STATUTORY INSTRUMENTS

2009 No. 636 (L. 5)

FAMILY PROCEEDINGS

SUPREME COURT OF ENGLAND AND WALES

COUNTY COURTS, ENGLAND AND WALES

The Family Proceedings (Amendment) Rules 2009

Made - - - -	*10th March 2009*
Laid before Parliament	*12th March 2009*
Coming into force - -	*6th April 2009*

The Family Proceedings Rule Committee makes the following Rules in exercise of the powers conferred by section 40(1) of the Matrimonial and Family Proceedings Act 1984(**a**):

Citation and commencement

1. These Rules may be cited as the Family Proceedings (Amendment) Rules 2009 and come into force on 6th April 2009.

Amendments to the Family Proceedings Rules 1991

2. The Family Proceedings Rules 1991(**b**) are amended in accordance with rules 3 to 16.

3. In the Arrangement of Rules—

(a) in the heading to Part IV, after "Children Act 1989" insert ", etc.";

(b) omit the entries for rules 4.22, 7.28, 8.1A and 8.1B;

(c) before the entry for rule 8.1 insert—

"**8.A1.** Interpretation";

(d) in the entry for rule 8.2, for "Appeals under Domestic Proceedings and Magistrates' Courts Act 1978" substitute "Appeals from magistrates' courts and appeals from district judges under the Act of 1989 and Parts 4 and 4A of the Family Law Act 1996";

(e) after the entry for rule 8.2, insert—

"**8.2A** Notice of Appeal;

(**a**) 1984 c.42. Section 40(1) was amended by section 125(3) of and paragraph 50 of Schedule 18 to the Courts and Legal Services Act 1990 (c.41) and section 15(1) of and paragraphs 379 and 380 of Schedule 4 to the Constitutional Reform Act 2005 (c.4) and will be repealed (on a date to be appointed) by section 109(1) of and paragraph 278 of Schedule 8 to, and Schedule 10 to, the Courts Act 2003 (c.39).

(**b**) S.I. 1991/1247. Relevant amending instruments are S.I. 1992/2067, 1991/2113, 1994/2165 and 3155, 1997/1893, 2001/821, 2003/184 and 2839, 2005/617 and 2922, 2007/2187 and 2008/2446 and 2861.

8.2B Respondents;

8.2C Stay;

8.2D Amendment of appeal notice;

8.2E Powers of a district judge;

8.2F Appeal court's powers;

8.2G Hearing of appeals;

8.2H Appeals from orders made under Parts 4 and 4A of the Family Law Act 1996".

4. In rule 1.2—

(a) in paragraph (1), in the definition of district registry, omit ",except in rule 4.22(2A),"; and

(b) in paragraph (9)(b), omit "and 8.1A".

5. In rule 3.13(1), for paragraph (e) substitute—

"(e) where the mother, or alleged mother, of the person whose parentage is in issue has previously been known by different names, if known—

(i) each full name by which she has previously been known; and

(ii) the dates between which she was known by each name;".

6. In the heading to Part IV, after "Children Act 1989" insert ", etc.".

7. In rule 4.1(2)—

(a) at the end of sub-paragraph (h), omit "or";

(b) at the end of sub-paragraph (i), insert "or"; and

(c) after sub-paragraph (i), insert—

"(j) on an application for a warrant under section 79 of the Childcare Act 2006(**a**).".

8. In rule 4.4(4)—

(a) at the end of sub-paragraph (d), omit "or";

(b) at the end of sub-paragraph (e), insert "or"; and

(c) after sub-paragraph (e), insert—

"(f) a warrant under section 79 of the Childcare Act 2006,".

9. Omit rules 4.22, 7.28, 8.1A and 8.1B.

10. Before rule 8.1, insert—

"Interpretation

8.A1. References to—

(a) "the court below" in rules 8.2A to 8.2G are references to the court from which, or the person from whom, the appeal lies; and

(b) "the appeal court" in rules 8.2F and 8.2G are to the court to which an appeal is made.".

