
STATUTORY INSTRUMENTS

2003 No. 184 (L. 2)

**FAMILY PROCEEDINGS,
ENGLAND AND WALES**

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

The Family Proceedings (Amendment) Rules 2003

Made - - - - 28th January 2003
Laid before Parliament 3rd February 2003
Coming into force - - 24th February 2003

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 and county courts, in the exercise of the powers conferred by section 40, make the following Rules:

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Family Proceedings (Amendment) Rules 2003 and shall come into force on 24th February 2003.

(2) In these Rules a reference to a rule or form by number alone means the rule or form so numbered in the Family Proceedings Rules 1991(2).

Amendments to the Family Proceedings Rules 1991

2. In the Arrangement of Rules—

(a) after the entry relating to rule 2.45 insert—

“**2.45A.** Application under section 10A(2) of the Act of 1973

2.45B. Order under section 10A(2) of the Act of 1973”;

(b) omit the title of rules 2.69A and 2.69C;

(c) in the title of rule 2.69D for “rules 2.69B and 2.69C” substitute “rule 2.69B”;

(1) 1984 c. 42; as amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 50 and the Civil Procedure Act 1997 (c. 12), Schedule 2, paragraph 3.

(2) S.I.1991/1247; Appendix 1A was inserted by S.I. 1997/1056, substituted by S.I. 1999/3491 and amended by S.I. 2000/2267.

(d) after the entry relating to rule 10.26 insert—

“**10.27. Costs**”.

3. After rule 2.45 insert—

“Application under section 10A(2) of the Act of 1973

2.45A

(1) This rule applies to an application under section 10A(2) of the Act of 1973 for an order that the decree of divorce is not to be made absolute until a declaration made by both parties that they have taken such steps as are required to dissolve the marriage in accordance with the relevant religious usages is produced to the court.

(2) Paragraphs (3) and (5) of rule 2.42 shall apply to an application under this rule as they apply to an application under that rule.

(3) The application shall be supported by an affidavit setting out the grounds on which the applicant seeks the order and a copy of the affidavit shall be served with the notice on the other parties.

Order under section 10A(2) of the Act of 1973

2.45B

(1) Where the court has made an order under section 10A(2) of the Act of 1973 the declaration referred to in that section shall—

- (a) be made and signed by both parties;
- (b) give particulars of the proceedings in which the order under section 10A(2) of the Act of 1973 was obtained;
- (c) confirm that steps as are required to dissolve the marriage in accordance with the religious usages, appropriate to the parties, referred to in section 10A(1)(a) of the Act of 1973 have been taken;
- (d) unless the court orders otherwise, be accompanied by a certificate from a relevant religious authority that all such steps have been taken; and
- (e) be filed at the court either before or together with an application to make the decree absolute under rules 2.49 or 2.50.

(2) For the purposes of paragraph (1)(d), a religious authority is “relevant” if the party who made the application for the order under section 10A(2) of the Act of 1973 considers that authority competent to confirm that the steps referred to in paragraph (1)(c) have been taken.

(3) Where the certificate referred to in paragraph (1)(d) is not in English the declaration must also be accompanied by a translation of that certificate into English, certified by a notary public or authenticated by affidavit.

(4) If the court dispenses with the need for a certificate under paragraph (1)(d), it may direct the parties to file other documents showing that the relevant steps have been taken and may refuse to make the decree absolute until that direction has been complied with.”

4. In rule 2.49(2)—

- (a) in subparagraph (f)(iii), omit “and”; and
- (b) after subparagraph (g), insert—
“; and

