council Regulation or under Article 26 of the 1996 Hague Convention, as the case may be, and in this Part “notice of registration” means a sealed order so endorsed.

(5) The notice of registration must state —

- (a) full particulars of the judgment registered and the order for registration;
- (b) the name of the party making the application and his address for service within the jurisdiction;
- (c) the right of the person against whom judgment was given to appeal against the order for registration; and
- (d) the period within which an appeal against the order for registration may be made.

### **Effect of registration under rule 31.11**

**31.12.** Registration of a judgment under rule 31.11 will serve for the purpose of Article 21(3) of the Council Regulation, Article 24 of the 1996 Hague Convention [<sup>F426</sup>], regulation 7 of the Jurisdiction and Recognition of Judgments Regulations [<sup>F427</sup> or regulation 5 of the 2014 Regulations] (as the case may be) as a decision that the judgment is recognised.

#### **Textual Amendments**

**F426** Rule 31.12: comma substituted for word (13.3.2014) by virtue of [The Family Procedure \(Amendment\) Rules 2014 \(S.I. 2014/524\)](#), rules 1, **10(a)**

**F427** Words in [rule 31.12](#) inserted (13.3.2014) by [The Family Procedure \(Amendment\) Rules 2014 \(S.I. 2014/524\)](#), rules 1, **10(b)**

## The central index of judgments registered under rule 31.11

**31.13.** The central index of judgments registered under rule 31.11 will be kept by the principal registry.

## Decision on recognition of a judgment only

**31.14.**—(1) Where an application is made seeking recognition of a judgment only, the provisions of rules 31.8 and 31.9 apply to that application as they do to an application for registration for enforcement.

(2) Where the court orders that the judgment should be recognised, the court officer will serve a copy of the order on each party as soon as practicable.

(3) A sealed order of the court will constitute notification that the judgment has been recognised under Article 21(3) of the Council Regulation, Article 24 of the 1996 Hague convention [<sup>F428</sup>,] regulation 7 of the Jurisdiction and Recognition of Judgments Regulations [<sup>F429</sup> or regulation 5 of the 2014 Regulations], as the case may be.

(4) The sealed order shall indicate —

- (a) full particulars of the judgment recognised;
- (b) the name of the party making the application and his address for service within the jurisdiction;
- (c) the right of the person against whom judgment was given to appeal against the order for recognition; and
- (d) the period within which an appeal against the order for recognition may be made.

### Textual Amendments

**F428** Rule 31.14(3): comma substituted for word (13.3.2014) by virtue of [The Family Procedure \(Amendment\) Rules 2014 \(S.I. 2014/524\)](#), rules 1, **11(a)**

**F429** Words in rule 31.14(3) inserted (13.3.2014) by [The Family Procedure \(Amendment\) Rules 2014 \(S.I. 2014/524\)](#), rules 1, **11(b)**

## Appeal against the court's decision under rules 31.10, 31.11 or 31.14

**31.15.**—(1) An appeal against the court's decision under rules 31.10, 31.11 or 31.14 must be made to a judge of the High Court —

- (a) within one month of the date of service of the notice of registration; or
- (b) if the party bringing the appeal is habitually resident in another Member State, or a Contracting State, within two months of the date of service.

(2) The court may not extend time for an appeal on account of distance unless the matter is one to which the 1996 Hague Convention applies and the Council Regulation does not apply.

(3) If, in a case to which the 1996 Hague Convention applies and the Service Regulation does not, the appeal is brought by the applicant for a declaration of enforceability or registration and the respondent fails to appear —

- (a) where the Hague Convention of 15th November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters applies, the court shall apply Article 15 of that Convention; and
- (b) in all other cases, the court will not consider the appeal unless —

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- (i) it is proved to the satisfaction of the court that the respondent was served with notice of the appeal within a reasonable period of time to arrange his or her response; or
- (ii) the court is satisfied that the circumstances of the case justify proceeding with consideration of the appeal.

(4) This rule is subject to rule 31.16. (The procedure for applications under rule 31.15 is set out in Practice Direction 30A (Appeals).)

### **Stay of enforcement where appeal pending in state of origin**

**31.16.**—(1) A party against whom enforcement is sought of a judgment which has been registered under rule 31.11 may apply to the court with which an appeal is lodged under rule 31.15 for the proceedings to be stayed where —

- (a) that party has lodged an ordinary appeal in the Member State or Contracting State of origin; or
- (b) the time for such an appeal has not yet expired.

(2) Where an application for a stay is filed in the circumstances described in paragraph (1)(b), the court may specify the time within which an appeal must be lodged.

### **Enforcement of judgments registered under rule 31.11**

**31.17.**—(1) [<sup>F430</sup>Subject to paragraph (1A),] the court will not enforce a judgment registered under rule 31.11 until after —

- (a) the expiration of any applicable period under rules 31.15 or 31.16; or
- (b) if that period has been extended by the court, the expiration of the period so extended.

[<sup>F431</sup>(1A) The court may enforce a judgment registered under rule 31.11 before the expiration of a period referred to in paragraph (1) where urgent enforcement of the judgment is necessary to secure the welfare of the child to whom the judgment relates.]

(2) A party applying to the court for the enforcement of a registered judgment must produce to the court a certificate of service of —

- (a) the notice of registration of the judgment; and
- (b) any order made by the court in relation to the judgment.

(Service out of the jurisdiction, including service in accordance with the Service Regulation, is dealt with in chapter 4 of Part 6 and in Practice Direction 6B.)

#### **Textual Amendments**

**F430** Words in rule 31.17(1) inserted (1.7.2012) by [The Family Procedure \(Amendment\) \(No. 2\) Rules 2012 \(S.I. 2012/1462\)](#), rules 1, **3(a)**

**F431** Rule 31.17(1A) inserted (1.7.2012) by [The Family Procedure \(Amendment\) \(No. 2\) Rules 2012 \(S.I. 2012/1462\)](#), rules 1, **3(b)**

### **Request for a certificate or a certified copy of a judgment**

**31.18.**—(1) An application for a certified copy of a judgment, or for a certificate under Articles 39, 41 or 42 of the Council Regulation, must be made to the court which made the order or judgment in respect of which certification is sought and without giving notice to any other party.

(2) The application must be made in the form, and supported by the documents and information required by a practice direction.

(3) The certified copy of the judgment will be an office copy sealed with the seal of the court and signed by [<sup>F432</sup>a court officer]. It will be issued with a certified copy of any order which has varied any of the terms of the original order.

(4) Where the application is made for the purposes of applying for recognition or recognition and enforcement of the order in another Contracting State, the court must indicate on the certified copy of the judgment the grounds on which it based its jurisdiction to make the order, for the purposes of Article 23(2)(a) of the 1996 Hague Convention.

#### Textual Amendments

**F432** Words in rule 31.18(3) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **75** (with rule 137); S.I. 2014/954, **art. 2**

### Certificates issued in England and Wales under Articles 41 and 42 of the Council Regulation

**31.19.** The court officer will serve —

- (a) a certificate issued under Article 41 or 42; or
- (b) a certificate rectified under rule 31.20,

on all parties and will transmit a copy to the Central Authority for England and Wales.

### Rectification of certificate issued under Article 41 or 42 of the Council Regulation

**31.20.**—(1) Where there is an error in a certificate issued under Article 41 or 42, an application to rectify that error must be made to the court which issued the certificate.

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

- (a) by the court of its own initiative; or
- (b) on application by —
  - (i) any party to the proceedings; or
  - (ii) the court or Central Authority of another Member State.

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

### Authentic instruments and agreements under Article 46 of the Council Regulation

**31.21.** This Chapter applies to an authentic instrument and an agreement to which Article 46 of the Council Regulation applies as it applies to a judgment.

### Application for provisional, including protective measures.

**31.22.** An application for provisional, including protective, measures under Article 20 of the Council Regulation or Articles 11 or 12 of the 1996 Hague Convention may be made notwithstanding that the time for appealing against an order for registration of a judgment has not expired or that a final determination of any issue relating to enforcement of the judgment is pending.

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## PART 32

### REGISTRATION AND ENFORCEMENT OF ORDERS

#### CHAPTER 1

##### SCOPE AND INTERPRETATION OF THIS PART

##### Scope and interpretation

**32.1.**—(1) This Part contains rules about the registration and enforcement of maintenance orders and custody orders.

[<sup>F433</sup>(2) In this Part, “the 1950 Act” means the Maintenance Orders Act 1950.]

(3) Chapter 2 of this Part relates to—

- (a) the registration of a maintenance order, made in the High Court or [<sup>F434</sup>the family court], in a court in Scotland or Northern Ireland in accordance with the 1950 Act; and
- (b) the registration of a maintenance order, made in Scotland or Northern Ireland, in the High Court in accordance with the 1950 Act.

<sup>F435</sup> ...

[<sup>F436</sup>(4) Chapter 3 of this Part contains rules to be applied in the family court in relation to the registration in the family court of a maintenance order made in the High Court, in accordance with the 1958 Act.]

(5) Chapter 4 of this Part relates to the registration and enforcement of custody orders in accordance with the 1986 Act.

[<sup>F437</sup>(6) Chapter 5 of this Part relates to the ability of a court officer to take enforcement proceedings in relation to certain orders for periodical payments.]

##### Textual Amendments

**F433** Rule 32.1(2) substituted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), rules 1, **16**

**F434** Words in rule 32.1(3)(a) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **76(a)(i)** (with rule 137); S.I. 2014/954, **art. 2**

**F435** Words in rule 32.1(3) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **76(a)(ii)** (with rule 137); S.I. 2014/954, **art. 2**

**F436** Rule 32.1(4) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **76(b)** (with rule 137); S.I. 2014/954, **art. 2**

**F437** Rule 32.1(6) inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **76(c)** (with rule 137); S.I. 2014/954, **art. 2**

#### CHAPTER 2

##### REGISTRATION ETC. OF ORDERS UNDER THE 1950 ACT

##### SECTION 1

##### *Interpretation of this Chapter*

##### Interpretation

**32.2.** In this Chapter—



“the clerk of the Court of Session” means the deputy principal clerk in charge of the petition department of the Court of Session;

[<sup>F438</sup>“the clerk of the court which made the order” means, in the case of a county court in Northern Ireland, the Chief Clerk for the appropriate court in Northern Ireland;]

F439 ...

[<sup>F440</sup>“family court order” means a maintenance order made in the family court;]

“High Court order” means a maintenance order made in the High Court;

“maintenance order” means a maintenance order to which section 16 of the 1950 Act applies;

[<sup>F441</sup>“Northern Irish order” means a maintenance order made by a court in Northern Ireland;]

“the register” means the register kept for the purposes of the 1950 Act;

“the registrar in Northern Ireland” means the chief registrar of the Queen's Bench Division (Matrimonial) of the High Court of Justice in Northern Ireland;

“registration” means registration under Part 2 of the 1950 Act and “registered” is to be construed accordingly; and

[<sup>F442</sup>“Scottish order” means a maintenance order made by a court in Scotland.]

#### Textual Amendments

- F438** Words in rule 32.2 inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 77\(a\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)
- F439** Words in rule 32.2 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 77\(b\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)
- F440** Words in rule 32.2 inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 77\(c\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)
- F441** Words in rule 32.2 substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 77\(d\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)
- F442** Words in rule 32.2 substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 77\(e\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

## SECTION 2

### *Registration etc of High Court and [<sup>F443</sup>family court] orders*

#### Textual Amendments

- F443** Words in Pt. 32 Ch. 2 Section 2 heading substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 78](#) (with [art. 137](#)); S.I. 2014/954, [art. 2](#)

### Registration of a High Court order

**32.3.**—(1) An application for the registration of a High Court order may be made by sending to a court officer at the court which made the order—

(a) a certified copy of the order; and

(b) a statement which—

(i) contains the address in the United Kingdom, and the occupation, of the person liable to make payments under the order;

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- (ii) contains the date on which the order was served on the person liable to make payments, or, if the order has not been served, the reason why service has not been effected;
  - (iii) contains the reason why it is convenient for the order to be enforced in Scotland or Northern Ireland, as the case may be;
  - (iv) contains the amount of any arrears due to the applicant under the order;
  - (v) confirms that the order is not already registered; and
  - (vi) is verified by a statement of truth.
- (2) If it appears to the court that—
- (a) the person liable to make payments under the order resides in Scotland or Northern Ireland; and
  - (b) it is convenient for the order to be enforced there,

the court officer will send the documents filed under paragraph (1) to the clerk of the Court of Session or to the registrar in Northern Ireland, as the case may be.

(3) On receipt of a notice of the registration of a High Court order in the Court of Session or the Court of Judicature of Northern Ireland, the court officer (who is the prescribed officer for the purposes of section 17(4) of the 1950 Act) will—

- (a) enter particulars of the notice of registration in the register;
- (b) note the fact of registration in the court records; and
- (c) send particulars of the notice to the principal registry.

#### **Notice of Variation etc. of a High Court order**

**32.4.**—(1) This rule applies where a High Court order, which is registered in the Court of Session or the Court of Judicature of Northern Ireland, is discharged or varied.

(2) A court officer in the court where the order was discharged or varied will send a certified copy of that order to the clerk of the Court of Session or the registrar in Northern Ireland, as the case may be.

#### **Cancellation of registration of a High Court order [<sup>F444</sup>by the court of registration]**

**32.5.**—(1) This rule applies where—

- (a) the registration of a High Court order registered in the Court of Session or the Court of Judicature of Northern Ireland is cancelled under section 24(1) of the 1950 Act; and
- (b) notice of the cancellation is given to a court officer in the court in which the order was made (who is the prescribed officer for the purposes of section 24(3)(a) of the 1950 Act <sup>M134</sup>).

(2) On receipt of a notice of cancellation of registration, the court officer will enter particulars of the notice in <sup>F445</sup>... the register.

#### **Textual Amendments**

**F444** Words in rule 32.5 heading inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **79(a)** (with rule 137); S.I. 2014/954, **art. 2**

**F445** Words in rule 32.5(2) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **79(b)** (with rule 137); S.I. 2014/954, **art. 2**

**Marginal Citations**

**M134** Section 24(3)(a) was amended by section 3 of and paragraph 9 of Schedule 3 to the [Administration of Justice Act 1977 \(c.38\)](#).

**[<sup>F446</sup>Cancellation of registration of a High Court order by the High Court**

**32.5A.** The Part 19 procedure applies to an application to the High Court under section 24(2) of the 1950 Act.]

**Textual Amendments**

**F446** Rule 32.5A inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **80** (with rule 137); S.I. 2014/954, **art. 2**

**Application of this Chapter to a [<sup>F447</sup>family court] order**

**32.6.** Rules 32.3 to [<sup>F448</sup>32.5A] apply to [<sup>F449</sup>a family court order] as if—

(a) references to a High Court order were references to a [<sup>F450</sup>family court] order;

[<sup>F451</sup>(aa) in rule 32.5A, references to the High Court were to the family court;]

(b) where the order is to be registered in Scotland, references to the Court of Session and the clerk of the Court of Session were references to the sheriff court and the sheriff-clerk of the sheriff court respectively; and

(c) where the order is to be registered in Northern Ireland, references to the Court of Judicature of Northern Ireland and the registrar of Northern Ireland were references to the court of summary jurisdiction and the clerk of the court of summary jurisdiction respectively.

**Textual Amendments**

**F447** Words in rule 32.6 heading substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **81(a)** (with rule 137); S.I. 2014/954, **art. 2**

**F448** Word in rule 32.6 substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **81(b)** (with rule 137); S.I. 2014/954, **art. 2**

**F449** Words in rule 32.6 substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **81(c)** (with rule 137); S.I. 2014/954, **art. 2**

**F450** Words in rule 32.6(a) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **81(d)** (with rule 137); S.I. 2014/954, **art. 2**

**F451** Rule 32.6(aa) inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **81(e)** (with rule 137); S.I. 2014/954, **art. 2**

**[<sup>F452</sup>Variation of a family court order: section 22(1) of the 1950 Act**

**32.6A.** Where a family court order, which is registered in a court in Scotland or Northern Ireland, is varied under section 22(1) of the 1950 Act by the court in which it is registered—

(a) the court officer for the court which made the order will be the prescribed officer to whom notice of the variation must be given under section 23(1) of the 1950 Act; and

(b) on receipt of a notice under section 23(1) of the 1950 Act, the court officer will enter particulars of the notice in the register.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

#### Textual Amendments

**F452** Rules 32.6A, 32.6B inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **82** (with rule 137); S.I. 2014/954, **art. 2**

#### Application to adduce evidence: section 22(5) of the 1950 Act

**32.6B.**—(1) The Part 18 procedure applies to an application under section 22(5) of the 1950 Act where a maintenance order was made by the family court.

(2) The family court will send a transcript or summary of any evidence taken to the clerk of the court in which the order is registered.

(3) The court officer for the court in England and Wales which made the maintenance order will be the prescribed officer to whom any transcript or summary of evidence adduced in the court in Scotland or Northern Ireland must be sent under section 22(5) of the 1950 Act.]

#### Textual Amendments

**F452** Rules 32.6A, 32.6B inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **82** (with rule 137); S.I. 2014/954, **art. 2**

### SECTION 3

#### *Registration etc. of Scottish and Northern Irish orders*

#### Registration of Scottish and Northern Irish orders

**32.7.** On receipt of a certified copy of a Scottish order or a Northern Irish order for registration, a court officer in the principal registry (who is the prescribed [<sup>F453</sup>in the High Court] officer for the purposes of section 17(2) of the 1950 Act) [<sup>F454</sup>or a court officer in the family court (who is the prescribed officer in the family court for the purposes of section 17(2) of the 1950 Act)] will—

- (a) enter particulars of the order in <sup>F455</sup>... the register;
- (b) notify the clerk of [<sup>F456</sup>the court which made the order] or the registrar in Northern Ireland, as the case may be, that the order has been registered; and
- (c) file the certified copy of the order and any statutory declaration, affidavit<sup>(GL)</sup> or statement as to the amount of any arrears due under the order.

[<sup>F457</sup>(Section 17(3) of the 1950 Act makes provision as to the court in England and Wales to which a Northern Irish order or a Scottish order should be sent, which depends on which court originally made the order.)]

#### Textual Amendments

**F453** Words in rule 32.7 inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **83(a)** (with rule 137); S.I. 2014/954, **art. 2**

**F454** Words in rule 32.7 inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **83(b)** (with rule 137); S.I. 2014/954, **art. 2**

**F455** Words in rule 32.7(a) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **83(c)** (with rule 137); S.I. 2014/954, **art. 2**

**F456** Words in rule 32.7(b) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **83(d)** (with rule 137); S.I. 2014/954, **art. 2**

**F457** Words in rule 32.7 inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **83(e)** (with rule 137); S.I. 2014/954, **art. 2**

#### [<sup>F458</sup> **Application to adduce evidence: sections 21(2) and 22(5) of the 1950 Act**

**32.8.**—(1) The Part 18 procedure applies to the applications under these provisions of the 1950 Act—

- (a) an application to the High Court to adduce evidence under section 21(2) by a person liable to make payments under a Scottish order registered in the High Court;
- (b) an application to the family court to adduce evidence under section 21(2) by a person liable to make payments under a Scottish order registered in the High Court under the 1950 Act and registered in the family court under Part 1 of the 1958 Act; and
- (c) an application to the family court to adduce evidence under section 22(5) by a person entitled to payments or a person liable to make payments under a Scottish order or a Northern Irish order registered in the family court under Part 1 of the 1950 Act.

(2) The court officer for the family court (being the court in which the order is registered) will be the prescribed officer under section 22(5) of the 1950 Act to whom any transcript or summary of evidence adduced in the court in Scotland or Northern Ireland by which the order was made must be sent.]

#### **Textual Amendments**

**F458** Rule 32.8 substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **84** (with rule 137); S.I. 2014/954, **art. 2**

#### **Notice of variation etc. of Scottish and Northern Irish orders**

**32.9.**—(1) This rule applies where—

- (a) a Scottish order or a Northern Irish order, which is registered in the High Court [<sup>F459</sup>or the family court], is discharged or varied [<sup>F460</sup>by the court in Scotland or Northern Ireland]; and
- (b) notice of the discharge or variation is given to [<sup>F461</sup>the court officer in the High Court or in the family court, as the case may be] (who is the prescribed officer for the purposes of section 23(1)(a) of the 1950 Act <sup>M135</sup>).

(2) On receipt of a notice of discharge or variation, the court officer will enter particulars of the notice in <sup>F462</sup>... the register.

#### **Textual Amendments**

**F459** Words in rule 32.9(1)(a) inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **85(a)(i)** (with rule 137); S.I. 2014/954, **art. 2**

**F460** Words in rule 32.9(1)(a) inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **85(a)(ii)** (with rule 137); S.I. 2014/954, **art. 2**

**F461** Words in rule 32.9(1)(b) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **85(b)** (with rule 137); S.I. 2014/954, **art. 2**

**F462** Words in rule 32.9(2) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **85(c)** (with rule 137); S.I. 2014/954, **art. 2**

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

#### Marginal Citations

**M135** Section 23(1)(a) was amended by section 3 of and paragraph 8 of Schedule 3 to the Administration of Justice Act 1977.

#### [<sup>F463</sup>Variation of Scottish and Northern Irish orders by the family court

**32.9A.**—(1) The Part 18 procedure applies to an application to the family court under section 22(1) of the 1950 Act to vary a Scottish order or a Northern Irish order which is registered in the family court.

(2) Where a Scottish order or a Northern Irish order is varied by the family court on an application under section 22(1) of the 1950 Act, the court officer will give notice of the variation to the clerk of the court in Scotland or Northern Ireland which made the order by sending a certified copy of the order of variation.]

#### Textual Amendments

**F463** Rule 32.9A inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **86** (with rule 137); S.I. 2014/954, **art. 2**

#### Cancellation of registration of Scottish and Northern Irish orders

**32.10.**—(1) The Part 18 procedure applies to an application [<sup>F464</sup>under section 24(1) of the 1950 Act] for the cancellation of the registration of a Scottish order or a Northern Irish order in the High Court [<sup>F465</sup>or the family court].

(2) The application must be made without notice to the person liable to make payments under the order.

(3) If the registration of the order is cancelled, the court officer will—

- (a) note the cancellation in <sup>F466</sup>... the register; and
- (b) send written notice of the cancellation to—
  - (i) the clerk of the [<sup>F467</sup>court which made the order] or the registrar in Northern Ireland, as the case may be; and
  - (ii) the court officer [<sup>F468</sup>of the family court if the order has been registered in the family court] in accordance with section 2(5) of the 1958 Act.

[<sup>F469</sup>(4) Where a maintenance order is registered under the 1950 Act in the family court, the court officer for the family court is the prescribed officer for the purposes of section 24(2) of the 1950 Act, and in paragraphs (5) and (6) references to the court officer are to the court officer of the family court.

(5) If a notice under section 24(2) of the 1950 Act is received, the court officer will—

- (a) cancel the registration of the order; and
- (b) send written notice of the cancellation to the clerk of the court which made the order.

(6) Where a maintenance order is registered in the family court under Part 1 of the 1958 Act and the court officer receives a notice of cancellation under section 24(3) of the 1950 Act from the appropriate officer of the High Court, the court officer will—

- (a) enter the details of the notice in the register;
- (b) cancel the registration under Part 1 of the 1958 Act; and

- (c) give notice of the cancellation to the appropriate officer of the court which made the order, being—
- (i) the Deputy Principal Clerk of Session, in the case of the Court of Session; or
  - (ii) the Chief Registrar of the Queen’s Bench Division (Matrimonial), in the case of the High Court of Justice in Northern Ireland.]

**Textual Amendments**

- F464** Words in rule 32.10(1) inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **87(a)(i)** (with rule 137); S.I. 2014/954, **art. 2**
- F465** Words in rule 32.10(1) inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **87(a)(ii)** (with rule 137); S.I. 2014/954, **art. 2**
- F466** Words in rule 32.10(3)(a) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **87(b)(i)** (with rule 137); S.I. 2014/954, **art. 2**
- F467** Words in rule 32.10(3)(b)(i) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **87(b)(ii)** (with rule 137); S.I. 2014/954, **art. 2**
- F468** Words in rule 32.10(3)(b)(ii) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **87(b)(iii)** (with rule 137); S.I. 2014/954, **art. 2**
- F469** Rules 32.10(4)-(6) inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **87(c)** (with rule 137); S.I. 2014/954, **art. 2**

**[<sup>F470</sup>Payments under a maintenance order registered in the family court**

**32.10A.**—(1) This rule applies where section 22(1A) of the 1950 Act applies and the family court orders that payments under a maintenance order registered in the family court are to be made by a particular means.