11. In rule 8.1,for paragraph (7) substitute—

"(7) This rule does not apply to—

(a) the proceedings referred to in rule 8.2; and

(**a**) 2006 c.21.

(b) any appeal by a party to proceedings for the assessment of costs against a decision in those proceedings.".

12. For rule 8.2 substitute—

"Appeals from magistrates' courts and appeals from district judges under the Act of 1989 and Parts 4 and 4A of the Family Law Act 1996

8.2.—(1) Rules 8.2A to 8.2H apply where—

(a) there is an appeal under—

(i) section 4(7) of the Maintenance Orders Act 1958(**a**);

(ii) section 29 of the Domestic Proceedings and Magistrates' Courts Act 1978(**b**);

(iii) section 60(5) of the Act of 1986(**c**);

(iv) section 94(1) to (9) of the Act of 1989(**d**);

(v) section 61 of the Family Law Act 1996(**e**); or

(vii) any other enactment giving a person a right of appeal against a decision of a magistrates' court; or

(b) an appeal lies from any decision of a district judge to the judge of the court in which the decision was made in proceedings—

(i) listed in rule 4.1(2); or

(ii) to which Parts 4 and 4A of the Family Law Act 1996 apply.

(2) In proceedings referred to in paragraph (1)(b)(i) and (ii), any party may appeal from an order or decision made or given by the district judge in a county court to a judge on notice and CCR Order 13, rule 1(10) and Order 37, rule 6 shall not apply.

(3) Appeals under paragraph (1)(b) shall be heard in chambers unless the judge directs otherwise.

(4) Rules 8.2A to 8.2H are subject to any enactment.

Notice of appeal

8.2A.—(1) The appellant shall file and serve on—

(a) the parties to the proceedings in the court below;

(b) any children's guardian; and

(c) where applicable, the local authority that prepared a report under section 14A(8) or (9) of the Act of 1989,

the documents set out in paragraph (2).

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

(a) notice in writing of the appeal, setting out the grounds of the appeal;

(b) a certified copy of the summons or application and of the order appealed against, and of any order staying its execution;

(c) a copy of any notes of the evidence; and

(d) a copy of any reasons given for the decision.

(**a**) Section 4(7) was amended by the Administration of Justice Act 1977 (c.38), section 32, Schedule 5, Part IV.

(**b**) Section 29 was amended by the Matrimonial and Family Proceedings Act 1984 (c.42), section 46(1), Schedule 1, paragraph 26 and by the Children Act 1989 (c.41), section 108(5), Schedule 13, paragraph 42 and section 108(7), Schedule 15.

(**c**) Subsection (5) was inserted by the Child Support, Pensions and Social Security Act 2000 (c.19), section 83(1) and (4).

(**d**) Section 94 was amended by the Courts and Legal Services Act 1990 (c.41), section 116, Schedule 16, Part 1, paragraph 23 and by the Adoption and Children Act 2002 (c.38), section 100.

(**e**) Section 61 was amended by the Constitutional Reform Act 2005 (c.4), section 15(1), Schedule 4, Part 1, paragraphs 252 and 254.

(3) The appellant shall file and serve the notice of appeal in accordance with paragraph (1)—

(a) within 14 days after the determination against which the appeal is brought;

(b) in the case of an appeal against an order under section 38(1) of the Act of 1989, within 7 days after the making of the order;

(c) in the case of an appeal against an order under section 29 of the Domestic Proceedings and Magistrates' Courts Act 1978, within 21 days after the making of the order; or

(d) with the leave of the court to which, or judge to whom, the appeal is brought, within such other time as that court or judge may direct.

(4) Subject to any direction of the court to which, or judge to whom, the appeal is brought, the appellant shall file and serve the documents mentioned in paragraph (2)(b) to (d) as soon as practicable after filing and service of the notice of appeal under paragraph (1).

