

2001 No. 821 (L. 18)

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

The Family Proceedings (Amendment) Rules 2001

Made - - - - - 6th March 2001

Laid before Parliament 9th March 2001

Coming into force in accordance with rule 1

We, the authority having the power under section 40(1) of the Matrimonial and Family Proceedings Act 1984(a) to make rules of court for the purposes of family proceedings in the High Court and county courts, in the exercise of the powers conferred by that section, make the following rules:

Citation, commencement and interpretation

1. These Rules may be cited as the Family Proceedings (Amendment) Rules 2001 and shall come into force—

- (a) as to rules 35, 36 and 42 and paragraphs (a) and (b) of rule 43 on 3rd September 2001; and
- (b) as to the remainder of these Rules on 1st April 2001.

2. In the following Rules—

- (a) a reference to a rule, chapter, Part or Appendix by number alone means the rule, chapter, Part or Appendix so numbered in the Family Proceedings Rules 1991(b); and
- (b) a reference to a Form by letter means the Form so identified by that letter in Appendix 1 or (as the case may be) 1A to those Rules.

Transitional provisions

3.—(1) Where—

- (a) before the coming into force of these Rules a person, other than the Official Solicitor, has been appointed as guardian ad litem under section 41 of the Children Act 1989(c); and
- (b) the proceedings in which he was appointed are still continuing,

that person shall, for the purposes of the Family Proceedings Rules 1991, be treated as if he had been appointed—

(a) 1984 c. 42. Section 40 was amended by paragraph 50 of Schedule 18 to the Courts and Legal Services Act 1990 (c. 41), and by paragraph 3 of Schedule 2 to the Civil Procedure Act 1997 (c. 12).
(b) S.I. 1991/1247. The relevant amending instruments are S.I. 1992/456, 1992/2067, 1993/295, 1994/2165, 1994/3155, 1997/1056, 1997/1893 and 2000/2267.
(c) 1989 c. 41; section 41 was amended by the Courts and Legal Services Act (c. 41), Schedule 16, paragraph 17 and is amended by the Criminal Justice and Court Services Act 2000 (c. 43), Schedule 7, Part II, paragraphs 87 and 91 and Schedule 8.

(i) children's guardian; or
(ii) parental order reporter,
as the case may be.

(2) Where—

(a) before the coming into force of these Rules the Official Solicitor had been appointed as guardian ad litem under section 41 of the Children Act 1989; and
(b) the proceedings in which he was appointed are still continuing,
the person in the office of the Official Solicitor who had day to day conduct of the proceedings shall, for the purposes of the Family Proceedings Rules 1991, be treated as if he had been appointed

(i) children's guardian; or
(ii) parental order reporter,
as the case may be.

4. Where—

(a) before the coming into force of these Rules a person had been requested to prepare a welfare report in accordance with section 7(1)(a) of the Children Act 1989; and
(b) the proceedings in which the report was requested are still continuing,
that person shall, for the purposes of the Family Proceedings Rules 1991, be treated as the children and family reporter in those proceedings.

5. The amendments to the Family Proceedings Rules 1991 made by rules 11 and 37 below shall not apply in respect of proceedings commenced before 1st April 2001.

6. The amendments to the Family Proceedings Rules 1991 made by rules 9 and 29 below shall not apply in respect of proceedings commenced before 1st March 2001.

Amendments to the Family Proceedings Rules 1991

7. In the Arrangement of Rules—

- (a) after the entry for rule 2.27, insert—
“2.27A Stay under the Council Regulation”;
- (b) for the entry for rule 3.13, substitute—
“Application under section 55A of Act of 1986 for declaration of parentage”;
- (c) in the entry for rule 3.22, delete “from decision of child support officer”;
- (d) for the entry for rule 4.11, substitute—
“Powers and duties of officers of the service”;
- (e) after the entry for rule 4.11, insert—
“4.11A Additional powers and duties of children's guardian
4.11B Additional powers and duties of a children and family reporter”;
- (f) after the entry for rule 7.39, insert—
“*Chapter 5. Registration and enforcement under the Council Regulation*
7.40 Interpretation
7.41 Filing of applications
7.42 Application for registration
7.43 Evidence in support of application
7.44 Order for registration
7.45 Register of judgments
7.46 Notice of registration
7.47 Enforcement of judgment
7.48 Application for recognition
7.49 Enforcement of judgments in other Contracting States
7.50 Authentic instruments and court settlements”;
- (g) after the entry for rule 10.14, insert—
“10.14A Power of court to limit cross-examination”.

8. In rule 1.2(1)—

(a) after the definition of “consent order”, insert—

““Contracting State” means—

(a) one of the original parties to the Council Regulation, that is to say Belgium, Germany, Greece, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal, Finland, Sweden and the United Kingdom, and

(b) a party which has subsequently adopted the Council Regulation;

“the Council Regulation” means Council Regulation (EC) No. 1347/2000 of 29th May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses(a);” and

(b) after the definition of “notice of intention to defend”, insert—

““officer of the service” has the same meaning as in the Criminal Justice and Court Services Act 2000(b);”

9. After rule 2.27 insert the following rule—

“2.27A Stay under the Council Regulation

(1) An application for an order under Article 11 of the Council Regulation shall be made to a district judge, who may determine the application or refer the application, or any question arising thereon, to a judge for his decision as if the application were an application for ancillary relief.