(2) The court officer will record on a copy of the order the means of payment that the court has ordered.

(3) The court officer will notify, in writing, the person liable to make payments under the order how the payments are to be made.

(4) Where [<sup>F471</sup>under section 1(4A) of the Maintenance Enforcement Act 1991] the family court orders payment to the court by a method of payment specified in [<sup>F472</sup>section 1(5) of that Act], the court officer will notify the person liable to make payments under the order of sufficient details of the account into which the payments should be made to enable payments to be made into that account.

(5) The Part 18 procedure applies to an application under section 1(7) of the Maintenance Enforcement Act 1991 [<sup>F473</sup>(application from an interested party to revoke, suspend, revive or vary a means of payment order)].

[<sup>F474</sup>(6) Where the court makes an order under section 1(7) of the Maintenance Enforcement Act 1991 or dismisses an application for such an order, the court officer will, as far as practicable, notify in writing all interested parties of the effect of the order and will take the steps set out in paragraphs (2), (3) and (4), as appropriate.

(7) In this rule, “interested party” has the meaning given in section 1(10) of the Maintenance Enforcement Act 1991.]]

**Textual Amendments**

- F470** Rule 32.10A inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **88** (with rule 137); S.I. 2014/954, **art. 2**

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

- F471** Words in rule 32.10A(4) inserted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\), rules 1, 27\(a\)\(i\)](#) (with rule 45)
- F472** Words in rule 32.10A(4) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\), rules 1, 27\(a\)\(ii\)](#) (with rule 45)
- F473** Words in rule 32.10A(5) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\), rules 1, 27\(b\)](#) (with rule 45)
- F474** Rule 32.10A(6)(7) substituted for rule 32.10A(6) (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\), rules 1, 27\(c\)](#) (with rule 45)

## Enforcement

**32.11.**—(1) [<sup>F475</sup>Subject to paragraph (2), Part 33] applies to an application for or with respect to the enforcement of a Scottish order or a Northern Irish order registered in the High Court [<sup>F476</sup>or the family court].

(2) The application may be made without notice to the person liable to make payments under the order.

### Textual Amendments

- F475** Words in rule 32.11(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\), rules 1, 89\(a\)](#) (with rule 137); S.I. 2014/954, [art. 2](#)
- F476** Words in rule 32.11(1) inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\), rules 1, 89\(b\)](#) (with rule 137); S.I. 2014/954, [art. 2](#)

## Inspection of register and copies of order

**32.12.** Any person—

- (a) who is entitled to receive, or liable to make, payments under [<sup>F477</sup>a Scottish order or a Northern Irish order registered in the High Court or the family court under the 1950 Act]; or
- (b) with the permission of the court,

may—

- (i) inspect the register; or
- (ii) request a copy of any order registered in the High Court [<sup>F478</sup>or the family court] under Part 2 of the 1950 Act and any statutory declaration, affidavit<sup>(GL)</sup> or statement filed with the order.

### Textual Amendments

- F477** Words in rule 32.12(a) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\), rules 1, 90\(a\)](#) (with rule 137); S.I. 2014/954, [art. 2](#)
- F478** Words in rule 32.12(a)(ii) inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\), rules 1, 90\(b\)](#) (with rule 137); S.I. 2014/954, [art. 2](#)

## [<sup>F479</sup>Notices and certificates: section 19(4), 20(1) and 24(5) and (5A) of the 1950 Act

**32.12A.**—(1) Practice Direction 32A contains the form of—



- (a) a notice under section 19(4) of the 1950 Act that payments under a maintenance order made by a sheriff court in Scotland or a court of summary jurisdiction in Northern Ireland have become payable through or to any officer or person;
  - (b) a notice under section 19(4) of the 1950 Act that the payments under a maintenance order made by the family court have, on its registration under Part 2 of the 1950 Act in a court in Scotland or Northern Ireland, ceased to be payable to or through the court or any person;
  - (c) a certificate lodged under section 20(1) of the 1950 Act as to the amount of any arrears due under a maintenance order made by the family court; and
  - (d) a notice under section 24(5) or (5A) of the 1950 Act of the cancellation of the registration under Part 2 of the 1950 Act of a maintenance order in the family court.
- (2) The court officer will send a notice referred to in paragraph (1)(a), (b) or (d) to the person liable to make the payments under the order at that person's last known address.]

#### Textual Amendments

**F479** Rule 32.12A inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **91** (with rule 137); S.I. 2014/954, **art. 2**

## CHAPTER 3

### REGISTRATION OF MAINTENANCE ORDERS UNDER THE 1958 ACT

#### Interpretation

**32.13.** In this Chapter “the register” means the register kept for the purposes of the 1958 Act.

#### Registration of orders – prescribed period

**32.14.** The prescribed period for the purpose of section 2(2) of the 1958 Act is 14 days. (Section 2(2) sets out the period during which an order, which is to be registered in a magistrates' court, may not be enforced)

#### Application for registration of a maintenance order in [<sup>F480</sup>the family court – procedure in the High Court]

**32.15.**—(1) An application under section 2(1) of the 1958 Act may be made by sending to the court officer at the court which made the order—

- (a) a certified copy of the maintenance order; and
- (b) two copies of the application.

(2) When, on the grant of an application, the court officer sends the certified copy of the maintenance order to the [<sup>F481</sup>family court] in accordance with section 2(2), the court officer must—

- (a) note on the order that the application for registration has been granted; and
- (b) send to the [<sup>F481</sup>family court] a copy of the application for registration of the order.

(3) On receiving notice that the [<sup>F482</sup>family court] has registered the order, the court officer [<sup>F483</sup>of the High Court] must enter particulars of the registration in the court records.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

#### Textual Amendments

- F480** Words in rule 32.15 heading substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 92\(a\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)
- F481** Words in rule 32.15(2) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 92\(b\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)
- F482** Words in rule 32.15(3) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 92\(b\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)
- F483** Words in rule 32.15(3) inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 92\(c\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

#### <sup>F484</sup> Application for registration of a maintenance order in the family court – procedure in the family court

**32.15A.**—(1) This rule applies where the court officer for the family court receives from the court officer of the High Court a certified copy of a High Court order, in accordance with section 2(2)(b) of the 1958 Act.

(2) The court officer of the family court will—

- (a) register the order in the family court by entering particulars in the register; and
- (b) send notice to the court officer of the High Court that the order has been registered.]

#### Textual Amendments

- F484** Rule 32.15A inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 93](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

#### Registration in <sup>F485</sup>the family court] of an order registered in the High Court [<sup>F486</sup>- procedure in the High Court]

**32.16.**—(1) This rule applies where—

- (a) a maintenance order is registered in the High Court in accordance with section 17(4) of the 1950 Act; and
- (b) the court officer [<sup>F487</sup>of the High Court] receives notice that the [<sup>F488</sup>family court] has registered the order in accordance with section 2(5) of the 1958 Act.

(2) The court officer [<sup>F489</sup>of the High Court] must enter particulars of the registration in <sup>F490</sup>... the register.

#### Textual Amendments

- F485** Words in rule 32.16 heading substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [art. 1, rule 94\(a\)\(i\)](#) (with [art. 137](#)); S.I. 2014/954, [art. 2](#)
- F486** Words in rule 32.16 heading inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [art. 1, rule 94\(a\)\(ii\)](#) (with [art. 137](#)); S.I. 2014/954, [art. 2](#)
- F487** Words in rule 32.16(1)(b) inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [art. 1, rule 94\(b\)](#) (with [art. 137](#)); S.I. 2014/954, [art. 2](#)
- F488** Words in rule 32.16(1)(b) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [art. 1, rule 94\(c\)](#) (with [art. 137](#)); S.I. 2014/954, [art. 2](#)

**F489** Words in rule 32.16(2) inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), art. 1, **rule 94(b)** (with art. 137); S.I. 2014/954, art. 2

**F490** Words in rule 32.16(2) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), art. 1, **rule 94(d)** (with art. 137); S.I. 2014/954, art. 2

**[<sup>F491</sup>Registration in the family court of an order registered in the High Court – procedure in the family court**

**32.16A.**—(1) This rule applies where—

- (a) a maintenance order is registered in the High Court in accordance with section 17(4) of the 1950 Act; and
- (b) the court officer of the family court, in accordance with section 2(2)(b) of the 1958 Act, receives from the appropriate officer of the original court in Scotland or Northern Ireland a certified copy of an order made by the court in Scotland or Northern Ireland.

(2) The court officer of the family court will—

- (a) register the order in the family court by entering particulars in the register; and
- (b) send written notice to the court officer of the High Court and to the appropriate officer of the original court in Scotland or in Northern Ireland that the order has been registered.]

**Textual Amendments**

**F491** Rule 32.16A inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **95** (with rule 137); S.I. 2014/954, **art. 2**

**Registration in the High Court of a magistrates' court order**

<sup>F492</sup>**32.17.** .....

**Textual Amendments**

**F492** Rule 32.17 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **96** (with rule 137); S.I. 2014/954, **art. 2**

**Registration in the High Court of an order registered in a magistrates' court**

<sup>F493</sup>**32.18.** .....

**Textual Amendments**

**F493** Rule 32.18 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **96** (with rule 137); S.I. 2014/954, **art. 2**

**Variation or discharge of an order registered in [<sup>F494</sup>the family court – procedure in the High Court]**

**32.19.**—(1) This rule applies where a maintenance order is registered in [<sup>F495</sup>the family court] under Part 1 of the 1958 Act.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

(2) If the court which made the order makes an order varying or discharging that order the court officer [<sup>F496</sup>of the High Court] must send a certified copy of the order of variation or discharge to [<sup>F497</sup>the family court].

(3) If the court officer [<sup>F498</sup>of the High Court] receives from [<sup>F499</sup>the family court] a certified copy of an order varying the maintenance order the court officer must—

- (a) file the copy of the order; and
- (b) enter the particulars of the variation in the place where the details required by rule 32.15(3) were entered.

#### Textual Amendments

- F494** Words in rule 32.19 heading substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\), rules 1, 97\(a\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)
- F495** Words in rule 32.19(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\), rules 1, 97\(b\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)
- F496** Words in rule 32.19(2) inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\), rules 1, 97\(c\)\(i\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)
- F497** Words in rule 32.19(2) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\), rules 1, 97\(c\)\(ii\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)
- F498** Words in rule 32.19(3) inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\), rules 1, 97\(d\)\(i\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)
- F499** Words in rule 32.19(3) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\), rules 1, 97\(d\)\(ii\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

#### <sup>F500</sup>Variation, remission, discharge or cancellation of registration of an order registered in the family court – procedure in the family court

**32.19A.**—(1) Where under section 4(2) of the 1958 Act a High Court order registered in the family court is varied by the family court, the court officer for the family court will give notice of the variation to the High Court.

(2) Where under section 4(4) of the 1958 Act an application for the variation of a High Court order registered in the family court is remitted to the High Court by the family court, the court officer for the family court will give notice of its having been remitted to the High Court.

(3) Where under section 5(4) of the 1958 Act the registration of a High Court order in the family court is cancelled by the family court, the court officer for the family court will give notice of cancellation to the High Court, stating (if applicable) that the cancellation is a result of a notice given under section 5(1) of the 1958 Act.

(4) Where under section 5(4) of the 1958 Act the registration in the family court of an order made in Scotland or Northern Ireland is cancelled by the family court, the court officer for the family court will give notice of the cancellation to—

- (a) the appropriate officer of the court which made the order; and
- (b) where the order is registered under Part 2 of the 1950 Act, to the appropriate officer of the High Court.

(5) Where under section 5(4) of the 1958 Act the registration in the family court of an order under Part 2 of the 1950 Act is cancelled by the family court, the court officer for the family court will give notice of the cancellation to the appropriate officer of the original court.

(6) Where under section 5 of the 1958 Act the cancellation of the registration of a High Court order means that any order which requires payment to be made to the family court is to cease to have

effect, the court officer will give notice to the defendant in the form set out in Practice Direction 32A (Form 7).]

**Textual Amendments**

**F500** Rule 32.19A inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **98** (with rule 137); S.I. 2014/954, **art. 2**

**Variation or discharge of an order registered in the High Court**

<sup>F501</sup>**32.20.** . . . . .

**Textual Amendments**

**F501** Rule 32.20 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **99** (with rule 137); S.I. 2014/954, **art. 2**

**Cancellation of registration – orders registered in the High Court**

<sup>F502</sup>**32.21.** . . . . .

**Textual Amendments**

**F502** Rule 32.21 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **99** (with rule 137); S.I. 2014/954, **art. 2**

**Cancellation of registration – orders registered in [<sup>F503</sup>the family court]**

**32.22.**—(1) Where the court gives notice under section 5(2) of the 1958 Act, the court officer must endorse the notice on the certified copy of the order of variation or discharge sent to the [<sup>F504</sup>family court] in accordance with rule 32.19(2).

(2) Where notice is received from [<sup>F505</sup>the family court] that registration of an order made by the High Court <sup>F506</sup>... under Part 1 of the 1958 Act has been cancelled, the court officer must enter particulars of the cancellation in the place where the details required by rule 32.15(3) were entered.

**Textual Amendments**

**F503** Words in rule 32.22 heading substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **100(a)** (with rule 137); S.I. 2014/954, **art. 2**

**F504** Words in rule 32.22(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **100(b)** (with rule 137); S.I. 2014/954, **art. 2**

**F505** Words in rule 32.22(2) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **100(a)** (with rule 137); S.I. 2014/954, **art. 2**

**F506** Words in rule 32.22(2) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **100(c)** (with rule 137); S.I. 2014/954, **art. 2**

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

### <sup>F507</sup>Notices: payments made through the family court

**32.22A.**—(1) Paragraph (2) applies where a notice is given under section 2(6ZC) of the 1958 Act that payments under an order registered in the family court are payable to the family court.

(2) The notice will be in the form set out in Practice Direction 32A (Form 5) and will be given by the court officer of the family court.

(3) Paragraph (4) applies where a notice is given under section 2(6ZC) of the 1958 Act that payments under an order registered in the family court have ceased to be payable to the family court.

(4) The notice will be in the form set out in Practice Direction 32A (Form 6) and will be given by the court officer of the family court.

#### Textual Amendments

**F507** Rules 32.22A-32.22D inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 101](#) (with [rule 137](#)); [S.I. 2014/954](#), [art. 2](#)

### Method of payment

**32.22B.**—(1) This rule applies where the family court exercises its duties or powers under section 4A(2) of the 1958 Act to make, revive or vary any means of payment order within the meaning of section 1(7) of the Maintenance Enforcement Act 1991.

(2) Where the court orders that payments under a registered order are to be made by a particular means—

- (a) the court will record on a copy of the order the means of payment which the court has ordered; and
- (b) the court officer will notify, in writing, the person liable to make payments under the order how the payments are to be made.

(3) Paragraph (4) applies where the court orders that payments be made—

- (a) by the debtor to the creditor; or
- (b) by the debtor to the court;

by a method falling within section 1(5) of the Maintenance Enforcement Act 1991.

(4) The court officer will notify the person liable to make payments under the order of sufficient details of the account into which payments should be made to enable payments to be made into that account.

#### Textual Amendments

**F507** Rules 32.22A-32.22D inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 101](#) (with [rule 137](#)); [S.I. 2014/954](#), [art. 2](#)

### Variation of method of payment

**32.22C.**—(1) The Part 18 procedure applies to an application under section 1(3)(a) of the Maintenance Enforcement Act 1991 received from an interested party for the method of payment to be varied under section 4A of the 1958 Act.

(2) The court will notify the interested party who made the application and, where practicable, any other interested party, of the result of the application.

- (3) The court will record any variation on a copy of the order.

**Textual Amendments**

**F507** Rules 32.22A-32.22D inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 101](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

**Notices received from another court or from a person entitled to payments**

**32.22D.**—(1) This rule applies where any notice is received—

- (a) of the discharge or variation by the High Court of a High Court order registered in the family court;
- (b) of the discharge or variation by a court in Scotland or Northern Ireland of an order made by such a court and registered in the family court; or
- (c) under section 5(1) or (2) of the 1958 Act.

(2) The court officer for the family court will enter details of any such notice in the register.

(3) In the case of a notice under section 5(1) or (2) of the 1958 Act, the court officer for the family court will ensure that the person in possession of any warrant of commitment, issued but not executed, for the enforcement of the order is informed of the giving of that notice.]

**Textual Amendments**

**F507** Rules 32.22A-32.22D inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 101](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

CHAPTER 4

REGISTRATION AND ENFORCEMENT OF CUSTODY ORDERS UNDER THE 1986 ACT

**Interpretation**

**32.23.** In this Chapter—

“appropriate court” means, in relation to—

- (a) Scotland, the Court of Session;
- (b) Northern Ireland, the High Court in Northern Ireland; and
- (c) a specified dependent territory, the corresponding court in that territory;

“appropriate officer” means, in relation to—

- (a) the Court of Session, the Deputy Principal Clerk of Session;
- (b) the High Court in Northern Ireland, the Master (Care and Protection) of that court; and
- (c) the appropriate court in a specified dependent territory, the corresponding officer of that court;

“Part 1 order” means an order under Part 1 of the 1986 Act;

“the register” means the register kept for the purposes of Part 1 of the 1986 Act; and

“specified dependent territory” means a dependent territory specified in column 1 of Schedule 1 to the Family Law Act 1986 (Specified Dependent Territories) Order 1991 <sup>M136</sup>.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

#### **Marginal Citations**

**M136** S.I. 1991/1723.

#### **Prescribed officer and functions of the court**

**32.24.**—(1) The prescribed officer for the purposes of sections 27(4) and 28(1) of the 1986 Act <sup>M137</sup> is the family proceedings department manager of the principal registry.

(2) The function of the court under sections 27(3) and 28(1) of the 1986 Act <sup>M138</sup> shall be performed by a court officer.

#### **Marginal Citations**

**M137** Section 27(4) was amended by section 108(5) of and paragraph 62 of Schedule 13 to the Children Act 1989.

**M138** Section 27(3) was amended by section 108(5) of and paragraph 62 of Schedule 13 to the Children Act 1989.

#### **Application for the registration of an order made by the High Court or [<sup>F508</sup>the family court]**

**32.25.**—(1) An application under section 27 of the 1986 Act for the registration of an order made in the High Court or [<sup>F509</sup>the family court] may be made by sending to a court officer at the court which made the order—

- (a) a certified copy of the order;
- (b) a copy of any order which has varied the terms of the original order;
- (c) a statement which—
  - (i) contains the name and address of the applicant and the applicant's interest under the order;
  - (ii) contains—
    - (aa) the name and date of birth of the child in respect of whom the order was made;
    - (bb) the whereabouts or suspected whereabouts of the child; and
    - (cc) the name of any person with whom the child is alleged to be;
  - (iii) contains the name and address of any other person who has an interest under the order and states whether the order has been served on that person;
  - (iv) states in which of the jurisdictions of Scotland, Northern Ireland or a specified dependent territory the order is to be registered;
  - (v) states that to the best of the applicant's information and belief, the order is in force;
  - (vi) states whether, and if so where, the order is already registered;
  - (vii) gives details of any order known to the applicant which affects the child and is in force in the jurisdiction in which the order is to be registered;
  - (viii) annexes any document relevant to the application; and
  - (ix) is verified by a statement of truth; and
- (d) a copy of the statement referred to in paragraph (c).



(2) On receipt of the documents referred to in paragraph (1), the court officer will, subject to paragraph (4)—

- (a) keep the original statement and send the other documents to the appropriate officer;
- (b) record in the court records the fact that the documents have been sent to the appropriate officer; and
- (c) file a copy of the documents.

(3) On receipt of a notice that the document has been registered in the appropriate court the court officer will record that fact in the court records.

(4) The court officer will not send the documents to the appropriate officer if it appears to the court officer that—

- (a) the order is no longer in force; or
- (b) the child has reached the age of 16.

(5) Where paragraph (4) applies—

- (a) the court officer must, within 14 days of the decision, notify the applicant of the decision of the court officer in paragraph (4) and the reasons for it; and
- (b) the applicant may apply to [<sup>F510</sup>the court], in private for an order that the documents be sent to the appropriate court.

#### Textual Amendments

**F508** Words in rule 32.25 heading substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 102\(a\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

**F509** Words in rule 32.25(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 102\(a\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

**F510** Words in rule 32.25(5)(b) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 102\(b\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

### Registration of orders made in Scotland, Northern Ireland or a specified dependent territory

**32.26.**—(1) This rule applies where the prescribed officer receives, for registration, a certified copy of an order made in Scotland, Northern Ireland or a specified dependent territory.

(2) The prescribed officer will—

- (a) enter in the register—
  - (i) the name and address of the applicant and the applicant's interest under the order;
  - (ii) the name and date of birth of the child and the date the child will attain the age of 16;
  - (iii) the whereabouts or suspected whereabouts of the child; and
  - (iv) the terms of the order, its date and the court which made it;
- (b) file the certified copy and accompanying documents; and
- (c) notify—
  - (i) the court which sent the order; and
  - (ii) the applicant,that the order has been registered.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

### **Revocation and variation of an order made in the High Court or <sup>F511</sup>the family court]**

**32.27.**—(1) Where a Part 1 order, registered in an appropriate court, is varied or revoked, the court officer of the court making the order of variation or revocation will—

- (a) send a certified copy of the order of variation or revocation to—
  - (i) the appropriate officer; and
  - (ii) if a different court, the court which made the Part 1 order;
- (b) record in the court records the fact that a copy of the order has been sent; and
- (c) file a copy of the order.

(2) On receipt of notice from the appropriate court that its register has been amended, this fact will be recorded by the court officer of—

- (a) the court which made the order of variation or revocation; and
- (b) if different, the court which made the Part 1 order.

#### **Textual Amendments**

**F511** Words in rule 32.27 heading substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **103** (with rule 137); S.I. 2014/954, **art. 2**

### **Registration of varied, revoked or recalled orders made in Scotland, Northern Ireland or a specified dependent territory**

**32.28.**—(1) This rule applies where the prescribed officer receives a certified copy of an order made in Scotland, Northern Ireland or a specified dependent territory which varies, revokes or recalls a registered Part 1 order.

(2) The prescribed officer shall enter particulars of the variation, revocation or recall in the register and give notice of the entry to—

- (a) the court which sent the certified copy;
- (b) if different, the court which made the Part 1 order;
- (c) the applicant for registration; and
- (d) if different, the applicant for the variation, revocation or recall of the order.

(3) An application under section 28(2) of the 1986 Act must be made in accordance with the Part 19 procedure.

(4) The applicant for the Part 1 order, if not the applicant under section 28(2) of the 1986 Act, must be made a defendant to the application.

(5) Where the court cancels a registration under section 28(2) of the 1986 Act, the court officer will amend the register and give notice of the amendment to the court which made the Part 1 order.

### **Interim directions**

**32.29.** The following persons will be made parties to an application for interim directions under section 29 of the 1986 Act <sup>M139</sup>—

- (a) the parties to the proceedings for enforcement; and
- (b) if not a party to those proceedings, the applicant for the Part 1 order.

### Marginal Citations

**M139** Section 29 was amended by section 108(5) of and paragraphs 62(1) and (2)(a) of Schedule 13 to the Children Act 1989 and by section 15(1) of and paragraphs 2 and 4 of Schedule 2 to the Children and Adoption Act 2006.

### Staying and dismissal of enforcement proceedings

**32.30.**—(1) The following persons will be made parties to an application under section 30(1) or 31(1) of the 1986 Act—

- (a) the parties to the proceedings for enforcement which are sought to be stayed<sup>(GL)</sup>; and
- (b) if not a party to those proceedings, the applicant for the Part 1 order.

(2) Where the court makes an order under section 30(2) or (3) or section 31(3) of the 1986 Act, the court officer will amend the register and give notice of the amendment to—

- (a) the court which made the Part 1 order; and
- (b) the applicants for—
  - (i) registration;
  - (ii) enforcement; and
  - (iii) stay<sup>(GL)</sup> or dismissal of the enforcement proceedings.

### Particulars of other proceedings

**32.31.** A party to proceedings for or relating to a Part 1 order who knows of other proceedings which relate to the child concerned (including proceedings out of the jurisdiction and concluded proceedings) must file a witness statement which—

- (a) states in which jurisdiction and court the other proceedings were begun;
- (b) states the nature and current state of the proceedings and the relief claimed or granted;
- (c) sets out the names of the parties to the proceedings and their relationship to the child;
- (d) if applicable and if known, states the reasons why relief claimed in the proceedings for or relating to the Part 1 order was not claimed in the other proceedings; and
- (e) is verified by a statement of truth.

