

2015 No. 1420 (L. 15)

FAMILY PROCEEDINGS

SENIOR COURTS OF ENGLAND AND WALES

FAMILY COURT, ENGLAND AND WALES

The Family Procedure (Amendment No. 2) Rules 2015

Made - - - - 24th June 2015

Laid before Parliament 26th June 2015

Coming into force in accordance with rule 1

The Family Procedure Rule Committee makes the following rules in exercise of the powers conferred by section 48 of the Civil Jurisdiction and Judgments Act 1982(a), section 110(4) of the County Courts Act 1984(b), paragraph 14(2) of Part 1 of Schedule 2 to the Female Genital Mutilation Act 2003(c) and sections 75 and 76 of the Courts Act 2003(d), after consulting in accordance with section 79 of the Courts Act 2003.

Citation and commencement

- 1.—(1) These Rules may be cited as the Family Procedure (Amendment No. 2) Rules 2015.
- (2) This rule and rules 2 to 17 come into force on 17th July 2015.
- (3) Rules 24 and 25 come into force on 31st July 2015.
- (4) The remainder of these Rules come into force on 24th August 2015.

Amendment of the Family Procedure Rules 2010

2. The Family Procedure Rules 2010(e) are amended in accordance with rules 3 to 25.

(a) 1982 c.27. Section 48 was amended by paragraph 23 of Schedule 2 to the Civil Jurisdiction and Judgments Act 1991 (c.12), paragraph 86 of Schedule 11 to the Crime and Courts Act 2013 (c.22) and by S.I. 2001/3929, 2011/1215, 2012/1770 and 2014/2947.

(b) 1984 c.28. Section 110 was amended by paragraph 10 of Schedule 9 to the Crime and Courts Act 2013 and by S.I. 2002/439.

(c) 2003 c.31. Part 1 of Schedule 2 was inserted by section 73(2) of the Serious Crime Act 2015 (c.9).

(d) 2003 c.39. Section 75 was amended by paragraph 338 of Schedule 4 and Part 2 of Schedule 18 to the Constitutional Reform Act 2005 (c.4) and by paragraph 91 of Schedule 10 to the Crime and Courts Act 2013. Section 76 was amended by section 62(7) of the Children Act 2004 (c.31), paragraph 172 of Schedule 27 to the Civil Partnership Act 2004 (c.33), paragraph 29 of Schedule 1 to the Constitutional Reform Act 2005 and paragraph 92 of Schedule 10 to the Crime and Courts Act 2013.

(e) S.I. 2010/2955. Relevant amending instruments are S.I. 2011/1328, 2012/679 and 2806, 2013/3204, 2014/667 and 3296 and 2015/913.

Amendment of the heading to Part 11

3. In the heading to Part 11 (applications under Part 4A of the Family Law Act 1996) after “1996” insert “OR PART 1 OF SCHEDULE 2 TO THE FEMALE GENITAL MUTILATION ACT 2003”.

Amendment of rule 11.1

4. In rule 11.1 (scope and interpretation)—

- (a) in paragraph (1) after “Act” insert “and under Part 1 of Schedule 2 to the 2003 Act”;
- (b) in paragraph (2)—
 - (i) before the definition of “a forced marriage protection order” insert—
““the 2003 Act” means the Female Genital Mutilation Act 2003;
“a FGM protection order” means an order under paragraph 1(1) of Part 1 of Schedule 2 to the 2003 Act;”;
 - (ii) in the definition of “a forced marriage protection order” omit “and”;
 - (iii) after the definition of “a forced marriage protection order” insert—
““a protection order” means a forced marriage protection order or a FGM protection order; and”;
 - (iv) in the definition of “the person who is the subject of proceedings”—
 - (aa) omit “forced marriage”; and
 - (bb) for “such an” substitute “the protection”.

Amendment of rule 11.2

5. In rule 11.2 (applications)—

- (a) in paragraph (1) omit “forced marriage”;
- (b) in paragraph (2) for “sworn” substitute “witness”; and
- (c) in paragraph (3) omit “forced marriage”.

Insertion of new rule 11.2A

6. After rule 11.2 insert—

“Directions about service

11.2A.—(1) Where rules within this Part require the person who is the subject of proceedings to be served with any documents or informed of any action taken by the court, and that person 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 must give directions about the persons who are to be served or informed.

(2) This rule applies to rules 11.3(3)(c), 11.4(1)(b), 11.6(3)(c) and 11.7(3).”.

Amendment of rule 11.3

7. In rule 11.3 (permission to apply)—

- (a) before paragraph (1) insert—

“(A1) An application for permission to apply for a protection order may be made without notice.”;

- (b) in paragraph (1)—
 - (i) omit “forced marriage”;
 - (ii) in sub-paragraph (a)(iv), before “the applicant’s” insert “in relation to an application for permission to apply for a forced marriage protection order only,”; and
- (c) in paragraph (4) omit “forced marriage”.