(5) Where the magistrates' court is the court below, the appellant shall serve the documents mentioned in paragraph (2)(a) and (b) on the designated officer for that court.

Respondents

8.2B.—(1) Subject to paragraph (2), a respondent who wishes to contend—

(a) on the appeal that the decision of the court below should be varied, either in any event or in the event of the appeal being allowed in whole or in part;

(b) that the decision of the court below should be affirmed on grounds other than those relied upon by that court; or

(c) by way of cross-appeal that the decision of the court below was wrong in whole or in part,

shall, within 14 days of receipt of notice of the appeal, file and serve on all other parties to the appeal a notice in writing, setting out the grounds upon which the respondent relies.

(2) No notice under paragraph (1) may be filed or served in an appeal against an order under section 38 of the Act of 1989.

Stay

8.2C. Unless the court orders otherwise, an appeal under rule 8.2 (1) shall not operate as a stay of proceedings on the order or decision appealed against.

Amendment of appeal notice

8.2D.—(1) The appellant may amend the appeal notice, without leave, by serving a supplementary notice not less than 7 days before the date of the hearing of the appeal, on each of the persons on whom the notice to be amended was served.

(2) Within 2 days after service of a supplementary notice under paragraph (1) the appellant must file two copies of the notice in the court in which the appeal notice was filed.

(3) Except with the leave of the court hearing the appeal, the appellant may not rely on grounds other than those stated in the notice of appeal or any supplementary notice under paragraph (1).

(4) The court may amend the grounds of appeal or make any other order, on such terms as it thinks just, to ensure the determination on the merits of the real question in controversy between the parties.

Powers of a district judge

8.2E.—(1) A district judge may—

(a) dismiss an appeal to which this rule applies—

(i) for want of prosecution; or

(ii) with the consent of the parties; or

(b) give leave for the appeal to be withdrawn,

and may deal with any question of costs arising out of the dismissal or withdrawal.

(2) Unless the court directs otherwise, any interlocutory application in an appeal under rule 8.2 (1)(a) may be made to a district judge.

Appeal court's powers

8.2F.—(1) In relation to an appeal the appeal court has all the powers of the court below.

(2) The appeal court has power to—

(a) affirm, set aside or vary any order or judgment made or given by the court below;

(b) refer any application or issue for determination by the court below;

(c) order a new hearing;

(d) make orders for the payment of interest;

(e) make a costs order.

(3) The appeal court may exercise its powers in relation to the whole or part of an order of the lower court.

Hearing of appeals

8.2G.—(1) Every appeal will be limited to a review of the decision of the court below unless—

(a) an enactment makes different provision for a particular category of appeal; or

(b) the court considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing.

(2) Unless it orders otherwise, the appeal court will not receive—

(a) oral evidence; or

(b) evidence which was not before the court below.

(3) The appeal court will allow an appeal where the decision of the court below was—

(a) wrong; or

(b) unjust because of a serious procedural or other irregularity in the proceedings in the court below.

(4) The appeal court may draw any inference of fact which it considers justified on the evidence.

Appeals from orders made under Parts 4 and 4A of the Family Law Act 1996

8.2H. Where an appeal is brought against the making of a hospital order or a guardianship order under the Mental Health Act 1983(**a**) a copy of any written evidence considered by the magistrates' court under section 37(1)(**b**) of the 1983 Act shall be sent by the designated officer to the county court in which the documents relating to the appeal are filed.".

(**a**) 1983 c.20.

(**b**) Section 37(1) was amended by the Crime (Sentences) Act 1997 (c.43), section 55, Schedule 4, paragraph 12(1) and the Criminal Justice Act 2003 (c.44), section 304, Schedule 32, Part 1, paragraphs 37 and 38(a).