### Inspection of register

**32.32.** The following persons may inspect any entry in the register relating to a Part 1 order and may request copies of the order any document relating to it—

- (a) the applicant for registration of the Part 1 order;
- (b) a person who, to the satisfaction of a district judge, has an interest under the Part 1 order; and
- (c) a person who obtains the permission of a district judge.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

## [<sup>F512</sup>Chapter 5

### Ability of a court officer to take enforcement proceedings in relation to certain orders for periodical payments

#### Textual Amendments

**F512** Pt. 32 Ch. 5 inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 104](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

#### Court officers and enforcement proceedings

**32.33.**—(1) In this rule—

“the 1972 Act” means the Maintenance Orders (Reciprocal Enforcement) Act 1972;

“relevant order” means—

- (a) any order made by the family court for periodical payments, other than an order made by virtue of Part 2 of the 1972 Act;
- (b) any order for periodical payments made by the High Court (including an order deemed to be made by the High Court by virtue of section 1(2) of the 1958 Act) and registered under Part 1 of the 1958 Act in the family court; and
- (c) an order made by a court in Scotland or in Northern Ireland which is registered in the family court under Part 2 of the 1950 Act; and

“the payee” means the person for whose benefit payments under a relevant order are required to be made.

(2) Where—

- (a) payments under a relevant order are required to be made periodically to the family court; and
- (b) any sums payable under the order are in arrears,

a court officer will, if the payee so requests in writing, and unless it appears to the court officer that it is unreasonable in the circumstances to do so, proceed in the officer’s own name for the recovery of those sums.

(3) Where payments under a relevant order are required to be made periodically to the court, the payee may, at any time during the period in which the payments are required to be so made, give authority in writing to a court officer for the officer to proceed as mentioned in paragraph (4).

(4) Where authority is given under paragraph (3) to a court officer, that officer will, unless it appears unreasonable in the circumstances to do so, proceed in the officer’s own name for the recovery of any sums payable to the court under the order in question which, on or after the date of the giving of the authority, fall into arrears.

(5) In any case where—

- (a) authority under paragraph (3) has been given to a court officer; and
- (b) the payee gives notice in writing to that court officer cancelling the authority,

the authority will cease to have effect and so the court officer will not continue any proceedings already commenced by virtue of the authority.

(6) The payee shall have the same liability for all of the costs properly incurred in, or in relation to, proceedings taken under paragraph (2) at the payee’s request, or under paragraph (3) by virtue of the payee’s authority, including any court fees and any costs incurred as a result of any proceedings commenced not being continued, as if the proceedings had been commenced by the payee.

(7) Nothing in paragraph (2) or (4) shall affect any right of a payee to proceed in his or her own name for the recovery of sums payable under an order of any court.]

## PART 33

### ENFORCEMENT

#### CHAPTER 1

#### GENERAL RULES

#### Application

**33.1.**—(1) The rules in this Part apply to an application made in the High Court and [<sup>F513</sup>the family court] to enforce an order made in family proceedings.

(2) [<sup>F514</sup>Parts 50, 83 and 84] of, and Schedules 1 and 2 to, the CPR apply, as far as they are relevant and with necessary modification <sup>F515</sup> ..., to an application made in the High Court and [<sup>F516</sup>the family court] to enforce an order made in family proceedings.

#### Textual Amendments

**F513** Words in rule 33.1(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\), rules 1, 28\(a\)](#) (with rule 45)

**F514** Words in rule 33.1(2) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\), rules 1, 28\(b\)\(i\)](#) (with rule 45)

**F515** Words in rule 33.1(2) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\), rules 1, 28\(b\)\(ii\)](#) (with rule 45)

**F516** Words in rule 33.1(2) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\), rules 1, 28\(b\)\(iii\)](#) (with rule 45)

#### SECTION 1

#### *Enforcement of orders for the payment of money*

#### Application of the Civil Procedure Rules

**33.2.** Part 70 of the CPR applies to proceedings under this Section as if—

(a) in rule 70.1, in paragraph (2)(d), “but does not include a judgment or order for the payment of money into court” is omitted; <sup>F517</sup> ...

[<sup>F518</sup>(a1) in rule 70.3(1), for “County Court” there is substituted “family court”; and]

(b) rule 70.5 is omitted.

#### Textual Amendments

**F517** Word in rule 33.2(a) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\), rules 1, 29\(a\)](#) (with rule 45)

**F518** Rule 33.2(a1) inserted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\), rules 1, 29\(b\)](#) (with rule 45)

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

### How to apply

**33.3.**—(1) Except where a rule or practice direction otherwise requires, an application for an order to enforce an order for the payment of money must be made in a notice of application accompanied by a statement which must—

- (a) state the amount due under the order, showing how that amount is arrived at; and
- (b) be verified by a statement of truth.

(2) The notice of application may either—

- (a) apply for an order specifying the method of enforcement; or
- (b) apply for an order for such method of enforcement as the court may consider appropriate.

(3) If an application is made under paragraph (2)(b), an order to attend court will be issued and rule 71.2 (6) and (7) of the CPR will apply as if the application had been made under that rule.

### Transfer of orders

**33.4.**—(1) This rule applies to an application for the transfer—

- (a) to the High Court of an order made in [<sup>F519</sup>the family court]; and
- (b) to [<sup>F519</sup>the family court] of an order made in the High Court.

(2) The application must be—

- (a) made without notice; and
- (b) accompanied by a statement which complies with rule 33.3(1).

(3) The transfer will have effect upon the filing of the application.

(4) Where an order is transferred from [<sup>F519</sup>the family court] to the High Court—

- (a) it will have the same force and effect; and
- (b) the same proceedings may be taken on it,

as if it were an order of the High Court.

(5) This rule does not apply to the transfer of orders for periodical payments or for the recovery of arrears of periodical payments.

#### Textual Amendments

**F519** Words in rule 33.4 substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014](#) (S.I. 2014/667), rules 1, **30** (with rule 45)

## SECTION 2

### *Committal and injunction*

#### [<sup>F520</sup>Enforcement of orders by way of committal

**33.5.** Part 37 applies as appropriate for the enforcement by way of committal of an order made in family proceedings.]

**Textual Amendments**

**F520** Rule 33.5 substituted for rules 33.5-33.8 (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **31** (with rule 45)

**Proceedings in the principal registry treated as pending in a designated county court**

<sup>F520</sup>**33.6.** . . . . .

**Textual Amendments**

**F520** Rule 33.5 substituted for rules 33.5-33.8 (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **31** (with rule 45)

**Specific modifications of the CCR**

<sup>F520</sup>**33.7.** . . . . .

**Textual Amendments**

**F520** Rule 33.5 substituted for rules 33.5-33.8 (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **31** (with rule 45)

**Section 118 County Courts Act 1984 and the tipstaff**

<sup>F520</sup>**33.8.** . . . . .

**Textual Amendments**

**F520** Rule 33.5 substituted for rules 33.5-33.8 (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **31** (with rule 45)

CHAPTER 2

COMMITTAL BY WAY OF JUDGMENT SUMMONS

**Interpretation**

**33.9.** In this Chapter, unless the context requires otherwise—

“order” means an order made in family proceedings for the payment of money;

“judgment creditor” means a person entitled to enforce an order under section 5 of the Debtors Act 1869;

“debtor” means a person liable under an order; and

“judgment summons” means a summons under section 5 of the Debtor's Act 1869<sup>M140</sup> requiring a debtor to attend court.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

### Marginal Citations

**M140** 1869 c.62. Section 5 was amended by articles 2 and 3 of the [Civil Procedure \(Modification of Enactments\) Order 2002 \( S.I. 2002/439\)](#) and the [Statute Law \(Repeals\) Act 2004 \(c.14\)](#).

### Application

**33.10.**—<sup>F521</sup>(1) An application for the issue of a judgment summons may be made—

(a) in the case of an order of the High Court, to—

- (i) the principal registry;
- (ii) a district registry; or
- (iii) the family court,

whichever in the opinion of the judgment creditor is most convenient, and if to the family court, to whichever Designated Family Judge area is in the opinion of the judgment creditor most convenient; and

(b) in the case of an order of the family court, to whichever Designated Family Judge area is in the opinion of the judgment creditor most convenient,

having regard (in any case) to the place where the debtor resides or carries on business and irrespective of the location of the court or registry in which the order was made.

(For the way in which information will be provided to enable Designated Family Judge areas and Designated Family Courts to be identified, see Practice Direction 34E.)]

(2) An application must be accompanied by a statement which—

- (a) complies with rule 33.3(1);
- (b) contains all the evidence on which the judgment creditor intends to rely; and
- (c) has exhibited to it a copy of the order.

### Textual Amendments

**F521** Rule 33.10(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **32** (with rule 45)

### Judgment summons

**33.11.**—(1) If the debtor is in default under an order of committal made on a previous judgment summons in respect of the same order, a judgment summons must not be issued without the court's permission.

(2) A judgment summons must—

- (a) be accompanied by the statement referred to in rule 33.10(2) and
- (b) be served on the debtor personally not less than 14 days before the hearing.

(3) A debtor served with the judgment summons under paragraph (2)(b) must be paid or offered a sum reasonably sufficient to cover the expenses of travelling to and from the court [<sup>F522</sup>building] at which the debtor is summoned to appear.



#### **Textual Amendments**

**F522** Word in rule 33.11(3) inserted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014](#) (S.I. 2014/667), rules 1, **33** (with rule 45)

#### **Successive judgment summonses**

**33.12.** Subject to rule 33.11(1), successive judgment summonses may be issued even if the debtor has ceased to reside or carry on business at the address stated in the application for the issue of a judgment summons since the issue of the original judgment summons.

#### **Requirement for personal service**

**33.13.** In proceedings for committal by way of judgment summons, the following documents must be served personally on the debtor—

- (a) where the court has summonsed the debtor to attend and the debtor has failed to do so, the notice of the date and time fixed for the adjourned hearing; and
- (b) copies of the judgment summons and the documents mentioned in rule 33.10(2).

#### **Committal on application for judgment summons**

**33.14.—**(1) No person may be committed on an application for a judgment summons unless—

- (a) where the proceedings are in the High Court, the debtor has failed to attend both the hearing that the debtor was summonsed to attend and the adjourned hearing;
- (b) where the proceedings are in [<sup>F523</sup>the family court], an order is made under section 110(2) of the County Courts Act 1984 <sup>M141</sup>; or
- (c) the judgment creditor proves that the debtor—
  - (i) has, or has had, since the date of the order the means to pay the sum in respect of which the debtor has made default; and
  - (ii) has refused or neglected, or refuses or neglects, to pay that sum.

(2) The debtor may not be compelled to give evidence.

#### **Textual Amendments**

**F523** Words in rule 33.14(1)(b) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014](#) (S.I. 2014/667), rules 1, **34** (with rule 45)

#### **Marginal Citations**

**M141** [Section 110\(2\)](#) was amended by articles 2 and 8 of the Civil Procedure (Modification of Enactments) Order 2002.

#### **Orders for the benefit of different persons**

**33.15.** Where an applicant has obtained one or more orders in the same application but for the benefit of different persons—

- (a) where the judgment creditor is a child, the applicant may apply for the issue of a judgment summons in respect of those orders on behalf of the judgment creditor without seeking permission to act as the child's litigation friend; and

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- (b) only one judgment summons need be issued in respect of those orders.

### **Hearing of judgment summons**

**33.16.**—(1) On the hearing of the judgment summons the court may—

- (a) where the order is for lump sum provision or costs; or
- (b) where the order is an order for maintenance pending suit, an order for maintenance pending outcome of proceedings or an order for other periodical payments and it appears to the court that the order would have been varied or suspended if the debtor had made an application for that purpose,

make a new order for payment of the amount due under the original order, together with the costs of the judgment summons, either at a specified time or by instalments.

(2) If the court makes an order of committal, it may direct its execution to be suspended on terms that the debtor pays to the judgment creditor—

- (a) the amount due;
- (b) the costs of the judgment summons; and
- (c) any sums accruing due under the original order,

either at a specified time or by instalments.

(3) All payments under a new order or an order of committal must be made to the judgment creditor unless the court directs otherwise.

(4) Where an order of committal is suspended on such terms as are mentioned in paragraph (2)—

- (a) all payments made under the suspended order will be deemed to be made—
  - (i) first, in or towards the discharge of any sums from time to time accruing due under the original order; and
  - (ii) secondly, in or towards the discharge of a debt in respect of which the judgment summons was issued and the costs of the summons; and
- (b) the suspended order must not be executed until the judgment creditor has filed a statement of default on the part of the debtor.

### **Special provisions as to judgment summonses in the High Court**

**33.17.**—(1) The court may summons witnesses to give evidence to prove the means of the debtor and may issue a witness summons for that purpose.

(2) Where the debtor appears at the hearing, the court may direct that the travelling expenses paid to the debtor be allowed as expenses of a witness.

(3) Where the debtor appears at the hearing and no order of committal is made, the court may allow the debtor's proper costs including compensation for any loss of earnings.

(4) When the court makes—

- (a) a new order; or
- (b) an order of committal,

a court officer must send notice of the order to the debtor and, if the original order was made in another court, to that court.

(5) An order of committal must be directed—

- (a) where the order is to be executed by the tipstaff, to the tipstaff; or

- (b) where the order is to be executed by a deputy tipstaff, to the [<sup>F524</sup>Designated Family Judge area within] which the debtor is to be found.

**Textual Amendments**

**F524** Words in rule 33.17(5)(b) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), [rules 1, 35](#) (with [rule 45](#))

**Special provisions as to judgment summonses in designated county courts**

<sup>F525</sup>**33.18.** . . . . .

**Textual Amendments**

**F525** Rule 33.18 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), [rules 1, 36](#) (with [rule 45](#))

CHAPTER 3

ATTACHMENT OF EARNINGS

<sup>F526</sup>**Application of CCR Order 27: enforcement of a judgment debt**

**33.19.**—(1) Order 27 of the CCR applies to proceedings under this Part for the enforcement of a judgment debt with the following modifications.

- (2) In Order 27 rule 3—
  - (a) in paragraph (1), for “County Court hearing centre” there is substituted “Designated Family Court for the Designated Family Judge area”;
  - (b) in paragraph (2), for “County Court hearing centre in” there is substituted “Designated Family Court for the Designated Family Judge area within”;
  - (c) in paragraph (3)—
    - (i) for “County Court hearing centre” there is substituted “Designated Family Court for the Designated Family Judge area”;
    - (ii) for the words from “at another” to the end there is substituted “within another Designated Family Judge area, the application shall be made to the Designated Family Court for that other Designated Family Judge area.”; and
  - (d) paragraph (4) is omitted.
- (3) In Order 27 rule 7—
  - (a) in paragraph (3), for “District Judge” in each place where it occurs there is substituted “court”;
  - (b) in paragraph (4)—
    - (i) for “District Judge who” there is substituted “court which”; and
    - (ii) for “if the District Judge” there is substituted “if it”;
  - (c) in paragraph (5)—
    - (i) for “District Judge does” there is substituted “court does”; and
    - (ii) for “they” there is substituted “it”; and

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- (d) in paragraph (7), for “District Judge” in each place where it occurs there is substituted “court”.
- (4) In Order 27 rule 10—
- (a) in paragraph (2), for “District Judge” there is substituted “court”; and
- (b) in paragraph (3)—
- (i) the words “or a magistrates’ court” and “or, as the case may be, the magistrates’ court” are omitted; and
- (ii) for “County Court” there is substituted “family court”.
- (5) In Order 27 rule 11, for “District Judge” there is substituted “court”.
- (6) In Order 27 rule 14, for paragraphs (1) and (2) there is substituted—
- “(1) Where the question of making a consolidated attachment order falls to be considered in a Designated Family Judge area which is not the area in which an attachment of earnings order has been made to secure the payment of a judgment debt by the debtor, the family court sitting in the last-mentioned area shall, at the request of the family court sitting in the first-mentioned area, transfer to that court the matter in which the attachment of earnings order was made.
- (2) Without prejudice to paragraph (1), if in the opinion of the family court sitting in a Designated Family Judge area in which an attachment of earnings order has been made the matter could more conveniently proceed in another Designated Family Judge area (whether by reason of the debtor having become resident in that other Designated Family Judge area or otherwise), the court may order the matter to be transferred to that other area.”
- (7) In Order 27 rule 16, in paragraph (10), for “the County Court, the District Judge” there is substituted “the family court, the court”.
- (8) In Order 27 rule 19, in paragraph (3D), for “District Judge who” there is substituted “court which”.

#### Textual Amendments

**F526** Rules 33.19, 33.19A substituted for rule 33.19 (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, 37 (with rule 45)

#### Application of CCR Order 27: enforcement of a maintenance order

**33.19A.**—(1) Order 27 of the CCR applies to proceedings under this Part for the enforcement of a maintenance order as it applies to proceedings for the enforcement of a judgment debt, subject to the following provisions of this rule—

- (a) paragraphs (2) and (3) in relation to failure by a debtor under a maintenance order to attend court and the application of section 23 of the Attachment of Earnings Act 1971; and
- (b) paragraphs (4) to (11) in relation to applications for an attachment of earnings order to secure payments under a maintenance order, the making of such attachment of earnings orders and their discharge.

(2) An order under section 23(1) of the Attachment of Earnings Act 1971 for the attendance of the debtor at an adjourned hearing for an attachment of earnings order to secure payments under a maintenance order must—

- (a) be served on the debtor personally not less than 5 days before the day fixed for the adjourned hearing; and

- (b) direct that any payments made thereafter must be paid into the court and not direct to the judgment creditor.
- (3) An application by a debtor for the revocation of an order committing the debtor to prison and (if already in custody) for discharge under section 23(7) of the Attachment of Earnings Act 1971 must—
- (a) be made to court in writing without notice to any other party, stating the reasons for the debtor’s failure to attend the court or refusal to be sworn or to give evidence (as the case may be) and containing an undertaking by the debtor to attend the court or to be sworn or to give evidence when next required to do so; and
  - (b) if the debtor has already been lodged in prison, be attested by the governor of the prison (or any other officer of the prison not below the rank of principal officer), and in any other case be made in a witness statement or affidavit,
- and before dealing with the application the court may, if it thinks fit, cause notice to be given to the judgment creditor that the application has been made and of a date and time when the judgment creditor may attend and be heard.
- (4) An application for an attachment of earnings order to secure payments under a maintenance order must be made to the Designated Family Judge area within which the order was made.
- (5) Any application under section 32 of the 1973 Act for permission to enforce the payment of arrears which became due more than 12 months before the application for an attachment of earnings order must be made in the application for the attachment of earnings order.
- (6) Notice of the application, together with a form of reply in the appropriate form, must be served on the debtor in the manner set out in rule 6.23 and—
- (a) service of the notice must be effected not less than 21 days before the hearing, but may be effected at any time before the hearing on the applicant satisfying the court by witness statement or affidavit that the respondent is about to move from the address for service; and
  - (b) rule 5(2A) of CCR Order 27 does not apply.
- (7) An application by the debtor for an attachment of earnings order to secure payments under a maintenance order may be made on the making of the maintenance order or of an order varying the maintenance order, and rules 4 and 5 of CCR Order 27 do not apply in such a case.
- (8) Rule 7 of CCR Order 27 has effect as if for paragraphs (1) to (8) of that rule there were substituted the following paragraph—
- “(1) An application for an attachment of earnings order to secure payments under a maintenance order shall be heard in private.”
- (9) Where an attachment of earnings order made by the High Court designates the court officer of the family court as the collecting officer, that officer shall, on receipt of a certified copy of the order from the court officer of the High Court, send to the person to whom the order is directed a notice as to the mode of payment.
- (10) Where an attachment of earnings order made by the family court to secure payments under a maintenance order ceases to have effect and—
- (a) the related maintenance order was made by that court; or
  - (b) the related maintenance order was an order of the High Court and—
    - (i) the court officer of the family court has received notice of the cessation from the court officer of the High Court; or
    - (ii) a committal order has been made in the family court for the enforcement of the related maintenance order,

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the court officer of the family court shall give notice of the cessation to the person to whom the attachment of earnings order was directed.

(11) Rule 13 of CCR Order 27 has effect as if for paragraphs (4) to (7) there were substituted the following paragraph—

“(4) Where the family court has made an attachment of earnings order and it appears to the court that the related maintenance order has ceased to have effect (whether by virtue of the terms of the maintenance order or under section 238 of the 1973 Act or otherwise), the court may discharge or vary the attachment of earnings order.”]

**Textual Amendments**

**F526** Rules 33.19, 33.19A substituted for rule 33.19 (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **37** (with rule 45)

CHAPTER 4

WARRANT OF [F527 CONTROL]

**Textual Amendments**

**F527** Word in Pt. 33 Ch. 4 heading substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **38** (with rule 45)

**Applications to vary existing orders**

**33.20.** Where an application is pending for a variation of—

- (a) a financial order;
- (b) an order under section 27 of the 1973 Act; or
- (c) an order under Part 9 of Schedule 5 to the 2004 Act,

no warrant of [F528 control] may be issued to enforce payment of any sum due under those orders, except with the permission of the [F529 court].

**Textual Amendments**

**F528** Word in rule 33.20 substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **39(a)** (with rule 45)

**F529** Words in rule 33.20 substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **39(b)** (with rule 45)

**Section 103 County Courts Act 1984**

<sup>F530</sup>**33.21.** . . . . .

**Textual Amendments**

**F530** Rule 33.21 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **40** (with rule 45)

## CHAPTER 5

### COURT'S POWER TO APPOINT A RECEIVER

#### Application of the CPR

**33.22.** Part 69 of the CPR applies to proceedings under this Part.

## CHAPTER 6

### ORDERS TO OBTAIN INFORMATION FROM JUDGMENT DEBTORS

#### [<sup>F531</sup> Application of the CPR

**33.23.—**(1) Part 71 of the CPR applies to proceedings under this Part with the following modifications.

(2) In rule 71.2(2), for paragraph (b) substitute—

“(b) must be—

(i) issued in the High Court if the High Court made the judgment or order which it is sought to enforce; or

(ii) made to the Designated Family Court for the Designated Family Judge area within which the judgment or order was made,

except that if the proceedings have since been transferred to a different court or Designated Family Judge area, it must be issued in that court or made to that area.”]

#### Textual Amendments

**F531** Rule 33.23 substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **41** (with rule 45)

## CHAPTER 7

### THIRD PARTY DEBT ORDERS

#### Application of the CPR

**33.24.—**(1) Part 72 of the CPR applies to proceedings under this Part with the following modifications.

[<sup>F532</sup>(1A) In rule 72.3, for paragraph (1)(b) there is substituted—

“(b) must be issued in the court which made the judgment or order which it is sought to enforce, or made to the Designated Family Judge area within which that judgment or order was made, except that if the proceedings have since been transferred to a different court or Designated Family Judge area, it must be issued in that court or made to that area.”]

(2) In rule 72.4—

(a) in paragraph (1), for “a judge” there is substituted “ the court ”; and

(b) in paragraph (2), for “judge” there is substituted “ court ”.

[<sup>F533</sup>(3) In rule 72.7—

(a) in paragraph (2)(a), after “the Royal Courts of Justice” there is inserted “or the principal registry”; and

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- (b) in paragraph (2)(b), for “in County Court proceedings, to any County Court hearing centre” there is substituted “in family court proceedings, to any Designated Family Judge area”.]
- (4) Rule 72.10 is omitted.

#### Textual Amendments

- F532** Rule 33.24(1A) inserted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **42(a)** (with rule 45)
- F533** Rule 33.24(3) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **42(b)** (with rule 45)

## CHAPTER 8

### CHARGING ORDER, STOP ORDER, STOP NOTICE

#### Application of the CPR

**33.25.**—(1) Part 73 of the CPR applies to proceedings under this Part with the following modifications.

(2) In rule 73.1, paragraph (2), sub-paragraphs (b) and (c) are omitted.

(3) For rule 73.2, there is substituted “ This Section applies to an application by a judgment creditor for a charging order under section 1 of the 1979 Act <sup>M142</sup>. ”.

[<sup>F534</sup>(4) In rule 73.3, in paragraph (2)—

- (a) for the words from “court” to “enforce” there is substituted “court which made the judgment or order which it is sought to enforce, or made to the Designated Family Judge area within which that judgment or order was made”;
- (b) in sub-paragraph (a), for the words from “different court” to the end there is substituted “different court or Designated Family Judge area, in which case the application must be issued in that court or made to that area”;
- (c) sub-paragraphs (b) and (c) are omitted;
- (d) in sub-paragraph (d), for “County Court” there is substituted “family court”; and
- (e) sub-paragraph (e) is omitted.]

