

2023 No. 1324 (L. 10)

FAMILY PROCEEDINGS

SENIOR COURTS OF ENGLAND AND WALES

FAMILY COURT, ENGLAND AND WALES

The Family Procedure (Amendment No. 2) Rules 2023

Made - - - - *30th November 2023*
Laid before Parliament *7th December 2023*
Coming into force in accordance with rule 1(3)

The Secretary of State makes these Rules in exercise of the powers conferred by sections 67B, 75 and 76(8) of the Courts Act 2003(a), having fulfilled the requirements of section 79(1) of that Act:

Citation, extent and commencement

- 1.—(1) These Rules may be cited as the Family Procedure (Amendment No. 2) Rules 2023.
- (2) These Rules extend to England and Wales.
- (3) These Rules come into force as follows—
 - (a) this rule and rules 2 and 4 come into force on 8th April 2024; and
 - (b) rule 3 and rules 5 to 19 come into force on 29th April 2024.

Amendment of the Family Procedure Rules 2010

2. The Family Procedure Rules 2010(b) are amended in accordance with rules 3 to 19 of these Rules.

Amendment of Part 2

3. In rule 2.3(1) (interpretation)—
 - (a) after the definition of “directions appointment” insert—

(a) 2003 c. 39. Section 67B was inserted by paragraphs 25 and 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), paragraphs 83 and 91 of Part 2 of Schedule 10 to the Crime and Courts Act 2013 (c. 22) and paragraph 3(1) and (2) of Schedule 4 to the Judicial Review and Courts Act 2022 (c. 35).

(b) S.I. 2010/2955. Relevant amendments were made by S.I. 2013/3204, 2014/843 and 3296, 2015/1868, 2017/1033, 2018/440, 2020/135 and 2021/875.

““domestic abuse” has the meaning given in sections 1 and 2 of the Domestic Abuse Act 2021(a);” and

(b) for the definition of “non-court dispute resolution” substitute—

““non-court dispute resolution” means methods of resolving a dispute other than through the court process, including but not limited to mediation, arbitration, evaluation by a neutral third party (such as a private Financial Dispute Resolution process) and collaborative law;”.

4. In rule 2.5 (power to perform functions conferred on the court by these rules and practice directions) after paragraph (1A) insert—

“(1B) The functions of the High Court listed in Practice Direction 2D may be exercised by a court officer who meets the criteria specified in that Practice Direction.

(1C) Practice Direction 2D may make provision for the procedure to be followed where such a court officer exercises a function of the High Court.”.

Amendment of Part 3

5. In rule 3.1 (interpretation) omit the definitions of “domestic violence”, “mediator’s exemption” and “prospective respondent”.

6. In rule 3.3 (the court’s duty to consider non-court dispute resolution)—

(a) after paragraph (1) insert—

“(1A) When the court requires, a party must file with the court and serve on all other parties, in the time period specified by the court, a form setting out their views on using non-court dispute resolution as a means of resolving the matters raised in the proceedings.”; and

(b) in paragraph (2)(b) omit “or mediator’s exemption was confirmed”.

7. In rule 3.4 (when the court will adjourn proceedings or a hearing in proceedings)—

(a) for the heading substitute “**Timetabling proceedings: encouraging non-court dispute resolution**”;

(b) for paragraph (1) substitute—

“(1) Paragraph (1A) applies when the court considers that non-court dispute resolution is appropriate.

(1A) Where the timetabling of proceedings allows sufficient time for these steps to be taken, the court should encourage parties, as it considers appropriate, to—

(a) obtain information and advice about, and consider using, non-court dispute resolution; and

(b) undertake non-court dispute resolution.”;

(c) for paragraph (2) substitute—

“(2) The court may give directions about the matters specified in paragraph (1A) on an application or of its own initiative.

(2A) Subject to paragraph (2B), the court may give directions referred to in paragraph (2) at any time during the proceedings.

(a) 2021 c. 17.

(2B) In proceedings to which Practice Direction 12B applies, the court may give directions referred to in paragraph (2) at any time after the court has received the safeguarding letter or safeguarding report referred to in Practice Direction 12B.”;

- (d) in paragraph (3) for “the court directs an adjournment under this rule, it” substitute “paragraph (1A) applies, the court”;
- (e) in paragraph (4) after “such” insert “further”; and
- (f) in paragraph (5)—
 - (i) in sub-paragraph (a) for “an order under this rule” substitute “any directions to which this rule applies”; and
 - (ii) in sub-paragraph (b) for “order” substitute “directions”.

8. In rule 3.6 (applications to which the MIAM requirement applies) in paragraph (1) omit “or a mediator’s exemption”.

9. In rule 3.7 (making an application)—

- (a) at the end of sub-paragraph (a) insert “or”;
- (b) in sub-paragraph (b) for “applies; or” substitute “applies.”; and
- (c) omit sub-paragraph (c) and the words in parentheses following that sub-paragraph.

