
STATUTORY INSTRUMENTS

1991 No. 1832 (L.25)

**FAMILY PROCEEDINGS SUPREME COURT
OF ENGLAND AND WALES COUNTY COURTS**

The Family Proceedings (Costs) Rules 1991

Made - - - - *2nd August 1991*
Laid before Parliament *16th August 1991*
Coming into force - - *14th October 1991*

We, the authority having power under section 40(1) of the Matrimonial and Family Proceedings Act 1984⁽¹⁾ to make rules of court for the purposes of family proceedings in the High Court or county courts, in the exercise of the powers conferred by the said section 40, and of all other powers enabling us in that behalf, hereby make the following rules—

1. –

(1) These rules may be cited as the Family Proceedings (Costs) Rules 1991 and shall come into force on 14th October 1991.

(2) In these rules, the “principal rules” means the Family Proceedings Rules 1991⁽²⁾, and expressions used in these rules have the same meanings as in those rules.

2. –

(1) Subject to the following provisions of this rule, these rules shall apply for the taxation of costs in family proceedings instituted before, on or after 14th October 1991.

(2) The Matrimonial Causes (Costs) Rules 1988⁽³⁾ (except rule 10 and Schedule 2), with the modifications specified in rule 3 below, shall have effect as if those rules were part of these rules and shall apply for the taxation of costs in proceedings—

- (a) under the Children Act 1989⁽⁴⁾; or
- (b) of any kind (and whenever commenced) with respect to which rules made under section 50 of the Matrimonial Causes Act 1973⁽⁵⁾ applied immediately before the commencement of these rules.

(1) 1984 c. 42; section 40 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 50.
(2) S.I. 1991/1247.
(3) S.I. 1988/1328; the relevant amending instruments are S.I. 1989/385, 1990/490 and 1991/530.
(4) 1989 c. 41.
(5) 1973 c. 18.

(3) The taxation of costs in all family proceedings other than those mentioned in paragraph (2) above shall be taxed—

- (a) where the proceedings are in the High Court, in accordance with RSC Order 62; and
- (b) where the proceedings are in a county court, in accordance with CCR Order 38.

(4) These rules shall not apply to the extent that regulations made under the Legal Aid Act 1988(6) determine the amount of costs payable to legal representatives in relation to family proceedings.

3. For rules 15 and 16 of the Matrimonial Causes (Costs) Rules 1988, as applied by these rules, there shall be deemed to be substituted the following—

“Personal liability of legal representative for costs

15. –

- (a) (1) Where the court decides to make an order under section 51(6) of the Supreme Court Act 1981(7) disallowing wasted costs or ordering a legal representative to meet such costs or part of them, it shall, subject to paragraph (4), specify in the order the costs which are to be so disallowed or met, and make such other order as it thinks fit;
- (b) before proceeding under sub-paragraph (a), the court may direct a district judge to inquire into the matter and report to the court.

(2) When conducting an inquiry pursuant to a direction under paragraph (1)(b), the district judge shall have all the powers and duties of the court under paragraphs (6) and (7) of this rule; and references in those paragraphs and paragraphs (4) and (5) to the court include references to the district judge.

(3) Instead of proceeding under paragraph (1) of this rule the court may refer the matter to a district judge, in which case the district judge shall deal with the matter under paragraphs (2) and (3) of rule 16.

(4) No order may be made under the said section 51(6) unless the court has given the legal representative a reasonable opportunity to appear and show cause why an order should not be made.

(5) The court shall not be obliged to give the legal representative a reasonable opportunity to show cause where proceedings fail, cannot conveniently proceed or are adjourned without useful progress being made because the legal representative—

- (a) fails to attend in person or by a proper representative;
- (b) fails to deliver any document for the use of the court, which ought to have been delivered or to be prepared with any proper evidence or account, or
- (c) otherwise fails to proceed.