13. In rule 8.3—

(a) renumber the existing text as paragraph (1);

(b) in paragraph (1), omit "and rule 8.2(4) shall apply, with the necessary modifications, to such proceedings"; and

(c) after paragraph (1), insert—

"(2) On entering the appeal, or as soon as practicable thereafter, the appellant shall, unless otherwise directed, lodge in the principal registry—

(a) three certified copies of the summons and of the order appealed against, and of any order staying its execution;

(b) three copies of the clerk's notes of the evidence;

(c) three copies of the justices' reasons for their decision;

(d) a certificate that notice of motion has been duly served on the clerk and on every party affected by the appeal; and

(e) where the notice of motion includes an application to extend the time for bringing the appeal, a certificate (and a copy) by the appellant's solicitor, or the appellant if he is acting in person, setting out the reasons for the delay and the relevant dates.".

14. In rule 9.3(1)(a), for "father", wherever it occurs, substitute "parent".

15. In Appendix 1, for Forms C19 and C23, substitute the forms set out in the Schedule.

16. In Appendix 3—

(a) at the end of column (i), insert "Section 79 of the Childcare Act 2006";

(b) in the corresponding entry in column (ii), insert "1 day"; and

(c) in the corresponding entry in column (iii), insert "Any person preventing or likely to prevent Her Majesty's Chief Inspector of Education, Children's Services and Skills from exercising a power conferred on him by section 77".

Transitional provision

17. Where a person has filed a notice of appeal or lodged a notice of motion before these rules come into force**,** the Family Proceedings Rules 1991 shall apply to those proceedings as if rules 3(b) to (e), 4 and 9 to 13 had not been made.

Mark Potter, P
Duncan Adam
Bruce Edgington
Angela Finnerty
David Salter
Philip Waller

I allow these Rules

Bridget Prentice
Parliamentary Under Secretary of State
Ministry of Justice

10th March 2009

SCHEDULE

Rule 15

Application for a warrant of assistance — Form C19

Section 102 Children Act 1989
Section 33 Adoption Act 1976
Section 79 Childcare Act 2006

The court	To be completed by the court Date issued Case number
The full name(s) of the child(ren) (if known)	Child(ren)'s number(s)

1 About you (the applicant)

State
- *your title, full name, address, telephone number and relationship to the child(ren) (if any)*
- *your solicitor's name, address, reference, telephone, FAX and DX numbers*
- *whether you are:*

☐ a person authorised by the local authority
☐ a person authorised by the Welsh Ministers
☐ a person authorised by the Secretary of State
☐ a supervisor acting under a supervision order
☐ Her Majesty's Chief Inspector of Education, Children's Services and Skills

2 Description of the child(ren) (if applicable)

If a child's identity is not known, state details which will identify the child.
You may enclose a recent photograph of the child, which should be dated.

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3 The grounds for the application

☐ I am attempting to exercise powers under an enactment within Section 102(6) Children Act 1989 or under section 77(1) or (2) of the Childcare Act 2006 at the following premises *(give full address)*:

