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STATUTORY INSTRUMENTS

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**2010 No. 2955**

The Family Procedure Rules 2010

**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**

**9.2.** Unless the context otherwise requires, and subject to the rules in this Part, the following rules of the Magistrates' Courts Rules 1981 <sup>M1</sup> apply to proceedings in a magistrates' court which are family proceedings under section 65 of the Magistrates' Courts Act 1980—

- (a) rule 39(6) (method of making periodical payments);
- (b) rule 41 (revocation etc. of orders for periodical payments);
- (c) rule 43 (service of copy of order);
- (d) rule 44 (remission of sums due under order);
- (e) rule 45 (duty of designated officer to notify subsequent marriage or formation of civil partnership of person entitled to payments under a maintenance order);
- (f) rule 48 (to whom payments are to be made);
- (g) rule 49 (duty of designated officer to give receipt);
- (h) rule 51 (application for further time);
- (i) rule 62 (particulars relating to payment of lump sum under a magistrates' courts maintenance order etc. to be entered in register);
- (j) rule 66 (register of convictions, etc.);
- (k) rule 67 (proof of service, handwriting, etc.);
- (l) rule 68 (proof of proceedings); and
- (m) rule 69 (proof that magistrates' court maintenance orders, etc, have not been revoked, etc.).

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**Marginal Citations**

**M1** [S.I. 1981/552](#).

## 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>M2</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;

“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>M3</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>M4</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>M5</sup>
- (b) in proceedings under the 1984 Act, an order under section 17(1)(a)(i) of that Act<sup>M6</sup> making provision equivalent to an order referred to in 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>M7</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>M8</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>M9</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>M10</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>M11</sup>;
- (b) regulation 5 of and Schedule 2 to the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 <sup>M12</sup> and regulation 11 of and Schedule 1 to the Occupational Pension Schemes (Transfer Value) Regulations 1996 <sup>M13</sup>;
- (c) section 93A or 94(1)(a) or (aa) of the Pension Schemes Act 1993 <sup>M14</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>M15</sup>;
- (e) the Dissolution etc. (Pensions) Regulations 2005 <sup>M16</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.

(2) References in this Part to a county court are to be construed, in relation to proceedings for a financial order, as references to a divorce county court or a civil partnership proceedings county court, as the case may be.

*Status: Point in time view as at 18/06/2011.*

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- (a) <sup>F1</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”;
- (b) Sub-paragraph (a) does not apply where the relief sought includes relief which is of a type to which the Maintenance Regulation does not apply.]

### Textual Amendments

- F1** Rule 9.3(3) inserted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), rules 1, 7

### Marginal Citations

- M2** [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.
- M3** [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.
- M4** [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 \(c. 30\)](#).
- M5** [Section 25F](#) was inserted by section 120 of and paragraphs 1 and 7 of Schedule 6 to the Pensions Act 2008.
- M6** [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.
- M7** [Section 24E](#) was inserted by section 120 of and paragraphs 1 and 3 of Schedule 6 to the Pensions Act 2008.
- M8** [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.
- M9** [Section 24B](#) was inserted by section 19 of and paragraphs 1 and 4 of Schedule 3 to the Welfare Reform and Pensions Act 1999.
- M10** [Section 21C](#) was inserted by section 120 of and paragraphs 1 and 2 of Schedule 6 to the Pensions Act 2008.
- M11** [S.I. 2000/1048](#).
- M12** [S.I. 1996/1655](#).
- M13** [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.
- M14** [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.
- M15** [S.I. 1987/1110](#).

M16 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 a designated county 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.

(2) In any other case, in relation to the application set out in column 1 of the following table, column 2 sets out where the application must be filed.

<i>Provision under which application is made</i>	<i>Court where application must be filed</i>
Section 27 of the 1973 Act M17	Divorce county court.
.	
Part 9 of Schedule 5 to the 2004 Act.	Civil partnership proceedings county court.
Part 3 of the 1984 Act.	Principal Registry or, in relation to an application for a consent order, a divorce county court.
Schedule 7 to the 2004 Act.	Principal Registry or, in relation to an application for a consent order, a civil partnership proceedings county court.
Section 35 of the 1973 Act M18	High Court, a divorce county court or a magistrates' court.
.	
Paragraph 69 of Schedule 5 to the 2004 Act.	High Court, a civil partnership proceedings county court or a magistrates' court.
Schedule 1 to the 1989 Act.	High Court, designated county court or a magistrates' court.
Part 1 of the 1978 Act.	magistrates' court.
Schedule 6 to the 2004 Act.	magistrates' court.

