
STATUTORY INSTRUMENTS

1991 No. 1247

The Family Proceedings Rules 1991

PART X

PROCEDURE (GENERAL)

Application

10.1 The provisions of this Part apply to all family proceedings, but have effect subject to the provisions of any other Part of these rules.

Service on solicitors

10.2.—(1) Where a document is required by these rules to be sent to any person who is acting by a solicitor, service shall, subject to any other direction or order, be effected—

- (a) by sending the document by first class post to the solicitor's address for service; or
- (b) where that address includes a numbered box at a document exchange, at that document exchange or at a document exchange which transmits documents every business day to that document exchange; or
- (c) by FAX (as defined by RSC Order 1, rule 4(1)) in accordance with the provisions of RSC Order 65, rule 5(2B)(1).

(2) Any document which is left at a document exchange in accordance with paragraph (1)(b) shall, unless the contrary is proved, be deemed to have been served on the second day after the day on which it is left.

(3) Where no other mode of service is prescribed, directed or ordered, service may additionally be effected by leaving the document at the solicitor's address.

Service on person acting in person

10.3.—(1) Subject to paragraph (3) and to any other direction or order, where a document is required by these rules to be sent to any person who is acting in person, service shall be effected by sending the document by first class post to the address given by him or, if he has not given an address for service, to his last known address.

(2) Subject to paragraph (3), where no other mode of service is prescribed, directed or ordered, service may additionally be effected by delivering the document to him or by leaving it at the address specified in paragraph (1).

(3) Where it appears to the district judge that it is impracticable to deliver the document to the person to be served and that, if the document were left at, or sent by post to, the address specified in paragraph (1) it would be unlikely to reach him, the district judge may dispense with service of the document.

Service by bailiff in proceedings in principal registry

10.4 Where, in any proceedings pending in the principal registry which are treated as pending in a divorce county court, a document is to be served by bailiff, it shall be sent for service to the proper officer of the county court within the district of which the document is to be served.

Proof of service by officer of court etc.

10.5.—(1) Where a petition is sent to any person by an officer of the court, he shall note the date of posting in the records of the court.

(2) Without prejudice to section 133 of the County Courts Act 1984(2) (proof of service of summonses etc) a record made pursuant to paragraph (1) shall be evidence of the facts stated therein.

(3) Where the court has authorised notice by advertisement to be substituted for service and the advertisement has been inserted by some person other than the proper officer, that person shall file copies of the newspapers containing the advertisement.

Service out of England and Wales

10.6.—(1) Any document in family proceedings may be served out of England and Wales without leave either in the manner prescribed by these rules or—

- (a) where the proceedings are pending in the High Court, in accordance with RSC Order I 1, rules 5 and 6 (which relate to the service of a writ abroad); or
- (b) where the proceedings are pending in a divorce county court, in accordance with CCR Order 8, rules 8 to 10 (which relate to the service of process abroad).

(2) Where the document is served in accordance with RSC Order 11, rules 5 and 6, those rules and rule 8 of the said Order I I (which deals with expenses incurred by the Secretary of State) shall have effect in relation to service of the document as they have effect in relation to service of notice of a writ, except that the official certificate of service referred to in paragraph (5) of the said rule 5 shall, if the document was served personally, show the server's means of knowledge of the identity of the person served.

(3) Where the document is served in accordance with CCR Order 8, rules 8 to 10, those rules shall have effect subject to the following modifications—

- (a) the document need not be served personally on the person required to be served so long as it is served in accordance with the law of the country in which service is effected;
 - (b) the official certificate or declaration with regard to service referred to in paragraph (6) of the said rule 10 shall, if the document was served personally, show the server's means of knowledge of the identity of the person served; and
 - (c) in paragraph (7) of the said rule 10 the words "or in the manner in which default summonses are required to be served" shall be omitted.
- (4) Where a petition is to be served on a person out of England and Wales, then—
- (a) the time within which that person must give notice of intention to defend shall be determined having regard to the practice adopted under RSC Order 11, rule 4(4) (which requires an order for leave to serve a writ out of the jurisdiction to limit the time for appearance) and the notice in Form M5 shall be amended accordingly;
 - (b) if the petition is to be served otherwise than in accordance with RSC Order 11, rules 5 and 6, or CCR Order 8, rules 8 to 10, and there is reasonable ground for believing that the person to be served does not understand English, the petition shall be accompanied by a translation, approved by the district judge, of the notice in Form M5, in the official

language of the country in which service is to be effected or, if there is more than one official language of that country, in any one of those languages which is appropriate to the place where service is to be effected; but this sub-paragraph shall not apply in relation to a document which is to be served in a country in which the official language, or one of the official languages, is English.

