STATUTORY INSTRUMENTS

2014 No. 667 (L. 11)

FAMILY PROCEEDINGS

SENIOR COURTS OF ENGLAND AND WALES

FAMILY COURT, ENGLAND AND WALES

The Family Procedure (Amendment No. 2) Rules 2014

Made - - - -	*13th March 2014*
Laid before Parliament	*18th March 2014*
Coming into force - -	*22nd April 2014*

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(**a**) and section 54(1) of the Access to Justice Act 1999(**b**), after consulting in accordance with section 79 of the Courts Act 2003.

Citation, interpretation and commencement

1. These Rules may be cited as the Family Procedure (Amendment No. 2) Rules 2014 and come into force on 22nd April 2014.

Amendments to the Family Procedure Rules 2010

2. The Family Procedure Rules 2010(**c**) are amended in accordance with rules 3 to 44.

3. In rule 2.3—

(a) in paragraph (1)—

(i) in the definitions of "CCR" and "RSC", delete "subject to paragraph (4)";

(ii) after the defined term "justices' clerk" insert—

""lay justice" means a justice of the peace who is not a District Judge (Magistrates' Courts);"; and

(iii) for the defined term "judge" substitute—

""judge" means—

(**a**) 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 (c.22). Section 76 was amended by section 62(7) of the Children Act 2004 (c.31), paragraph 172 of Schedule 2 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.

(**b**) 1999 c.22. Section 54(1) was amended by paragraphs 78 and 79 of Part 2 of Schedule 10 to the Crime and Courts Act 2013.

(**c**) S.I. 2010/2955; relevant amending instruments are S.I. 2011/1328, 2012/ 679, 2007, 2046, 2806 and 3006 and 2013/530.

(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 Queens 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(**a**);

(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 (xiii) or to act as a temporary additional officer for any such office;

(xiv) a circuit judge;

(xv) a Recorder;

(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(**b**) or section 8 of the County Courts Act 1984(**c**);

(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;";

(**a**) 1981 c. 54. For renaming of the Supreme Court Act 1981, see the Constitutional Reform Act 2005 (c. 4), sections 40, 59, Schedule 9, paragraph 36, Schedule 11 paragraph 1(1). Section 9 has been amended by the Crime and Courts Act 2013 (c. 22), sections 20, 21(4), Schedule 13, paragraph 52, paragraph 89, Schedule 14 paragraphs 1, 2; the Criminal Justice and Public Order Act 1994 (c. 33), section 52; the Administration of Justice Act 1982 (c. 53), section 58; the Judicial Pensions and Retirement Act 1993 (c. 8), sections 26, 31, Schedule 6, paragraph 5, Schedule 9; the Constitutional Reform Act 2005 (c. 4), section 15(1), Schedule 4, paragraph 114 , 121; the Courts Act 2003 (c. 39), section 109(1), Schedule 8, paragraph 260.

(**b**) Section 102 has been amended by the Courts and Legal Services Act 1990 (c. 41), section 125(3), Schedule 18, paragraph 40; the Tribunals, Courts and Enforcement Act 2007 (c. 15), sections 56, 125(7), Schedule 11, paragraphs 1, 3, Schedule 20; the Crime and Courts Act 2013 (c. 22), section 20, Schedule 13, paragraph 36; the Judicial Pensions and Retirement Act 1993 (c. 8), section 31, Schedule 8, paragraph 15(3).

(**c**) 1984 c. 28. Section 8 has been amended by the Courts and Legal Services Act 1990 (c. 41), section 125(3), Schedule 18, paragraph 42; the Tribunals, Courts and Enforcement Act 2007 (c. 15), sections 56, Schedule 11, paragraphs 5, 7; the Crime and Courts Act 2013 (c. 22), section 17(5), 20, Schedule 9, paragraphs 1, 6, Schedule 13, paragraph 37; the Judicial Pensions and Retirement Act 1993 (c. 8), section 26, Schedule 6, paragraph 17.

(b) in paragraph (3), for "Subject to paragraph (4), where" substitute "Where"; and

(c) omit paragraph (4).

4. For rule 2.5(1)(b) substitute—

"(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(**a**); 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.".

5. In rule 2.6—

(a) in paragraph (1)—

(i) for the words before sub-paragraph (a) substitute "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—"; and

(ii) omit sub-paragraph (d);

(b) in paragraph (2), for "justice of the peace" substitute "lay justice"; and

(c) in paragraph (3), for "(1)(a), (c) and (d)" substitute "(1)(a) and (c)".

6. For rule 2.7 substitute—

"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.".

7. Omit rule 9.2.

8. In rule 9.14, after paragraph (2) insert—

"(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.".

9. In rule 9.18(A1)(a)—

(a) in paragraph (iii), omit "or"; and

(b) after paragraph (iii) insert—

"(iv) Article 56 of the Maintenance Regulation; or

(v) Article 10 of the 2007 Hague Convention.".

