STATUTORY INSTRUMENTS

2020 No. 135 (L. 7)

FAMILY PROCEEDINGS

SENIOR COURTS OF ENGLAND AND WALES

FAMILY COURT, ENGLAND AND WALES

The Family Procedure (Amendment) Rules 2020

Made - - - -	*10th February 2020*
Laid before Parliament	*13th February 2020*
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 17(2) of the Senior Courts Act 1981(**a**) and sections 67B, 75 and 76 of the Courts Act 2003(**b**), after consulting in accordance with section 79(1) of the Courts Act 2003:

Citation and commencement

1. These Rules may be cited as the Family Procedure (Amendment) Rules 2020 and come into force on 6th April 2020, except for rules 10 to 14 which come into force on 6th July 2020.

Amendment of the Family Procedure Rules 2010

2. The Family Procedure Rules 2010(**c**) are amended in accordance with rules 3 to 30.

Amendment of rule 2.3

3. In rule 2.3(1) (interpretation) for the definition of "justices' clerk" substitute—

> ""justices' legal adviser" means a person authorised to exercise functions under section 67B of the Courts Act 2003 who has such qualifications as are prescribed by the Authorised Court Staff (Legal Advice Functions) Qualifications Regulations 2020(**d**);".

(**a**) 1981 c. 54.

(**b**) 2003 c. 39. Section 67B was inserted by paragraph 32 of the Schedule to the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33). Section 75 was amended by paragraphs 308 and 338 of Schedule 4 and Part 2 of Schedule 18 to the Constitutional Reform Act 2005 (c. 4) and by paragraphs 83 and 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 29 of Schedule 1 to the Constitutional Reform Act 2005, paragraphs 83 and 92 of Schedule 10 to the Crime and Courts Act 2013 and paragraphs 25 and 24 of the Schedule to the Courts and Tribunals (Judiciary and Functions of Staff Act 2018.

(**c**) S.I. 2010/2955. Relevant amendments were made in S.I. 2011/1328, 2012/679, 2007, 2046, 2806, 3006 and 3061, 2013/1465, 1472 and 3204, 2014/667, 843 and 3296, 2015/913, 2016/355, 2018/440 and 1172 and 2019/517.

(**d**) S.I. 2020/98.

Amendment of rule 2.5

4. In rule 2.5 (power to perform functions conferred on the court by these rules and practice directions)—

(a) omit the text in parenthesis after paragraph (1)(b)(ii); and

(b) after paragraph (1) insert—

"(1A) The functions of the family court or a judge of the family court listed in Practice Direction 2C may be exercised by a justices' legal adviser.".

Amendment of the heading to Part 5

5. For the title to Part 5 substitute—

"FORMS, START OF PROCEEDINGS AND COMMUNICATION WITH THE COURT".

Insertion of new rule 5.A1

6. Before rule 5.1 (forms) insert—

"Application

5.A1.—(1) This Part is subject to any provision made by or pursuant to Part 41 (proceeding by electronic means).".

Insertion of new rule 5.7

7. After rule 5.6 (documents in the Welsh language) insert—

"Communications with the court

5.7.—(1) Any communication between a party to proceedings and the court must be disclosed to, and if in writing (whether in paper or electronic format) copied to, the other party or parties or their representatives.

(2) Paragraph (1) applies to any communication in which any representation is made to the court on a matter of substance or procedure but does not apply to communications that are purely routine, uncontentious and administrative.

(3) A party is not required under paragraph (1) to disclose or copy a communication if there is a compelling reason for not doing so, and provided that any reason is clearly stated in the communication.

(4) A written communication required under paragraph (1) to be copied to the other party or parties, or their representatives, must state on its face that it is being copied to that person or those persons, stating their identity and capacity.

(5) Unless the court directs otherwise, a written communication which does not comply with paragraph (4) will be returned to the sender without being considered by the court, with a brief explanation of why it is being returned.

(6) In addition to returning a communication under paragraph (5), where a party fails to comply with paragraph (1) the court may, subject to hearing the parties, exercise its case management powers under Part 4.

(7) Paragraph (1) does not apply to communications authorised by a rule or practice direction to be sent to the court without at the same time being provided to the other party or parties or their representatives.".

Insertion of new rule 7.1(1A)

8. After rule 7.1(1) (application and interpretation) insert—

"(1A) This Part is subject to any provision made by or pursuant to Part 41 (proceeding by electronic means).".

Substitution of rule 9.1

9. For rule 9.1 (application) substitute—

"Application

9.1.—(1) The rules in this Part apply to an application for a financial remedy.

(2) This Part is subject to any provision made by or pursuant to Part 41 (proceeding by electronic means).

("Financial remedy" and "financial order" are defined in rule 2.3.)".