- (h) that any order under section 10A(2) of the Act of 1973 has been complied with.”.
5. In rule 2.61D(2)(d)—
- (a) after “one” insert “or more”; and
 - (b) in subparagraph (iii) omit “or”.
6. Omit rule 2.69A.
7. Omit rule 2.69C.
- 8.—(1) In the title of rule 2.69D, for “rules 2.69B and 2.69C” substitute “rule 2.69B”.
- (2) In rule 2.69D(1) for “orders referred to in rules 2.69B and 2.69C” substitute “order referred to in rule 2.69B”.
- (3) Omit rule 2.69D(2).
9. In rule 2.70(14)(e) and (15)(e), for “(for example a policy reference number)” substitute “, including the name and address of the person responsible for the pension arrangement and a policy reference number”.
10. For rule 3.13(4), substitute—
- “(4) The prescribed officer for the purposes of section 55A(7) of the Act of 1986 shall be the proper officer within the meaning of rule 1.2(1).”
- 11.—(1) In rule 7.4(1), in the definition of “judgment summons”, for “to appear and be examined on oath as to his means” substitute “to attend court”.
- (2) After rule 7.4(3) insert—
- “(3A) The judgment creditor must file with the request copies of all written evidence on which he intends to rely.”.
- (3) In rule 7.4(5)—
- (a) after “served on the debtor personally” insert “together with copies of the written evidence referred to in paragraph (3A)”; and
 - (b) for “10” substitute “14”.
- (4) After rule 7.4(7) insert—
- “(7A) The following documents must be served personally on the debtor—
- (a) where the proceedings are in the High Court and the court has summoned the debtor to attend and he has failed to do so, the notice of the day and time fixed for the adjourned hearing;
 - (b) where the proceedings are in the county court, an order made under section 110(1) of the County Courts Act 1984(3);
 - (c) in either case, copies of the judgment summons, the affidavit required by rule 7.1(1) and all written evidence referred to in paragraph (3A).
- (7B) No person may be committed on an application for a judgment summons unless—
- (a) where the proceedings are in the High Court, the court has summoned the debtor to attend, he has failed to do so, and he has also failed to attend the adjourned hearing;

- (b) where the proceedings are in the county court, an order is made under section 110(2) of the County Courts Act 1984(4); or
- (c) the judgment creditor proves that the debtor—
 - (i) has or has had since the date of the order the means to pay the sum in respect of which he has made default; and
 - (ii) has refused or neglected, or refuses or neglects, to pay that sum.

(7C) The debtor may not be compelled to give evidence.”.

12. Omit rule 7.5(1), (6) and (7).

13. In rule 7.6(1) for “7(3) and 9(2)” substitute “5, 7(3), 9(2) and 10(3)”.

14. For rule 8.1(3) substitute—

“(3) On any appeal to which paragraph (2) applies—

- (a) the appeal shall be limited to a review of the decision or order of the district judge unless the judge considers that in the circumstances of the case it would be in the interests of justice to hold a rehearing;
- (b) oral evidence or evidence which was not before the district judge may be admitted if in all circumstances of the case it would be in the interests of justice to do so, irrespective of whether the appeal be by way of review or rehearing.”.

15. After rule 8.1(6) insert—

“(7) This rule does not apply to any appeal by a party to proceedings for the assessment of costs against a decision in those proceedings.”.

16. After rule 10.26 insert—

“Costs

10.27

(1) Order 38 of the County Court Rules 1981(5) and Order 62 of the Rules of the Supreme Court 1965(6) shall not apply to costs in family proceedings, and CPR Parts 43, 44 (except rules 44.9 to 44.12), 47 and 48(7) shall apply to costs in those proceedings, with the following modifications—

- (a) in CPR rule 43.2(1)(c)(ii), “district judge” includes a district judge of the Principal Registry of the Family Division;
- (b) CPR rule 44.3(2) (costs follow the event) shall not apply.

(2) Except in the case of an appeal against a decision of an authorised court officer (to which CPR rules 47.20 to 47.23 apply), an appeal against a decision in assessment proceedings relating to costs in family proceedings shall be dealt with in accordance with the following paragraphs of this rule.

(3) An appeal within paragraph (2) above shall lie as follows—

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- (4) Amended by S.I. 2002/439.
 - (5) S.I. 1981/1687, frequently amended. The County Court Rules were revoked and replaced by the Civil Procedure Rules 1998 (S.I. 1998/3132), but rule 1.3 of the Family Proceedings Rules 1991 provides that those Rules as they were in force immediately before 26th April 1999 shall continue to apply with any necessary modifications to family proceedings in a county court.
 - (6) S.I. 1965/1776, frequently amended. The Rules of the Supreme Court were revoked and replaced by the Civil Procedure Rules 1998 (S.I. 1998/3132), but rule 1.3 of the Family Proceedings Rules 1991 provides that those Rules as they were in force immediately before 26th April 1999 shall continue to apply with any necessary modifications to family proceedings in the High Court.
 - (7) The reference is to the Civil Procedure Rules 1998 (S.I. 1998/3132 as amended by S.I. 1999/1008, 2000/221, 940, 1317 and 2092 and 2001/256, 1388 and 1769).