(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

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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.)

#### **Marginal Citations**

**M17** Section 27 was amended by sections 4 and 46(1) of and paragraph 13 of Schedule 1 to the Matrimonial and Family Proceedings Act 1984 and section 63(1), (2), (3), (4) and (5) as substituted by section 33(1) of and paragraph 52 of Schedule 2 to the [Family Law Reform Act 1987 \(c.42\)](#) and section 89(2)(b) and Schedule 3 to the Domestic Proceedings and Magistrates' Courts Act 1978 and section 66(1) of and paragraph 13(2), (3), and (4) of Schedule 8 to the Family Law Act 1996 and section 6(1) of the Domicile and Matrimonial Proceedings Act 1973.

**M18** Section 35 was amended by section 46(1) of and paragraph 13 of Schedule 1 to the Matrimonial and Family Proceedings Act 1984 and by section 109(1) of and paragraph 169 of Schedule 8 to the Courts Act 2003 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.

#### **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;
- (b) an order for maintenance pending outcome of proceedings;
- (c) an order for interim periodical payments;
- (d) an interim variation order; or
- (e) any other form of interim order.

(2) The Part 18 procedure applies to an application for an interim order.

(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.

#### **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 in whose favour a residence order has been made with respect to a child of the family, and any applicant for such an order;
- (c) any other person who is entitled to apply for a residence order with respect to a child;
- (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) a child of the family who has been given permission to apply for a financial remedy.

(2) In this rule “residence order” has the meaning given to it by section 8(1) of the 1989 Act.

#### **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 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,

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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 IN THE HIGH COURT AND COUNTY COURT AFTER FILING AN APPLICATION

#### **Duties of the court and the applicant upon issuing an application**

**9.12.**—(1) When an application under this Part is issued in the High Court or in a county court—

- (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>F2</sup>(4) In relation to an application to which the Maintenance Regulation 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**

**F2** Rule 9.12(4) inserted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), [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 an affidavit; 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
  - (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>F3</sup>(2A) Where the application is made under Article 56 of, using the form in Annex VII to, the Maintenance Regulation, and the relief sought is limited to relief of a type to which that Regulation applies, the requirement of paragraph (2)(a) relating to verification by affidavit does not apply.]

(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).

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(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**

**F3** Rule 9.14(2A) inserted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), rules 1, 9

#### **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.

(By rule 3.3 the court may also direct that the case be adjourned if it considers that alternative 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.

#### **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.

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- (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

### PROCEDURE IN THE MAGISTRATES' COURT AFTER FILING AN APPLICATION

#### **Duties of the court and the applicant upon filing an application**

- 9.18.**—(1) When an application for an order under this Part is issued in a magistrates' court—
- (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>F4</sup>(4) The requirement at paragraph (1)(b)(iii) that the court officer sends a blank financial statement to the applicant does not apply where the application has been made under Article 56 of, and using the form in Annex VII to, the Maintenance Regulation.
- (5) In relation to an application to which the Maintenance Regulation 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**

- F4** Rule 9.18(4)(5) inserted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), rules 1, **10**

**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 an affidavit; 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>F5</sup>(2A) Where the application is made under Article 56 of, and using the form in Annex VII to, the Maintenance Regulation the requirement of paragraph (2)(a) relating to verification by affidavit does not apply.]

(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**

**F5** Rule 9.19(2A) inserted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), [rules 1, 11](#)

**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>M19</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, except an application for variation of an order.	The other party to the marriage; 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 under paragraphs 30 to 34 of Schedule 6 to the 2004 Act, except an application for variation of an order.	The other party to the civil partnership; and where the order to which the application relates requires periodical payments to be made to, or

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*Changes to legislation: There are currently no known outstanding effects for the  
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Application for the revival of an order under section 20A of the 1978 Act or paragraph 40 of Schedule 6 to the 2004 Act.

in respect of, a child who is 16 years of age or over, that child.

The parties to the proceedings leading to the order which it is sought to have revived.

#### Marginal Citations

**M19** 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>F6</sup>Application in a magistrates' court 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 to a magistrates' court for a maintenance order, or for 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.
- (3) This rule does not apply in relation to proceedings to vary a maintenance order.
- (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.