(6) The court may, except in proceedings in a county court or in proceedings in the principal registry which are treated as pending in a county court, direct the Official Solicitor to attend and take such part in any proceedings or inquiry under this rule as the court may direct and the court shall make such order as to the payment of the Official Solicitor’s costs as it thinks fit.

(7) The court may direct that notice of any proceedings or order against a legal representative under this rule be given to his client in such manner as may be specified in the direction.

(6) 1988 c. 34.

(7) 1981 c. 54; section 51 was substituted by the Courts and Legal Services Act 1990 (c. 41), section 4.

Powers of district judges in relation to misconduct, neglect, etc

16. –

(1) Where, whether or not on a reference by the court under rule 14(2), it appears to the district judge when taxing a bill of costs that any thing has been done, or that any omission has been made, unreasonably or improperly by or on behalf of any party in the taxation proceedings or in the proceedings which gave rise to the taxation proceedings, he may exercise the powers conferred on the court by rule 14(1).

(2) Where, whether or not on a reference by the court under rule 15(3), it appears to the district judge that costs have been wasted in the taxation proceedings or in the proceedings which gave rise to the taxation proceedings, he may, subject to paragraph (3) of this rule, exercise the powers conferred on the court by section 51(6) of the Supreme Court Act 1981.

(3) In relation to the exercise by a district judge of the powers of the court under the said section 51(6), paragraphs (4) to (7) of rule 15 shall apply as if for references to the court there were substituted references to the district judge.

(4) Where a party entitled to costs–

- (a) fails without good reason to commence or conduct proceedings for the taxation of those costs in accordance with these rules or any direction, or
- (b) delays lodging a bill of costs for taxation,

the district judge may–

- (i) disallow all or part of the costs of taxation that he would otherwise have awarded that party; and
- (ii) after taking into account all the circumstances, including any prejudice suffered by any other party as a result of such failure or delay, as the case may be, and any additional interest payable under section 17 of the Judgments Act 1838⁽⁸⁾ because of the failure or delay, allow the party so entitled less than the amount he would otherwise have allowed on taxation of the bill or may wholly disallow the costs.

(5) In exercising his powers under this rule the district judge shall have all the powers available to the court in the exercise of its discretion under rules 14 and 15.

(6) An appeal shall lie from the exercise by a district judge of the powers conferred by this rule–

- (a) except in proceedings in a county court or in proceedings in the principal registry which are treated as pending in a county court, to a judge in chambers, and RSC Order 58, rule 1 (as modified, in the case of an appeal from a district judge, by Order 58, rule 3(2)) shall apply to such an appeal as it applies to an appeal from a master;
- (b) in proceedings in a county court or in proceedings in the principal registry which are treated as pending in a county court, to a judge in accordance with rule 8.1 of the principal rules.”.

(8) 1838 c. 110; section 17 was amended by the Administration of Justice Act 1970 (c. 31), section 44 and S.I. 1985/437.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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Dated 2nd August 1991

EXPLANATORY NOTE

(This note is not part of the Rules)

These rules provide for the taxation of costs in family proceedings under the Family Proceedings Rules 1991 except where regulations made under the Legal Aid Act 1988 determine the amount of costs payable.

Apart from these rules, the Matrimonial Causes (Costs) Rules 1988 would cease to have effect because the power under which they were made is repealed on 14th October 1991. However, rule 2(2) of these rules applies the 1988 Rules to costs in matrimonial causes and in proceedings under the Children Act 1989. Rule 3 modifies the Matrimonial Causes (Costs) Rules, as applied by rule 2(2), to make fresh provision as to personal liability of legal representatives for costs following the enactment of section 4 of the Courts and Legal Services Act 1990.

Where, before the coming into force of the Family Proceedings Rules, family proceedings were governed by the Rules of the Supreme Court 1965 (S.I. 1965/1776) or the County Court Rules 1981 (S.I. 1981/1687), rule 2(3) provides for costs in those proceedings to be taxed in accordance with RSC Order 62 or CCR Order 38 respectively.