- (a) where the decision appealed against was made by a district judge of the High Court or a costs judge (as defined by CPR rule 43.2(1)(b)), to a judge of the High Court;
- (b) where the decision appealed against was made by a district judge of a county court, to a judge of that court.

(4) CPR Part 52 applies to every appeal within paragraph (2) above, and any reference in CPR Part 52 to a judge or a district judge shall be taken to include a district judge of the Principal Registry of the Family Division.

(5) The Civil Procedure Rules 1998 shall apply to an appeal to which CPR Part 52 or CPR rules 47.20 to 47.23 apply in accordance with paragraph (2) above in the same way as they apply to any other appeal within CPR Part 52 or CPR rules 47.20 to 47.23 as the case may be; accordingly the Rules of the Supreme Court 1965 and the County Court Rules 1981 shall not apply to any such appeal.”

17. In Forms M2, M7(b), M16, M19, M21, M22 and M23, for “Divorce Registry”, wherever these words appear, substitute “Principal Registry”.

18. For Form M17 there shall be substituted the form set out in Schedule 1 to these Rules.

19. For Form C there shall be substituted the form set out in Schedule 2 to these Rules.

Amendment to the Family Proceedings (Miscellaneous Amendments) Rules 1999

20. Rule 4(1) of the Family Proceedings (Miscellaneous Amendments) Rules 1999(8) shall cease to have effect.

*Irvine of Lairg, C.
Elizabeth Butler-Sloss, P.
Joyanne Bracewell
Gerald Angel
Victor Hall
Peter Hunt
Rache A. Evans
Christopher Frazer
Claire Jenkins
Godfrey Freeman*

Dated 28th January 2003

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SCHEDULE 1

Rule 18

Form M17

(Seal)

JUDGMENT SUMMONS

[Heading as in Form M16]

To the debtor

On [19] [20], in the [],
[] ("the judgment creditor") obtained an order against you in the following terms:

The judgment creditor says that you have not paid as ordered and has requested that this judgment summons be issued against you.

If the judge is satisfied that—

- the amount ordered to be paid has not been paid;
- you have (or since the date of the order have had) the means to pay it; and
- you are refusing or neglecting (or have refused or neglected) to pay it;

the judge may order your committal to prison.

[AND TAKE NOTICE that the judgment creditor intends to apply to the Court for leave to enforce arrears which became due more than twelve months before the date of this judgment summons.]

**On 20 at o'clock
at**

the judge will consider the evidence given by the judgment creditor and any evidence you may wish to give.

Dated 20 .

To the Debtor:

A copy of the written evidence filed by the judgment creditor is served with this judgment summons.

If you fail to attend the hearing the judge may:—

- make an order in your absence; or
- order you to attend at a later hearing.

Amount claimed as due and unpaid in respect of the order and any costs	£
Court fee paid to issue this judgment summons	£
Amount (if any) paid to you for your travelling expenses to the court	£
Total amount	£

If payment is made too late to prevent the judgment creditor's attendance on the day of the hearing, you may be liable for further costs. If you pay the total amount above before the hearing, an order committing you to prison will not be made.

[The judgment creditor's solicitor is

6]

SCHEDULE 2

NOTICE OF A FIRST APPOINTMENT

In the	
* [County Court]	
* [Principal Registry of the Family Division]	
Case No: Always quote this	
Applicants Solicitor's Reference	
Respondents Solicitor's Reference	

*Delete as appropriate

The marriage of _____ and _____

Take Notice that

By [_____] you must file with the Court a statement which gives full details of your property and income. You must sign and swear the statement. At the same time each party must exchange a copy of the statement with the [legal representatives of] the other party. You will therefore need to contact the other party [or their legal representatives] not later than the above date and agree when the exchange shall take place. The exchange may be carried out by post. You must use the standard form of statement (Form E) which you may obtain from the Court office.