Amendment of rule 9.17

10. In rule 9.17(9) (the FDR appointment)—

(a) in sub-paragraph (a) omit "and";

(b) in sub-paragraph (b) for "." substitute "; and"; and

(c) after sub-paragraph (b) insert—

"(c) any necessary directions for the filing of open proposals for settlement under rule 9.27A or rule 9.28.".

Amendment of rule 9.20

11. In rule 9.20(5)(b) (consideration of the application at the first hearing) for "paragraphs (7) and (9) do" substitute "paragraph (7) does".

Substitution of rule 9.27

12. For rule 9.27 (estimates of costs) substitute—

"**9.27.**—(1) Except where paragraph (4) applies, not less than one day before every hearing or appointment, each party must file with the court and serve on each other party an estimate of the costs incurred by that party up to the date of that hearing or appointment.

(2) Not less than one day before the first appointment, each party must file with the court and serve on each other party an estimate of the costs that party expects to incur up to the FDR appointment if a settlement is not reached.

(3) Not less than one day before the FDR appointment, each party must file with the court and serve on each other party an estimate of the costs that party expects to incur up to the final hearing if a settlement is not reached.

(4) 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.

(5) A costs estimate filed and served in accordance with paragraph (1), (2) or (3) and particulars of costs filed and served in accordance with paragraph (4) must include confirmation—

(a) that they have been served on each other party; and

(b) in the case of a party who is legally represented, that they have been discussed with the party on whose behalf they are provided.

(6) Each party must bring to a hearing or appointment a copy of any estimate of costs filed and served in accordance with paragraph (1), (2) or (3) and any particulars of costs filed and served in accordance with paragraph (4).

(7) The amount of—

(a) a costs estimate filed and served in accordance with paragraph (1), (2) or (3); and

(b) particulars of costs filed and served in accordance with paragraph (4),

must be recorded in a recital to the order made at the hearing or appointment before which the estimate or particulars were filed or served.

(8) If a party fails to comply with paragraph (1), (2), (3) or (4)—

(a) this fact must be recorded in a recital to the order made at the hearing or appointment before which the costs estimate or particulars of costs should have been filed and served; and

(b) the court must direct that the relevant costs estimate or particulars of costs must be filed with the court and served on each other party within three days of the hearing or appointment or within such other time period as the court directs.

(Rule 28.3 makes provision for orders for costs in financial remedy proceedings.)

(Practice Direction 9A makes provision for statements of truth to be included in estimates of costs and particulars of costs filed and served in accordance with this rule.)".

Insertion of new rule 9.27A

13. After rule 9.27 (estimates of costs) insert—

"Duty to make open proposals after a FDR appointment or where there has been no FDR appointment

9.27A.—(1) Where at a FDR appointment the court does not make an appropriate consent order or direct a further FDR appointment, each party must file with the court and serve on each other party an open proposal for settlement—

(a) by such date as the court directs; or

(b) where no direction is given under sub-paragraph (a), within 21 days after the date of the FDR appointment.

(2) Where no FDR appointment takes place, each party must file with the court and serve on each other party an open proposal for settlement—

(a) by such date as the court directs; or

(b) where no direction is given under sub-paragraph (a), not less than 42 days before the date fixed for the final hearing.".

Amendment of the heading to rule 9.28

14. For the heading to rule 9.28 (duty to make open proposals) substitute—

"Duty to make open proposals before a final hearing".

Amendment of rule 12.1

15. In rule 12.1 (application of this Part), after paragraph (2) insert—

"(3) This Part is subject to any provision made by or pursuant to Part 41 (proceeding by electronic means).".

Amendment of rule 12.4

16. In rule 12.4 (notice of proceedings to person with foreign parental responsibility)—

(a) in paragraph (2), at the beginning, insert "Subject to paragraph (2A),";

(b) after paragraph (2) insert—

"(2A) Notice shall not be given to a person to whom the applicant believes paragraph (1) applies if the court directs that such notice is not necessary."; and

(c) in paragraph (3), at the beginning, insert "Unless a direction has been made under paragraph (2A),".

Insertion of new rule 12.42B

17. After rule 12.42A (application for a writ of habeas corpus for release in relation to a minor) insert–

"Application to set aside an inherent jurisdiction order

12.42B.—(1) In this rule—

"inherent jurisdiction order" means an order, declaration or judgment made under the inherent jurisdiction, and includes—

(a) a part of such an order, declaration or judgment; or

(b) a consent order; and

"set aside" means to set aside pursuant to section 17(2) of the Senior Courts Act 1981 and this rule.

(2) A party may apply under this rule to set aside an inherent jurisdiction order where no error of the court is alleged.

(3) An application under this rule must be made within the proceedings in which the inherent jurisdiction order was made.

(4) An application under this rule must be made in accordance with the Part 18 procedure, subject to the modifications contained in this rule.