10. In the heading to rule 3.8 (circumstances in which MIAM requirement does not apply (MIAM exemptions and mediator’s exemptions)) omit “**and mediator’s exemptions**”.

11. In rule 3.8(1) (circumstances in which the MIAM requirement does not apply (MIAM exemptions and mediator’s exemptions))—

- (a) for the sub-heading to sub-paragraph (a) for “*violence*” substitute “*abuse*”;
- (b) in sub-paragraph (a) for “violence” substitute “abuse”;
- (c) in sub-paragraph (c)(ii)(ad) for “unreasonable” substitute “significant financial”;
- (d) in the sub-heading to sub-paragraph (d) for “*MIAM exemption*” substitute “*non-court dispute resolution attendance*”;
- (e) in sub-paragraph (d)—
 - (i) in paragraph (i)—
 - (aa) for “participated in another form of” substitute “a”;
 - (bb) after “resolution” insert “process”; and
 - (cc) for “; or” substitute “; and”;
 - (ii) for paragraph (ii) substitute—

“(ii) where the person attended a non-court dispute resolution process, there is evidence of that attendance, as specified in Practice Direction 3A; or”;
- (f) omit sub-paragraphs (e), (g) and (i);
- (g) in sub-paragraph (k)—
 - (i) before paragraph (i) insert—

“(ai) the prospective applicant is not able to attend a MIAM online or by video-link and an explanation of why this is the case is provided to the court.”;
 - (ii) in paragraph (i)—
 - (aa) omit “or all of the prospective respondents are”; and

- (bb) after “attendance” insert “in person”;
- (iii) in paragraph (ii) for “three” both times it appears substitute “five”;
- (iv) in paragraph (iii)—
 - (aa) for “such” substitute “the”;
 - (bb) after “mediators” insert “contacted by the prospective applicant”;
 - (cc) for “can be” substitute “are”; and
 - (dd) omit “if requested”;
- (h) in sub-paragraph (l)—
 - (i) omit “or all of the prospective respondents”;
 - (ii) for “he or she is, or they are, as the case may be” substitute “the prospective applicant is”; and
 - (iii) in paragraph (i)—
 - (aa) for “he or she is or they are” substitute “the prospective applicant is”; and
 - (bb) after “detained” insert “and facilities cannot be made available for them to attend a MIAM online or by video-link”;
- (i) omit sub-paragraph (m);
- (j) in sub-paragraph (n) omit “by virtue of Rules 12.3(1)”;
- (k) in sub-paragraph (o)—
 - (i) before paragraph (i) insert—
 - “(ai) the prospective applicant is not able to attend a MIAM online or by video-link and an explanation of why this is the case is provided to the court.”;
 - (ii) in paragraph (i) for “three” both times it occurs substitute “five”;
 - (iii) in paragraph (ii)—
 - (aa) for “such” substitute “the”;
 - (bb) after “mediators” insert “contacted by the prospective applicant”;
 - (cc) for “can be” substitute “are”; and
 - (dd) omit “if requested”; and
- (l) for sub-paragraph (p) substitute—
 - “(p) —
 - (i) the prospective applicant is not able to attend a MIAM online or by video-link;
 - (ii) there is no authorised family mediator with an office within fifteen miles of the prospective applicant’s home; and
 - (iii) an explanation of why this exemption applies is provided by the prospective applicant to the court.”.

12. Omit rule 3.8(2) (mediator’s exemptions).

13. In rule 3.9 (conduct of MIAMs), in paragraph (2)—

- (a) for sub-paragraph (b) substitute—

- “(b) consider and explain the potential benefits of mediation and other methods of non-court dispute resolution as a means of resolving the dispute;”;
- (b) in sub-paragraph (c) for “violence; and” substitute “abuse;”;
- (c) in sub-paragraph (d) for “application.” substitute “application;”;
- (d) after sub-paragraph (d) insert—
 - “(e) indicate to those attending the MIAM which form, or forms, of non-court dispute resolution may be most suitable as a means of resolving the dispute, and why; and
 - (f) where sub-paragraph (e) applies, provide information to those attending the MIAM about how to proceed with the form, or forms, of non-court dispute resolution in question.”.