(2) Where at any time after the presentation of a petition, it appears to the court that, under Articles 9, 10 or 11 of the Council Regulation, the court does not have jurisdiction to hear the petition and is required or may be required to stay the proceedings, the Court shall stay the proceedings and fix a date for a hearing to determine the questions of jurisdiction and whether there should be a stay or other order and shall serve notice of the hearing on the parties to the proceedings.

(3) The court must give reasons for its decision under Articles 9, 10 or 11 of the Council Regulation and, where it makes a finding of fact, state such finding of fact.

(4) An order under Article 9 of the Council Regulation that the court has no jurisdiction over the proceedings shall be recorded by the court or the proper officer in writing.

(5) The court may, if all parties agree, deal with any question about the jurisdiction of the court without a hearing.”

10. In rule 2.70(5) for the words “pursuant to” substitute “for the purposes of”.

11. For rule 3.13, substitute—

“Application under section 55A of Act of 1986(c) for declaration of parentage

3.13—(1) Unless otherwise directed, a petition by which proceedings are begun under section 55A of the Act of 1986 for a declaration of parentage shall state—

(a) the full name and the sex, date and place of birth and residential address of the petitioner (except where the petitioner is the Secretary of State);

(b) where the case is not an excepted case within section 55A(4) of the Act of 1986, either the petitioner’s interest in the determination of the application, or that section 27(2) of the Act of 1991(d) applies;

(c) if they are known, the full name and the sex, date and place of birth and residential address of each of the following persons (unless that person is the petitioner)—

(i) the person whose parentage is in issue;

(ii) the person whose parenthood is in issue; and

(iii) any person who is acknowledged to be the father or mother of the person whose parentage is in issue;

(a) OJ No. L160, 30.6.2000, p.19.

(b) 2000 c. 43.

(c) 1986 c. 55; section 55A was inserted by the Child Support, Pensions and Social Security Act 2000 (c. 19), section 83.

(d) The Child Support Act 1991, c. 48.

- (d) if the petitioner, the person whose parentage is in issue or the person whose parenthood is in issue, is known by a name other than that which appears in the certificate of his birth, that other name shall also be stated in the petition and in any decree made thereon;
- (e) if it is known, the full name of the mother, or alleged mother, of the person whose parentage is in issue, at the date of—
 - (i) her birth;
 - (ii) her first marriage;
 - (iii) the birth of the person whose parentage is in issue; and
 - (iv) her most recent marriage;
 if it was at any of those times different from her full name at the date of the presentation of the petition;
- (f) the grounds on which the petitioner relies and all other material facts alleged by him to justify the making of the declaration;
- (g) whether there are or have been any other proceedings in any court, tribunal or authority in England or Wales or elsewhere relating to the parentage of the person whose parentage is in issue or to the parenthood of the person whose parenthood is in issue, and, if so—
 - (i) particulars of the proceedings, including the court, tribunal or authority before which they were begun, and their nature, outcome or present state;
 - (ii) the date they were begun;
 - (iii) the names of the parties; and
 - (iv) the date or expected date of any trial in the proceedings;
- (h) that either the person whose parentage is in issue or the person whose parenthood is in issue—
 - (i) is domiciled in England and Wales on the date of the presentation of the petition;
 - (ii) has been habitually resident in England and Wales throughout the period of one year ending with that date; or
 - (iii) died before that date and either was at death domiciled in England and Wales or had been habitually resident in England and Wales throughout the period of one year ending with the date of death; and
- (i) the nationality, citizenship or immigration status of the person whose parentage is in issue and of the person whose parenthood is in issue, and the effect which the granting of a declaration of parentage would have upon the status of each of them as regards his nationality, citizenship or right to be in the United Kingdom.

(2) Unless otherwise directed, there shall be annexed to the petition a copy of the birth certificate of the person whose parentage is in issue.

- (3) The respondents to the application shall be—
- (i) the person whose parentage is in issue; and
 - (ii) any person who is, or who is alleged to be, the mother or father of the person whose parentage is in issue;
- excluding the petitioner.

(4) The prescribed officer for the purposes of section 55A(7) of the Act of 1986 shall be the family proceedings department manager of the principal registry.

(5) Within 21 days after a declaration of parentage has been made, the prescribed officer shall send to the Registrar General a copy of the declaration in Form M30 and the petition.”.

12. In rule 3.16—

- (a) in paragraph (4), for “A copy of the petition”, substitute “Except in the case of a petition under rule 3.13, a copy of the petition”;
- (b) for paragraph (5), substitute—

“(5) If the Attorney General has notified the court that he wishes to intervene in the proceedings, the proper officer shall send to him a copy of any answer and, in the case of a petition under rule 3.13, of the petition and every document accompanying it”; and