Amendment of rule 11.4

- 8.** In rule 11.4 (service of applications on notice)—
 - (a) in paragraph (3) after “applicant” insert “, acting in person,”;
 - (b) omit paragraph (5); and
 - (c) in paragraph (6) after “personal service” insert “on each party served”.

Amendment of rule 11.6

- 9.** In rule 11.6 (parties)—
 - (a) before paragraph (1) insert—

“(A1) Where the person who is the subject of proceedings is not the applicant and is a child, the court must consider, at every stage in the proceedings, whether to make that child a party to proceedings.

(For when a child should be made a party to proceedings generally see paragraph 7 of Practice Direction 16A).”;
 - (b) in paragraph (3)(b) omit “forced marriage”; and
 - (c) in paragraph (5)(a) omit “forced marriage”.

Amendment of rule 11.7

- 10.** In rule 11.7(1) (hearings and service of orders) omit “forced marriage”.

Amendment of rule 11.8

- 11.** In rule 11.8(1) (orders made by the court of its own initiative)—
 - (a) omit “forced marriage”; and
 - (b) after “1996 Act” insert “or under paragraph 2 of Part 1 of Schedule 2 to the 2003 Act”.

Amendment of rule 11.10

- 12.** In rule 11.10 (applications to vary, extend or discharge an order) omit “forced marriage”.

Amendment of rule 11.12

- 13.** In rule 11.12 (service of an order on the officer for the time being in charge of a police station)—
 - (a) in paragraph (1)—
 - (i) omit “forced marriage”; and
 - (ii) in sub-paragraph (a) after “proceedings;” for “or” substitute “and”;
 - (b) in paragraph (2)—
 - (i) after “respondent(s)” insert “and any other person whose breach of the order would be an offence”; and

- (ii) for “has” substitute “have”; and
- (c) in both places where it occurs in paragraph (4) omit “forced marriage”.

Amendment of rule 11.13

14. In rule 11.13(1) (application for issue of warrant for arrest) after “1996 Act” insert “or under paragraph 7(1) of Part 1 of Schedule 2 to the 2003 Act”.

Amendment of rule 11.14

15. In rule 11.14 (proceedings following arrest)—

- (a) in paragraph (1)(b) after “1996 Act” insert “or under paragraph 7(1) of Part 1 of Schedule 2 to the 2003 Act”; and
- (b) in the words in parentheses at the end of the rule, after “1996 Act” insert “and in paragraphs 8 to 14 of Part 1 of Schedule 2 to the 2003 Act”.

Amendment of rule 11.15

16. In rule 11.15 (enforcement of orders and undertakings)—

- (a) in paragraph (1) omit “forced marriage”; and
- (b) in the words in parentheses at the end of the rule, before “rule 37.4(4)” insert “section 63E of the 1996 Act and”.

Amendment of rule 11.19

17. In rule 11.19(1) (recognizances) after “1996 Act” insert “or paragraph 10(3)(b) of Part 1 of Schedule 2 to the 2003 Act”.

Amendment of rule 33.9

18. In rule 33.9 (interpretation), in the definition of “judgment summons”, for “Debtor’s” substitute “Debtors”.

Amendment of rule 33.11

19. In rule 33.11 (judgment summons), for paragraphs (2) and (3) substitute—

“(2) A judgment summons must be accompanied by the statement referred to in rule 33.10(2).

(3) A judgment summons must be served on the debtor—

- (a) personally; or
- (b) by the court sending it to the debtor by first class post—
 - (i) at the address stated in the application for the issue of a judgment summons; or
 - (ii) in a case where a court officer is proceeding for the recovery of a debt in accordance with rule 32.33, at the last known address for the debtor shown on court records.

(4) In a case to which paragraph (3)(b)(i) applies, the judgment creditor must file with the court a certificate for postal service.

(5) A judgment summons must be served on the debtor not less than 14 days before the hearing.

(6) Paragraph (3) is subject to any direction of the court that the judgment summons must be served personally on the debtor.”.

Substitution of rule 33.13

20. For rule 33.13 (requirement for personal service), substitute—

“Order or summons to attend adjourned hearing: requirement for personal service

33.13.—(1) Paragraph (2) applies in proceedings for committal by way of judgment summons where—

- (a) the family court has ordered under section 110(1) of the County Courts Act 1984 that the debtor must attend an adjourned hearing; or
 - (b) the High Court has summonsed the debtor to attend an adjourned hearing following the debtor’s failure to attend the hearing of the judgment summons.
- (2) The following documents must be served personally on the debtor—
- (a) 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).”.

Substitution of rule 33.14

21. For rule 33.14 (committal on application for judgment summons) substitute—

“Committal on application for judgment summons

33.14.—(1) Subject to paragraph (2), on a hearing of an application for a judgment summons the debtor may be committed for making default on payment of a debt if the judgment creditor proves that the debtor—

- (a) 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
- (b) has refused or neglected, or refuses or neglects, to pay that sum.