and

☐ **I have been** prevented from exercising those powers by

☐ **I am likely to be** prevented from exercising those powers by

PERSON AUTHORISED BY THE LOCAL AUTHORITY	*s62(6)*	☐	[being, or likely to be, refused entry to accommodation provided by a voluntary organisation] [being, or likely to be, refused access to a child in accommodation provided by a voluntary organisation]
	s64(4)	☐	[being, or likely to be, refused entry to a children's home] [being, or likely to be, refused access to a child in a children's home]
	s67(3)	☐	[being, or likely to be, refused entry to a private foster home] [being, or likely to be, refused access to a child in a private foster home]
	s86(5)	☐	[being, or likely to be, refused entry to a residential care, nursing or mental nursing home] [being, or likely to be, refused access to a child in a residential care, nursing or mental nursing home]
	s87(5)	☐	[being, or likely to be, refused entry to an independent school] [being, or likely to be, refused access to a child in an independent school]
	Section 33 Adoption Act 1976	☐	[being, or likely to be, refused entry to premises on which a protected child is, or is likely to be, kept] [being, or likely to be prevented from visiting a protected child]
PERSON AUTHORISED BY THE WELSH MINISTERS	*s79U*	☐	[being, or likely to be, refused entry to domestic premises where child-minding is carried on] [being, or likely to be, refused access to a child on domestic premises where child-minding is carried on]
		☐	[being, or likely to be, refused entry to premises on which day care for children under the age of 8 is provided] [being, or likely to be, refused access to a child in premises on which day care for children under the age of 8 is provided]
PERSON AUTHORISED BY THE SECRETARY OF STATE	*s80(8)*	☐	[being, or likely to be, refused entry to any of the premises specified by Section 80(1) Children Act 1989] [being, or likely to be, refused access to a child in any of the premises specified by Section 80(1) Children Act 1989]
SUPERVISOR UNDER THE SUPERVISION ORDER	*Paragraph 8(1)(b) Schedule 3*	☐	[being, or likely to be, refused entry to accommodation where a supervised child is living]
	Paragraph 8(2)(b) Schedule 3	☐	[being, or likely to be, refused contact with a supervised child by a responsible person]
HER MAJESTY'S CHIEF INSPECTOR OF EDUCATION, CHILDREN'S SERVICES AND SKILLS	*Section 77(1) Childcare Act 2006*	☐	[being, or likely to be, refused entry to premises on which I have reasonable cause to believe early years provision or later years provision is being provided in breach of section 33(1), 34(1), 52(1) or 53(1) of the Childcare Act 2006]
	Section 77(2) Childcare Act 2006	☐	[being, or likely to be, refused entry for a purpose in section 77(2)(a) or (b) to premises on which early years provision or later years provision is being provided]

4 The respondent(s)

For each respondent state the title, full name, address, telephone number and relationship (if any) to each child.

5 The reason(s) for the application

If you are relying on a report or other documentary evidence, state the date(s) and author(s) and enclose a copy.

6 The direction(s) sought

State

- *whether you wish to accompany the constable, if the warrant is granted*
- *whether you wish the constable to be accompanied by a registered medical practitioner, registered nurse or registered midwife, if he so wishes.*

Signed (Applicant) Date

In the

Case Number:

Child(ren)'s Number(s):

Order	Emergency Protection Order Section 44 Children Act 1989		
	The full name(s) of the child(ren)	Boy or Girl	Date(s) of birth
	[described as		
Warning	**It is an offence intentionally to obstruct any person exercising the power under Section 44(4)(b) Children Act 1989 to remove, or prevent the removal, of a child** (Section 44(15) Children Act 1989).		
The Court grants	an Emergency Protection Order to the applicant who is		
	The order gives the applicant parental responsibility for the child[ren].		
The Court authorises	[the applicant to remove the child[ren] to accommodation provided by or on behalf of the applicant] [the applicant to prevent the child[ren] being removed from		
[This order directs that	any person who can produce the child[ren] to the applicant must do so.]		
The Court directs that	[[a named person] be excluded from [a named address] [forthwith] [from [date]] so that the child may continue to live there, consent to the exclusion requirement having been given by [a named person]]		
	[a power of arrest be attached to the exclusion requirement for a period of]		
This order ends on		at	[am] [pm]
Ordered by	[Mr][Mrs] Justice [His][Her] Honour Judge District Judge [of Family Division] Justice[s] of the Peace		
on		at	[am] [pm]

C23 (01.09)

Notes about the Emergency Protection Order

About this order

This is an Emergency Protection Order.
This order states what has been authorised in respect of the child[ren] and when the order will end.
The court can extend this order for up to 7 days but it can only do this once.

Warning

If you are shown this order, you must comply with it. If you do not, you may commit an offence. Read the order now.

What you may do

You may apply to the court at any time
to **change the directions**
or to **end the order.**

If you would like to ask the court to change the directions, or end the order, you must fill in a form. You can obtain the form from a court office.

If the court has directed that the child[ren] should have a medical, psychiatric or another kind of examination, you may ask the court to allow a doctor of your choice to be at the examination.