- (c) in paragraph (7), for “necessary” substitute “desirable”, and after “does so consider” insert “and the Attorney General agrees to argue that question”.
- 13.** In rule 3.21—
- (a) in paragraph (1), for “section 27 of the Act of 1991 (reference to court for declaration of parentage)” substitute “section 55A of the Act of 1986 (declarations of parentage)”; and
 - (b) in paragraph (2), for “section 27 of the Act of 1991” substitute “section 55A of the Act of 1986”.
- 14.** In rule 3.22—
- (a) in the heading, delete “from decision of child support officer”;
 - (b) in paragraph (1), for “appeals against certain decisions of child support officers”, substitute “appeals to appeal tribunals”, and
 - (c) in paragraph (2), for “section 27 of the Act of 1991”, substitute “section 55A of the Act of 1986”.
- 15.** In rule 4.1(1)—
- (a) after the definition of “child”, insert—
 - ““children and family reporter” means an officer of the service who has been asked to prepare a welfare report under section 7(1)(a);
 - ““children’s guardian”—
 - (a) means an officer of the service appointed under section 41(a) for the child with respect to whom the proceedings are brought; but
 - (b) does not include such an officer appointed in relation to proceedings specified by Part IVA;”;
 - (b) omit the definition of “guardian ad litem”; and
 - (c) in the definition of “welfare officer”, for “section 7”, substitute “section 7(1)(b)”.
- 16.** In the remaining provisions of Part IV,
- (a) for “guardian ad litem”, wherever it appears, except in paragraphs (3) and (4) of rule 4.8, substitute “children’s guardian”; and
 - (b) except in rule 4.13, for “welfare officer”, wherever it appears, substitute “welfare officer or children and family reporter”.
- 17.** In rule 4.8—
- (a) in paragraph (3)—
 - (i) in sub-paragraph (b), after “solicitor,” insert “the children’s guardian or”; and
 - (ii) in sub-paragraph (c), after “solicitor” insert “nor a children’s guardian”; and
 - (b) in paragraph (4)—
 - (i) in sub-paragraph (b), after “solicitor,” insert “the children’s guardian or”; and
 - (ii) in sub-paragraph (c), after “solicitor” insert “nor a children’s guardian”.
- 18.** In rule 4.10—
- (a) after paragraph (4) insert—
 - “(4A) The court may, in specified proceedings, appoint more than one children’s guardian in respect of the same child”; and
 - (b) for paragraph (7) substitute—
 - “(7) A children’s guardian appointed by the court under this rule shall not—
 - (a) be a member, officer or servant of a local authority which, or an authorised person (within the meaning of section 31(9)) who, is a party to the proceedings;
 - (b) be, or have been, a member, officer or servant of a local authority or voluntary organisation (within the meaning of section 105(1)) who has been directly concerned in that capacity in arrangements relating to the care, accommodation or welfare of the child during the five years prior to the commencement of the proceedings; or

(a) Section 41 of the Children Act 1989 (c. 41) was amended by the Courts and Legal Services Act 1990 (c. 41), section 116, schedule 16, paragraph 17; and by the Criminal Justice and Court Services Act 2000 (c. 43), section 74, schedule 7, part II, paragraphs 87 and 91(a).

- (c) be a serving probation officer who has, in that capacity, been previously concerned with the child or his family.”.

19. For rule 4.11 substitute—

“Powers and duties of officers of the service

4.11.—(1) In carrying out his duty under section 7(1)(a) or section 41(2), the officer of the service shall have regard to the principle set out in section 1(2) and the matters set out in section 1(3)(a) to (f) as if for the word “court” in that section there were substituted the words “officer of the service”.

(2) The officer of the service shall make such investigations as may be necessary for him to carry out his duties and shall, in particular—

- (a) contact or seek to interview such persons as he thinks appropriate or as the court directs;
- (b) obtain such professional assistance as is available to him which he thinks appropriate or which the court directs him to obtain.

(3) In addition to his duties, under other paragraphs of this rule, or rules 4.11A and 4.11B, the officer of the service shall provide to the court such other assistance as it may require.

(4) A party may question the officer of the service about oral or written advice tendered by him to the court.”.

20. After rule 4.11, insert—

“Additional powers and duties of children’s guardian

4.11A.—(1) The children’s guardian shall—

- (a) appoint a solicitor to represent the child unless such a solicitor has already been appointed; and
- (b) give such advice to the child as is appropriate having regard to his understanding and, subject to rule 4.12(1)(a), instruct the solicitor representing the child on all matters relevant to the interests of the child including possibilities for appeal, arising in the course of proceedings.

(2) Where the children’s guardian is an officer of the service authorised by the Service in the terms mentioned by and in accordance with section 15(1) of the Criminal Justice and Court Services Act 2000, paragraph (1)(a) shall not require him to appoint a solicitor for the child if he intends to have conduct of the proceedings on behalf of the child unless—

- (a) the child wishes to instruct a solicitor direct; and
- (b) the children’s guardian or the court considers that he is of sufficient understanding to do so.

(3) Where it appears to the children’s guardian that the child—

- (a) is instructing his solicitor direct; or
- (b) intends to conduct and is capable of conducting the proceedings on his own behalf,

he shall inform the court and from then he—

- (i) shall perform all of his duties set out in rule 4.11 and this rule, other than those duties under paragraph (1)(a) of this rule, and such other duties as the court may direct;
- (ii) shall take such part in the proceedings as the court may direct; and
- (iii) may, with the leave of the court, have legal representation in the conduct of those duties.