10. After rule 9.21, insert—

"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.".

(**a**) Section 31D was inserted by the Crime and Courts Act 2013 (c. 22), section 17, Schedule 10, paragraphs 1.

11. After rule 9.21A, insert—

"Chapter 5A

Certain applications".

12. Omit rule 9.23.

13. In Chapter 6 of Part 9, after rule 9.26B, insert—

"Method of making periodical payments

9.26C.—(1) This rule applies where under section 1(4) or (4A) of the Maintenance Enforcement Act 1991(**a**) 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

(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.

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,

(**a**) 1991 c. 17. Section 1(4A) was inserted by paragraph 77(5) of Schedule 10 to the Crime and Courts Act 2013 (c. 22).

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(**a**); and

"the 1972 Act" means the Maintenance Orders (Reciprocal Enforcement) Act 1972(**b**).

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

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(**a**) 1920 c. 33.
(**b**) 1972 c. 18.

"payer" means a person required to make payments under a periodical payments order."

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14. In rule 10.6(1), for sub-paragraph (b) and the words in parentheses that follow it, substitute—

"(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.)".

15. For rules 10.12 and 10.13 substitute—

"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).)

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).)".

16. For rule 11.15 substitute—

"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).)".

17. In rule 23.9—

(a) in the heading, omit "in magistrates' courts"; and

(b) for "in a magistrates' court" substitute "in the family court before a lay justice or lay justices".

18. In rule 25.20(1), omit "or section 63 of the County Courts Act 1984".

19. In rule 27.2—

(a) in the heading, for "of the magistrates' courts" substitute ": proceedings before a lay justice or justices";

(b) in paragraph (1) for "in a magistrates' court" substitute "in the family court before a lay justice or justices";

(c) in paragraph (5)—

(i) in sub-paragraph (a) before "justice" insert "lay"; and

(ii) in sub-paragraph (b), before "justice" insert "lay";

(d) in paragraph (7), before "justices" insert "lay"; and

(e) omit paragraph (10) .

20. After rule 29.18 insert—

"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.".

21. In rule 30.1—

(a) in paragraph 1(b), for "a county court" substitute "the family court";

(b) in the words in parentheses following paragraph (2), for "47.20 to 47.23" substitute "47.21 to 47.24"; and

(c) in paragraph (3), after the definition of "appellant" insert —

""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);".

22. In rule 30.3—

(a) in paragraph (5A), after "judge of the High Court or" insert "in the family court, a judge of the High Court or ";and

(b) omit paragraph (9).

23. In rule 30.4—

(a) for paragraph (3) substitute —

"(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."; and

(b) omit paragraph (5)(e).

24. In rule 30.5—

(a) in paragraph (4), for "A respondent's notice" substitute "Subject to paragraph (4A), a respondent's notice"; and

(b) after paragraph (4) insert—

"(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).".

25. In rule 30.13, for paragraph (2) substitute—

"(2) Paragraph (1) does not allow an application for permission to appeal to be transferred to the Court of Appeal.".

26. In rule 30.14(3), for "a county court" substitute "the family court".

27. In rule 32.10A—

(a) in paragraph (4)—

(i) after "Where" insert "under section 1(4A) of the Maintenance Enforcement Act 1991"; and

(ii) for "section 1(5) of the Maintenance Enforcement Act 1991" substitute "section 1(5) of that Act";

(b) in paragraph (5), for the words after "1991" substitute "(application from an interested party to revoke, suspend, revive or vary a means of payment order)";

(c) for paragraph (6) substitute—

"(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.".

28. In rule 33.1—

(a) in paragraph (1), for "a county court" substitute "the family court"; and

(b) in paragraph (2)—

(i) for "Part 50" substitute "Parts 50, 83 and 84";

(ii) omit the words in brackets; and

(iii) for "a county court" substitute "the family court".

29. In rule 33.2—

(a) omit "and" at the end of paragraph (a); and

(b) after paragraph (a) insert—

"(a1) in rule 70.3(1), for "County Court" there is substituted "family court"; and".

30. In rule 33.4, for "a designated county court" in all three places where it occurs substitute "the family court".

31. Omit rules 33.5 to 33.8, and insert in their place—

"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.".

32. In rule 33.10, for paragraph (1) substitute—

"(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.)".

33. In rule 33.11(3), after "court", insert "building".

34. In rule 33.14(1)(b), for "a county court" substitute "the family court".

35. In rule 33.17(5)(b), for "county court within the district of" substitute "Designated Family Judge area within".

36. Omit rule 33.18.

37. Omit rule 33.19 and insert in its place—

"**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

(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".

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(**a**); 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."

(**a**) 1971 c. 32. Section 23 is amended by the Crime and Courts Act 2013 (c.22), paragraph 33 Schedule 10.

(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,

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."".