(5) Where a document specifying the date of hearing of any proceedings is to be served out of England and Wales, the date shall be fixed having regard to the time which would be limited under paragraph (4)(a) for giving notice of intention to defend if the document were a petition.

Mode of giving notice

10.7 Unless otherwise directed, any notice which is required by these rules to be given to any person shall be in writing and, may be given in any manner in which service may be effected under RSC Order 65, rule 5.

Notice of intention to defend

10.8.—(1) In these rules any reference to a notice of intention to defend is a reference to an acknowledgment of service in Form M6 containing a statement to the effect that the person by whom or on whose behalf it is signed intends to defend the proceedings to which the acknowledgment relates, and any reference to giving notice of intention to defend is a reference to returning such a notice to the court office.

(2) In relation to any person on whom there is served a document requiring or authorising an acknowledgment of service to be returned to the court office, references in these rules to the time limited for giving notice of intention to defend are references—

- (a) to seven days after service of the document, in the case of notice of intention to defend a petition under Part 11 of these rules, and
- (b) in any other case, to 14 days or such other time as may be fixed.

(3) Subject to paragraph (2) a person may give notice of intention to defend notwithstanding that he has already returned to the court office an acknowledgment of service not constituting such a notice.

Mode of making applications

10.9 Except where these rules, or any rules applied by these rules, otherwise provide, every application in family proceedings—

- (a) shall be made to a district judge;
- (b) shall, if the proceedings are pending in the High Court, be made by summons or, if the proceedings are pending in a divorce county court, be made in accordance with CCR Order 13, rule I (which deals with applications in the course of proceedings).

Orders for transfer of family proceedings

10.10.—(1) Where a cause is pending in the High Court, the district judge of the registry in which the cause is pending or a judge may order that the cause be transferred to another registry.

(2) Where a cause is pending in a divorce county court, the court may order that the cause be transferred to another divorce county court.

(3) Paragraphs (1) and (2) shall apply to applications in causes as they apply to causes; but before making an order for transfer of an application the court shall consider whether it would be more convenient to transfer the cause under paragraph (1) or (2), as the case may be.

(4) The court shall not, either of its own motion or on the application of any party, make an order under paragraph (1), (2) or (3) unless the parties have either—

- (a) had an opportunity of being heard on the question, or
- (b) consented to such an order.

(5) Where the parties, or any of them, desire to be heard on the question of a transfer, the court shall give the parties notice of a date, time and place at which the question will be considered.

(6) Paragraphs (4) and (5) shall apply with the necessary modifications to an order for the transfer of family proceedings under section 38(3) or 39 of the Act of 1984 as they apply to an order under paragraph (1) or (2) of this rule.

(7) Paragraphs (4) and (5) shall not apply where the court makes an order for transfer under paragraphs (1), (2) or (3) in compliance with the provisions of any Order made under Part I of Schedule 11 to the Children Act 1989(4).

Procedure on transfer of cause or application

10.11.—(1) Where any cause or application is ordered to be transferred from one court or registry to another, the proper officer of the first-mentioned court or registry shall, unless otherwise directed, give notice of the transfer to the parties.

(2) Any provision in these rules, or in any order made or notice given pursuant to these rules, for the transfer of proceedings between a divorce county court and the High Court shall, in relation to proceedings which, after the transfer, are to continue in the principal registry, be construed—

- (a) in the case of a transfer from the High Court to a divorce county court, as a provision for the proceedings to be treated as pending in a divorce county court, and
- (b) in the case of a transfer from a divorce county court to the High Court, as a provision for the proceedings no longer to be treated as pending in a divorce county court.