(5) Where the court decides to set aside an inherent jurisdiction order, it shall give directions for a rehearing or make such other orders as may be appropriate to dispose of the application.

(6) This rule is without prejudice to any power the High Court has to vary, revoke, discharge or set aside other orders, declarations or judgments where no error of the court is alleged.".

Insertion of new rule 12.52A

18. After rule 12.52 (stay of proceedings upon notification of wrongful removal etc.) insert—

"Application to set aside a return order under the 1980 Hague Convention

12.52A.—(1) In this rule—

"return order" means an order for the return or non-return of a child made under the 1980 Hague Convention(**a**) and includes a consent order;

"set aside" means to set aside a return order pursuant to section 17(2) of the Senior Courts Act 1981 and this rule.

(**a**) The Convention on the Civil Aspects of International Child Abduction which was signed at The Hague on 25 October 1980.

(2) A party may apply under this rule to set aside a return order where no error of the court is alleged.

(3) An application under this rule must be made within the proceedings in which the return order was made.

(4) An application under this rule must be made in accordance with the Part 18 procedure, subject to the modifications contained in this rule.

(5) Where the court decides to set aside a return order, it shall give directions for a rehearing or make such other orders as may be appropriate to dispose of the application.

(6) This rule is without prejudice to any power the High Court has to vary, revoke, discharge or set aside other orders, declarations or judgments which are not specified in this rule and where no error of the court is alleged.".

Amendment of rule 14.1

19. In rule 14.1 (application of this Part and interpretation), after paragraph (1) insert—

"(1A) This Part is subject to any provision made by or pursuant to Part 41 (proceeding by electronic means).".

Amendment of rule 14.4

20. In rule 14.4 (notice of proceedings to person with foreign parental responsibility)—

(a) in paragraph (2), at the beginning, insert "Subject to paragraph (2A),";

(b) after paragraph (2) insert—

"(2A) Notice shall not be given to a person to whom the applicant believes paragraph (1) applies if the court directs that such notice is not necessary."; and

(c) in paragraph (3), at the beginning, insert "Unless a direction has been made under paragraph (2A),".

Amendment of rule 14.21

21. In rule 14.21 (Inherent jurisdiction and fathers without parental responsibility)—

(a) in the heading, for "Inherent jurisdiction and" substitute "Notice to"; and

(b) for "High Court" substitute "court".

Amendment of rule 18.1

22. In rule 18.1 (types of applications for which Part 18 procedure may be followed), after paragraph (3) insert—

"(4) This Part is subject to any provision made by or pursuant to Part 41 (proceeding by electronic means).".

Amendment of rule 19.1

23. In rule 19.1 (types of application for which Part 19 procedure may be followed), after paragraph (2) insert—

"(2A) This Part is subject to any provision made by or pursuant to Part 41 (proceeding by electronic means).".

Amendment of rule 19.2

24. In rule 19.2 (applications for which the Part 19 procedure must be followed), in sub-paragraph (c) omit "of High Court".

Amendment of rule 23.9

25. In rule 23.9 (note of oral evidence) for "justices' clerk" substitute "justices' legal adviser".

Amendment of rule 25.5

26. In rule 25.5 (further provision about the court's power to restrict expert evidence), after paragraph (2) insert—

"(3) Provision may be made in a practice direction in relation to permission to put expert evidence in relation to toxicology testing before the court.".

Amendment of rule 27.2

27. In rule 27.2 (reasons for a decision: proceedings before a lay justice or justices) for "justices' clerk" in both places it appears substitute "justices' legal adviser".

Substitution of rule 27.9

28. For rule 27.9 substitute—

"Recording, transcription and informal notes of proceedings

27.9.—(1) At any hearing, the proceedings will be tape recorded or digitally recorded unless the court directs otherwise.

(2) No party or member of the public may use unofficial recording equipment in any court without the permission of the court. (To do so without permission constitutes a contempt of court under section 9 of the Contempt of Court Act 1981(**a**).)

(3) Unless the court directs otherwise, a person to whom paragraph (4) applies may require a transcript of the recording of any hearing in proceedings to be supplied to them, upon payment of the charges authorised by any scheme in force for the making of the recording or the transcript.

(4) This paragraph applies to—

(a) a party to the proceedings;

(b) the Queen's Proctor; and

(c) where a declaration of parentage has been made under section 55A of the 1986 Act(**b**), the Registrar General.

(5) A person to whom paragraph (4) does not apply may be provided with a transcript of the recording of any hearing—

(a) with the permission of the court; and

(b) upon payment of the charges authorised by any scheme in force for the making of the recording or the transcript.

(6) At any hearing, the court may give appropriate directions to assist a party, in particular one who is or has been or may become unrepresented, for the compilation and sharing of a note or other informal record of the proceedings made by another party.".

(**a**) 1981 c. 49. Section 9 was amended by section 31 of the Crime and Courts Act 2013.