(4) Unless excused by the court, the children’s guardian shall attend all directions appointments in and hearings of the proceedings and shall advise the court on the following matters—

- (a) whether the child is of sufficient understanding for any purpose including the child’s refusal to submit to a medical or psychiatric examination or other assessment that the court has the power to require, direct or order.
- (b) the wishes of the child in respect of any matter relevant to the proceedings including his attendance at court;

- (c) the appropriate forum for the proceedings;
- (d) the appropriate timing of the proceedings or any part of them;
- (e) the options available to it in respect of the child and the suitability of each such option including what order should be made in determining the application; and
- (f) any other matter concerning which the court seeks his advice or concerning which he considers that the court should be informed.

(5) The advice given under paragraph (4) may, subject to any order of the court, be given orally or in writing; and if the advice be given orally, a note of it shall be taken by the court or the proper officer.

(6) The children's guardian shall, where practicable, notify any person whose joinder as a party to those proceedings would be likely, in the opinion of the children's guardian, to safeguard the interests of the child of that person's right to apply to be joined under rule 4.7(2) and shall inform the court—

- (a) of any such notification given;
- (b) of anyone whom he attempted to notify under this paragraph but was unable to contact; and
- (c) of anyone whom he believes may wish to be joined to the proceedings.

(7) The children's guardian shall, unless the court otherwise directs, not less than 14 days before the date fixed for the final hearing of the proceedings—

- (a) file a written report advising on the interests of the child; and
- (b) serve a copy of the filed report on the other parties.

(8) The children's guardian shall serve and accept service of documents on behalf of the child in accordance with rule 4.8(3)(b) and (4)(b) and, where the child has not himself been served, and has sufficient understanding, advise the child of the contents of any document so served.

(9) If the children's guardian inspects records of the kinds referred to in section 42, he shall bring to the attention of—

- (a) the court; and
- (b) unless the court otherwise directs, the other parties to the proceedings, all records and documents which may, in his opinion, assist in the proper determination of the proceedings.

(10) The children's guardian shall ensure that, in relation to a decision made by the court in the proceedings—

- (a) if he considers it appropriate to the age and understanding of the child, the child is notified of that decision; and
- (b) if the child is notified of the decision, it is explained to the child in a manner appropriate to his age and understanding.

Additional powers and duties of a children and family reporter

4.11B. —(1) The children and family reporter shall—

- (a) notify the child of such contents of his report (if any) as he considers appropriate to the age and understanding of the child, including any reference to the child's own views on the application and the recommendation of the children and family reporter; and
- (b) if he does notify the child of any contents of his report, explain them to the child in a manner appropriate to his age and understanding.

(2) Where the court has—

- (a) directed that a written report be made by a children and family reporter;

and

- (b) notified the children and family reporter that his report is to be considered at a hearing,

the children and family reporter shall—

- (i) file the report; and
- (ii) serve a copy on the other parties and on the children's guardian (if any), by such time as the court may direct, and if no direction is given, not less than 14 days before that hearing.

- (3) The court may direct that the children and family reporter attend any hearing at which his report is to be considered.
- (4) The children and family reporter shall advise the court if he considers that the joinder of a person as a party to the proceedings would be likely to safeguard the interests of the child.
- (5) The children and family reporter shall consider whether it is in the best interests of the child for the child to be made a party to the proceedings.
- (6) If the children and family reporter considers the child should be made a party to the proceedings he shall notify the court of his opinion together with the reasons for that opinion.”.
- 21.** In rule 4.12—
- (a) for “rule 4.11(2)(a)”, wherever it appears, substitute “rule 4.11A (1)(a)”; and
 - (b) in paragraph (1)(a), for “rule 4.11(3)” substitute “rule 4.11A(3)”.
- 22.** In rule 4.13—
- (a) in paragraph (1), after “welfare officer” insert “in accordance with section 7(1)(b)”; and
 - (b) after paragraph (3) insert—
 - “(3A) The welfare officer shall consider whether it is in the best interests of the child for the child to be made a party to the proceedings.
 - (3B) If the welfare officer considers the child should be made a party to the proceedings he shall notify the court of his opinion together with the reasons for that opinion.”.
- 23.** In rule 4.14, for sub-paragraph (d) of paragraph (2) substitute—
- “(d) the appointment of a children’s guardian, a guardian ad litem, or of a solicitor under section 41(3);”.
- 24.** In rule 4.23—
- (a) in paragraphs (1), after sub-paragraph (e), insert—
 - “(f) an expert whose instruction by a party has been authorised by the court;”;
 - (b) for paragraph (3) substitute—
 - “(3) Nothing in this rule shall prevent the disclosure of a document prepared by an officer of the service for the purpose of—
 - (a) enabling a person to perform functions required under section 62(3A) of the Justices of the Peace Act 1997(a);
 - (b) assisting an officer of the service who is appointed by the court under any enactment to perform his functions.”; and
 - (c) after paragraph (3) insert—
 - “(4) Nothing in this rule shall prevent the disclosure of any document relating to proceedings by an officer of the service to any other officer of the service unless that other officer is involved in the same proceedings but on behalf of a different party.”.
- 25.** In rule 4A.1(1)—
- (a) omit the definition of “guardian ad litem”; and
 - (b) after the definition of “parental order” insert—
 - ““parental order reporter” means an officer of the service appointed under section 41 of the Children Act 1989 in relation to proceedings specified by paragraph (2);”.
- 26.** In rule 4A.2—
- (a) for “4.11(2)”, substitute “4.11A(1)”; and
 - (b) for “4.11(3)”, substitute “4.11A(3)”.
- 27.** In rule 4A.5—
- (a) for “guardian ad litem”, wherever it appears, substitute “parental order reporter”;
 - (b) omit paragraphs (2) and (3); and
 - (c) in paragraph (4), for “rule 4.11”, substitute “rules 4.11 and 4.11A”.