(3) Proceedings transferred from a divorce county court to the High Court pursuant to any provision in these rules shall, unless the order for transfer otherwise directs, proceed in the registry nearest to the divorce county court from which they are transferred, but nothing in this paragraph shall prejudice any power under these rules to order the transfer of the proceedings to a different registry.

Evidence by affidavit

10.12 On any application made—

- (a) in a county court, by originating application or in accordance with CCR Order 13, rule I (which deals with applications in the course of proceedings), or
- (b) in the High Court, by originating summons, notice or motion,

evidence may be given by affidavit unless these rules otherwise provide or the court otherwise directs, but the court may, on the application of any party, order the attendance for cross-examination of the person making any such affidavit; and where, after such an order has been made, that person does not attend, his affidavit shall not be used as evidence without the leave of the court.

(3) Section 38 was amended by section 1(1) of the Matrimonial Proceedings (Transfers) Act 1988 (c. 18).

(4) 1989 c. 41.

Taking of affidavit in county court proceedings

10.13 In relation to family proceedings pending or treated as pending in a divorce county court, section 58(1) of the County Courts Act 1984 (5) shall have effect as if after paragraph (c) there were inserted the following words—

“or

- (d) a district judge of the principal registry; or
- (e) any officer of the principal registry authorised by the President under section 2 of the Commissioners for Oaths Act 1889(6); or
- (f) any clerk in the Central Office of the Royal Courts of Justice authorised to take affidavits for the purposes of proceedings in the Supreme Court.”.

Evidence of marriage outside England and Wales

10.14.—(1) The celebration of a marriage outside England and Wales and its validity under the law of the country where it was celebrated may, in any family proceedings in which the existence and validity of the marriage is not disputed, be proved by the evidence of one of the parties to the marriage and the production of a document purporting to be—

- (a) a marriage certificate or similar document issued under the law in force in that country; or
- (b) a certified copy of an entry in a register of marriages kept under the law in force in that country.

(2) Where a document produced by virtue of paragraph (1) is not in English it shall, unless otherwise directed, be accompanied by a translation certified by a notary public or authenticated by affidavit.

(3) This rule shall not be construed as precluding the proof of marriage in accordance with the Evidence (Foreign, Dominion and Colonial Documents) Act 1933(7) or in any other manner authorised apart from this rule.

Official shorthand note etc of proceedings

10.15.—(1) Unless the judge otherwise directs, an official shorthand note shall be taken of the proceedings at the trial in open court of every cause pending in the High Court.

(2) An official shorthand note may be taken of any other proceedings before a judge or district judge if directions for the taking of such a note are given by the Lord Chancellor.

(3) The shorthand writer shall sign the note and certify it to be a correct shorthand note of the proceedings and shall retain the note unless he is directed by the district judge to forward it to the court.

(4) On being so directed the shorthand writer shall furnish the court with a transcript of the whole or such part as may be directed of the shorthand note.

(5) Any party, any person who has intervened in a cause, the Queen’s Proctor or, where a declaration of parentage has been made under section 56(1)(a) of the Act of 1986(8), the Registrar General shall be entitled to require from the shorthand writer a transcript of the shorthand note, and the shorthand writer shall, at the request of any person so entitled, supply that person with a transcript of the whole or any part of the note on payment of the shorthand writer’s charges authorised by any scheme in force providing for the taking of official shorthand notes of legal proceedings.

(5) 1984 c. 28 section 58(1) was amended by the Administration of Justice Act 1985 (c. 61), Schedule 7, paragraph 8 and Schedule 8.

(6) 1889 c. 10.

(7) 1933 c. 4.

(8) Section 56(1)(a) was substituted by section 22 of the Family Law Reform Act 1987 (c. 42).

(6) Except as aforesaid, the shorthand writer shall not, without the permission of the court, furnish the shorthand note or a transcript of the whole or any part thereof to anyone.

(7) In these Rules references to a shorthand note include references to a record of the proceedings made by mechanical means and in relation to such a record references to the shorthand writer shall have effect as if they were references to the person responsible for transcribing the record.

Copies of decrees and orders

10.16.—(1) A copy of every decree shall be sent by the proper officer to every party to the cause.