(**b**) The Family Law Act 1986 (c. 55). Section 55A was inserted by section 83(1) and (2) of the Child Support, Pensions and Social Security Act 2000 (c. 19) and was amended by paragraphs 95 and 97 of Schedule 11 to the Crime and Courts Act 2013.

Amendment of rule 34.28ZL

29. In rule 34.28ZL (request under section 38(1) of the 1972 Act(**a**) to the officer of the court) for "justices' clerk" each time it appears substitute "justices' legal adviser".

Insertion of new Part 41

30. After Part 40 (charging order, stop order, stop notice) insert—

"PART 41

PROCEEDING BY ELECTRONIC MEANS

Provision for proceeding by electronic means

41.1.—(1) A practice direction may make provision for proceedings to proceed by electronic means.

(2) Proceedings proceed by electronic means if they are—

(a) created;

(b) started;

(c) progressed; or

(d) disposed of,

by electronic means.

(3) The practice direction may, in particular—

(a) specify the types of proceedings which may proceed by electronic means;

(b) specify the conditions which must be met before proceedings may proceed by electronic means;

(c) provide for the filing of documents by electronic means;

(d) specify any requirements that must be fulfilled for any document to be filed by electronic means; and

(e) provide for how any fee payable in respect of a document filed by electronic means is to be paid.

(4) The practice direction may disapply or modify these Rules or any other practice direction supporting these Rules in relation to cases to which the practice direction applies.

(5) These Rules and any other practice direction supporting these Rules apply—

(a) subject to the provisions of a practice direction made pursuant to paragraph (1); and

(b) as modified in accordance with paragraph (3).

(6) In this Part—

"document" means anything in which information of any description is recorded and includes, but is not limited to, an application, a notice, a statement or a letter; and

"proceedings" includes one or more aspects of proceedings.".

Sir Andrew McFarlane, President of the Family Division
Melanie Carew

(**a**) The Maintenance Orders (Reciprocal Enforcement) Act 1972 (c. 18). Section 38 was amended by paragraphs 29 and 54 of Schedule 11 to the Crime and Courts Act 2013 and by S.I. 2010/976.

His Honour Judge Godwin
Michael Horton
Fiona James JP
Mr Justice Mostyn
Her Honour Judge Raeside
Michael Seath
District Judge Suh
Mrs Justice Theis

I allow these Rules

Wendy Morton
Parliamentary Under-Secretary of State
Ministry of Justice

10th February 2020

EXPLANATORY NOTE

(This note is not part of the Rules)

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

Rule 4 amends rule 2.5 of the FPR to refer to a practice direction making provision in relation to justices' legal advisers carrying out specified functions of the family court. Rules 3, 25, 27 and 29 make associated or consequential amendments to the FPR.

Rule 5 amends the title to Part 5 of the FPR. Rule 7 inserts a new rule 5.7 into the FPR setting out requirements in relation to correspondence which is sent to the court by a party to proceedings.

Rule 12 substitutes rule 9.27 of the FPR with new provision in relation to the filing and service of estimates of costs and of particulars of costs at specified stages of proceedings for a financial remedy.

Rule 13 inserts a new rule 9.27A into the FPR, which makes provision for the making of open proposals for settlement in proceedings for a financial remedy. Consequential amendments are made by rules 10, 11 and 14.

Rules 16 and 20 amend rules 12.4 and 14.4 of the FPR to clarify that in the proceedings in which those rules apply, a direction can be applied for from that court that notice of proceedings need not be given to a person with foreign parental responsibility.

Rule 17 inserts new rule 12.42B into the FPR to specify a procedure for the High Court to set aside its orders made under the inherent jurisdiction where no error of the court is alleged.

Rule 18 inserts new rule 12.52A into the FPR to specify a procedure for the High Court to set aside orders for return or non-return of a child that it has made under the 1980 Hague Convention where no error of the court is alleged.

Rule 21 amends rule 14.21 of the FPR to reflect the fact that the directions referred to in that rule can be sought not just from the High Court but also the family court. Rule 24 amends rule 19.2 of the FPR consequentially on this amendment.

Rule 26 amends rule 25.5 of the FPR to insert reference to the fact that a new practice direction may make provision regarding expert evidence in relation to toxicology testing.

Rule 28 substitutes a new rule 27.9 into the FPR setting out the position in relation to recording family proceedings, obtaining transcripts of such proceedings and the making and sharing of informal notes of such proceedings.

Rule 30 inserts a new Part 41 into the FPR, which makes provision for a practice direction to set out procedures to be followed in relation to cases proceeding by electronic means. Associated and consequential amendments are made by rules 6, 8, 9, 15, 19, 22 and 23.

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£6.90

UK202002111006 02/2020 19585

http://www.legislation.gov.uk/id/uksi/2020/135

ISBN 978-0-11-119307-5