(5) In rule 73.4—

- (a) in paragraph (1), for “a judge” there is substituted “ the court, ”; and
- (b) in paragraph (2), for “judge” there is substituted “ court ”.

(6) In rule 73.9, in the parenthesis after paragraph (1)—

- (a) “and regulation 51.4 of the 1992 Regulations” is omitted;
- (b) for “provides” there is substituted “ provide ”, and
- (c) “, or (where the 1992 Regulations apply) of the authority,” is omitted.

(7) In rule 73.10—

- (a) in paragraph (1), for “a claim” there is substituted “ an application ”;
- (b) in paragraph (2) and the parenthesis following it, for “A claim” each time it appears there is substituted “ An application ”;
- (c) in paragraph (3), for “claimant” there is substituted “ applicant ”;
- (d) in paragraph (4), for “claim form” there is substituted “ application ”; and



- (e) in paragraph (5), for “claimant’s” there is substituted “applicant’s”.
- (8) In rule 73.11, “funds in court or” is omitted.
- (9) In rule 73.12—
  - (a) paragraph (1)(a) is omitted;
  - (b) in paragraph (1)(b) “other than securities held in court” is omitted;
  - (c) in paragraph (2), in sub-paragraph (b), for “claim form” there is substituted “ application notice ”; and
  - (d) in paragraph (3)—
    - (i) “or claim form” is omitted; and
    - (ii) for sub-paragraph (b) there is substituted “ the person specified in rule 73.5(1)(d) ”.
- (10) Rule 73.13 is omitted.
- (11) In rule 73.14, in paragraph (1), “other than securities held in court” is omitted.
- (12) In rule 73.16—
  - (a) in paragraph (a) for “; and” there is substituted “ . ”; and
  - (b) paragraph (b) is omitted.

#### Textual Amendments

**F534** Rule 33.25(4) substituted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), rules 1, **43** (with rule 45)

#### Marginal Citations

**M142** 1979 c. 53. Section 1 was amended by sections 34 and 37 of and paragraphs 2, 3 and 6 of Schedule 3 to the [Administration of Justice Act 1982 \(c.53\)](#) and section 148(1) of and paragraph 71 of Schedule 2 to the County Courts Act 1984. Subsections (6) to (8) of that section were inserted by section 93(1) and (2) of the [Tribunals, Courts and Enforcement Act 2007 \(c.15\)](#).

## PART 34

### RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS

#### Scope and interpretation of this Part

- 34.1.**—(1) This Part contains rules about the reciprocal enforcement of maintenance orders.
- (2) In this Part—
- “the 1920 Act” means the Maintenance Orders (Facilities for Enforcement) Act 1920<sup>F535</sup>;
  - “the 1972 Act” means the Maintenance Orders (Reciprocal Enforcement) Act 1972;
  - “the 1982 Act” means the Civil Jurisdiction and Judgments Act 1982;
  - “the 1988 Convention” means the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters done at Lugano on 16th September 1988;
  - “the Judgments Regulation” means Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; and

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“the Lugano Convention” means the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, between the European Community and the Republic of Iceland, the Kingdom of Norway, the Swiss Confederation and the Kingdom of Denmark signed on behalf of the European Community on 30th October 2007.

(3) Chapter 1 of this Part relates to the enforcement of maintenance orders in accordance with the 1920 Act.

(4) Chapter 2 of this Part relates to the enforcement of maintenance orders in accordance with [F536Parts 1 and 2] of the 1972 Act.

(5) Chapter 3 of this Part relates to the enforcement of maintenance orders in accordance with—

(a) the 1982 Act;

(b) the Judgments Regulation; F537 ...

(c) the Lugano Convention [F538, F539 ...]

[F540(d) the Maintenance Regulation [F541, and]

(e) the 2007 Hague Convention.]

#### Textual Amendments

**F535** 1920 c.33.

**F536** Words in rule 34.1(4) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **105** (with rule 137); [S.I. 2014/954](#), **art. 2**

**F537** Word in rule 34.1(5)(b) omitted (18.6.2011) by virtue of [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), rules 1, **17(a)**

**F538** Word in rule 34.1(5)(c) substituted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), rules 1, **17(b)**

**F539** Word in rule 34.1(5)(c) omitted (20.12.2012) by virtue of [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), rules 1, **18(a)**

**F540** Rule 34.1(5)(d) inserted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), rules 1, **17(c)**

**F541** Rule 34.1(5)(e) and word substituted for full stop (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), rules 1, **18(b)**

#### Meaning of prescribed officer in [F542the family court]

**34.2.**—(1) For the purposes of the 1920 Act, the prescribed officer in relation to [F543the family court is the court officer].

(2) For the purposes of Part 1 of the 1972 Act and section 5(2) of the 1982 Act, the prescribed officer in relation to [F544the family court is the court officer].

[F545(3) For the purposes of an application under Article 30 of the Maintenance Regulation for a declaration of enforceability of a maintenance order or under Article 23(2) or (3) of the 2007 Hague Convention for registration of a maintenance order, the prescribed officer in relation to the family court is the court officer.]

#### Textual Amendments

**F542** Words in rule 34.2 heading substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **106(a)** (with rule 137); [S.I. 2014/954](#), **art. 2**

- F543** Words in rule 34.2(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\), rules 1, 106\(b\)](#) (with rule 137); S.I. 2014/954, [art. 2](#)
- F544** Words in rule 34.2(2) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\), rules 1, 106\(c\)](#) (with rule 137); S.I. 2014/954, [art. 2](#)
- F545** Rule 34.2(3) inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\), rules 1, 106\(d\)](#) (with rule 137); S.I. 2014/954, [art. 2](#)

### Registration of maintenance orders in [<sup>F546</sup>the family court]

**34.3.** Where [<sup>F547</sup>the family court] is required by any of the enactments referred to in rule 34.1(2) [<sup>F548</sup>or by virtue of the Maintenance Regulation][<sup>F549</sup>or the 2007 Hague Convention] to register a foreign order the court officer must—

- (a) enter <sup>F550</sup>... a memorandum of the order in the register <sup>F551</sup>...; and
- (b) state on the memorandum the statutory provision [<sup>F552</sup>or international instrument] under which the order is registered.

#### Textual Amendments

- F546** Words in rule 34.3 heading substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\), rules 1, 107\(a\)](#) (with rule 137); S.I. 2014/954, [art. 2](#)
- F547** Words in rule 34.3 substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\), rules 1, 107\(b\)](#) (with rule 137); S.I. 2014/954, [art. 2](#)
- F548** Words in rule 34.3 inserted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\), rules 1, 18](#)
- F549** Words in rule 34.3 inserted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\), rules 1, 19\(a\)](#)
- F550** Words in rule 34.3(a) omitted (6.4.2012) by virtue of [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\), rules 1, 27](#) (with rule 30)
- F551** Words in rule 34.3(a) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\), rules 1, 107\(c\)](#) (with rule 137); S.I. 2014/954, [art. 2](#)
- F552** Words in rule 34.3(b) inserted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\), rules 1, 19\(b\)](#)

## CHAPTER 1

### ENFORCEMENT OF MAINTENANCE ORDERS UNDER THE MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) ACT 1920

#### Interpretation

**34.4.—(1)** In this Chapter—

“payer”, in relation to a maintenance order, means the person liable to make the payments for which the order provides; and

“reciprocating country” means a country or territory to which the 1920 Act extends.

(2) In this Chapter, an expression defined in the 1920 Act has the meaning given to it in that Act.

#### Confirmation of provisional orders made in a reciprocating country

**34.5.—(1)** This rule applies where, in accordance with section 4(1) of the 1920 Act <sup>M143</sup>, the court officer receives a provisional maintenance order.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

- (2) The court must fix the date, time and place for a hearing.
- (3) The court officer must register the order in accordance with rule 34.3.
- (4) The court officer must serve on the payer—
  - (a) certified copies of the provisional order and accompanying documents; and
  - (b) a notice—
    - (i) specifying the time and date fixed for the hearing; and
    - (ii) stating that the payer may attend to show cause why the order should not be confirmed.
- (5) The court officer must inform—
  - (a) the court which made the provisional order; and
  - (b) the Lord Chancellor,
 whether the court confirms, with or without modification, or decides not to confirm, the order.

#### Marginal Citations

**M143** Section 4(1) was amended by article 4(1) and (2) of the [Transfer of Functions \(Magistrates' Courts and Family Law\) Order 1992 \(S.I.1992/709\)](#) and section 1(1) of and paragraph 2(2) of Schedule 1 to the [Maintenance Orders \(Reciprocal Enforcement\) Act 1992 \(c.56\)](#).

#### Payment of sums due under registered orders

**34.6.** Where an order made by a reciprocating country is registered in [<sup>F553</sup>the family court under section 1 of the 1920 Act], the court must order payments due to be made to the court <sup>F554</sup>... .

(Practice Direction 34A contains further provisions relating to the payment of sums due under registered orders.)

#### Textual Amendments

**F553** Words in rule 34.6 substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **108(a)** (with rule 137); S.I. 2014/954, **art. 2**

**F554** Word in rule 34.6 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **108(b)** (with rule 137); S.I. 2014/954, **art. 2**

#### [<sup>F555</sup>Collection and enforcement] of sums due under registered orders

**34.7—**[<sup>F556</sup>(1) This rule applies to—

- (a) an order made in a reciprocating county which is registered in the family court; and
- (b) a provisional order made in a reciprocating country which has been confirmed by the family court,

where the court has ordered that payments due under the order be made to the court.]

(2) The court officer must—

- (a) collect the monies due under the order <sup>F557</sup>...; and
- (b) send the monies collected to—
  - (i) the court in the reciprocating country which made the order; or

(ii) such other person or authority as that court or the Lord Chancellor may from time to time direct.

(3) The court officer may take proceedings in that officer's own name for enforcing payment of monies due under the order.

[<sup>F558</sup>(Rule 32.33 makes provision in relation to a court officer taking such proceedings.)]

#### Textual Amendments

**F555** Words in rule 34.7 heading substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **109(a)** (with rule 137); S.I. 2014/954, **art. 2**

**F556** Rule 34.7(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **109(b)** (with rule 137); S.I. 2014/954, **art. 2**

**F557** Words in rule 34.7(2)(a) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **109(c)** (with rule 137); S.I. 2014/954, **art. 2**

**F558** Words in rule 34.7 inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **109(d)** (with rule 137); S.I. 2014/954, **art. 2**

#### Prescribed notice for the taking of further evidence

**34.8.**—(1) This rule applies where a court in a reciprocating country has sent a provisional order to [<sup>F559</sup>the family court] for the purpose of taking further evidence.

(2) The court officer must send a notice to the person who applied for the provisional order specifying—

- (a) the further evidence required; and
- (b) the time and place fixed for taking the evidence.

#### Textual Amendments

**F559** Words in rule 34.8(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **110** (with rule 137); S.I. 2014/954, **art. 2**

#### Transmission of maintenance orders made in a reciprocating country to the High Court

**34.9.** A maintenance order to be sent by the Lord Chancellor to the High Court in accordance with section 1(1) of the 1920 Act <sup>M144</sup> will be—

- (a) sent to the senior district judge who will register it in the register kept for the purpose of the 1920 Act; and
- (b) filed in the principal registry.

#### Marginal Citations

**M144** [Section 1\(1\)](#) was amended by article 4(1) and (2) of the Transfer of Functions (Magistrates' Courts and Family Law) Order 1992.

#### Transmission of maintenance orders made in the High Court to a reciprocating country

**34.10.**—(1) This rule applies to maintenance orders made in the High Court.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

(2) An application for a maintenance order to be sent to a reciprocating country under section 2 of the 1920 Act <sup>M145</sup> must be made in accordance with this rule.

(3) The application must be made to a district judge in the principal registry unless paragraph (4) applies.

(4) If the order was made in the course of proceedings in a district registry, the application may be made to a district judge in that district registry.

(5) The application must be—

- (a) accompanied by a certified copy of the order; and
- (b) supported by a record of the sworn written evidence.

(6) The written evidence must give—

- (a) the applicant's reason for believing that the payer resides in the reciprocating country;
- (b) such information as the applicant has as to the whereabouts of the payer; and
- (c) such other information as may be set out in Practice Direction 34A.

#### **Marginal Citations**

**M145** Section 2 was amended by article 4(1) and (2) of the Transfer of Functions (Magistrates' Courts and Family Law) Order 1992.

### **Inspection of the register in the High Court**

**34.11.**—(1) A person may inspect the register and request copies of a registered order and any document filed with it if the district judge is satisfied that that person is entitled to, or liable to make, payments under a maintenance order made in—

- (a) the High Court; or
- (b) a court in a reciprocating country.

(2) The right to inspect the register referred to in paragraph (1) may be exercised by—

- (a) a solicitor acting on behalf of the person entitled to, or liable to make, the payments referred to in that paragraph; or
- (b) with the permission of the district judge, any other person.

## CHAPTER 2

### ENFORCEMENT OF MAINTENANCE ORDERS UNDER PART 1 OF THE 1972 ACT

#### **Interpretation**

**34.12.**—(1) In this Chapter—

- (a) “reciprocating country” means a country to which Part 1 of the 1972 Act extends; and
- (b) ‘relevant court in the reciprocating country’ means, as the case may be—
  - (i) the court which made the order which has been sent to England and Wales for confirmation;
  - (ii) the court which made the order which has been registered in a court in England and Wales;
  - (iii) the court to which an order made in England and Wales has been sent for registration; or

(iv) the court to which a provisional order made in England and Wales has been sent for confirmation.

(2) In this Chapter, an expression defined in the 1972 Act has the meaning given to it in that Act.

(3) In this Chapter, “Hague Convention Countries” means the countries listed in Schedule 1 to the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order [<sup>F560</sup>1993].

**Textual Amendments**

**F560** Word in rule 34.12(3) substituted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), rules 1, **19**

**Scope**

**34.13.**—(1) Section 1 of this Chapter contains rules relating to the reciprocal enforcement of maintenance orders under Part 1 of the 1972 Act.

(2) Section 2 of this Chapter modifies the rules contained in Section 1 of this Chapter in their application to—

- <sup>F561</sup>(a) .....
- (b) the Hague Convention Countries; and
- (c) the United States of America.

(Practice Direction 34A sets out in full the rules for <sup>F562</sup>... the Hague Convention Countries and the United States of America as modified by Section 2 of this Chapter.)

[<sup>F563</sup>(3) Section 3 of this Chapter contains a rule in relation to notification of proceedings in a Hague Convention Country or the United States of America.

(4) Section 4 of this Chapter contains rules in relation to proceedings under Part 2 of the 1972 Act (reciprocal enforcement of claims for the recovery of maintenance).]

**Textual Amendments**

**F561** Rule 34.13(2)(a) omitted (18.6.2011) by virtue of [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), rules 1, **20(a)**

**F562** Words in rule 34.13 omitted (18.6.2011) by virtue of [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), rules 1, **20(b)**

**F563** Rule 34.13(3)(4) inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **111** (with rule 137); S.I. 2014/954, **art. 2**

*SECTION 1*

*Reciprocal enforcement of maintenance orders under Part 1 of the 1972 Act*

**Application for transmission of maintenance order to reciprocating country**

**34.14.** An application for a maintenance order to be sent to a reciprocating country under section 2 of the 1972 Act must be made in accordance with Practice Direction 34A.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

**Certification of evidence given on provisional orders**

**34.15.** A document setting out or summarising evidence is authenticated by a court in England and Wales by a certificate signed [<sup>F564</sup>by the judge] before whom that evidence was given.

(Section 3(5)(b), 5(4) and 9(5) of the 1972 Act require a document to be authenticated by the court.)

**Textual Amendments**

**F564** Words in rule 34.15 substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **112** (with rule 137); S.I. 2014/954, **art. 2**

**Confirmation of a provisional order made in a reciprocating country**

**34.16.—**(1) This rule applies to proceedings for the confirmation of a provisional order made in a reciprocating country [<sup>F565</sup>, including proceedings in the family court for the confirmation of a provisional order made in a reciprocating country varying a maintenance order to which section 5(5) or 9(6) of the 1972 Act applies].

(2) Paragraph (3) applies on receipt by the court of—

- (a) a certified copy of the order; and
- (b) the documents required by the 1972 Act to accompany the order.

(3) On receipt of the documents referred to in paragraph (2)—

- (a) the court must fix the date, time and place for a hearing or a directions appointment; and
- (b) the court officer must send to the payer notice of the date, time and place fixed together with a copy of the order and accompanying documents.

(4) The date fixed for the hearing must be not less than 21 days beginning with the date on which the court officer sent the documents to the payer in accordance with paragraph (2).

(5) The court officer will send to the relevant court in the reciprocating country a certified copy of any order confirming or refusing to confirm the provisional order.

<sup>F566</sup>(6) .....

(Section 5(5) and 7 of the 1972 Act provide for proceedings for the confirmation of a provisional order.) <sup>F567</sup> ...

**Textual Amendments**

**F565** Words in rule 34.16(1) inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **113(a)** (with rule 137); S.I. 2014/954, **art. 2**

**F566** Rule 34.16(6) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **113(b)** (with rule 137); S.I. 2014/954, **art. 2**

**F567** Words in rule 34.16 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **113(c)** (with rule 137); S.I. 2014/954, **art. 2**

**Consideration of revocation of a provisional order made by [<sup>F568</sup>the family court]**

**34.17.—**(1) This rule applies where—

- (a) [<sup>F569</sup>the family court] has made a provisional order by virtue of section 3 of the 1972 Act;



- (b) before the order is confirmed, evidence is taken by the court or received by it as set out in section 5(9) of the 1972 Act; and
- (c) on consideration of the evidence the court considers that the order ought not to have been made.

(Section 5(9) of the 1972 Act provides that [<sup>F570</sup>the family court] may revoke a provisional order made by it, before the order has been confirmed in a reciprocating country, if it receives new evidence.)

(2) The court officer must serve on the person who applied for the provisional order (“the applicant”) a notice which must—

- (a) set out the evidence taken or received by the court;
  - (b) inform the applicant that the court considers that the order ought not to have been made; and
  - (c) inform the applicant that the applicant may—
    - (i) make representations in relation to that evidence either orally or in writing; and
    - (ii) adduce further evidence.
- (3) If an applicant wishes to adduce further evidence—
- (a) the applicant must notify the court officer at the court which made the order;
  - (b) the court will fix a date for the hearing of the evidence; and
  - (c) the court officer will notify the applicant in writing of the date fixed.

#### Textual Amendments

- F568** Words in rule 34.17 heading substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 114](#) (with [rule 137](#)); [S.I. 2014/954](#), [art. 2](#)
- F569** Words in rule 34.17(1)(a) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 114](#) (with [rule 137](#)); [S.I. 2014/954](#), [art. 2](#)
- F570** Words in rule 34.17 substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 114](#) (with [rule 137](#)); [S.I. 2014/954](#), [art. 2](#)

#### Notification of variation or revocation of a maintenance order by the High Court or [<sup>F571</sup>the family court]

**34.18.**—(1) This rule applies where—

- (a) a maintenance order has been sent to a reciprocating country in pursuance of section 2 of the 1972 Act; and
- (b) the court makes an order, not being a provisional order, varying or revoking that order.

(2) The court officer must send a certified copy of the order of variation or revocation to the relevant court in the reciprocating country.

(Rule 34.22 provides for the transmission of documents to a court in a reciprocating country.)

#### Textual Amendments

- F571** Words in rule 34.18 heading substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 115](#) (with [rule 137](#)); [S.I. 2014/954](#), [art. 2](#)

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

**Notification of confirmation [<sup>F572</sup>, variation] or revocation of a maintenance order by [<sup>F573</sup>the family court]**

**34.19.—**(1) This rule applies where [<sup>F574</sup>the family court] makes an order—

- (a) not being a provisional order, revoking [<sup>F575</sup>or varying] a maintenance order to which section 5 of the 1972 Act <sup>M146</sup> applies;
- (b) under section 9 of the 1972 Act, revoking [<sup>F576</sup>or varying] a registered order; or
- (c) under section 7(2) of the 1972 Act <sup>M147</sup>, confirming an order to which section 7 of that Act applies.

(2) The court officer must send written notice of the making, [<sup>F577</sup>variation,] revocation or confirmation of the order, as appropriate, to the relevant court in the reciprocating country.

<sup>F578</sup>(3) .....

(Section 5 of the 1972 Act applies to a provisional order made by [<sup>F579</sup>the family court] in accordance with section 3 of that Act which has been confirmed by a court in a reciprocating country.) <sup>F580</sup> ...

**Textual Amendments**

- F572** Word in rule 34.19 heading inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **116(a)(i)** (with rule 137); S.I. 2014/954, art. 2
- F573** Words in rule 34.19 heading substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **116(a)(ii)** (with rule 137); S.I. 2014/954, art. 2
- F574** Words in rule 34.19(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **116(b)(i)** (with rule 137); S.I. 2014/954, art. 2
- F575** Words in rule 34.19(1)(a) inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **116(b)(ii)** (with rule 137); S.I. 2014/954, art. 2
- F576** Words in rule 34.19(1)(b) inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **116(b)(ii)** (with rule 137); S.I. 2014/954, art. 2
- F577** Word in rule 34.19(2) inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **116(c)** (with rule 137); S.I. 2014/954, art. 2
- F578** Rule 34.19(3) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **116(d)** (with rule 137); S.I. 2014/954, art. 2
- F579** Words in rule 34.19 substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **116(e)(i)** (with rule 137); S.I. 2014/954, art. 2
- F580** Words in rule 34.19 omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **116(e)(ii)** (with rule 137); S.I. 2014/954, art. 2

**Marginal Citations**

- M146** [Section 5](#) was amended by section 1 (2) of and paragraph 7 of [Schedule 1 to the Maintenance Orders \(Reciprocal Enforcement\) Act 1992](#) and article 185(1) of and paragraph 67 of [Schedule 9 to the Children \(Northern Ireland\) Order 1995 \(S.I. 1995/755\)](#) and section 54(a) and (b) of the [Domestic Proceedings and Magistrates' Courts Act 1978](#).
- M147** [Section 7\(2\)](#) was amended by section 1(2) of and paragraphs 8(2) to (5) of [Schedule 1 to the Maintenance Orders \( Reciprocal Enforcement\) Act 1992](#).

**Taking of evidence for court in reciprocating country**

**34.20.—**(1) This rule applies where a request is made by or on behalf of a court in a reciprocating country for the taking of evidence for the purpose of proceedings relating to a maintenance order

to which Part 1 of the 1972 Act applies. (Section 14 of the 1972 <sup>M148</sup> Act makes provision for the taking of evidence needed for the purpose of certain proceedings.)

- (2) The High Court has power to take the evidence where—
- (a) the request for evidence relates to a maintenance order made by a superior court in the United Kingdom; and
  - (b) the witness resides in England and Wales.

[<sup>F581</sup>(3) The family court has power to take evidence where—

- (a) the request for evidence relates to a maintenance order—
- (i) made by the family court; or
  - (ii) registered in the family court; or
- (b) the Lord Chancellor sends to the family court a request to take evidence.

(Practice Direction 34E makes further provision on this matter)]

- (6) The evidence is to be taken in accordance with Part 22.

#### Textual Amendments

**F581** Rule 34.20(3) substituted for rule 34.20(3)-(5) (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **117** (with rule 137); S.I. 2014/954, **art. 2**

#### Marginal Citations

**M148** Section 14 was amended by article 14(1) of and paragraph 22 of Schedule 5 to the [Northern Ireland \(Modification of Enactments – No 1\) Order 1973 \(S.I. 1973/2163\)](#) and section 154 of and paragraph 105 of Schedule 7 to the Magistrates' Courts Act 1980 and article 170(2) of and paragraph 21 of Schedule 6 to the Magistrates' Courts (Northern Ireland) Order 1981.

### Request for the taking of evidence by a court in a reciprocating country

**34.21.**—(1) This rule applies where a request is made by [<sup>F582</sup>the family court] for the taking of evidence in a reciprocating country in accordance with section 14(5) of the 1972 Act.

- (2) The request must be made in writing to the court in the reciprocating country.

(Rule 34.22 provides for the transmission of documents to a court in a reciprocating country.)

#### Textual Amendments

**F582** Words in rule 34.21(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **118** (with rule 137); S.I. 2014/954, **art. 2**

### Transmission of documents

**34.22.**—(1) This rule applies to any document, including a notice or request, which is required to be sent to a court in a reciprocating country by—

- (a) Part 1 of the 1972 Act; or
- (b) Section 1 of Chapter 2 of this Part of these rules.