(2) A sealed or other copy of a decree or order made in open court shall be issued to any person requiring it on payment of the prescribed fee.

Service of order

10.17.—(1) Where an order made in family proceedings has been drawn up, the proper officer of the court where the order is made shall, unless otherwise directed, send a copy of the order to every party affected by it.

(2) Where a party against whom the order is made is acting by a solicitor, a copy may, if the district judge thinks fit, be sent to that party as if he were acting in person, as well as to his solicitor.

(3) It shall not be necessary for the person in whose favour the order was made to prove that a copy of the order has reached any other party to whom it is required to be sent.

(4) This rule is without prejudice to RSC Order 45, rule 7 (which deals with the service of an order to do or abstain from doing an act), CCR Order 29, rule I (which deals with orders enforceable by committal) and any other rule or enactment for the purposes of which an order is required to be served in a particular way.

No notice of intention to proceed after year's delay

10.18 RSC Order 3, rule 6 (which requires a party to give notice of intention to proceed after a year's delay) shall not apply to any proceedings pending in the High Court.

Filing of documents at place of hearing etc.

10.19 Where the file of any family proceedings has been sent from one divorce county court or registry to another for the purpose of a hearing or for some other purpose, any document needed for that purpose and required to be filed shall be filed in the other court or registry.

Inspection etc of documents retained in court

10.20.—(1) Subject to rule 10.21, a party to any family proceedings or his solicitor or the Queen's Proctor or a person appointed under rule 2.57 or 9.5 to be the guardian ad item of a child in any family proceedings may have a search made for, and may inspect and bespeak a copy of, any document filed or lodged in the court office in those proceedings.

(2) Any person not entitled to a copy of a document under paragraph (1) above who intends to make an application under the Hague Convention (as defined in section 1(1) of the Child Abduction and Custody Act 1985(9)) in a Contracting State (as defined in section 2 of that Act) other than the United Kingdom shall, if he satisfies the district judge that he intends to make such an application, be entitled to obtain a copy bearing the seal of the court of any order relating to the custody of the child in respect of whom the application is to be made.

(9) 1985 c. 60.

(3) Except as provided by rules 2.36(4) and 3.16(1 0) and paragraphs (1) and (2) of this rule, no document filed or lodged in the court office other than a decree or order made in open court shall be open to inspection by any person without the leave of the district judge, and no copy of any such document, or of an extract from any such document, shall be taken by, or issued to, any person without such leave.

Disclosure of addresses

10.21.—(1) Nothing in these rules shall be construed as requiring any party to reveal the address of their private residence (or that of any child) save by order of the court.

(2) Where a party declines to reveal an address in reliance upon paragraph (1) above, he shall give notice of that address to the court 'n Form CHA59 and that address shall not be revealed to any person save by order of the court.

Practice to be observed in district registries and divorce county courts

10.22.—(1) The President and the senior district judge may, with the concurrence of the Lord Chancellor, issue directions for the purpose of securing in the district registries and the divorce county courts due observance of statutory requirements and uniformity of practice in family proceedings.

(2) RSC Order 63, rule 11 (which requires the practice of the Central Office to be followed in the district registries) shall not apply to family proceedings.

Transitional Provisions

10.23.—(1) Subject to paragraph (2) below, these rules shall apply, so far as practicable, to any proceedings pending on the day on which they come into force.

(2) Rule 8.1 shall not apply to an appeal from an order or decision made or given by a district judge in matrimonial proceedings in a divorce county court where notice of appeal has been filed before the day on which these rules come into force.

(3) Where, by reason of paragraph (1) above, these rules do not apply to particular proceedings pending on the day on which they come into force, the rules in force immediately before that day shall continue to apply to those proceedings.

(4) Nothing in this rule shall be taken as prejudicing the operation of the provisions of the Interpretation Act 1978⁽¹⁰⁾ as regards the effect of repeals.

(5) Without prejudice to the generality of paragraph (1) above (and for the avoidance of doubt) rule 2.39 shall not apply to any proceedings which are pending within the meaning of paragraph 1(1) of Schedule 14 to the Children Act 1989⁽¹¹⁾.

(10) 1978 c. 30.

(11) 1989 c. 41.