(a) 1997 c. 25. Section 62(3A) was inserted by the Criminal Justice and Court Services Act 2000 (c. 43), section 17(1).

28. In rules 7.23, 7.25, 7.26(2) (in each place where they occur), 7.27(1), (2) and (3), and 7.29(3)(b), (4) and (5), for the words “clerk of” substitute the words “justices’ chief executive for”.

29. After rule 7.39, insert the following chapter—

“Chapter 5. Registration and enforcement under the Council Regulation

7.40 Interpretation

In this chapter “judgment” is to be construed in accordance with the definition in Article 13 of the Council Regulation.

7.41 Filing of applications

Every application to the High Court under the Council Regulation, other than an application under rule 7.49 for a certified copy of a judgment, shall be filed with the principal registry.

7.42 Application for registration

An application for registration of a judgment under Article 21(2) of the Council Regulation shall be made without notice being served on any other party.

7.43 Evidence in support of application

(1) An application for registration under Article 21(2) of the Council Regulation must be supported by a statement that is sworn to be true or an affidavit—

(a) exhibiting—

- (i) the judgment or a verified or certified or otherwise duly authenticated copy thereof together with such other document or documents as may be requisite to show that, according to the law of the Contracting State in which it has been given, the judgment is enforceable and has been served;
- (ii) in the case of a judgment given in default, the original or a certified true copy of the document which establishes that the party in default was served with the document instituting the proceedings or with an equivalent document;
- (iii) where it is the case, a document showing that the party making the application is in receipt of legal aid in the Contracting State in which the judgment was given;
- (iv) where the judgment or document is not in the English language, a translation thereof into English certified by a notary public or a person qualified for the purpose in one of the Contracting States or authenticated by witness statement or affidavit;
- (v) the certificate, in the form set out in Annex IV or Annex V of the Council Regulation, issued by the Contracting State in which judgment was given;

(b) stating—

- (i) whether the judgment provides for the payment of a sum or sums of money;
 - (ii) whether interest is recoverable on the judgment or part thereof in accordance with the law of the State in which the judgment was given, and if such be the case, the rate of interest, the date from which interest is recoverable, and the date on which interest ceases to accrue;
- (c) giving an address within the jurisdiction of the court for service of process on the party making the application and stating, so far as is known to the witness, the name and the usual or last known address or place of business of the person against whom judgment was given; and
- (d) stating to the best of the information or belief of the witness—
- (i) the grounds on which the right to enforce the judgment is vested in the party making the application;
 - (ii) as the case may require, either that at that date of the application the judgment has not been satisfied, or the part or amount in respect of which it remains unsatisfied.

(2) Where the party making the application does not produce the documents referred to in paragraphs (1)(a)(ii) and (iii) of this rule, the court may—

- (a) fix a time within which the documents are to be produced;

- (b) accept equivalent documents; or
- (c) dispense with production of the documents.

7.44 Order for registration

(1) An order giving permission to register a judgment under Article 21(2) of the Council Regulation must be drawn up by the court.

(2) Every such order shall state the period within which an appeal may be made against the order for registration and shall contain a notification that the court will not enforce the judgment until after the expiration of that period.

(3) The notification referred to in paragraph (2) shall not prevent any application for protective measures under Article 12 of the Council Regulation pending final determination of any issue relating to enforcement of the judgment.

7.45 Register of judgments

There shall be kept in the principal registry by the proper officer a register of the judgments ordered to be registered under Article 21(2) of the Council Regulation.

7.46 Notice of registration

(1) Notice of the registration of a judgment under Article 21(2) of the Council Regulation must be served on the person against whom judgment was given by delivering it to him personally or by sending it to him at his usual or last known address or place of business or in such other manner as the court may direct.

(2) Permission is not required to serve such a notice out of the jurisdiction and rule 10.6 shall apply in relation to such a notice.

(3) The notice of the registration must state—

- (a) full particulars of the judgment registered and the order for registration;
- (b) the name of the party making the application and his address for service within the jurisdiction;
- (c) the right of the person against whom judgment was given to appeal against the order for registration; and
- (d) the period within which an appeal against the order for registration may be made.

7.47 Enforcement of judgment

(1) A judgment registered under Article 21(2) of the Council Regulation shall not be enforced until after the expiration of the period specified in accordance with rule 7.44(2) or, if that period has been extended by the Court, until after the expiration of the period so extended.

(2) Any party wishing to apply for the enforcement of a judgment registered under Article 21(2) of the Council Regulation must produce to the proper officer a witness statement or affidavit of service of the notice of registration of the judgment and of any order made by the court in relation to the judgment.

(3) Nothing in this rule shall prevent the court from granting protective measures under Article 12 of the Council Regulation pending final determination of any issue relating to enforcement of the judgment.