(2) The document must be sent to the Lord Chancellor for transmission to the court in the reciprocating country.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

### Method of payment under registered orders

**34.23.**—(1) Where an order is registered in [<sup>F583</sup>the family court] in accordance with section 6(3) of the 1972 Act, the court must order that the payment of sums due under the order be made—

- (a) to the <sup>F584</sup>... registering court; and
- (b) at such time and place as the court officer directs.

(Section 6(3) of the 1972 Act makes provision for the registration of maintenance orders made in a reciprocating country.)

(2) Where the court orders payments to be made [<sup>F585</sup>to the court], whether in accordance with paragraph (1) or otherwise, the court officer must send the payments—

- (a) by post to either—
  - (i) the court which made the order; or
  - (ii) such other person or authority as that court, or the Lord Chancellor, directs; or
- (b) if the court which made the order is a country or territory specified in the Practice Direction 34A—
  - (i) to the Crown Agents for Overseas Governments and Administrations for transmission to the person to whom they are due; or
  - (ii) as the Lord Chancellor directs.

(Practice Direction 34A contains further provisions relating to the payment of sums due under registered orders.)

#### Textual Amendments

**F583** Words in rule 34.23(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 119\(a\)\(i\)](#) (with rule 137); S.I. 2014/954, [art. 2](#)

**F584** Words in rule 34.23(1)(a) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 119\(a\)\(ii\)](#) (with rule 137); S.I. 2014/954, [art. 2](#)

**F585** Words in rule 34.23(2) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 119\(b\)](#) (with rule 137); S.I. 2014/954, [art. 2](#)

### Enforcement of payments under registered orders

**34.24.**—(1) This rule applies where a court has ordered periodical payments under a registered maintenance order to be made to the court <sup>F586</sup>... .

(2) The court officer must take reasonable steps to notify the payee of the means of enforcement available.

(3) Paragraph (4) applies where periodical payments due under a registered order are in arrears.

(4) The court officer, on that officer's own initiative—

- (a) may; or
- (b) if the sums due are more than 4 weeks in arrears, must,

proceed in that officer's own name for the recovery of the sums due unless of the view that it is unreasonable to do so.

**Textual Amendments**

**F586** Word in rule 34.24(1) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **120** (with rule 137); S.I. 2014/954, **art. 2**

**Notification of registration and cancellation**

**34.25.**—(1) The court officer must send written notice to the Lord Chancellor of the due registration of orders registered in accordance with section 6(3), 7(5), or 10(4) of the 1972 Act.

(2) The court officer must, when registering an order in accordance with section 6(3), 7(5), 9(10), 10(4) or (5) or 23(3) of the 1972 Act <sup>M149</sup>, send written notice to the payer stating—

- (a) that the order has been registered;
- (b) that payments under the order should be made to the court officer; and
- (c) the hours during which and the place at which the payments should be made.

(3) The court officer must, when cancelling the registration of an order in accordance with section 10(1) of the 1972 Act, send written notice of the cancellation to the payer.

**Marginal Citations**

**M149** [Section 23\(3\)](#) was amended by section 90(1) of and paragraphs 71 and 75(1) and (2) of Schedule 13 to the Access to Justice Act 1999.

*SECTION 2*

*Modification of rules in Section 1 of this Chapter*

*SUB-SECTION 1*

*Republic of Ireland*

**Application of Section 1 of this Chapter to the Republic of Ireland**

<sup>F587</sup>**34.26.** . . . . .

**Textual Amendments**

**F587** Pt. 34 Ch. 2 Section 2(1) omitted (18.6.2011) by virtue of [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), rules 1, **22** (with transitional provisions in rule 38(2)); and rule 34.26, in so far as it is still in force, amended (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **121** (with rule 137); S.I. 2014/954, **art. 2**

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

## *SUB-SECTION 2*

### *Hague Convention Countries*

#### **Application of Section 1 of this Chapter to the Hague Convention Countries**

**34.27.**—(1) In relation to the Hague Convention Countries, Section 1 of this Chapter has effect as modified by this rule.

(2) A reference in this rule, and in any rule which has effect in relation to the Hague Convention Countries by virtue of this rule to—

- (a) the 1972 Act is a reference to the 1972 Act as modified by Schedule 2 to the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1993 <sup>M150</sup>; and
- (b) a section under the 1972 Act is a reference to the section so numbered in the 1972 Act as so modified.

(3) A reference to a reciprocating country in rule 34.12(1) and Section 1 of this Chapter is a reference to a Hague Convention Country.

(4) Rules 34.15 (certification of evidence given on provisional orders), 34.16 (confirmation of provisional orders), 34.19 (notification of confirmation [<sup>F588</sup>, variation] or revocation of a maintenance order by [<sup>F589</sup>the family court]) and 34.21 (request for the taking of evidence by a court in a reciprocating country) do not apply.

(5) For rule 34.17 (consideration of revocation of a provisional order made by [<sup>F590</sup>the family court] ) substitute—

**[<sup>F591</sup>“Consideration of variation or revocation of a maintenance order made by the family court”]**

**34.17.**—(1) This rule applies where—

- (a) an application has been made to [<sup>F592</sup>the family court by a payee for the variation or revocation] of an order to which section 5 of the 1972 Act applies; and
- (b) the payer resides in a Hague Convention Country.

(2) The court officer must serve on the payee, by post, a copy of any representations or evidence adduced by or on behalf of the payer.

(<sup>F593</sup> ...).”

(6) For rule 34.18 (notification of variation or revocation of a maintenance order by the High Court or [<sup>F594</sup>the family court]) substitute—

**“Notification of variation or revocation of a maintenance order by the High Court or [<sup>F595</sup>the family court”]**

**34.18.**—(1) This rule applies if the High Court or [<sup>F596</sup>the family court] makes an order varying or revoking a maintenance order to which section 5 of the 1972 Act applies.

(2) If the time for appealing has expired without an appeal having been entered, the court officer will send to the Lord Chancellor—

- (a) the documents required by section 5(8) of the 1972 Act; and
- (b) a certificate signed by [<sup>F597</sup>a judge] stating that the order of variation or revocation is enforceable and no longer subject to the ordinary forms of review.

- (3) A party who enters an appeal against the order of variation or revocation must, at the same time, give written notice to the court officer.”.
- (7) For rule 34.23(2) (method of payment under registered orders) substitute—
- “(2) Where the court orders payment to be [<sup>F598</sup>made to the court], the court officer must send the payments by post to the payee under the order.”.
- (8) For rule 34.25 (notification of registration and cancellation) substitute—

**“Notification of registration and cancellation**

**34.25.** The court officer must send written notice to—

- (a) the Lord Chancellor, on the due registration of an order under section 10(4) of the 1972 Act; and
- (b) the payer under the order, on—
- (i) the registration of an order under section 10(4) of the 1972 Act; or
- (ii) the cancellation of the registration of an order under section 10(1) of the 1972 Act.”.
- (9) After rule 34.25 insert—

**“General provisions as to notices**

**34.25A.—**(1) A notice to a payer of the registration of an order in [<sup>F599</sup>the family court] in accordance with section 6(3) of the 1972 Act must be in the form referred to in a practice direction. (Section 6(8) of the 1972 Act requires notice of registration to be given to the payer.)

(2) If the court sets aside the registration of a maintenance order following an appeal under section 6(9) of the 1972 Act, the court officer must send written notice of the decision to the Lord Chancellor.

(3) A notice to a payee that the court officer has refused to register an order must be in the form referred to in a practice direction. (Section 6(11) of the 1972 Act requires notice of refusal of registration to be given to the payee.)

(4) Where, under any provision of Part 1 of the 1972 Act, a court officer serves a notice on a payer who resides in a Hague Convention Country, the court officer must send to the Lord Chancellor a certificate of service.”.

**Textual Amendments**

- F588** Word in rule 34.27(4) inserted (22.4.2014) by *The Family Procedure (Amendment No.3) Rules 2013* (S.I. 2013/3204), **rules 1, 122(a)(i)** (with rule 137); S.I. 2014/954, **art. 2**
- F589** Words in rule 34.27(4) substituted (22.4.2014) by *The Family Procedure (Amendment No.3) Rules 2013* (S.I. 2013/3204), **rules 122(a)(ii)** (with rule 137); S.I. 2014/954, **art. 2**
- F590** Words in rule 34.27(5) substituted (22.4.2014) by *The Family Procedure (Amendment No.3) Rules 2013* (S.I. 2013/3204), **rules 1, 122(b)(i)** (with rule 137); S.I. 2014/954, **art. 2**
- F591** Words in rule 34.27(5) heading substituted (22.4.2014) by *The Family Procedure (Amendment No.3) Rules 2013* (S.I. 2013/3204), **rules 1, 122(b)(ii)(aa)** (with rule 137); S.I. 2014/954, **art. 2**
- F592** Words in rule 34.27(5) substituted (22.4.2014) by *The Family Procedure (Amendment No.3) Rules 2013* (S.I. 2013/3204), **rules 1, 122(b)(ii)(bb)** (with rule 137); S.I. 2014/954, **art. 2**
- F593** Words in rule 34.27(5) omitted (22.4.2014) by *The Family Procedure (Amendment No.3) Rules 2013* (S.I. 2013/3204), **rules 1, 122(b)(ii)(cc)** (with rule 137); S.I. 2014/954, **art. 2**
- F594** Words in rule 34.27(6) substituted (22.4.2014) by *The Family Procedure (Amendment No.3) Rules 2013* (S.I. 2013/3204), **rules 1, 122(c)(i)** (with rule 137); S.I. 2014/954, **art. 2**

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

- F595** Words in rule 34.27(6) heading substituted (22.4.2014) by The Family Procedure (Amendment No.3) Rules 2013 (S.I. 2013/3204), rules 1, **122(c)(ii)(aa)** (with rule 137); S.I. 2014/954, art. 2
- F596** Words in rule 34.27(6) substituted (22.4.2014) by The Family Procedure (Amendment No.3) Rules 2013 (S.I. 2013/3204), rules 1, **122(c)(ii)(aa)** (with rule 137); S.I. 2014/954, art. 2
- F597** Words in rule 34.27(6) substituted (22.4.2014) by The Family Procedure (Amendment No.3) Rules 2013 (S.I. 2013/3204), rules 1, **122(c)(ii)(bb)** (with rule 137); S.I. 2014/954, art. 2
- F598** Words in rule 34.27(7) substituted (22.4.2014) by The Family Procedure (Amendment No.3) Rules 2013 (S.I. 2013/3204), rules 1, **122(d)** (with rule 137); S.I. 2014/954, art. 2
- F599** Words in rule 34.27(9) substituted (22.4.2014) by The Family Procedure (Amendment No.3) Rules 2013 (S.I. 2013/3204), rules 1, **122(e)** (with rule 137); S.I. 2014/954, art. 2

#### **Marginal Citations**

**M150** S.I. 1993/593.

### *SUB-SECTION 3*

#### *United States of America*

#### **Application of Section 1 of this Chapter to the United States of America**

**34.28.**—(1) In relation to the United States of America, Section 1 of this Chapter has effect as modified by this rule.

(2) A reference in this rule and in any rule which has effect in relation to the United States of America by virtue of this rule to—

- (a) the 1972 Act is a reference to the 1972 Act as modified by Schedule 1 to the Reciprocal Enforcement of Maintenance Orders (United States of America) Order 2007<sup>M151</sup>; and
- (b) a section under the 1972 Act is a reference to the section so numbered in the 1972 Act as so modified.

(3) A reference to a reciprocating country in rule 34.12(1) and Section 1 of this Chapter is a reference to the United States of America.

(4) Rules 34.15 (certification of evidence given on provisional orders), 34.16 (confirmation of provisional orders), 34.19 (notification of confirmation [<sup>F600</sup>, variation] or revocation of a maintenance order made by [<sup>F601</sup>the family court]) and 34.21 (request for the taking of evidence in a reciprocating country) do not apply.

(5) For rule 34.17 (consideration of revocation of a provisional order made by [<sup>F602</sup>the family court]) substitute—

#### **[<sup>F603</sup>“Consideration of variation or revocation of a maintenance order made by the family court”]**

**34.17.**—(1) This rule applies where—

- (a) an application has been made to [<sup>F604</sup>the family court by a payee for the variation or revocation] of an order to which section 5 of the 1972 Act applies; and
- (b) the payer resides in the United States of America.

(2) The court officer must serve on the payee by post a copy of any representations or evidence adduced by or on behalf of the payer.

(<sup>F605</sup> ...).”

(6) For rule 34.18 (notification of variation or revocation), substitute—



**“Notification of variation or revocation**

**34.18.** If the High Court or [<sup>F606</sup>the family court] makes an order varying or revoking a maintenance order to which section 5 of the 1972 Act applies, the court officer will send to the Lord Chancellor the documents required by section 5(7) of that Act.”

(7) For 34.23(2)(method of payment under registered orders) substitute—

“(2) Where the court orders payment to be [<sup>F607</sup>made to the court], the court officer must send the payments by post to the payee under the order.”

(8) For rule 34.25 (notification of registration and cancellation) substitute—

**“Notification of registration and cancellation**

**34.25.** The court officer must send written notice to—

- (a) the Lord Chancellor, on the due registration of an order under section 10(4) of the 1972 Act; or
- (b) the payer under the order, on—
  - (i) the registration of an order under section 10(4) of the 1972 Act; or
  - (ii) the cancellation of the registration of an order under section 10(1) of that Act.”

**Textual Amendments**

**F600** Word in rule 34.28(4) inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 123\(a\)\(i\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

**F601** Words in rule 34.28(4) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 123\(a\)\(ii\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

**F602** Words in rule 34.28(5) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 123\(b\)\(i\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

**F603** Words in rule 34.28(5) heading substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 123\(b\)\(ii\)\(aa\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

**F604** Words in rule 34.28(5) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 123\(b\)\(ii\)\(bb\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

**F605** Words in rule 34.28(5) omitted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 123\(b\)\(ii\)\(cc\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

**F606** Words in rule 34.28(6) inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 123\(c\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

**F607** Words in rule 34.28(7) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 123\(d\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

**Marginal Citations**

**M151** [S.I. 2007/2006](#).

<sup>F608</sup>SECTION 3

*Proceedings in a Hague Convention Country or in the United States of America*

**Textual Amendments**

**F608** Pt. 34 Ch. 2 Section 3 inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 124](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

## Notification of proceedings in a Hague Convention Country or in the United States of America

**34.28ZA.** Practice Direction 34E applies where the court officer receives from the Lord Chancellor notice of the institution of proceedings, including notice of the substance of a claim, in a Hague Convention Country or in the United States of America in relation to the making, variation or revocation of a maintenance order.]

### <sup>F609</sup>SECTION 4

#### *Reciprocal enforcement of claims for the recovery of maintenance*

#### **Textual Amendments**

**F609** Pt. 34 Ch. 2 Section 4 inserted (22.4.2014) by *The Family Procedure (Amendment No.3) Rules 2013* (S.I. 2013/3204), rules 1, **124** (with rule 137); S.I. 2014/954, art. 2

#### **Interpretation**

**34.28ZB.** In this Section—

“convention country” means a country or territory specified in an Order in Council made under section 25 of the 1972 Act; and

an expression defined in the 1972 Act has the meaning given to it in that Act.

#### **Dismissal of an application under section 27A of the 1972 Act or application for variation**

**34.28ZC.**—(1) Where the family court dismisses an application under—

(a) section 27A of the 1972 Act (application for recovery of maintenance); or

(b) an application by a person in a convention country for the variation of a registered order, the court officer will send a written notice of the court’s decision to the Lord Chancellor.

(2) The notice will include a statement of the court’s reasons for its decision.

#### **Application for recovery of maintenance in England and Wales: section 27B of the 1972 Act**

**34.28ZD.**—(1) Where the family court receives an application for the recovery of maintenance sent from the Lord Chancellor under section 27B of the 1972 Act, the court will—

(a) fix the date, time and place for a hearing or directions appointment, allowing sufficient time for service under this rule to be effected at least 21 days before the date fixed; and

(b) serve copies of the application and any accompanying documents, together with a notice stating the date, time and place so fixed, on the respondent.

(2) Within 14 days of service under this rule, the respondent must file an answer to the application in the form referred to in Practice Direction 5A.

#### **Application under section 26(1) or (2) of the 1972 Act and certificate under section 26(3A) of the 1972 Act: registration**

**34.28ZE.** Where—

(a) an application under section 26(1) or (2) of the 1972 Act; or

(b) a certificate under section 26(3A) of the 1972 Act,

is required to be registered in the family court by virtue of the Recovery of Maintenance (United States of America) Order 2007, the court officer will enter a minute or memorandum of the application or certificate in the register.

#### **Registration of an order: sections 27C(7) and 32(3) and (6) of the 1972 Act**

**34.28ZF.**—(1) Where the family court makes an order which is required under section 27C(7) of the 1972 Act to be registered, the court officer will enter a minute or memorandum of the order in the register.

(2) Where a court officer receives under section 32(3) of the 1972 Act a certified copy of an order, the court officer will register the order by means of a minute or memorandum in the register.

(3) Every minute or memorandum entered under paragraph (1) or (2) will specify the section and subsection of the 1972 Act under which the order in question is registered.

(4) Where a court officer registers an order as required by section 27C(7) or 32(3) of the 1972 Act, the court officer will send written notice to the Lord Chancellor that the order has been registered.

(5) Where a court officer is required by section 32(6) of the 1972 Act to give notice of the registration of an order, the court officer will do this by sending written notice to the officer specified in that subsection that the order has been registered.

#### **Payments made to the family court**

**34.28ZG.**—(1) Where payments are made to the family court by virtue of section 27C or 34A of the 1972 Act, the court officer will send those payments by post to such person or authority as the Lord Chancellor may from time to time direct.

(2) Subject to paragraph (3), if it appears to a court officer that any sums payable under a registered order are in arrears, the officer may proceed in the officer's own name for the recovery of those sums.

(3) Where it appears to the officer that sums payable under the order are in arrears to an amount equal—

(a) in the case of payments to be made monthly or less frequently, to twice the sum payable periodically; or

(b) in any other case, to four times the sum payable periodically,

the officer will proceed in the officer's own name for the recovery of those sums, unless it appears to the officer that it is unreasonable in the circumstances to do so.

#### **Method of payment**

**34.28ZH.**—(1) This rule applies where the family court exercises its duties or powers under section 27C or 34A of the 1972 Act.

(2) Where the court orders that payments under the order are to be made by a particular means—

(a) the court will record on the copy of the order the means of payment that the court has ordered; and

(b) the court officer will, as soon as practicable, notify, in writing, the person liable to make the payments under the order how payments are to be made.

(3) Paragraph (4) applies where the court orders that payments be made to the court by a method of payment falling within section 1(5) of the Maintenance Enforcement Act 1991.

(4) The court officer will notify the person liable to make the payments under the order of sufficient details of the account into which the payments should be made to enable payments to be made into that account.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

### **Application under section 34 of the 1972 Act: variation or revocation**

**34.28ZI.**—(1) This rule applies in relation to an application under section 34 of the 1972 Act for the variation or revocation of a registered order.

(2) An application which is made directly to the registering court must be filed in the form referred to in Practice Direction 5A.

(3) Where the court receives an application, either filed in accordance with paragraph (2) or sent from the Lord Chancellor under section 34(3) of the 1972 Act—

- (a) the court will set the date, time and place for a hearing or directions appointment; and
- (b) the court officer will notify the applicant of the date, time and place.

### **Application under section 35 of the 1972 Act: variation or revocation**

**34.28ZJ.**—(1) This rule applies in relation to an application under section 35 of the 1972 Act for the variation or revocation of a registered order.

(2) Notice under section 35(3)(b) of the 1972 Act of the time and place appointed for the hearing of the application will be in the form specified in Practice Direction 34D.

(3) The court officer will send the notice by post to the Lord Chancellor for onward transmission to the appropriate authority in the convention country in which the respondent is residing.

(4) The time appointed for the hearing of the application will not be less than six weeks later than the date on which the notice is sent to the Lord Chancellor.

### **Request under section 38(1) of the 1972 Act to the family court**

**34.28ZK.**—(1) This rule applies where the family court receives from the Lord Chancellor a request under section 38(1) of the 1972 Act (taking evidence at the request of a court in a convention country) to take the evidence of any person.

(2) Subject to paragraph (3)—

- (a) the evidence will be taken in the same manner as if the person concerned were a witness in family proceedings;
- (b) any oral evidence so taken will be put into writing and read to the person who gave it, who must sign the document; and
- (c) the judge who takes any such evidence of any person will certify at the foot of the document setting out the evidence of, or produced in evidence by, that person that such evidence was taken, or document received in evidence, as the case may be, by that judge.

(3) Where the request referred to in section 38(2) of the 1972 Act includes a request that the evidence be taken in a particular manner, the court by which the evidence is taken will, so far as circumstances permit, comply with that request.

### **Request under section 38(1) of the 1972 Act to the officer of the court**

**34.28ZL.**—(1) This rule applies where an officer of the court receives from the Lord Chancellor a request under section 38(1) of the 1972 Act to take the evidence of any person.

(2) Subject to paragraph (3)—

- (a) the person whose evidence is to be taken will be examined on oath by or before a justices' clerk or any other court officer determined by the Lord Chancellor;
- (b) any oral evidence will be put into writing and read to the person who gave it, who must sign the document; and

- (c) the justices' clerk or other officer will certify at the foot of the document setting out the evidence of, or produced by, that person, that such evidence was taken, or document received in evidence, as the case may be, by that justices' clerk or other officer.
- (3) Where the request referred to in section 38(1) of the 1972 Act includes a request that the evidence be taken in a particular manner, the justices' clerk or other officer by whom the evidence is taken will, so far as circumstances permit, comply with that request.
- (4) For the purposes of this rule, the justices' clerk or other officer has the same power to administer oaths as a single justice of the peace.

### Onward transmission of documents

**34.28ZM.** Any document mentioned in rule 34.28ZK(2)(c) or rule 34.28ZL(2)(c) will be sent to the Lord Chancellor for onward transmission to the appropriate authority in the convention country in which the request referred to in section 38(1) of the 1972 Act originated.]

## CHAPTER 3

### ENFORCEMENT OF MAINTENANCE ORDERS UNDER THE CIVIL JURISDICTION AND JUDGMENTS ACT 1982, THE JUDGMENTS REGULATION [F610], THE MAINTENANCE REGULATION [F611], THE 2007 HAGUE CONVENTION] AND THE LUGANO CONVENTION

#### Textual Amendments

**F610** Words in Pt. 34 Ch. 3 heading inserted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), rules 1, 23

**F611** Words in Pt. 34 Ch. 3 heading inserted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), rules 1, 20

### [F612] Application of this Chapter

**34.28A.**—(1) In this Chapter—

[F613(a) references to a maintenance order include—

- (i) a decision, a court settlement or an authentic instrument within the meaning of Article 2 of the Maintenance Regulation where that Regulation applies;
- (ii) a maintenance decision to which Chapter V of the 2007 Hague Convention applies by virtue of Article 19(1) of that Convention;
- (iii) a maintenance arrangement (as defined in Article 3(e) of the 2007 Hague Convention) which is to be recognised and enforceable in the same way as a maintenance decision by virtue of Article 30 of that Convention;]

(b) references to the Hague Protocol are to the Protocol on the Law Applicable to Maintenance Obligations done at The Hague on 23 November 2007 [F614;]

[ “the 1968 Convention” has the meaning given in the 1982 Act.]

[F615(c)

(2) In relation to the Maintenance Regulation—

- (a) Section 1 applies to maintenance orders to which Sections 2 and 3 of Chapter IV of the Maintenance Regulation apply (decisions given in a Member State which does not apply the rules of the Hague Protocol, that is, Denmark, and decisions to which Sections 2 and 3 of Chapter IV of that Regulation apply by virtue of Article 75(2)(a) or (b));

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

- (b) Section 2 applies to all maintenance orders made in a magistrates' court in England and Wales for which reciprocal enforcement is sought in any Member State of the European Union, including Denmark.