By [_____] you must file with the court and the [legal representative of the] other party:

- a concise statement of the apparent issues between yourself and the other party;
- a chronology;
- a questionnaire setting out the further information and documents you require from the other party, or a statement that no information or documents are required;
- a Notice in Form G.

The First Appointment will be heard by

(the District Judge in chambers) at

on _____ 20

at _____ [a.m.] [p.m.]

The probable length of the hearing is

You and your legal representative, if you have one, must attend the appointment. At the appointment you must provide the Court with a written estimate (in Form H) of any legal costs which you have incurred. Non-compliance may render you liable to costs penalties.

Dated:

The court office at:

is open between 10 a.m. and 4 p.m. (4.30 p.m. at the Principal Registry of the Family Division). When corresponding with the court, please address forms or letters to the Court Manager and quote the case number. If you do not do so, your correspondence may be returned.

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EXPLANATORY NOTE

(This note is not part of the Rules)

Rules 2(a), 3 and 4 amend the Family Proceedings Rules to give effect to the provisions of the Divorce (Religious Marriages) Act 2002.

That Act amends the Matrimonial Causes Act 1973 by providing that parties married in accordance with the usages of the Jews, or such other religious usages as may be prescribed, may make an application to the court that a decree of divorce is not to be made absolute until the formalities for obtaining a religious divorce have been completed. The parties will then be required to submit a declaration in the form specified in these Rules before a decree absolute is made.

Rule 3 inserts rule 2.45A and 2.45B. Rule 2.45A provides that the application will be made on notice to the other party and will require a supporting affidavit. Rule 2.45B provides for the arrangements for the declaration that the religious formalities have been completed. Rule 4 amends rule 2.49 to provide that the court records must be checked to ensure that any order made in respect of a religious divorce has been complied with.

Rules 2(b) and (c), 6, 7 and 8 repeal rules 2.69A and 2.69C of the Family Proceedings Rules 1991.

Rule 5 makes an amendment to permit a district judge at a first appointment for ancillary relief to make more than one of the directions listed where it is decided that a referral to a FDR appointment is not appropriate.

Rule 9 requires additional information to be stated in the annex where provision is made in respect of pension sharing and pension attachment under the Matrimonial Causes Act 1973.

Rule 10 makes a change to the prescribed officer for the purposes of an application for a declaration of parentage under section 55A of the Family Law Act 1986.

Rules 11 to 13 make various amendments to the procedure for judgment summonses in rule 7.4 to 7.6 of the Family Proceedings Rules 1991 following the Court of Appeal's judgment in *Mubarak v Mubarak*. Rule 18 makes consequential amendments to Form M17.

Rule 14 amends rule 8.1(3) of the Family Proceedings Rules 1991 following the Court of Appeal's judgment in *Cordle v Cordle*.

Rules 2(d), 12, 15, 16 and 20 amend the Family Proceedings Rules 1991 to provide for the assessment of costs in family proceedings. They incorporate into the Family Proceedings Rules 1991 a provision previously in the Family Proceedings (Miscellaneous Amendments) Rules 1999, to the effect that Rules 43, 44, 47 and 48 of the Civil Procedure Rules 1998 apply with certain modifications to the assessment of costs in family proceedings. They further provide that, as in civil proceedings generally, an appeal arising out of the assessment of costs is dealt with:

- (a) under rules 47.20 to 47.23 of the Civil Procedure Rules 1998 as at present, where the appeal is against a decision of an authorised costs officer; and
- (b) under Part 52 of those Rules, otherwise.

In either case the appeal is made subject to the Civil Procedure Rules 1998 rather than to the Rules of the Supreme Court or the County Court Rules. Appeals dealt with under Part 52 lie from a district judge or other officer of the court to a judge of the same court.

Rule 19 provides for a new Form C to be substituted into Appendix 1A of the Family Proceedings Rules 1991.

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