7.48 Application for recognition

(1) Registration of the judgment under these rules shall serve for the purposes of Article 14(3) of the Council Regulation as a decision that the judgment is recognised.

(2) Where it is sought to apply for recognition of a judgment, the rules of this chapter shall apply to such application as they apply to an application for registration under Article 21(2) of the Council Regulation, with the exception that the applicant shall not be required to produce—

- (a) a document or documents which establish that according to the law of the Contracting State in which it has been given the judgment is enforceable and has been served, or
- (b) the document referred to in rule 7.43(1)(a)(iii).

7.49 Enforcement of judgments in other Contracting States

(1) Subject to rules 10.16(2) and 10.20, an application for a certified copy of a judgment referred to in Article 32(1) of the Council Regulation must be made to the court which made the order on a witness statement or affidavit without notice being served on any other party.

- (2) A witness statement or affidavit by which such an application is made must—
- (a) give particulars of the proceedings in which the judgment was obtained;
 - (b) have annexed to it a copy of the petition or application by which the proceedings were begun, the evidence of service thereof on the respondent, copies of the pleadings and particulars, if any, and a statement of the grounds on which the judgment was based together, where appropriate, with any document showing that the applicant is entitled to legal aid or assistance by way of representation for the purposes of the proceedings;
 - (c) state whether the respondent did or did not object to the jurisdiction, and, if so, on what grounds;
 - (d) show that the judgment has been served in accordance with rules 4.8, 10.2, 10.3, 10.4, 10.5, 10.6, 10.16 or 10.17 and is not subject to any order for the stay of proceedings;
 - (e) state that the time for appealing has expired, or, as the case may be, the date on which it will expire and in either case whether notice of appeal against the judgment has been given; and
 - (f) state—
 - (i) whether the judgment provides for the payment of a sum of money;
 - (ii) whether interest is recoverable on the judgment or part thereof and if so, the rate of interest, the date from which interest is recoverable, and the date on which interest ceases to accrue.

(3) The certified copy of the judgment shall be an office copy sealed with the seal of the court and signed by the district judge and there shall be issued with the copy of the judgment a certified copy of any order which has varied any of the terms of the original order.

7.50 Authentic instruments and court settlements

Rules 7.40 to 7.49 (except rule 7.43(1)(a)(ii)) shall apply to an authentic instrument and a settlement to which Article 13(3) of the Council Regulation applies, as they apply to a judgment subject to any necessary modifications.”.

30. In rule 8.1A(2) for the words “justices’ clerk of” there shall be substituted the words “justices’ chief executive for” and in rule 8.1A(4) for the words “justices’ clerk” there shall be substituted the words “justices’ chief executive”.

31. In rule 9.5—

- (a) for paragraph (1) substitute—
- “(1) Without prejudice to rules 2.57 and 9.2A, if in any family proceedings it appears to the court that it is in the best interest of any child to be made a party to the proceedings, the court may appoint—
- (a) an officer of the service;
 - (b) (if he consents) the Official Solicitor; or
 - (c) (if he consents) some other proper person,

to be the guardian ad litem of the child with authority to take part in the proceedings on the child’s behalf.”;

(b) omit paragraph (4); and

(c) after paragraph (5) insert—

“(6) Where the guardian ad litem appointed under this rule is an officer of the service, rules 4.11 and 4.11A shall apply to him as they apply to a children’s guardian appointed under section 41 of the Children Act 1989.”.

32. After rule 10.14 insert—

“Power of court to limit cross-examination

10.14A The court may limit the issues on which an officer of the service may be cross-examined.”.

33. In rule 10.15(5), for “section 56(1)(a)” substitute “section 55A”.

34. In rule 10.26—

- (a) in paragraph (18) for the words “section 9(3)” substitute “section 7(1)”;
- (b) in paragraph (19) for the words “in respect of a judicial act to which sections 9(3) and (4) of the Act applies”, substitute the words “under section 7(1) of that Act and section 9(3) and (4) applies”; and
- (c) in sub-paragraph (a) of paragraph (20) for the words “section 9(3)” substitute “section 7(1)”, and at the end of that sub-paragraph insert the words “in respect of a judicial act and section 9(3) applies”.

35. In Form M5 (Notice of proceedings), after the words “Notes on Questions in the Acknowledgement of Service” insert—

“2A

- (a) If you answer “Yes” to Question 1A please attach a copy of any relevant order or court documents to the acknowledgement of service.
- (b) Before answering “Yes” to Question 1A or “No” to Question 1C you should understand that, under Articles 9 and 11 of Council Regulation (EC) No. 1347/2000 of 29th May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses, the court will need to decide whether it has jurisdiction to entertain the proceedings. In these circumstances, the proceedings may be stayed whilst the court reaches its decision.”.

36. In Form M6 (Acknowledgement of service), after question 1 in the first column, insert—

“1A. Are there any proceedings continuing in any country outside England and Wales which relate to the marriage or are capable of affecting its validity or subsistence? If so, please provide the following information:

- (a) particulars of the proceedings, including the court in or tribunal or authority before which they were begun,
- (b) the date when they were begun,
- (c) the names of the parties,
- (d) the date or expected date of any trial in the proceedings, and
- (e) such other facts as may be relevant to the question whether the proceedings on the petition should be stayed under Article 11 of the Council Regulation.