14. In rule 3.10 (MIAM exemption not validly claimed)—

- (a) in the heading after “**claimed**” insert “**or no longer applicable**”;
- (b) for paragraph (1) substitute—
 - “(1) If a MIAM exemption has been claimed, the court will inquire into whether the exemption—
 - (a) was not validly claimed; or
 - (b) was validly claimed but is no longer applicable.
 - (1A) The inquiry referred to in paragraph (1) must be made—
 - (a) when making the decision on allocation, in private law proceedings to which the MIAM requirement applies; or
 - (b) when making a decision on allocation (if such a decision is made), and in any event at the first hearing, in proceedings for a financial remedy to which the MIAM requirement applies.”;
- (c) in paragraph (2) after “claimed” insert “, or that it was validly claimed but is no longer applicable”; and
- (d) in paragraph (3)—
 - (i) after sub-paragraph (b) insert—
 - “(ba) the reasons why a MIAM exemption which was validly claimed is no longer applicable;”;
 - (ii) at the end of sub-paragraph (c) omit “and”; and
 - (iii) after sub-paragraph (c) insert—
 - “(ca) the potential benefits of attending a MIAM, including the opportunity to receive information about options for non-court dispute resolution; and”.

Amendment of rule 3A.1

15. In rule 3A.1 (interpretation)—

- (a) omit the definition of “domestic abuse”; and
- (b) in the definition of “victim” for “section 3(2)” substitute “section 3”.

Amendment of Part 9

16. In rule 9.15 (duties of the court at the first appointment) for the words in parentheses at the end of paragraph (5) substitute—

“(Rule 3.4 makes provision in relation to cases in which the court considers non-court dispute resolution is appropriate.)”.

17. In rule 9.20 (consideration of the application at the first hearing) for the words in parentheses at the end of paragraph (7) substitute—

“(Rule 3.4 makes provision in relation to cases in which the court considers non-court dispute resolution is appropriate.)”.

Amendment of rule 14.8

18. In rule 14.8 (the first directions hearing) for the words in parentheses after paragraph (1) substitute—

“(Rule 3.4 makes provision in relation to cases in which the court considers non-court dispute resolution is appropriate.)”.

Amendment of rule 28.3(7)

19. In rule 28.3 (costs in financial remedy proceedings) in paragraph (7) after sub-paragraph (a) insert—

- “(aa) any failure by a party, without good reason, to—
- (i) attend a MIAM (as defined in rule 3.1); or
 - (ii) attend non-court dispute resolution;”.

*Sir Andrew McFarlane, President of the Family Division
Lord Justice Baker
Poonam Bhari
District Judge Birk
District Judge Foss
Graeme Fraser
Mr Justice Keehan
Rhys Taylor*

I allow these Rules

30th November 2023

Bellamy
Parliamentary Under-Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Family Procedure Rules 2010 (S.I. 2010/2955) (“the FPR”).

The FPR include various references to the term “domestic violence”. These Rules amend such references to “domestic abuse”, to align the FPR more closely with the terms used in the Domestic Abuse Act 2021 (c. 17). Such amendments are made by rule 3(a), elements of rule 5, and rules 11(a) and (b), 13(b) and 15.

Rule 4 amends rule 2.5 FPR to enable a practice direction to make provision for when functions of the High Court may be exercised by a court officer.

Section 10 of the Children and Families Act 2014 (c. 6) makes provision for prospective applicants for specified types of orders to attend a family mediation information and assessment meeting (referred to in the FPR as “MIAM”). Associated procedural provision about MIAMs is made in the FPR. These Rules amend various of those provisions in the FPR. In particular:

- (a) rule 11(c) to (l) amend rule 3.8 FPR to modify or remove certain exemptions from the requirement to attend a MIAM;
- (b) rule 13(a), (c) and (d) amend rule 3.9 FPR to make revised provision about matters which must be included within a MIAM;
- (c) rule 14 amends rule 3.10 FPR to provide for the court to consider whether a previously validly claimed MAIM exemption is no longer applicable; and
- (d) rule 5 (certain elements) and rules 8, 9, 10, 16, 17 and 18 make amendments to the FPR in consequence of the amendments referred to above.

The FPR also make provision for steps the court may take to encourage parties to resolve their disputes outside of the court. These Rules make various amendments to such provision. In particular:

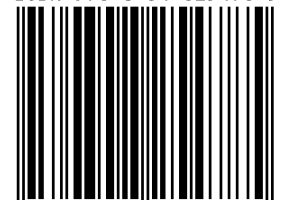
- (a) rule 3(b) substitutes a new definition of “non-court dispute resolution” in the FPR;
- (b) rule 6 amends rule 3.3 FPR to require parties to set out their position in relation to engaging with non-court dispute resolution in specified circumstances;
- (c) rule 7 amends rule 3.4 FPR to make provision for the court to use the timetabling of proceedings to encourage non-court dispute resolution; and
- (d) rule 19 amends rule 28.3(7) FPR to expressly provide for the court to consider as a matter of conduct, when determining whether to make an order for costs in financial remedy proceedings, any failure of a party to attend a MIAM or attend non-court dispute resolution.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

£8.14

<http://www.legislation.gov.uk/id/uksi/2023/1324>

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