(<sup>F616</sup> ... )]

#### Textual Amendments

- F612** Rule 34.28A inserted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), rules 1, **24**
- F613** Rule 34.28A(1)(a) substituted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), rules 1, **21**
- F614** Punctuation in rule 34.28A(1)(b) substituted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), rules 1, **28(a)** (with rule 30)
- F615** Rule 34.28A(1)(c) inserted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), rules 1, **28(b)** (with rule 30)
- F616** Words in rule 34.28A omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **125** (with rule 137); S.I. 2014/954, **art. 2**

### SECTION 1

*Registration and Enforcement in a Magistrates' Court of Maintenance Orders made in a Contracting State to the 1968 Convention, a Contracting State to the 1988 Convention, a Regulation State [<sup>F617</sup>, a State bound by the 2007 Hague Convention other than a Member State of the European Union] or a State bound by the Lugano Convention*

#### Textual Amendments

- F617** Words in Pt. 34 Ch. 3 Section 1 heading inserted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), rules 1, **22**

### Interpretation

**34.29.** In this Section—

- (a) an expression defined in the 1982 Act has the meaning given to it in that Act [<sup>F618</sup>, subject to paragraph (b)]; and
- [<sup>F619</sup>(b) “Regulation State” means a Member State of the European Union which does not apply the rules of the Hague Protocol, or, where registration is sought for a maintenance order to which Article 75(2)(a) or (b) of the Maintenance Regulation applies, the Member State of the European Union from which the order originated.]

#### Textual Amendments

- F618** Words in rule 34.29(a) inserted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), rules 1, **25(a)**
- F619** Rule 34.29(b) substituted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), rules 1, **25(b)**

**Application under Article 30 of the Maintenance Regulation or under Article 23 of the 2007 Hague Convention for a declaration of enforceability**

<sup>F620</sup>**34.29A.** . . . . .

**Textual Amendments**  
**F620** Rule 34.29A omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 126](#) (with rule 137); S.I. 2014/954, [art. 2](#)

**Registration of maintenance orders**

**34.30.**—<sup>F621</sup>(1) . . . . .

(2) [<sup>F622</sup>This rule and Practice Direction 34E apply where the family court] receives—

- (a) an application under Article 31 of the 1968 Convention for the enforcement of a maintenance order made in a Contracting State other than the United Kingdom;
- (b) an application under Article 31 of the 1988 Convention for the enforcement of a maintenance order made in a State bound by the 1988 Convention other than a Member State of the European Union;
- <sup>F623</sup>(c) an application under Article 26 of the Maintenance Regulation for a declaration of enforceability of a maintenance order made in a Regulation State other than the United Kingdom; <sup>F624</sup>...]
- (d) an application under Article 38 of the Lugano Convention for the enforcement of a maintenance order made in a State bound by the Lugano Convention other than a Member State of the European Union <sup>F625</sup>... [<sup>F626</sup>; or
- (e) an application under Article 23 of the 2007 Hague Convention for registration of a maintenance order made in a State bound by that Convention other than a Member State of the European Union.]

<sup>F627</sup>(3) . . . . .

<sup>F628</sup>(4) . . . . .

<sup>F629</sup>(5) . . . . .

(6) Except where [<sup>F630</sup>Practice Direction 34E provides otherwise, the court] must register the order unless—

- (a) in the case of an application under Article 31 of the 1968 Convention, Articles 27 or 28 of that Convention apply; <sup>F631</sup>...
- (b) in the case of an application under Article 31 of the 1988 Convention, Articles 27 or 28 of that Convention apply <sup>F632</sup>... [<sup>F633</sup>; and
- (c) in the case of an application under Article 23(2) or (3) of the 2007 Hague Convention, Article 22(a) of that Convention applies.]

(7) If the court <sup>F634</sup>... refuses to register an order to which this rule relates the court officer must notify the applicant.

(8) If the court <sup>F635</sup>... registers an order the court officer must send written notice of that fact to—

- (a) the Lord Chancellor;
- (b) the payer; and
- (c) the applicant.

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

<sup>F636</sup>(9) .....

### Textual Amendments

- F621** Rule 34.30(1) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013](#) (S.I. 2013/3204), [rules 1, 127\(a\)](#) (with rule 137); S.I. 2014/954, [art. 2](#)
- F622** Words in rule 34.30(2) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013](#) (S.I. 2013/3204), [rules 1, 127\(b\)](#) (with rule 137); S.I. 2014/954, [art. 2](#)
- F623** Rule 34.30(2)(c) substituted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011](#) (S.I. 2011/1328), [rules 1, 27](#) (with rule. 38(1)(a))
- F624** Word in rule 34.30(2)(c) omitted (20.12.2012) by virtue of [The Family Procedure \(Amendment No. 4\) Rules 2012](#) (S.I. 2012/2806), [rules 1, 24\(a\)\(i\)](#)
- F625** Rule 34.30(2)(d) full stop omitted (20.12.2012) by virtue of [The Family Procedure \(Amendment No. 4\) Rules 2012](#) (S.I. 2012/2806), [rules 1, 24\(a\)\(ii\)](#)
- F626** Rule 34.30(2)(e) and word inserted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012](#) (S.I. 2012/2806), [rules 1, 24\(a\)\(ii\)](#)
- F627** Rule 34.30(3) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013](#) (S.I. 2013/3204), [rules 1, 127\(c\)](#) (with rule 137); S.I. 2014/954, [art. 2](#)
- F628** Rule 34.30(4) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013](#) (S.I. 2013/3204), [rules 1, 127\(c\)](#) (with rule 137); S.I. 2014/954, [art. 2](#)
- F629** Rule 34.30(5) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013](#) (S.I. 2013/3204), [rules 1, 127\(c\)](#) (with rule 137); S.I. 2014/954, [art. 2](#)
- F630** Words in rule 34.30(6) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013](#) (S.I. 2013/3204), [rules 1, 127\(d\)](#) (with rule 137); S.I. 2014/954, [art. 2](#)
- F631** Word in rule 34.30(6)(a) omitted (20.12.2012) by virtue of [The Family Procedure \(Amendment No. 4\) Rules 2012](#) (S.I. 2012/2806), [rules 1, 24\(b\)\(i\)](#)
- F632** Rule 34.30(6)(b) full stop omitted (20.12.2012) by virtue of [The Family Procedure \(Amendment No. 4\) Rules 2012](#) (S.I. 2012/2806), [rules 1, 24\(b\)\(ii\)](#)
- F633** Rule 34.30(6)(c) and word inserted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012](#) (S.I. 2012/2806), [rules 1, 24\(b\)\(ii\)](#)
- F634** Word in rule 34.30(7) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013](#) (S.I. 2013/3204), [rules 1, 127\(e\)](#) (with rule 137); S.I. 2014/954, [art. 2](#)
- F635** Word in rule 34.30(8) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013](#) (S.I. 2013/3204), [rules 1, 127\(e\)](#) (with rule 137); S.I. 2014/954, [art. 2](#)
- F636** Rule 34.30(9) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013](#) (S.I. 2013/3204), [rules 1, 127\(f\)](#) (with rule 137); S.I. 2014/954, [art. 2](#)

### Appeal from a decision relating to registration

**34.31.**—(1) This rule applies to an appeal under—

- (a) Article 36 or Article 40 of the 1968 Convention;
- (b) Article 36 or Article 40 of the 1988 Convention;
- [<sup>F637</sup>(c) Article 32 of the Maintenance Regulation; <sup>F638</sup> ...]
- (d) Article 43 of the Lugano Convention. <sup>F639</sup> ... [<sup>F640</sup>; or
- (e) Article 23(5) of the 2007 Hague Convention.]

[<sup>F641</sup>(2) The appeal must be to the family court.

(Practice Direction 34E makes provision in relation to such cases.)]



**Textual Amendments**

- F637** Rule 34.31(1)(c) substituted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), rules 1, **28** (with rule. 38(1)(a))
- F638** Word in rule 34.31(1)(c) omitted (20.12.2012) by virtue of [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), art. 1, **rule 25(a)**
- F639** Rule 34.31(1)(d) full stop omitted (20.12.2012) by virtue of [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), rules 1, **25(b)**
- F640** Rule 34.31(1)(e) and word inserted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), rules 1, **25(b)**
- F641** Rule 34.31(2) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **128** (with rule 137); S.I. 2014/954, **art. 2**

**Payment of sums due under a registered order**

**34.32.**—(1) Where an order is registered in accordance with section 5(3) of the 1982 Act [<sup>F642</sup>,] Article 38 of the Judgments Regulation [<sup>F643</sup>, ] Article 38 of the Lugano Convention [<sup>F644</sup> or Article 23 of the 2007 Hague Convention], [<sup>F645</sup> or declared enforceable under Article 26 of the Maintenance Regulation by virtue of registration,] the court [<sup>F646</sup> may] order that payment of sums due under the order be made [<sup>F647</sup> to the court, at such time and place as directed.]

(2) Where the court orders payments to be made to the court <sup>F648</sup> ..., whether in accordance with paragraph (1) or otherwise, the court officer must send the payments by post either—

- (a) to the court which made the order; or
- (b) to such other person or authority as that court, or the Lord Chancellor, directs.

(Practice Direction 34A contains further provisions relating to the payment of sums due under registered orders.)

**Textual Amendments**

- F642** Rule 34.32(1): comma substituted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), rules 1, **29(a)**
- F643** Rule 34.32(1): comma substituted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), rules 1, **26(a)**
- F644** Words in rule 34.32(1) inserted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), rules 1, **26(b)**
- F645** Words in rule 34.32(1) inserted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), rules 1, **29(b)**
- F646** Word in rule 34.32(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **129(a)(i)** (with rule 137); S.I. 2014/954, **art. 2**
- F647** Words in rule 34.32(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **129(a)(ii)** (with rule 137); S.I. 2014/954, **art. 2**
- F648** Word in rule 34.32(2) omitted (22.4.2014) by virtue of [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **129(b)** (with rule 137); S.I. 2014/954, **art. 2**

**Enforcement of payments under registered orders**

**34.33.**—(1) This rule applies where a court has ordered periodical payments under a registered maintenance order to be made to the [<sup>F649</sup> the family court].

*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

(2) The court officer must take reasonable steps to notify the payee of the means of enforcement available.

(3) Paragraph (4) applies where periodical payments due under a registered order are in arrears.

(4) The court officer, on that officer's own initiative—

(a) may; or

(b) if the sums due are more than 4 weeks in arrears, must,

proceed in that officer's own name for the recovery of the sums due unless of the view that it is unreasonable to do so.

#### Textual Amendments

**F649** Words in rule 34.33(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), rules 1, **130** (with rule 137); [S.I. 2014/954](#), art. 2

#### Variation and revocation of registered orders

**34.34.**—(1) This rule applies where the court officer for a registering court receives notice that a registered maintenance order has been varied or revoked by a competent court in a Contracting State to the 1968 Convention, a Contracting State to the 1988 Convention (other than a Member State of the European Union), a Regulation State or a State bound by the Lugano Convention [<sup>F650</sup>or by the 2007 Hague Convention], other than a Member State of the European Union.

(2) The court officer for the registering court must—

(a) register the order of variation or revocation; and

(b) send notice of the registration by post to the payer and payee under the order.

[<sup>F651</sup>(3) Where the court officer for a registering court receives notice that a maintenance order registered in that court by virtue of the provisions of the Judgments Regulation has been varied or revoked by a competent court in another Member State of the European Union, the court officer must—

(a) note against the entry in the register that the original order so registered has been varied or revoked, as the case may be; and

(b) send notice of the noting of the variation or revocation, as the case may be, by post to the payer and payee under the order.]

#### Textual Amendments

**F650** Words in rule 34.34(1) inserted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), rules 1, **27**

**F651** Rule 34.34(3) inserted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), rules 1, **30**

#### [<sup>F652</sup>Registered order: payer residing in a different Designated Family Judge area

**34.35.** Practice Direction 34E makes provision for cases where a court officer in the Designated Family Judge area where an order is registered considers that the payer is residing in a different Designated Family Judge area.]

#### Textual Amendments

**F652** Rule 34.35 substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 131](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

#### Cancellation of registered orders

**34.36.**—<sup>F653</sup>(1) Where the court officer for the registering court—

- (a) has no reason to send papers to another Designated Family Judge area under Practice Direction 34E; and
- (b) considers that the payer under the registered order is not residing within the Designated Family Judge area where the order is registered,

the court officer will cancel the registration of the order.]

(2) The court officer must—

- (a) give notice of cancellation to the payee; and
- (b) send the information and documents relating to the registration and the other documents referred to in rule 34.35(2) to the Lord Chancellor.

#### Textual Amendments

**F653** Rule 34.36(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 132](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)

#### <sup>F654</sup>Directions as to stays, documents and translations

**34.36A.** At any stage in proceedings for registration of a maintenance order under this Section of this Chapter, the court may give directions about the conduct of the proceedings, including—

- (a) staying of proceedings in accordance with—
  - (i) Article 30 or 38 of the 1968 Convention,
  - (ii) Article 30 or 38 of the 1988 Convention,
  - (iii) Article 37 or 46 of the Lugano Convention, <sup>F655</sup> ...
  - (iv) Article 25 or 35 of the Maintenance Regulation <sup>F656</sup> ... [<sup>F657</sup>, or
  - (v) Article 30(6) of the 2007 Hague Convention;]
- (b) the provision of documents in accordance with—
  - (i) Article 48 of the 1968 Convention,
  - (ii) Article 48 of the 1988 Convention,
  - (iii) Article 55 of the Lugano Convention, <sup>F658</sup> ...
  - (iv) Article 29 of the Maintenance Regulation <sup>F659</sup> ... [<sup>F660</sup>, or
  - (v) Article 25 or 30 of the 2007 Hague Convention;]
- (c) the provision of translations in accordance with—
  - (i) Article 48 of the 1968 Convention,
  - (ii) Article 48 of the 1988 Convention,
  - (iii) Article 55 of the Lugano Convention, <sup>F661</sup> ...

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*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

- (iv) Article 28 of the Maintenance Regulation <sup>F662</sup> ... [<sup>F663</sup>, or  
 (v) in relation to an application under this Section relating to the 2007 Hague Convention, without prejudice to Article 44 of that Convention.]]

#### Textual Amendments

- F654** Rule 34.36A inserted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), [rules 1, 32](#) (with [art. 38\(1\)\(b\)](#))
- F655** Word in [rule 34.36A\(a\)\(iii\)](#) omitted (20.12.2012) by virtue of [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), [rules 1, 29\(a\)\(i\)](#)
- F656** [Rule 34.36A\(a\)\(iv\)](#) semicolon omitted (20.12.2012) by virtue of [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), [rules 1, 29\(a\)\(ii\)](#)
- F657** [Rule 34.36A\(a\)\(v\)](#) and word inserted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), [rules 1, 29\(a\)\(ii\)](#)
- F658** Word in [rule 34.36A\(b\)\(iii\)](#) omitted (20.12.2012) by virtue of [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), [rules 1, 29\(b\)\(i\)](#)
- F659** [Rule 34.36A\(b\)\(iv\)](#) semicolon omitted (20.12.2012) by virtue of [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), [rules 1, 29\(b\)\(ii\)](#)
- F660** [Rule 34.36A\(b\)\(v\)](#) and word inserted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), [rules 1, 29\(b\)\(ii\)](#)
- F661** Word in [rule 34.36A\(c\)\(iii\)](#) omitted (20.12.2012) by virtue of [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), [rules 1, 29\(c\)\(i\)](#)
- F662** [Rule 34.36A\(c\)\(iv\)](#) full stop omitted (20.12.2012) by virtue of [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), [rules 1, 29\(c\)\(ii\)](#)
- F663** [Rule 34.36A\(c\)\(v\)](#) and word inserted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), [rules 1, 29\(c\)\(ii\)](#)

#### [<sup>F664</sup> **International Maintenance Obligations; Communication with the Central Authority for England and Wales**

**34.36B.**—(1) Where the Lord Chancellor requests information or a document from the court officer for the relevant court for the purposes of Article 58 of the Maintenance Regulation, or Article 12 or 25(2) of the 2007 Hague Convention, the court officer shall provide the requested information or document to the Lord Chancellor forthwith.

(2) In this rule, “relevant court” means the court at which an application under Article 56 of the Maintenance Regulation or Article 10 of the 2007 Hague Convention has been filed.

[The Lord Chancellor is the Central Authority for the 2007 Hague Convention and the Maintenance Regulation]]

#### Textual Amendments

- F664** Rule 34.36B inserted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), [rules 1, 30](#)

#### [<sup>F665</sup> **The Maintenance Regulation: applications for enforcement or for refusal or suspension of enforcement**

**34.36C.** Practice Direction 34E makes provision regarding—

- (a) an application for enforcement of a maintenance decision to which section 1 of Chapter IV of the Maintenance Regulation applies; and
- (b) an application by a debtor under Article 21 of the Maintenance Regulation for refusal or suspension of enforcement.]

**Textual Amendments**

**F665** Rule 34.36C inserted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013](#) (S.I. 2013/3204), art. 1, **rule 133** (with art. 137); S.I. 2014/954, art. 2

*SECTION 2*

*Reciprocal enforcement in a Contracting State or [F666 a Member State of the European Union] of Orders of a court in England and Wales*

**Textual Amendments**

**F666** Words in Pt. 34 Ch. 3 heading substituted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011](#) (S.I. 2011/1328), rules 1, **33**

**Application in a magistrates' court for a maintenance order, or revocation of a maintenance order, to which the 1982 Act, the Judgments Regulations or the Lugano Convention applies**

<sup>F667</sup>**34.37.** . . . . .

**Textual Amendments**

**F667** Rule 34.37 omitted (18.6.2011) by virtue of [The Family Procedure \(Amendment\) Rules 2011](#) (S.I. 2011/1328), rules 1, **34**

**Admissibility of Documents**

**34.38.**—(1) This rule applies to a document, referred to in paragraph (2) and authenticated in accordance with paragraph (3), which comprises, records or summarises evidence given in, or information relating to, proceedings in a court in another part of the UK, another Contracting State to the 1968 Convention or the 1988 Convention, [<sup>F668</sup>Member State of the European Union] or State bound by the Lugano Convention, [<sup>F669</sup>or by the 2007 Hague Convention,] and any reference in this rule to “the court”, without more, is a reference to that court.

- (2) The documents referred to at paragraph (1) are documents which purport to—
- (a) set out or summarise evidence given [<sup>F670</sup>to] the court;
  - (b) have been received in evidence [<sup>F671</sup>to] the court;
  - (c) set out or summarise evidence taken in the court for the purpose of proceedings in a court in England and Wales to which the 1982 Act [<sup>F672</sup>, the Judgments Regulation [<sup>F673</sup>,] the Maintenance Regulation][<sup>F674</sup>or the 2007 Hague Convention] applies; or
  - (d) record information relating to payments made under an order of the court.

(3) A document to which paragraph (1) applies shall, in any proceedings in [<sup>F675</sup>the family court] relating to a maintenance order to which the 1982 Act [<sup>F676</sup>, the Judgments Regulation [<sup>F677</sup>,] the

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Maintenance Regulation][<sup>F678</sup>or the 2007 Hague Convention] applies, be admissible as evidence of any fact stated in it to the same extent as oral evidence of that fact is admissible in those proceedings.

- (4) A document to which paragraph (1) applies shall be deemed to be authenticated—
- (a) in relation to the documents listed at paragraph 2(a) or (c), if the document purports to be—
    - (i) certified by the judge or official before whom the evidence was given or taken; or
    - (ii) the original document recording or summarising the evidence, or a true copy of that document;
  - (b) in relation to a document listed at paragraph (2)(b), if the document purports to be certified by a judge or official of the court to be, or to be a true copy of, the document received in evidence; and
  - (c) in relation to the document listed at paragraph (2)(d), if the document purports to be certified by a judge or official of the court as a true record of the payments made under the order.

(5) It shall not be necessary in any proceedings in which evidence is to be received under this rule to prove the signature or official position of the person appearing to have given the certificate referred to in paragraph (4).

(6) Nothing in this rule shall prejudice the admission in evidence of any document which is admissible in evidence apart from this rule.

[<sup>F679</sup>(7) Any request by [<sup>F680</sup>the family court] for the taking or providing of evidence by a court in a State listed in paragraph (8) for the purposes of proceedings to which an instrument listed in that paragraph applies, or by a court in another part of the United Kingdom, shall be communicated in writing to the court in question.

- (8) The States and instruments referred to in paragraph (7) are—
- (a) a Contracting State to the 1968 Convention;
  - (b) a Contracting State to the 1988 Convention;
  - (c) a State bound by the Lugano Convention;
  - (d) Denmark, in relation to proceedings to which the Maintenance Regulation applies;
  - (e) a State bound by the 2007 Hague Convention,

but this paragraph and paragraph (7) do not apply where the State in question is a Member State of the European Union to which the Taking of Evidence Regulation (as defined in rule 24.15) applies.]

#### Textual Amendments

- F668** Words in rule 34.38(1) substituted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), [rules 1, 35\(a\)](#)
- F669** Words in [rule 34.38\(1\)](#) inserted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), [rules 1, 31\(a\)](#)
- F670** Word in rule 34.38(2)(a) substituted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), [rules 1, 35\(b\)\(i\)](#)
- F671** Word in rule 34.38(2)(b) inserted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), [rules 1, 35\(b\)\(ii\)](#)
- F672** Words in rule 34.38(2)(c) inserted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), [rules 1, 35\(b\)\(iii\)](#)
- F673** Rule 34.38(2)(c): comma substituted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), [rules 1, 31\(b\)\(i\)](#)
- F674** Words in [rule 34.38\(2\)\(c\)](#) inserted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), [rules 1, 31\(b\)\(ii\)](#)

- F675** Words in rule 34.38(3) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\), rules 1, 134 \(with rule 137\); S.I. 2014/954, art. 2](#)
- F676** Words in rule 34.38(3) inserted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\), rules 1, 35\(c\)](#)
- F677** Rule 34.38(3): comma substituted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\), rules 1, 31\(c\)\(i\)](#)
- F678** Words in rule 34.38(3) inserted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\), rules 1, 31\(c\)\(ii\)](#)
- F679** Rule 34.38(7)(8) substituted for rule 34.38(7) (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\), rules 1, 31\(d\)](#)
- F680** Words in rule 34.38(7) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\), rules 1, 134 \(with rule 137\); S.I. 2014/954, art. 2](#)

### Enforcement of orders of <sup>F681</sup>the family court]

**34.39.**—<sup>F682</sup>(1) A person who wishes to enforce a maintenance order obtained in <sup>F683</sup>the family court] in a State to which paragraph (2) applies must apply for a certified copy of the order and, where required by Practice Direction 34A, a certificate giving particulars relating to the judgment and proceedings in which it was given.

- (2) The States referred to in paragraph (1) are—
- a Contracting State to the 1968 Convention;
  - a Contracting State to the 1988 Convention (other than a Member State of the European Union);
  - a Member State of the European Union;
  - a State bound by the Lugano Convention (other than a Member State of the European Union); or
  - a State bound by the 2007 Hague Convention (other than a Member State of the European Union).]
- (3) An application under this rule must be made in writing to the court officer and must specify—
- the names of the parties to the proceedings;
  - the date, or approximate date, of the proceedings in which the maintenance order was made and the nature of those proceedings;
  - the <sup>F684</sup>State] in which the application for recognition or enforcement has been made or is to be made; and
  - the postal address of the applicant.

(4) The court officer must, on receipt of the application, send a copy of the order to the applicant certified in accordance with <sup>F685</sup>... practice direction <sup>F686</sup>34A][<sup>F687</sup>, <sup>F688</sup>together with a copy of any certificate required by that practice direction]] .

- (5) Paragraph (6) applies where—
- a maintenance order is registered in <sup>F689</sup>the family court]; and
  - a person wishes to obtain a certificate giving details of any payments made or arrears accrued under the order while it has been registered, for the purposes of an application made or to be made in connection with that order in—
    - another Contracting State to the 1968 Convention;
    - another Contracting State to the 1988 Convention (other than a Member State of the European Union);

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*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

- (iii) another [<sup>F690</sup>Member State of the European Union];
- (iv) another State bound by the Lugano Convention (other than a Member State of the European Union); <sup>F691</sup>...
- (v) another part of the United Kingdom [<sup>F692</sup>; or
- (vi) another State bound by the 2007 Hague Convention (other than a Member State of the European Union).]

(6) The person wishing to obtain the certificate referred to in paragraph (5) may make a written application to the court officer for the registering court.

(7) On receipt of an application under paragraph (6) the court officer must send to the applicant a certificate giving the information requested.

(Rule 74.12 (application for certified copy of a judgment) and 74.13 (evidence in support) of the CPR apply in relation to the application for a certified copy of a judgment obtained in the High Court or a county court.)