1B. In which country are you—

- (a) habitually resident?
- (b) domiciled?

Of which country are you a national?

1C. Do you agree with the statement of the petitioner as to the grounds of jurisdiction set out in the petition? If not, please state the grounds on which you disagree with the statement of the petitioner.”.

37. In Form M30—

- (a) for “SECTION 56(1)(a)” substitute “SECTION 55A”;

- (b) for “*(the parent of the petitioner)* is [or was] the parent of the said _____, the petitioner” substitute “*(the person whose parenthood is in issue)* [is] [was] [or] [is not] [was not] the parent of _____ *(the person whose parentage is in issue)*”.

38. For Forms C1 (Application for an order) and C9 (Statement of Service), substitute the forms in Schedule 1 to these Rules.

39. In Form C7 (Acknowledgement) for the words “Clerk to the Justices” there shall be substituted the words “Chief Executive to the Justices”.

40. In Form C42 (Family Assistance Order), for “a probation officer” substitute “an officer of the service”.

41. In Form C47 (Order), wherever it appears, and in Form C48 (Order), for “guardian ad litem” substitute “children’s guardian”.

42. In the Notes to Form FL416 (Notice to mortgagees and landlords) for the words “Clerk to the Justices” there shall be substituted the words “Chief Executive to the Justices”.

43. In paragraph (1) of Appendix 2—

- (a) after sub-paragraph (b) insert—

“(bb) where it is alleged that the court has jurisdiction under the Council Regulation, state the grounds of jurisdiction under Article 2(1) of the Council Regulation.”;

- (b) in each of sub-paragraphs (c) and (d), after the words “has jurisdiction”, insert—

“; other than under the Council Regulation.”; and

- (c) in sub-paragraph (ia), for “assessment” in both places where it appears, substitute “calculation”.

*Irvine of Lairg, C.
Elizabeth Butler-Sloss, P.
Joyanne Bracewell
Gerald Angel
Donald Hamilton
A. N. Fricker
Rachel A. Evans
Lesley Newton
David Hodson*

Dated 6th March 2001

Schedule 1

Application for an order

Form C1

Children Act 1989

The court

To be completed by the court

Date issued

Case number

The full name(s) of the child(ren)

Child(ren)'s number(s)

1 About you (the applicant)

- State*
- *your title, full name, address, telephone number, date of birth and relationship to each child above*
 - *your solicitor's name, address, reference, telephone, FAX and DX numbers.*

2 The child(ren) and the order(s) you are applying for

- For each child state*
- *the full name, date of birth and sex*
 - *the type of order(s) you are applying for (for example, residence order, contact order, supervision order).*

C1

3 Other cases which concern the child(ren)

If there have ever been, or there are pending, any court cases which concern

- *a child whose name you have put in paragraph 2*
- *a full, half or step brother or sister of a child whose name you have put in paragraph 2*
- *a person in this case who is or has been, involved in caring for a child whose name you have put in paragraph 2*

attach a copy of the relevant order and give

- *the name of the court*
- *the name and contact address (if known) of the children's guardian, if appointed*
- *the name and contact address (if known) of the children and family reporter, if appointed*
- *the name and contact address (if known) of the welfare officer, if appointed*
- *the name and contact address (if known) of the solicitor appointed for the child(ren).*

4 The respondent(s)

Appendix 3 Family Proceedings Rules 1991; Schedule 2 Family Proceedings Courts (Children Act 1989) Rules 1991

- For each respondent state*
- *the title, full name and address*
 - *the date of birth (if known) or the age*
 - *the relationship to each child.*

5 Others to whom notice is to be given

Appendix 3 Family Proceedings Rules 1991; Schedule 2 Family Proceedings Courts (Children Act 1989) Rules 1991

For each person state

- *the title, full name and address*
- *the date of birth (if known) or age*
- *the relationship to each child.*

6 The care of the child(ren)

For each child in paragraph 2 state

- *the child's current address and how long the child has lived there*
- *whether it is the child's usual address and who cares for the child there*
- *the child's relationship to the other children (if any).*

7 Social Services

For each child in paragraph 2 state

- *whether the child is known to the Social Services*
If so, give the name of the social worker and the address of the Social Services department.
- *whether the child is, or has been, on the Child Protection Register. If so, give the date of registration.*

8 The education and health of the child(ren)

- For each child state*
- *the name of the school, college or place of training which the child attends*
 - *whether the child is in good health. Give details of any serious disabilities or ill health.*
 - *whether the child has any special needs.*

9 The parents of the child(ren)

- For each child state*
- *the full name of the child's mother and father*
 - *whether the parents are, or have been, married to each other*
 - *whether the parents live together. If so, where.*
 - *whether, to your knowledge, either of the parents have been involved in a court case concerning a child. If so, give the date and the name of the court.*

10 The family of the child(ren) (other children)

- For any other child not already mentioned in the family (for example, a brother or a half sister) state*
- *the full name and address*
 - *the date of birth (if known) or age*
 - *the relationship of the child to you.*

11 Other adults

- State*
- *the full name of any other adults (for example, lodgers) who live at the same address as any child named in paragraph 2*
 - *whether they live there all the time*
 - *whether, to your knowledge, the adult has been involved in a court case concerning a child. If so, give the date and the name of the court.*

12 Your reason(s) for applying and any plans for the child(ren)

State briefly your reasons for applying and what you want the court to order.