(2) A debtor may not be committed in accordance with paragraph (1) where the judgment summons was served by post, unless the debtor attends the hearing.

(3) Where the debtor has been ordered or summonsed to attend an adjourned hearing in accordance with rule 33.13, the debtor may be committed—

- (a) for failure to attend the adjourned hearing; or
- (b) for making default on payment of a debt, if 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.

(4) The debtor may not be compelled to give evidence.”.

Insertion of new rule 33.14A

22. After rule 33.14 insert—

“Expenses

33.14A.—(1) A debtor must not be committed to prison under section 110(2) of the County Courts Act 1984 unless the debtor has been paid or offered a sum reasonably sufficient to cover the expenses of travelling to and from the court building at which the debtor is summoned or ordered to appear.

(2) The sum must be paid or offered at the time of service of—

- (a) the judgment summons; or

- (b) the order to attend under section 110(1) of the County Courts Act 1984.”.

Amendment of rule 33.17

- 23.** In rule 33.17 (special provisions as to judgment summonses in the High Court)—
- (a) in paragraph (1), for “The court” substitute “The High Court”; and
 - (b) in paragraphs (2), (3) and (4), for “the court” substitute “the High Court”.

Substitution of rule 34.35

- 24.** For rule 34.35 (registered order: payer residing in a different Designated Family Judge area) substitute—

“Registered order: payer residing in an area covered by a different Maintenance Enforcement Business Centre

34.35. Practice Direction 34E makes provision for cases where a court officer in the Maintenance Enforcement Business Centre for the Designated Family Judge area where an order is registered considers that the payer is residing in a Designated Family Judge area covered by a different Maintenance Enforcement Business Centre.

(For the way in which information will be provided to enable Maintenance Enforcement Business Centres to be identified, see Practice Direction 34E.)”.

Amendment of rule 34.36

- 25.** In rule 34.36 (cancellation of registered orders) for paragraph (1) substitute—
- “(1) Where the court officer for the registering court—
- (a) has no reason to send papers to another Maintenance Enforcement Business Centre under Practice Direction 34E; and
 - (b) considers that the payer under the registered order is not residing within the area covered by the Maintenance Enforcement Business Centre for the Designated Family Judge area where the order is registered and has no assets in England and Wales,
- the court officer must cancel the registration.”.

Transitional provision

26.—(1) Subject to paragraph (2), the Family Procedure Rules 2010 as amended by rules 18 to 23 of these Rules apply from 24th August 2015 to any proceedings which were commenced but not disposed of before that date, as they apply to proceedings commenced on or after that date.

(2) In any proceedings which were commenced but not disposed of before 24th August 2015, the court may give any directions for the purpose of ensuring that the proceedings are dealt with fairly and, in particular, may—

- (a) apply any provision in rules of court which applied to the proceedings before 24th August 2015; or
- (b) disapply provisions of the Family Procedure Rules 2010 as amended by rules 18 to 23 of these Rules.

*James Munby, P
Marie Brock
Richard Burton
Christopher Darbyshire
Jane Harris
Mike Hinchliffe*

*Michael Horton
Hannah Perry
HHJ Alison Raeside
Ernest Ryder, LJ*

I allow these Rules

24th June 2015

Caroline Dinenage
Parliamentary Under-Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Family Procedure Rules 2010 (S.I. 2010/2955) (“the FPR”).

Rules 3 to 17 amend Part 11 of the FPR to make provision for the practice and procedure to be followed on an application for a female genital mutilation protection order under Part 1 of Schedule 2 to the Female Genital Mutilation Act 2003 (c.31).

Rules 18 to 23 amend Part 33 of the FPR to make changes to the procedure in respect of an application for a judgment summons. In particular, the amendments alter the provision for the payment or offer of a sum to cover the debtor’s travelling expenses to attend court, to align the provision in the FPR more closely with the provision made in section 110 of the County Courts Act 1984 (c.28) and in the Civil Procedure Rules 1998 (S.I. 1998/3132).

Rules 24 and 25 amend rules 34.35 and 34.36 of the FPR to reflect operational changes made by Her Majesty’s Courts and Tribunals Service in dealing with cases for the reciprocal enforcement of maintenance orders. These changes mean that the administration of such cases will be dealt with at particular locations of the family court in England and Wales, known as Maintenance Enforcement Business Centres.

Rule 26 makes transitional provision.

No impact assessment has been produced for this instrument because no, or minimal, impact is anticipated to result from its provisions.

© Crown copyright 2015

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty’s Stationery Office and Queen’s Printer of Acts of Parliament.

£6.00

UK2015062519 07/2015 19585

<http://www.legislation.gov.uk/id/uksi/2015/1420>

ISBN 978-0-11-113716-1



9 780111 137161