#### Textual Amendments

- F681** Words in rule 34.39 heading substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 135\(a\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)
- F682** [Rule 34.39\(1\)\(2\)](#) substituted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), [rules 1, 32\(a\)](#)
- F683** Words in rule 34.39(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 135\(a\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)
- F684** Word in rule 34.39(3)(c) substituted (6.4.2012) by [The Family Procedure \(Amendment\) Rules 2012 \(S.I. 2012/679\)](#), [rules 1, 29](#) (with [rule 30](#))
- F685** Word in rule 34.39(4) omitted (20.12.2012) by virtue of [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), [rules 1, 32\(b\)\(i\)](#)
- F686** Word in rule 34.39(4) inserted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), [rules 1, 32\(b\)\(ii\)](#)
- F687** Words in rule 34.39(4) inserted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), [rules 1, 36\(d\)](#)
- F688** Words in rule 34.39(4) substituted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), [rules 1, 32\(b\)\(iii\)](#)
- F689** Words in rule 34.39(5) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013 \(S.I. 2013/3204\)](#), [rules 1, 135\(b\)](#) (with [rule 137](#)); S.I. 2014/954, [art. 2](#)
- F690** Words in rule 34.39(5)(b)(iii) substituted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), [rules 1, 36\(e\)](#)
- F691** Word in rule 34.39(5)(b)(iv) omitted (20.12.2012) by virtue of [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), [rules 1, 32\(c\)\(i\)](#)
- F692** Rule 34.39(5)(b)(vi) and word substituted for full stop (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012 \(S.I. 2012/2806\)](#), [rules 1, 32\(c\)\(ii\)](#)

#### [<sup>F693</sup>Enforcement of orders of the High Court or [<sup>F694</sup>the family court]

**34.40.**—(1) This rule applies where a person wishes to enforce a maintenance order obtained in the High Court or [<sup>F695</sup>the family court] in a Member State of the European Union or a State bound by the 2007 Hague Convention (other than a Member State of the European Union).

(2) Subject to the requirements of Practice Direction 34A, rules 74.12 (application for a certified copy of a judgment) and 74.13 (evidence in support) of the CPR apply in relation to—



- (a) an application under Article 40(2) of the Maintenance Regulation for a certified copy of a judgment and an extract relating to that judgment in the form of Annex II to that Regulation;
- (b) an application for a certified copy of a judgment and a certificate giving particulars relating to the judgment and the proceedings in which it was given.]

#### Textual Amendments

- F693** Rule 34.40 substituted (20.12.2012) by [The Family Procedure \(Amendment No. 4\) Rules 2012](#) (S.I. 2012/2806), rules 1, **33**
- F694** Words in rule 34.40 heading substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013](#) (S.I. 2013/3204), rules 1, **136(a)** (with rule 137); S.I. 2014/954, **art. 2**
- F695** Words in rule 34.40(1) substituted (22.4.2014) by [The Family Procedure \(Amendment No.3\) Rules 2013](#) (S.I. 2013/3204), rules 1, **136(b)** (with rule 137); S.I. 2014/954, **art. 2**); and rule 34.40(1) in so far as it still has effect in relation to proceedings which were commenced but not disposed of before 22.4.2014 by virtue of rule 137 is amended (31.12.2020) by virtue of [The Family Procedure Rules 2010 and Court of Protection Rules 2017 \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/517), regs. 1(1), **19(19)(a)(i)** (with reg. 27) (as amended by S.I. 2020/1574, regs. 1, **4(2)** and S.I. 2020/1493, regs. 1(1), **8(2)(f)**); 2020 c. 1, **Sch. 5 para. 1(1)**

## PART 35

### MEDIATION DIRECTIVE

#### Scope and Interpretation

**35.1.**—(1) This Part applies to mediated cross-border disputes that are subject to Directive [2008/52/EC](#) of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (“the Mediation Directive”).

(2) In this Part—

“cross-border dispute” has the meaning given by article 2 of the Mediation Directive;

“mediation” has the meaning given by article 3(a) of the Mediation Directive;

“mediation administrator” means a person involved in the administration of the mediation process;

“mediation evidence” means evidence regarding information arising out of or in connection with a mediation process;

“mediator” has the meaning given by article 3(b) of the Mediation Directive; and

“relevant dispute” means a cross-border dispute that is subject to the Mediation Directive.

#### Relevant disputes: applications for consent orders in respect of financial remedies

**35.2.**—(1) This rule applies in relation to proceedings for a financial remedy where the applicant, with the explicit consent of the respondent, wishes to make an application that the content of a written agreement resulting from mediation of a relevant dispute be made enforceable by being made the subject of a consent order.

(2) The court will not include in a consent order any matter which is contrary to the law of England and Wales or which is not enforceable under that law.

(3) The applicant must file two copies of a draft of the order in the terms sought.

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(4) Subject to paragraph (5), the application must be supported by evidence of the explicit consent of the respondent.

(5) Where the respondent has written to the court consenting to the making of the order sought, the respondent is deemed to have given explicit consent to the order and paragraph (4) does not apply.

(6) Paragraphs (1)(b) and (2) to (6) of rule 9.26 apply to an application to which this rule applies.

### **Mediation evidence: disclosure and inspection**

**35.3.**—(1) Where a party to proceedings seeks disclosure or inspection of mediation evidence that is in the control of a mediator or mediation administrator, that party must first obtain the court's permission to seek the disclosure or inspection, by an application made in accordance with Part 18.

(2) The mediator or mediation administrator who has control of the mediation evidence must be named as a respondent to the application and must be served with a copy of the application notice.

(3) Evidence in support of the application must include evidence that—

- (a) all parties to the mediation agree to the disclosure or inspection of the mediation evidence;
- (b) disclosure or inspection of the mediation evidence is necessary for overriding considerations of public policy, in accordance with article 7(1)(a) of the Mediation Directive; or
- (c) the disclosure of the content of an agreement resulting from mediation is necessary to implement or enforce that agreement.

(4) Where this rule applies, Parts 21 to 24 apply to the extent they are consistent with this rule.

### **Mediation evidence: witnesses and depositions**

**35.4.**—(1) This rule applies where a party wishes to obtain mediation evidence from a mediator or mediation administrator by—

- (a) a witness summons;
- (b) cross-examination with permission of the court under rule 22.8 or 23.4;
- (c) an order under rule 24.7 (evidence by deposition);
- (d) an order under rule 24.9 (enforcing attendance of witness);
- (e) an order under rule 24.10(4) (deponent's evidence to be given orally); or
- (f) an order under rule 24.12 (order for the issue of a letter of request).

(2) When applying for a witness summons, permission under rule 22.8 or 23.4 or order under rule 24.7, 24.9, 24.10(4) or 24.12, the party must provide the court with evidence that—

- (a) all parties to the mediation agree to the obtaining of the mediation evidence;
- (b) obtaining the mediation evidence is necessary for overriding considerations of public policy in accordance with article 7(1)(a) of the Mediation Directive; or
- (c) the disclosure of the content of an agreement resulting from mediation is necessary to implement or enforce that agreement.

(3) When considering a request for a witness summons, permission under rule 22.8 or 23.4 or order under rule 24.7, 24.9, 24.10(4) or 24.12, the court may invite any person, whether or not a party, to make representations.

(4) Where this rule applies, Parts 21 to 24 apply to the extent they are consistent with this rule.

## PART 36

### TRANSITIONAL ARRANGEMENTS AND PILOT SCHEMES

#### Transitional provisions

**36.1.** Practice Direction 36A shall make provision for the extent to which these rules shall apply to proceedings started before the day on which they come into force.

#### Pilot schemes

**36.2.** Practice directions may modify or disapply any provision of these rules—

- (a) for specified periods; and
- (b) in relation to proceedings in specified courts,

during the operation of pilot schemes for assessing the use of new practices and procedures in connection with proceedings.

## GLOSSARY

### *Scope*

This glossary is a guide to the meaning of certain legal expressions as used in these rules, but it does not give the expressions any meaning in the rules which they do not otherwise have in the law.

<i>Expression</i>	<i>Meaning</i>
Affidavit	A written, sworn, statement of evidence.
Cross-examination	Questioning of a witness by a party other than the party who called the witness.
Evidence in chief	The evidence given by a witness for the party who called him.
Injunction	A court order prohibiting a person from doing something or requiring a person to do something.
Official copy	A copy of an official document, supplied and marked as such by the office which issued the original.
Pre-action protocol	Statements of best practice about pre-action conduct which have been approved by the President of the Family Division and which are annexed to a Practice Direction.
Privilege	The right of a party to refuse to disclose a document or produce a document or to refuse to answer questions on the ground of some special interest recognised by law.

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Seal	A seal is a mark which the court puts on document to indicate that the document has been issued by the court.
Service	Steps required by rules of court to bring documents used in court proceedings to a person's attention.
Set aside	Cancelling a judgment or order or a step taken by a party in the proceedings.
Stay	A stay imposes a halt on proceedings, apart from the taking of any steps allowed by the rules or the terms of the stay. Proceedings can be continued if a stay is lifted.
Strike out	Striking out means the court ordering written material to be deleted so that it may no longer be relied upon.
Without prejudice	Negotiations with a view to settlement are usually conducted “without prejudice” which means that the circumstances in which the content of those negotiations may be revealed to the court are very restricted.

[<sup>F696</sup>PART 37

APPLICATIONS AND PROCEEDINGS IN  
RELATION TO CONTEMPT OF COURT

**Textual Amendments**

**F696** Pt. 37 inserted (22.4.2014) by [The Family Procedure \(Amendment No. 2\) Rules 2014 \(S.I. 2014/667\)](#), [rules 44](#), [Sch.](#) (with [rule 45](#))

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## CHAPTER 1

### Scope and interpretation

#### Scope

- 37.1.**—(1) This Part sets out the procedure in respect of—
- (a) committal for breach of a judgment, [<sup>F697</sup>order,] undertaking to do or abstain from doing an act [<sup>F698</sup>or of an incoming protection measure];
  - (b) contempt in the face of the court;
  - (c) committal for interference with the due administration of justice;

- (d) committal for making a false statement of truth;
- (e) sequestration to enforce a judgment, order or undertaking; and
- (f) the penal, contempt and disciplinary provisions of the County Courts Act 1984.

(2) So far as applicable, and with the necessary modifications, this Part applies in relation to an order requiring a person—

- (a) guilty of contempt of court; or
- (b) punishable by virtue of any enactment as if that person had been guilty of contempt of the High Court,

to pay a fine or to give security for good behaviour, as it applies in relation to an order of committal.

(3) Unless otherwise stated, this Part applies to procedure in the High Court and family court.

#### Textual Amendments

**F697** Word in rule 37.1(1)(a) substituted (11.1.2015) by [The Family Procedure \(Amendment No. 4\) Rules 2014 \(S.I. 2014/3296\)](#), rules 1(2), **12(a)** (with rule 15)

**F698** Words in rule 37.1(1)(a) inserted (11.1.2015) by [The Family Procedure \(Amendment No. 4\) Rules 2014 \(S.I. 2014/3296\)](#), rules 1(2), **12(b)** (with rule 15)

#### Saving for other powers

**37.2.**—(1) This Part is concerned only with procedure and does not itself confer upon the court the power to make an order for—

- (a) committal;
- (b) sequestration; or
- (c) the imposition of a fine in respect of contempt of court.

(2) Nothing in this Part affects the power of the court to make an order requiring a person—

- (a) guilty of contempt of court; or
- (b) punishable by virtue of any enactment as if that person had been guilty of contempt of the High Court,

to pay a fine or to give security for good behaviour.

(3) Nothing in this Part affects any statutory or inherent power of the court to make a committal order of its own initiative against a person guilty of contempt of court.

#### Interpretation

**37.3.** In this Part—

- (a) “applicant” means a person making—
  - (i) an application for permission to make a committal application;
  - (ii) a committal application; or
  - (iii) an application for a writ of sequestration;
- (b) “committal application” means any application for an order committing a person to prison;
- (c) “judge of High Court judge level” means a person in sub-paragraphs (i) to (x) of paragraph (b) in the definition of “judge” in rule 2.3;
- (d) “respondent” means a person—

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- (i) against whom a committal application is made or is intended to be made; or
- (ii) against whose property it is sought to issue a writ of sequestration;
- (e) “undertaking” means an undertaking to the court; and
- (f) references to a writ of sequestration are, in relation to the family court, to be read as references to a warrant containing provision corresponding to that which may be contained in a writ of sequestration.

(See section 31E of the Matrimonial and Family Proceedings Act 1984 (Family court has High Court and county court powers), in particular subsections (1) and (2) of that section.)

## CHAPTER 2

### *Committal for breach of a judgment, order or undertaking to do or abstain from doing an act*

#### **Enforcement of judgment, order or undertaking to do or abstain from doing an act**

**37.4.**—(1) If a person—

- (a) required by a judgment or order to do an act does not do it within the time fixed by the judgment or order; or
- (b) disobeys a judgment or order not to do an act,

then, subject to the Debtors Acts 1869 and 1878 and to the provisions of these Rules, the judgment or order may be enforced under the court’s powers by an order for committal.

(2) If the time fixed by the judgment or order for doing an act has been varied by a subsequent order, then references in paragraph (1)(a) to the time fixed are references to the time fixed by that subsequent order or agreement.

(3) If the person referred to in paragraph (1) is a company or other corporation, the committal order may be made against any director or other officer of that company or corporation.

(4) So far as applicable, and with the necessary modifications, this Chapter applies to undertakings given by a party as it applies to judgments or orders.

(Specific provision in relation to judgment summonses is contained in Chapter 2 of Part 33.)

#### **Requirement for service of a copy of the judgment or order and time for service**

**37.5.**—(1) Unless the court dispenses with service under rule 37.8, a judgment or order may not be enforced under rule 37.4 unless a copy of it has been served on the person required to do or not do the act in question, and in the case of a judgment or order requiring a person to do an act—

- (a) the copy has been served before the end of the time fixed for doing the act, together with a copy of any order fixing that time;
- (b) where the time for doing the act has been varied by a subsequent order, a copy of that subsequent order has also been served; and
- (c) where the judgment or order was made pursuant to an earlier judgment or order requiring the act to be done, a copy of the earlier judgment or order has also been served.

(2) Where the person referred to in paragraph (1) is a company or other corporation, a copy of the judgment or order must also be served on a director or officer of the company or corporation before the end of the time fixed for doing the act.

(3) Copies of the judgment or order and any orders or agreements fixing or varying the time for doing an act must be served in accordance with rule 37.6 or 37.7, or in accordance with an order for alternative service made under rule 37.8(2)(b).



### **Method of service – copies of judgments or orders**

**37.6.** Subject to rules 37.7 and 37.8, copies of judgments or orders and any orders or agreements fixing or varying the time for doing an act must be served personally.

### **Method of service – copies of undertakings**

**37.7.**—(1) Subject to paragraph (2) and rule 37.8, a copy of any document recording an undertaking will be delivered by the court to the person who gave the undertaking—

- (a) by handing to that person a copy of the document before that person leaves the court building;
- (b) by posting a copy to that person at the residence or place of business of that person where this is known; or
- (c) by posting a copy to that person’s solicitor.

(2) If delivery cannot be effected in accordance with paragraph (1), the court officer will deliver a copy of the document to the party for whose benefit the undertaking was given and that party must serve it personally on the person who gave the undertaking as soon as practicable.

(3) Where the person referred to in paragraph (1) is a company or other corporation, a copy of the judgment or order must also be served on a director or officer of the company or corporation.

### **Dispensation with personal service**

**37.8.**—(1) In the case of a judgment or order requiring a person not to do an act, the court may dispense with service of a copy of the judgment or order in accordance with rules 37.5 to 37.7 if it is satisfied that the person has had notice of it—

- (a) by being present when the judgment or order was given or made; or
- (b) by being notified of its terms by telephone, email or otherwise.

(2) In the case of any judgment or order the court may—

- (a) dispense with service under rules 37.5 to 37.7 if the court thinks it just to do so; or
- (b) make an order in respect of service by an alternative method or at an alternative place.

### **Requirement for a penal notice on judgments and orders**

**37.9.**—(1) Subject to paragraph (2), a judgment or order to do or not do an act may not be enforced under rule 37.4 unless there is prominently displayed, on the front of the copy of the judgment or order served in accordance with this Chapter, a warning to the person required to do or not do the act in question that disobedience to the order would be a contempt of court punishable by imprisonment, a fine or sequestration of assets.

<sup>F699</sup>(2) The following may be enforced under rule 37.4 notwithstanding that the judgment or order does not contain the warning described in paragraph (1)—

- (a) an undertaking to do or not do an act which is contained in a judgment or order; and
- (b) an incoming protection measure.]

(3) In the case of—

- (a) a section 8 order (within the meaning of section 8(2) of the Children Act 1989);
- (b) an order under section 14A, 14B(2)(b), 14C(3)(b) or 14D of the Children Act 1989 enforceable by committal order<sup>F700</sup>;

<sup>F701</sup>[ an order prohibiting contact with a child under section 51A(2)(b) of the 2002 Act,]

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the court may, on the application of the person entitled to enforce the order, direct that the court officer issue a copy of the order, endorsed with or incorporating a notice as to the consequences of disobedience, for service in accordance with this rule, and no copy of the order shall be issued with any such notice endorsed or incorporated save in accordance with such a direction.

#### **Textual Amendments**

- F699** Rule 37.9(2) substituted (11.1.2015) by [The Family Procedure \(Amendment No. 4\) Rules 2014 \(S.I. 2014/3296\)](#), [rules 1\(2\)](#), [13](#) (with [rule 15](#))
- F700** Rule 37.9(3)(b): semicolon substituted for comma (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), [rules 1](#), [52](#)
- F701** Rule 37.9(3)(c) inserted (22.4.2014) by [The Family Procedure \(Amendment No. 3\) Rules 2014 \(S.I. 2014/843\)](#), [rules 1](#), [52](#)

#### **How to make the committal application**

**37.10.**—(1) A committal application is made by an application notice using the Part 18 procedure in the proceedings in which the judgment or order was made or the undertaking was given.

(2) Where the committal application is made against a person who is not an existing party to the proceedings, it is made against that person by an application notice using the Part 18 procedure.

(3) The application notice must—

- (a) set out in full the grounds on which the committal application is made and must identify, separately and numerically, each alleged act of contempt including, if known, the date of each of the alleged acts; and
- (b) be supported by one or more affidavits containing all the evidence relied upon.

(4) Subject to paragraph (5), the application notice and the evidence in support must be served personally on the respondent.

(5) The court may—

- (a) dispense with service under paragraph (4) if it considers it just to do so; or
- (b) make an order in respect of service by an alternative method or at an alternative place.

#### **Committal for breach of a solicitor's undertaking**

**37.11.**—(1) This rule applies where an order for committal is sought in respect of a breach by a solicitor of an undertaking given by the solicitor to the court in connection with family proceedings.

(2) The applicant must obtain permission from the court before making a committal application under this rule.

(3) The application for permission must be made by filing an application notice using the Part 18 procedure.

(4) The application for permission must be supported by an affidavit setting out—

- (a) the name, description and address of the respondent;
- (b) the grounds on which the committal order is sought.

(5) The application for permission may be made without notice.

(6) Rules 18.10 and 18.11 do not apply.

(7) Unless the applicant makes the committal application within 14 days after permission has been granted under this rule, the permission will lapse.

## CHAPTER 3

### *Contempt in the face of the court*

#### **Contempt in the face of the court**

**37.12.** Where—

- (a) contempt has occurred in the face of the court; and
- (b) that court has power to commit for contempt,

the court may deal with the matter of its own initiative and give such directions as it thinks fit for the disposal of the matter.

## CHAPTER 4

### *Committal for interference with the due administration of justice*

#### **Scope**

**37.13.**—(1) This Chapter regulates committal applications in relation to interference with the due administration of justice in connection with family proceedings, except where the contempt is committed in the face of the court or consists of disobedience to an order of the court or a breach of an undertaking to the court.

(2) A committal application under this Chapter may not be made without the permission of the court.

(The procedure for applying for permission to make a committal application is set out in rule 37.15.)

(Rules 37.16(3) and (4) make provision for cases in which both this Chapter and Chapter 5 (Committal for making a false statement of truth) may be relevant.)

#### **Court to which application for permission under this Chapter is to be made**

**37.14.**—(1) Where the contempt of court is committed in connection with any family proceedings, the application for permission may be made only to a single judge of the Family Division.

(2) Where the contempt of court is committed otherwise than in connection with any proceedings, Part 81 of the CPR applies.

#### **Application for permission**

**37.15.**—(1) The application for permission to make a committal application must be made using the Part 18 procedure, and the application notice must include or be accompanied by—

- (a) a detailed statement of the applicant's grounds for making the committal application; and
- (b) an affidavit setting out the facts and exhibiting all documents relied upon.

(2) The application notice and the documents referred to in paragraph (1) must be served personally on the respondent unless the court otherwise directs.

(3) Within 14 days of service on the respondent of the application notice, the respondent—

- (a) must file and serve an acknowledgment of service; and
- (b) may file and serve evidence.

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*Status: Point in time view as at 11/01/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

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(4) The court will consider the application for permission at an oral hearing, unless it considers that such a hearing is not appropriate.

(5) If the respondent intends to appear at the permission hearing referred to in paragraph (4), the respondent must give 7 days' notice in writing of such intention to the court and any other party and at the same time provide a written summary of the submissions which the respondent proposes to make.

(6) Where permission to proceed is given, the court may give such directions as it thinks fit, and may—

- (a) transfer the proceedings to another court; or
- (b) direct that the application be listed for hearing before a single judge or a Divisional Court.

## CHAPTER 5

### *Committal for making a false statement of truth (Rule 17.6)*

#### **Scope and interaction with other Chapters of this Part**

**37.16.**—(1) This Chapter contains rules about committal applications in relation to making, or causing to be made, a false statement in a document verified by a statement of truth, without an honest belief in its truth.

(2) Where the committal application relates only to a false statement of truth, this Chapter applies.

(3) Where the committal application relates to both—

- (a) a false statement of truth; and
- (b) breach of a judgment, order or undertaking to do or abstain from doing an act,

then Chapter 2 (Committal for breach of a judgment, order or undertaking to do or abstain from doing an act) applies, but subject to paragraph (4).

(4) To the extent that a committal application referred to in paragraph (3) relates to a false statement of truth—

- (a) the applicant must obtain the permission of the court in accordance with rule 37.17; or
- (b) the court may direct that the matter be referred to the Attorney General with a request that the Attorney General consider whether to bring proceedings for contempt of court.

#### **Committal application in relation to a false statement of truth**

**37.17.**—(1) A committal application in relation a false statement of truth in connection with family proceedings in the High Court may be made only—

- (a) with the permission of the court dealing with the proceedings in which the false statement was made; or
- (b) by the Attorney General.

(2) A committal application in relation to a false statement of truth in connection with proceedings in the family court may be made only—

- (a) with the permission of a single judge of the Family Division; or
- (b) by the Attorney General.

(3) Where permission is required under paragraph (1)(a) or (2)(a), rule 37.15 applies.

(Under rule 37.15(6)(b), the court granting permission may direct that the application be listed before a single judge or a Divisional Court.)

(4) The court may direct that the matter be referred to the Attorney General with a request that the Attorney General consider whether to bring proceedings for contempt of court.

(5) Where the committal application is made by the Attorney General, the application may be made to a single judge or a Divisional Court.

## CHAPTER 6

### *Writ of sequestration to enforce a judgment, order or undertaking*

#### **Scope**

**37.18.** This Chapter contains rules about applications for a writ of sequestration to enforce a judgment, order or undertaking.

#### **Writ of sequestration to enforce a judgment, order or undertaking**

**37.19.**—(1) If—

- (a) a person required by a judgment or order to do an act does not do it within the time fixed by the judgment or order; or
- (b) a person disobeys judgment or order not to do an act,

then, subject to the provisions of these Rules and if the court permits, the judgment or order may be enforced by a writ of sequestration against the property of that person.

(2) If the time fixed by the judgment or order for doing an act has been varied by a subsequent order, references in paragraph (1)(a) to the time fixed are references to the time fixed by that subsequent order.

(3) If the person referred to in paragraph (1) is a company or other corporation, the writ of sequestration may in addition be issued against the property of any director or other officer of that company or corporation.

(4) So far as applicable, and with the necessary modifications, the Chapter applies to undertakings given by a party as it applies to judgments or orders.

#### **Requirement for service of a copy of the judgment or order and time for service**

**37.20.**—(1) Unless the court dispenses with service under rule 37.23, a judgment or order may not be enforced by writ of sequestration unless a copy of it has been served on the person required to do or not do the act in question, and in the case of a judgment or order requiring a person to act—

- (a) the copy has been served before the end of the time fixed for doing the act, together with a copy of any order fixing that time;
- (b) where the time for doing the act has been varied by a subsequent order, a copy of that subsequent order has also been served; and
- (c) where the judgment or order was made pursuant to an earlier judgment or order requiring the act to be done, a copy of the earlier judgment or order has also been served.