- **Do not** give a full statement if you are applying for an order under Section 8 of Children Act 1989. You may be asked to provide a full statement later.
- **Do not** complete this section if this form is accompanied by a prescribed supplement.

13 At the court

- State*
- *whether you will need an interpreter at court (parties are responsible for providing their own). If so, specify the language.*
 - *whether disabled facilities will be needed at court.*

Signed
(Applicant)

Date

C1

Statement of Service

Form C9

Family Proceedings Rules 1991 Rule 4.8

Family Proceeding Courts (Children Act 1989) Rules 1991 Rule 8

The Court

Case Number

The full name(s) of the child(ren)

Child(ren)'s number(s)

-
- You must
- give details of service of the application on each of the other parties
 - give details of service on persons to whom notice has to be given
 - file this form with the court on or before the first Directions Appointment or Hearing of the proceedings
- You should
- if the person's solicitor was served, give his or her name and address
 - if the children's guardian was served on behalf of the child, give his or her name and **contact** address.
- You must indicate
- the manner, date, time and place of service,
 - or** • where service was effected by post, the date, time and place of posting.
-

Name and address of person served	How, when and where served	Prescribed forms served

I have served the [application] [Notice of Proceedings] as stated above.

I am the [applicant] [solicitor for the applicant] [other (state)]

Signed

Date

C9

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Family Proceedings Rules 1991 following the establishment of the Children and Family Court Advisory and Support Service ('CAFCASS') by the Criminal Justice and Court Services Act 2000. The term 'guardian ad litem' is replaced in proceedings under the Children Act 1989 by 'children's guardian', and in proceedings for a parental order under section 30 of the Human Fertilisation and Embryology Act 1990 by 'parental order reporter'. An officer of the service who is appointed under section 7(1)(a) of the Children Act 1989 (c. 41) is called a 'children and family reporter'. A person appointed by a local authority under section 7(1)(b) of that Act will continue to be known as a welfare officer.

The Rules permit more than one children's guardian to be appointed if the court considers it appropriate. They set out clearly the powers and duties of officers of the service. The provisions relating to disclosure of documents have been amended to facilitate inspection of CAFCASS and also to allow disclosure where this would assist an officer of the service to perform any of his functions. They also permit disclosure within CAFCASS save where a conflict of interest arises and disclosure without the leave of the court to an expert whose instruction by a party has been authorised by the court.

Provision is also made for the court to appoint an officer of the service to act as guardian for a child where the court feels the child ought to be made a party in any family proceedings. The court may also continue to appoint the Official Solicitor as guardian for this purpose if he consents.

The Rules amend the Family Proceedings Rules 1991 to prescribe the procedure for applications under section 55A of the Family Law Act 1986 (declarations of parentage). This section was introduced by section 83 of the Child Support, Pensions and Social Security Act 2000 and replaces section 56(1)(a) of the Family Law Act 1986. The procedure is similar to the existing procedure but takes account of the greater number of categories of people who may apply for declarations of parentage. The Rules remove the requirement for the papers to be sent to the Attorney General in every case. They also bring up to date certain references in child support legislation.

These Rules amend the Family Proceedings Rules 1991 to transfer the administrative functions of justices' clerks under the Rules to justices' chief executives in line with section 90 of, and Schedule 13 to, the Access to Justice Act 1999 (the "1999 Act") which make corresponding amendments to primary legislation. In particular, rules 7.23, 7.25, 7.26, 7.27 and 7.29 are consequential on amendments to the Maintenance Orders Act 1950 and the Maintenance Orders Act 1958 effected by paragraphs 12 to 15 and 25 to 31 of Schedule 13 to the 1999 Act.

Subsection (5) of section 90 of the 1999 Act provides that for the purposes of that section the administrative functions of justices' clerks are all their functions apart from those which are legal functions within the meaning given by section 48(2) of the Justices of the Peace Act 1997, as substituted by section 89(1) of the 1999 Act.

These Rules also amend the Family Proceedings Rules 1991 to give effect to Council Regulation (EC) No. 1347/2000 of 29th May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses (the "Council Regulation").

In particular, rule 2.27A provides for district judges to consider whether matrimonial proceedings should be stayed under Article 11 ("Lis pendens and dependent actions") of the Council Regulation or to refer the matter to a judge. Article 11 regulates the situation where there are concurrent matrimonial proceedings in more than one State of the European Union to which the Council Regulation applies.

The new Chapter 5 in Part VII provides a procedure for the registration and enforcement of judgments under the Council Regulation. The new procedure covers, among other matters, the evidence to be provided in support of an application for the registration of a foreign order, requirements relating to orders for, and notices of, registration and requirements relating to matrimonial decrees and orders made by courts in England and Wales whose enforcement abroad is sought under the Council Regulation.

The amendments to Form M5 (Notice of proceedings), Form M6 (Acknowledgement of service) and Appendix 2 (Contents of petition) are consequential upon the amendments to the jurisdiction of the court effected by the Council Regulation.

These Rules also make other minor amendments to the Family Proceedings Rules 1991.

2001 No. 821 (L. 18)

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

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