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STATUTORY INSTRUMENTS

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**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);”.

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(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.

## **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.

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(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 subparagraph (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.”.

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(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.