38. In the heading to Chapter 4 of Part 33, for "Execution" substitute "Control".

39. In rule 33.20—

(a) for "execution" substitute "control"; and

(b) for "district judge" substitute "court".

40. Omit rule 33.21.

41. For rule 33.23 substitute—

"**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, for sub-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."".

42. In rule 33.24—

(a) after paragraph (1), insert—

"(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.""; and

(b) for paragraph (3) substitute—

"(3) In rule 72.7—

(a) in paragraph (2)(a), after "the Royal Courts of Justice" there is inserted "or the principal registry"; and

(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"."

43. In rule 33.25, for paragraph (4) substitute—

"(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.".

44. After Part 36, insert Part 37 (Applications and proceedings in relation to contempt of court) as set out in the Schedule to these Rules.

Transitional and saving provision

45.—(1) Subject to paragraphs (2) and (3), the Family Procedure Rules 2010 as amended by these Rules shall apply to any proceedings which were commenced but not disposed of before these Rules came into force.

(2) The court may in any such proceedings 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 these Rules came into force; or

(b) disapply provisions of the Family Procedure Rules 2010 as amended by these Rules.

(3) Part 30 of the Family Procedure Rules applies to appeals or applications for permission to appeal against decisions made before these Rules come into force as if the amendments made to that Part by rule 21(c) (in so far as it refers to a District Judge (Magistrates' Courts)) and rules 23(a) and 24(a) and (b) of these Rules had not been made.

James Munby, P
Timothy Becker
Richard Burton
Paul Carr
Martyn Cook
Bruce Edgington
Angela Finnerty
Mike Hinchliffe
Sunita Mason
David Salter
Lucy Theis, J
John Wilson

I allow these Rules

Signed by authority of the Lord Chancellor

Simon Hughes
Minister of State
Ministry of Justice

13th March 2014

SCHEDULE

Rule 44

"PART 37

APPLICATIONS AND PROCEEDINGS IN RELATION TO CONTEMPT OF COURT

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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, order or undertaking to do or abstain from doing an act;

(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.

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—

(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(**a**) (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(**b**) and 1878(**c**) 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

(**a**) 1984 c.42. Section 31E is inserted by the Crime and Courts Act 2013 (c.22), section 17(6), Schedule 10 paragraph 1.
(**b**) 1869 c. 62
(**c**) 1878 c. 54

(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.

(2) An undertaking to do or not do an act which is contained in a judgment or order may be enforced under rule 37.4 notwithstanding that the judgment or order does not contain the warning described in paragraph (1).

(3) In the case of—

(a) a section 8 order (within the meaning of section 8(2) of the Children Act 1989)(**a**);

(b) an order under section 14A, 14B(2)(b), 14C(3)(b) or 14D of the Children Act 1989(**b**) enforceable by committal order,

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.

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 form 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.

(**a**) 1989 c. 41.
(**b**) Sections 14A to 14D were inserted by the Adoption and Children Act 2002 (c. 38), section 115(1).

(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.

(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;

(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.

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."

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Family Procedure Rules 2010 (S.I. 2010/2955) ("the FPR 2010"). The amendments made to the FPR 2010 by rules 3 to 44 of these Rules are made to reflect the creation of the family court, to insert a new Part 37, and to make some adjustments to the appeals rules in Part 30.

Provision in respect of the family court is made in section 17 of, and Schedules 10 and 11 to, the Crime and Courts Act 2013 (c.22). The family court, and the High Court, have jurisdiction to deal with family proceedings. The jurisdiction formerly exercised by magistrates' courts and county courts in relation to family proceedings, and enforcement of orders made in family proceedings, held by magistrates' courts and county courts, is removed by provision in the Crime and Courts Act 2013.

In particular, these Rules amend the following Parts of the FPR 2010 to reflect the coming into force of the family court—

— Part 2 (Application and interpretation);
— Part 9 (Applications for a financial remedy);
— Part 10 (Applications under Part 4 of the Family Law Act 1996);
— Part 11 (Applications under Part 4A of the Family Law Act 1996);
— Part 23 (Miscellaneous rules about evidence);
— Part 25 (Experts and assessors);
— Part 27 (Hearings and directions appointments);
— Part 29 (Miscellaneous);
— Part 30 (Appeals);
— Part 32 (Registration and enforcement of orders);
— Part 33 (Enforcement).

In addition, these Rules insert into the FPR 2010 a new Part 37 to make freestanding provision in the FPR 2010 in relation to applications and proceedings in relation to contempt of court.

These Rules also introduce a requirement to obtain permission to appeal from the decision of a District Judge (Magistrates' Courts) and new time limits for filing an appellant's notice and a respondent's notice where there is an appeal or application for permission to appeal against a case management decision.

Transitional and saving provision is made in rule 45.

An impact assessment covering instruments being made to support the establishment of the family court accompanies the Explanatory Memorandum (which is available alongside this instrument at www.legislation.gov.uk).

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