(2) Where the person referred to in paragraph (1) is a company or other corporation, a copy of the judgment or order must also be served on a director or officer of the company or corporation before the end of the time fixed for doing the act.

(3) Copies of the judgment or order and any orders or agreements fixing or varying the time for doing an act must be served in accordance with rule 37.21 or 37.22, or in accordance with an order for alternative service made under rule 37.23(2)(b).

**Method of service – copies of judgments or orders**

**37.21.** Subject to rules 37.22 and 37.23, copies of judgments or order and any orders or agreements fixing or varying the time for doing an act must be served personally.

**Method of service – copies of undertakings**

**37.22.**—(1) Subject to paragraph (2) and rule 37.23, a copy of any document recording an undertaking will be delivered by the court to the person who gave the undertaking—

- (a) by handing to that person a copy of the document before that person leaves the court building;
- (b) by posting a copy to that person at the residence or place of business of that person where this is known; or
- (c) by posting a copy to that person’s solicitor.

(2) If delivery cannot be effected in accordance with paragraph (1), the court officer will deliver a copy of the document to the party for whose benefit the undertaking was given, and that party must serve it personally on the person who gave the undertaking as soon as practicable.

(3) Where the person referred to in paragraph (1) is a company or other corporation, a copy of the judgment or order must also be served on a director or officer of the company or corporation.

**Dispensation with personal service**

**37.23.**—(1) In the case of a judgment or order requiring a person to do or not do an act, the court may dispense with service of a copy of the judgment or order in accordance with rules 37.20 to 37.22 if it is satisfied that the person has had notice of it—

- (a) by being present when the judgment or order was given or made; or
- (b) by being notified of its terms by telephone, email or otherwise.

(2) In the case of any judgment or order the court may—

- (a) dispense with service under rules 37.20 to 37.22 if the court thinks it just to do so; or
- (b) make an order in respect of service by an alternative method or at an alternative place.

**Requirement for a penal notice on judgments and orders**

**37.24.**—(1) Subject to paragraph (2), a judgment or order to do or not do an act may not be enforced by a writ of sequestration unless there is prominently displayed, on the front of the copy of the judgment or order served in accordance with this Chapter, a warning to the person required to do or not do the act in question that disobedience to the order would be a contempt of court punishable by imprisonment, a fine or sequestration of assets.

(2) An undertaking to do or not do an act which is contained in a judgment or order may be enforced by a writ of sequestration notwithstanding that the judgment or order does not contain the warning described in paragraph (1).

**How to make an application for permission to issue a writ of sequestration**

**37.25.**—(1) An application for permission to issue a writ of sequestration must be made—

- (a) in the High Court, to a single judge of the Family Division; or
- (b) in the family court, to a judge of High Court judge level.

(2) An application for permission to issue a writ of sequestration must be made by filing an application notice using the Part 18 procedure.

- (3) The application notice must—
  - (a) set out in full the grounds on which the committal application is made and must identify, separately and numerically, each alleged act of contempt including, if known, the date of each of the alleged acts; and
  - (b) be supported by one or more affidavits containing all the evidence relied upon.
- (4) Subject to paragraph (5), the application notice and the evidence in support must be served personally on the respondent.
- (5) The court may—
  - (a) dispense with service under paragraph (4) if it considers it just to do so; or
  - (b) make an order in respect of service by an alternative method or at an alternative place.

### **Form of writ of sequestration**

**37.26.** A writ of sequestration must be in Form No. 67 as set out in Practice Direction 5A (or, in the family court, in a form containing corresponding provision).

## *CHAPTER 7*

### *General rules about committal applications, orders for committal and writs of sequestration*

### **The hearing**

**37.27.**—(1) Unless the court hearing the committal application or application for sequestration otherwise permits, the applicant may not rely on—

- (a) any grounds other than—
    - (i) those set out in the application notice; or
    - (ii) in relation to committal application under Chapter 4, the statement of grounds required by rule 37.15(1)(a) (where not included in the application notice);
  - (b) any evidence unless it has been served in accordance with the relevant Chapter of this Part or the Practice Direction supplementing this Part.
- (2) At the hearing, the respondent is entitled—
- (a) to give oral evidence, whether or not the respondent has filed or served written evidence, and, if doing so, may be cross-examined; and
  - (b) with the permission of the court, to call a witness to give evidence whether or not the witness has made an affidavit or witness statement.
- (3) The court may require or permit any party or other person (other than the respondent) to give oral evidence at the hearing.
- (4) The court may give directions requiring the attendance for cross-examination of a witness who has given written evidence.
- (5) The general rule is that a committal application, application for sequestration or application for discharge from custody will be heard, and judgment given, in public, but a hearing, or any part of it, may be in private (but with the matters in paragraph (6) always stated in public) if—
- (a) publicity would defeat the object of the hearing;
  - (b) it involves matters relating to national security;
  - (c) it involves confidential information (including information relating to personal financial matters) and publication would damage that confidentiality;

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- (d) a private hearing is necessary to protect the interests of any child or protected party;
  - (e) it is a hearing of an application made without notice and it would be unjust to any respondent for there to be a public hearing; or
  - (f) the court considers this to be necessary, in the interests of justice.
- (6) If the court hearing an application in private decides to make a committal order against the respondent, it will in public state—
- (a) the name of the respondent;
  - (b) in general terms, the nature of the contempt of court in respect of which the committal order is being made; and
  - (c) the length of the period of the committal order.
- (7) Where a committal order is made in the absence of the respondent, the court may on its own initiative fix a date and time when the respondent is to be brought before the court.

#### **Power to suspend execution of a committal order**

**37.28.**—(1) The court making the committal order may also order that execution of the order will be suspended for such period or on such terms and conditions as the court may specify.

(2) Unless the court otherwise directs, the applicant must serve on the respondent a copy of any order made under paragraph (1).

#### **Warrant of committal**

**37.29.**—(1) If a committal order is made, the order will be for the issue of a warrant of committal.

(2) Unless the court orders otherwise—

- (a) a copy of the committal order must be served on the respondent either before or at the time of the execution of the warrant of committal; or
- (b) where the warrant of committal has been signed by the judge, the committal order may be served on the respondent at any time within 36 hours after the execution of the warrant.

(3) Without further order of the court, a warrant of committal must not be enforced more than 2 years after the date on which the warrant is issued.

#### **Discharge of a person in custody**

**37.30.**—(1) A person committed to prison for contempt of court may apply to the court to be discharged.

(2) The application must—

- (a) be in writing and attested by the governor of the prison (or any other officer of the prison not below the rank of principal officer);
- (b) show that the person committed to prison for contempt has purged, or wishes to purge, the contempt; and
- (c) be served on the person (if any) at whose instance the warrant of committal was issued at least one day before the application is made.

(3) Paragraph (2) does not apply to—

- (a) a warrant of committal to which CCR Order 27 rule 8, or CCR Order rule 4 or 14, relates;
- (b) an application made by the Official Solicitor acting with official authority for the discharge of a person in custody..

(4) If the committal order is made in the family court and—



(a) does not direct that any application for discharge must be made to a judge; or  
(b) was made by a district judge under section 118 of the County Courts Act 1984;  
the application for discharge may be made to a district judge.

(5) If the committal order is made in the High Court, the application for discharge may be made to a single judge of the Family Division.

### **Discharge of a person in custody where a writ of sequestration has been issued**

**37.31.** Where—

- (a) a writ of sequestration has been issued to enforce a judgment or order;
- (b) the property is in the custody or power of the respondent;
- (c) the respondent has been committed for failing to deliver up any property or deposit it in court or elsewhere; and
- (d) the commissioners appointed by the writ of sequestration take possession of the property as if it belonged to the respondent;

then, without prejudice to rule 37.30(1) (discharge of a person in custody), the court may discharge the respondent and give such directions for dealing with the property taken by the commissioners as it thinks fit.

## *CHAPTER 8*

### *Penal and disciplinary provisions under the County Courts Act 1984*

#### **Scope**

**37.32.**—(1) This Chapter applies to the family court only and contains rules in relation to the penal, contempt and disciplinary provisions of the County Courts Act 1984 as they apply to the family court.

(2) In this Chapter, “the Act” means the County Courts Act 1984.

#### **Offences under sections 14, 92 or 118 of the Act**

**37.33.**—(1) This rule applies where it is alleged that any person has committed an offence—

- (a) under section 14 of the Act, by assaulting an officer of the court acting in the execution of the officer’s duties;
- (b) under section 92 of the Act, by rescuing or attempting to rescue any goods seized in execution; or
- (c) under section 118 of the Act, by wilfully insulting a judge, juror, witness or any officer of the court or by wilfully interrupting the proceedings of the family court or otherwise misbehaving in court,

and the alleged offender has not been taken into custody and brought before the court.

(2) The court will issue a summons, which must be served on the alleged offender personally not less than 7 days before the day of the hearing stated in the summons.

(3) Rule 37.29 (warrant of committal) applies, with the necessary modifications, where an order is made under section 14, 92 or 118 of the Act committing a person to prison.

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*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

### **Offences under section 124 of the Act**

**37.34.** Where a complaint is made against an officer of the court under section 124 of the Act for having lost the opportunity of levying execution, the court will issue a summons, which must be served on the alleged offender personally not less than 7 days before the date of the hearing stated in the summons.

### **Notice to give evidence before or after a fine is imposed under section 55 of the Act**

**37.35.**—(1) Before or after imposing a fine on any person under section 55 of the Act for disobeying a witness summons or refusing to be sworn or give evidence, the court may direct that notice be given to that person in accordance with paragraph (2).

(2) The notice must state that if the recipient of the notice can demonstrate any reason why a fine should not be or should not have been imposed, that person may give evidence—

- (a) by witness statement, affidavit or otherwise; and
- (b) on a day named in the notice.

### **Non-payment of fines**

**37.36.**—(1) If a fine is not paid in accordance with the order imposing it, the court officer will, as soon as reasonably possible, report the matter to a judge.

(2) Where by an order imposing a fine—

- (a) the amount of the fine is directed to be paid by instalments; and
- (b) default is made in the payment of any instalment,

the same proceedings may be taken as if default had been made in respect of the whole of the fine.

### **Repayment of fine**

**37.37.** If a person pays a fine and later gives evidence to satisfy the court that, if the evidence had been given earlier, no fine or a smaller fine would have been imposed, the court may order the whole or part of the fine to be repaid.

### **Section 118 of the Act and the tipstaff**

**37.38.** For the purposes of section 118 of the Act in its application to the hearing of family proceedings at the Royal Courts of Justice or the principal registry, the tipstaff is deemed to be an officer of the court.]

## **[<sup>F702</sup>PART 38**

### **RECOGNITION AND ENFORCEMENT OF PROTECTION MEASURES**

#### **Textual Amendments**

**F702** Pt. 38 inserted (11.1.2015) by [The Family Procedure \(Amendment No. 4\) Rules 2014 \(S.I. 2014/3296\)](#), rules 1(2), **14** (with rule 15)

## CHAPTER 1

### SCOPE AND INTERPRETATION OF THIS PART

#### Scope and interpretation

**38.1.**—(1) This Part contains rules about the mutual recognition and enforcement of protection measures between England and Wales and Member States of the European Union other than the United Kingdom and Denmark.

(2) In this Part—

“Article 5 certificate” means a certificate issued under Article 5 of the Protection Measures Regulation;

“Article 8 notice” means the notification required by Article 8 of the Protection Measures Regulation;

“Article 11 notice” means the notification required by Article 11 of the Protection Measures Regulation;

“Article 14 certificate” means a certificate issued under Article 14 of the Protection Measures Regulation;

“outgoing protection measure” means any protection measure included in any of—

- (a) a non-molestation order made under section 42 of the 1996 Act;
- (b) an occupation order made under any of sections 33, 35, 36, 37 or 38 of the 1996 Act;
- (c) an undertaking accepted by the court under section 46 of the 1996 Act;
- (d) an order that has been varied under section 49 of the 1996 Act;
- (e) a forced marriage protection order made under section 63A of the 1996 Act;
- (f) an undertaking accepted by the court under section 63E of the 1996 Act;
- (g) an order that has been varied under section 63G of the 1996 Act;
- (h) any other order of the family court or the High Court in family proceedings; or
- (i) any other undertaking accepted by the family court or the High Court in family proceedings;

“person causing the risk” has the meaning given to it in the Protection Measures Regulation; and

“protected person” has the meaning given to it in the Protection Measures Regulation.

## CHAPTER 2

### CERTIFICATES FOR OUTGOING PROTECTION MEASURES

#### Application for an Article 5 certificate

**38.2.**—(1) A protected person may apply for an Article 5 certificate—

- (a) at the time of application for an order containing an outgoing protection measure; or
- (b) at any time after such application, provided either—
  - (i) the order or the undertaking containing the outgoing protection measure has not yet been made or accepted, as the case may be; or
  - (ii) the outgoing protection measure is still in force.

(2) An application for an Article 5 certificate may be made without notice.

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*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010. (See end of Document for details)*

### **The court to which an application for an Article 5 certificate must be made**

**38.3.** An application for an Article 5 certificate must be made—

- (a) where the outgoing protection measure has not yet been ordered or accepted—
  - (i) to the family court if the proceedings relating to the outgoing protection measure are before the family court;
  - (ii) to the High Court if the proceedings relating to the outgoing protection measure are before the High Court;
- (b) where the outgoing protection measure has been ordered or accepted—
  - (i) to the family court if that court made the order or accepted the undertaking as the case may be, unless there are proceedings relating to that order or undertaking before the High Court, in which case the application must be made to the High Court;
  - (ii) to the High Court if that court made the order or accepted the undertaking as the case may be, unless there are proceedings relating to that order or undertaking before the family court, in which case the application must be made to the family court.

### **When a request for a translation of an Article 5 certificate may be made**

**38.4.** A protected person may request a translation of an Article 5 certificate—

- (a) at the time of the application for the Article 5 certificate; or
- (b) at any time after such application, provided the Article 5 certificate—
  - (i) has not yet been issued; or
  - (ii) if issued, is still in force.

### **The court to which a request for translation of an Article 5 certificate must be made**

**38.5.** A request for a translation of an Article 5 certificate must be made—

- (a) if the certificate has not yet been issued, to—
  - (i) the family court, if the application for the certificate is before the family court; or
  - (ii) the High Court, if the application for the certificate is before the High Court; or
- (b) if the certificate has been issued, to—
  - (i) the family court, if the family court issued it;
  - (ii) the High Court, if the High Court issued it.

### **Service requirements under Article 6**

**38.6.—**(1) Where the outgoing protection measure is included in an order, the court may only issue an Article 5 certificate if satisfied that the order has been served upon the person causing the risk in accordance with the requirements specified in rule 37.5, unless the court has dispensed with service of the order in accordance with the requirements specified in rule 37.8.

(2) Where the protected person is responsible for serving the order on the person causing the risk, any application for an Article 5 certificate must be accompanied by a certificate of service.

### **Notification of the certificate under Article 8**

**38.7.—**(1) Subject to paragraph (2), the court officer must give Article 8 notice to the person causing the risk by serving it in accordance with Chapter 3 of Part 6 and the rules in that Chapter shall apply to service of the notice as they apply to any other document served by a court officer.

(2) If the person causing the risk resides in a Member State of the European Union other than the United Kingdom or in a country outside the European Union, the court officer must give Article 8 notice by sending it by registered letter with acknowledgement of receipt or confirmation of delivery or equivalent to the last known place of residence of that person.

#### **Rectification of an Article 5 certificate**

**38.8.**—(1) An application pursuant to Article 9 of the Protection Measures Regulation for rectification of an Article 5 certificate must be made to—

- (a) the family court if the family court issued the certificate;
  - (b) the High Court if the High Court issued the certificate.
- (2) An application for such rectification may be made by—
- (a) the protected person; or
  - (b) the person causing the risk.

(3) An Article 5 certificate may be rectified pursuant to Article 9(1)(a) of the Protection Measures Regulation by the court—

- (a) on application under this rule; or
- (b) on its own initiative.

#### **Withdrawal of an Article 5 certificate**

**38.9.**—(1) An application pursuant to Article 9 of the Protection Measures Regulation for withdrawal of an Article 5 certificate must be made to—

- (a) the family court if the family court issued the certificate; or
  - (b) the High Court if the High Court issued the certificate.
- (2) An application for such withdrawal may be made by—
- (a) the protected person; or
  - (b) the person causing the risk.

(3) An Article 5 certificate may be withdrawn pursuant to Article 9(1)(b) of the Protection Measures Regulation by the court—

- (a) on application under this rule; or
- (b) on its own initiative.

#### **When an application for an Article 14 certificate may be made**

**38.10.** A protected person or person causing the risk may apply for an Article 14 certificate—

- (a) at the time of application for variation or discharge of the order containing the outgoing protection measure, or for acceptance of a variation or discharge of the undertaking containing the outgoing protection measure, as the case may be;
- (b) at any time after the variation or discharge of the order containing the outgoing protection measure has been ordered or the variation or discharge of the undertaking containing the outgoing protection measure has been accepted, as the case may be;
- (c) at the time of application under Article 9 of the Protection Measures Regulation for withdrawal of an Article 5 certificate;
- (d) at any time after an Article 5 certificate has been withdrawn under Article 9 of the Protection Measures Regulation;

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- (e) at the time of application for an order staying or suspending enforcement of the order or undertaking containing the outgoing protection measure; or
- (f) any time after, the making of an order staying or suspending enforcement of the order or undertaking containing the outgoing protection measure.

### **The court to which an application for an Article 14 certificate must be made**

**38.11.** An application for an Article 14 certificate must be made—

- (a) if the order containing the outgoing protection measure has not yet been varied or discharged or a variation or discharge of the undertaking containing the protection measure has not yet been accepted, as the case may be, to—
  - (i) the family court if the application for such variation or discharge is before the family court; or
  - (ii) the High Court if the application for such variation or discharge is before the High Court;
- (b) if there has been an application under Article 9 of the Protection Measures Regulation for withdrawal of the Article 5 certificate, and that application has not yet been decided, to—
  - (i) the family court if the application for such withdrawal is before the family court; or
  - (ii) the High Court if the application for such withdrawal is before the High Court;
- (c) if the order containing the outgoing protection measure has been varied or discharged or the variation or discharge of the undertaking containing the outgoing protection measure has been accepted, as the case may be, to—
  - (i) the family court if the family court ordered or accepted such variation or discharge, as the case may be; or
  - (ii) the High Court if the High Court ordered or accepted such variation or discharge, as the case may be;
- (d) if an Article 5 certificate has been withdrawn under Article 9, to—
  - (i) the family court if the family court ordered such withdrawal; or
  - (ii) the High Court if the High Court ordered such withdrawal;
- (e) where enforcement of the order has been stayed or suspended, to—
  - (i) the family court if the family court made the order for the stay or suspension; or
  - (ii) the High Court if the High Court made the order for the stay or suspension.

## CHAPTER 3

### INCOMING PROTECTION MEASURES

#### **Application for adjustment under Article 11**

**38.12.** A protected person may apply to the court under Article 11 of the Protection Measures Regulation to adjust the factual elements of an incoming protection measure.

#### **Notification of the adjustment under Article 11**

**38.13.**—(1) Subject to paragraph (2), the court officer must give Article 11 notice to the person causing the risk by serving it in accordance with Chapter 3 of Part 6 and the rules in that Chapter apply to service of the notice as they apply to any other document to be served by a court officer.

(2) If the person causing the risk resides in a Member State of the European Union other than the United Kingdom or in a country outside the European Union, the court officer must give Article

11 notice by sending it by registered letter with acknowledgment of receipt or other confirmation of delivery or equivalent to the last known place of residence of that person.

### **Application for refusal of recognition or enforcement under Article 13**

**38.14.** An application by a person causing the risk for refusal of recognition or enforcement under Article 13 of the Protection Measures Regulation must be made to—

- (a) the family court if—
  - (i) there are proceedings relating to the same protection measure before the family court; or
  - (ii) proceedings relating to the same protection measure were dealt with by the family court;
- (b) the High Court if—
  - (i) there are proceedings relating to the same protection measure before the High Court; or
  - (ii) proceedings relating to the same protection measure were dealt with by the High Court; or
- (c) the family court, unless, applying rule 5.4, the application should be made to the High Court.

### **Application under Article 14(2)**

**38.15.**—(1) This rule applies where an Article 14 certificate has been issued in a Member State of the European Union other than the United Kingdom or Denmark.

(2) A protected person or person causing the risk may apply to the court to stay, suspend or withdraw the effects of recognition or, where applicable, the enforcement of the protection measure.

(3) An application under this rule must include a copy of the Article 14 certificate issued in the other Member State.

(4) On an application under this rule, the court must make such orders or give such directions as may be necessary to give effect to the Article 14 certificate.]

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**Status:** Point in time view as at 11/01/2015.

**Changes to legislation:** There are currently no known outstanding effects  
for the The Family Procedure Rules 2010. (See end of Document for details)

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I allow these Rules  
Signed by authority of the Lord Chancellor

Ministry of Justice

*J Djanogly*



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## EXPLANATORY NOTE

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

These rules provide a new code of procedure for family proceedings in the High Court, county courts and magistrates' courts, and replace existing rules of court for family proceedings. The principal rules being replaced are the Family Proceedings Rules 1991, the Family Procedure (Adoption) Rules 2005 and, in so far as they relate to family proceedings, the Family Proceedings Courts (Children Act 1989) Rules 1991, the Family Proceedings (Matrimonial Proceedings etc) Rules 1991, and rules relating to the reciprocal enforcement of maintenance orders, in particular the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) Rules 1974.

The rules adopt a similar structure to the Civil Procedure Rules 1998. The introductory Parts provide for fundamental matters of general application and various preliminary matters, opening in Part 1 with the overriding objective of the rules, to enable the court to deal with cases justly, having regard to any welfare issues involved. Part 2 contains the provisions for interpreting and applying the rules including provision about the delegation of certain functions of a magistrates' court to a single justice. Part 3 contains the court's powers to encourage the use of alternative dispute resolution; Part 4 contains provision for case management powers; Part 5 provides for the forms which are to be used in family proceedings and how family proceedings are started; and Part 6 makes provision for service of documents in family proceedings (including service abroad). The rules then make provision for procedure for the key types of family proceedings in separate Parts as follows—

- Part 7 (Procedure for applications in matrimonial and civil partnership proceedings);
- Part 8 (Procedure for miscellaneous applications such as applications for a gender recognition certificate, declarations and orders preventing avoidance under section 32L of the Child Support Act 1991(c.48));
- Part 9 (Applications for a financial remedy);
- Part 10 (Applications under Part 4 of the Family Law Act 1996 (c.27) (domestic violence));
- Part 11 (Applications under Part 4A of the Family Law Act 1996 (forced marriage));
- Part 12 (Proceedings relating to children, except parental order proceedings and proceedings for applications in adoption, placement and related proceedings);
- Part 13 (Proceedings under section 54 of the Human Fertilisation and Embryology Act 2008(c.22) (parental orders)); and
- Part 14 (Adoption, placement and related proceedings).

Parts 15 and 16 contain rules relating to representation of protected parties and children respectively, and Part 17 for when statements of truth are required to verify documents. Part 18 relates to the procedure for other applications in proceedings which, for example, will be used for applications for the court's permission to bring proceedings and Part 19 to the alternative procedure for applications which will be used for matters such as proceedings for an order to prevent disclosure of information to an adopted person under section 60(3) of the Adoption and Children Act 2002(c.38).

The remaining Parts of the rules are of general application and contain procedural provisions mirroring, with modifications for family proceedings, the general procedural parts of the Civil Procedure Rules 1998, as follows—

- Part 20 makes provision for applications for interim injunctions;
- Part 21 contains miscellaneous rules about disclosure and inspection of documents;

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- Parts 22 to 24 contain rules about evidence;
- Part 25 deals with experts and assessors;
- Part 26 deals with change of solicitor;
- Part 27 relates to hearings and directions appointments and includes provision relating to the giving of reasons in a magistrates' court;
- Part 28 relates to costs across all three levels of court;
- Part 29 contains miscellaneous provisions including provision for protection of personal details in proceedings and provision for Human Rights Act 1998 (c.42) questions being raised in family proceedings;
- Part 30 deals with appeals;
- Parts 31 and 32 deal with registration and enforcement of foreign or Scottish or Northern Irish orders of different sorts, and Part 34 with reciprocal enforcement of maintenance orders;
- Part 33 provides for enforcement generally;
- Part 35 relates to the Mediation Directive; and
- Part 36 contains transitional provisions.

Detailed supplementary provisions supporting many parts of the rules such as the transitional provisions in Part 36 and appeals in Part 30 are, where indicated in the rules, contained in practice directions, which do not form part of the rules.

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