(Rules made under section 144 of the Magistrates' Courts Act 1980 make provision for applications to vary maintenance orders made in magistrates' courts.)]

#### Textual Amendments

**F6** Rule 9.22 substituted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), [rules 1, 12](#)

#### Duty to make entries in the court's register

**9.23.**—(1) Where the designated officer for the court receives notice of any direction made in the High Court or a county court under section 28 of the 1978 Act <sup>M20</sup> by virtue of which an order

made by the court under that Act or the 2004 Act ceases to have effect, particulars of the direction must be entered in the court's register.

(2) Where—

- (a) in proceedings under the 1978 Act, the hearing of an application under section 2 of that Act <sup>M21</sup> is adjourned after the court has decided that it is satisfied of any ground mentioned in section 1 <sup>M22</sup>; or
- (b) in proceedings under the 2004 Act, the hearing of an application under Part 1 of Schedule 6 to that Act is adjourned after the court has decided that it is satisfied of any ground mentioned in paragraph 1,

and the parties to the proceedings agree to the resumption of the hearing in accordance with section 31 of the 1978 Act by a court which includes justices who were not sitting when the hearing began, particulars of the agreement must be entered into the court's register.

#### Marginal Citations

- M20** Section 28 was inserted with savings by section 66(1) of and paragraph 28(2) and (3) of Schedule 8 to the Family Law Act 1996 and subsection (2) was repealed by Schedule 10 to that Act.
- M21** Section 2 was amended by sections 15(1) and 146 of and paragraphs 96(1), (2) and (3) of Schedule 4 to and Part 2 of Schedule 18 to the Constitutional Reform Act 2005.
- M22** Section 1 was amended by section 46(1) of and paragraph (c) of Schedule 1 to the Matrimonial and Family Proceedings Act 1984 and prospectively repealed with savings by sections 18(1) and 66(3) of and Schedule 10 to the Family Law Act 1996.

## 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 <sup>M23</sup>;
- (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

- M23** 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—

- (a) where the case is proceeding in the county court, at any court of trial; and
- (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.

(3) An application for an order under—

- (a) section 27 of the 1973 Act <sup>M24</sup>; or
- (b) Part 9 of Schedule 5 to the 2004 Act,

must be heard in a court of trial or in the High Court.

(4) A court may transfer a case to another court exercising the same jurisdiction, 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 (5) applies.

(5) 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) neither party has, within 14 days of the notification being sent, requested a hearing to determine whether a transfer should be ordered.

**Marginal Citations**

**M24** Section 27 was amended by sections 4 and 46(1) and paragraph 13 of Schedule 1 to the Matrimonial and Family Proceedings Act 1984 and sections 63(1), (2), (3) (4) and (5) and 89(2)(b) of and Schedule 3 to the Domestic Proceedings and Magistrates' Courts Act 1978 and sections 33(1) and 66(1) and paragraph 52 of Schedule 2 and paragraphs 13(2), (3) and (4) of Schedule 8 to the Family Law Act 1996 and section 6(1) of the Domicile and Matrimonial Proceedings Act 1973.

**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>F7</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; or
- (d) the Maintenance Regulation.

(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).]

*Status: Point in time view as at 18/06/2011.*

*Changes to legislation: There are currently no known outstanding effects for the The Family Procedure Rules 2010, PART 9. (See end of Document for details)*

### Textual Amendments

- F7** Rule 9.26A inserted (18.6.2011) by [The Family Procedure \(Amendment\) Rules 2011 \(S.I. 2011/1328\)](#), rules 1, 13

## 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.

(3) This rule does not apply to magistrates’ courts. (Rule 28.3 makes provision for orders for costs in financial remedy proceedings.)

#### 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>M25</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>M26</sup> have the meanings assigned by that section.

#### Marginal Citations

- M25** 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.
- M26** 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.

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### **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.

(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 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—

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- (i) the relevant pension sharing or pension attachment 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 is made; or
  - (ii) the final order of dissolution or nullity or separation order is made,  
whichever is the later.

### **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>M27</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**

M27 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>M28</sup>.

**Marginal Citations**

M28 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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*Changes to legislation: There are currently no known outstanding effects for the Family Procedure Rules 2010, PART 9. (See end of Document for details)*

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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.

**Status:**

Point in time view as at 18/06/2011.

**Changes to legislation:**

There are currently no known outstanding effects for the The Family Procedure Rules 2010, PART 9.