What you should do

Go to a solicitor as soon as you can.

Some solicitors specialise in court proceedings which involve children. You can obtain the address of a solicitor or advice agency from the Yellow Pages or the Solicitors' Regional Directory.
You will find these books at
- a Citizens Advice Bureau
- a Law Centre
- a local library

A solicitor or an advice agency will be able to tell you whether you may be eligible for legal aid.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Family Proceedings Rules 1991 ("the 1991 Rules").

Rules 3 and 4 and 9 to 12 amend the rules relating to the process for—

(a) statutory rights of appeal from decisions of a magistrates' court; and

(b) internal appeals in a county court from a decision of a district judge to a judge in proceedings which are listed in rule 4.1(2) of the 1991 Rules and to which Parts 4 and 4A of the Family Law Act 1996 (c.27) apply.

Rules 8.A1 and 8.2 to 8.H ("the new rules") which are inserted into the 1991 Rules by these Rules, replace rules 4.22, 7.28, 8.1A and 8.1B of the 1991 Rules and are modelled on those rules, Order 55 of the Rules of the Supreme Court 1965 (S.I. 1965/1776) and rules 180 and 181 of the Family Procedure (Adoption) Rules 2005 (S.I. 2005/2795). The new rules are freestanding and rationalise and modernise the existing rules. A notice of appeal is the common way of commencing the appeals within the scope of the new rules.

In addition, the new rules will be able to accommodate the appeals which are proposed to come to a county court from decisions of a magistrates' court under the Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) Order 2009 ("the draft order") which has been laid in draft before Parliament. New rule 8.2A(3)(c) changes the time limit for appealing against an order under section 29 of the Domestic Proceedings and Magistrates' Courts Act 1978 (c.22) from 6 weeks to 21 days so that the time will be in line with the time for appealing against decisions of the magistrates' court under the proposed new section 111A of the Magistrates' Courts Act 1980 (c.43) (in article 4(3) of the draft order) on the ground that the decision is wrong in law and in excess of jurisdiction.

In consequence of the new rules, rule 13 adds a new paragraph to rule 8.3 of the 1991 Rules which relates to appeals under section 13 of the Administration of Justice Act 1960 (c.65).

By virtue of rule 17, the new rules will not apply to any appeal in which the appeal notice is filed or notice of motion is lodged before these Rules come into force.

Rule 5 amends rule 3.13(1)(e) of the 1991 Rules to require, on an application for a declaration of parentage, information to be given about any change of name of the mother or alleged mother and not just changes made on marriage. This would include change of name on entry into a civil partnership. This takes account of the fact that, on the coming into force of section 42 of the Human Fertilisation and Embryology Act 2008 (c.22), the existence of a civil partnership entered into by the mother may be a relevant consideration. Rule 14 amends rule 9.3 of the 1991 Rules to provide that where service on a child (who is not also a protected party) could previously be effected on a father it may now be effected on either parent.

Rules 6 to 8 and 16 are consequential on the coming into force of the Childcare Act 2006 (c.21) ("the 2006 Act"). The amendments insert provision to ensure that an application for a warrant by Her Majesty's Chief Inspector of Education, Children's Services and Skills under section 79 (power of constable to assist in exercise of powers of entry) of the 2006 Act may be made ex parte, and to specify for such an application the appropriate form, periods of notice and respondents. Rule 15 substitutes a new Form C19 (Warrant of Assistance) which form now refers to an application under section 79 and makes provision for an application under section 102 of the Children Act 1989 (c.41) in relation to the exercise of powers, in Wales, under section 79U of that Act.

Rule 15 also substitutes a new Form C23 (Emergency Protection Order) in consequence of the repeal of section 45(9) of the Children Act 1989 by section 30 of the Children and Young Persons Act 2008 (c.23).

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SUPREME COURT OF ENGLAND AND WALES

COUNTY COURTS, ENGLAND AND WALES

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£5.00

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