
STATUTORY INSTRUMENTS

1992 No. 456 (L.1)

FAMILY PROCEEDINGS

SUPREME COURT OF ENGLAND AND WALES

COUNTY COURTS

The Family Proceedings (Amendment) Rules 1992

Made; - - - - 3rd March 1992

Laid before Parliament 11th March 1992

Coming into force - - 1st April 1992

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 the said section 40, hereby make the following rules:

1. These rules may be cited as the Family Proceedings (Amendment) Rules 1992 and shall come into force on 1st April 1992.
2. In these rules, any reference to a rule by number alone shall be construed as a reference to the rule so numbered in the Family Proceedings Rules 1991⁽²⁾.

Representation of minors

3. In rule 4.8(3), after the words “this Part applies” there shall be added the words “is not prosecuting or defending them without a next friend or guardian ad litem under rule 9.2A and”.
4. In rule 4.8(4), after the words “on a child” there shall be inserted the words “who is not prosecuting or defending the proceedings concerned without a next friend or guardian ad litem under rule 9.2A”.
5. In rule 5.5⁽³⁾, for the words from “unless” to the end of the rule there shall be substituted the words “unless the minor has been made a party to the summons.”.
6. In rule 9.1, after paragraph (2) there shall be inserted the following new paragraph—

(1) 1984 c. 42. Section 40 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 50.
(2) S.I.1991/1247, amended by S.I. 1991/2113.
(3) Rule 5.5 was inserted by S.I. 1991/2113.

“(3) Rule 9.2A shall apply only to proceedings under the Act of 1989 or the inherent jurisdiction of the High Court with respect to minors.”.

7. In rule 9.2(1), for the words “A person under disability may begin and prosecute any family proceedings by his next friend and may defend any such proceedings” there shall be substituted the words “Except where rule 9.2A or any other rule otherwise provides, a person under disability may begin and prosecute any family proceedings only by his next friend and may defend any such proceedings only”.

8. At the beginning of rule 9.2(6), for the word “No” there shall be substituted the words “Except where a minor is prosecuting or defending proceedings under rule 9.2A, no”.

9. After rule 9.2 there shall be inserted the following new rule—

“Certain minors may sue without next friend etc.

9.2A.—(1) Where a person entitled to begin, prosecute or defend any proceedings to which this rule applies, is a minor to whom this Part applies, he may, subject to paragraph (4), begin, prosecute or defend, as the case may be, such proceedings without a next friend or guardian ad litem—

- (a) where he has obtained the leave of the court for that purpose; or
- (b) where a solicitor—
 - (i) considers that the minor is able, having regard to his understanding, to give instructions in relation to the proceedings; and
 - (ii) has accepted instructions from the minor to act for him in the proceedings and, where the proceedings have begun, is so acting.

(2) A minor shall be entitled to apply for the leave of the court under paragraph (1)(a) without a next friend or guardian ad litem either—

- (a) by filing a written request for leave setting out the reasons for the application, or
- (b) by making an oral request for leave at any hearing in the proceedings.

(3) On considering a request for leave filed under paragraph (2)(a), the court shall either—

- (a) grant the request, whereupon the proper officer shall communicate the decision to the minor and, where the leave relates to the prosecution or defence of existing proceedings, to the other parties to those proceedings, or
- (b) direct that the request be heard *ex parte*, whereupon the proper officer shall fix a date for such a hearing and give to the minor making the request such notice of the date so fixed as the court may direct.

(4) Where a minor has a next friend or guardian ad litem in proceedings and the minor wishes to prosecute or defend the remaining stages of the proceedings without a next friend or guardian ad litem, the minor may apply to the court for leave for that purpose and for the removal of the next friend or guardian ad litem; and paragraph (2) shall apply to the application as if it were an application under paragraph (1)(a).

(5) On considering a request filed under paragraph (2) by virtue of paragraph (4), the court shall either—

- (a) grant the request, whereupon the proper officer shall communicate the decision to the minor and next friend or guardian ad litem concerned and to all other parties to the proceedings, or
- (b) direct that the request be heard, whereupon the proper officer shall fix a date for such a hearing and give to the minor and next friend or guardian ad litem concerned such notice of the date so fixed as the court may direct; provided that

the court may act under sub-paragraph (a) only if it is satisfied that the next friend or guardian ad litem does not oppose the request.

- (6) Where the court is considering whether to
- (a) grant leave under paragraph (1)(a), or
 - (b) grant leave under paragraph (4) and remove a next friend or guardian ad litem, it shall grant the leave sought and, as the case may be, remove the next friend or guardian ad litem if it considers that the minor concerned has sufficient understanding to participate as a party in the proceedings concerned or proposed without a next friend or guardian ad litem.

(7) Where a request for leave is granted at a hearing fixed under paragraph (3)(b) (in relation to the prosecution or defence of proceedings already begun) or (5)(b), the proper officer shall forthwith communicate the decision to the other parties to the proceedings.

(8) The court may revoke any leave granted under paragraph (1)(a) where it considers that the child does not have sufficient understanding to participate as a party in the proceedings concerned without a next friend or guardian ad litem.

(9) Without prejudice to any requirement of CCR Order 50, rule 5 or RSC Order 67, where a solicitor is acting for a minor in proceedings which the minor is prosecuting or defending without a next friend or guardian ad litem by virtue of paragraph (1)(b) and either of the conditions specified in paragraph (1)(b)(i) and (ii) cease to be fulfilled, he shall forthwith so inform the court. (10) Where—

- (a) the court revokes any leave under paragraph (8), or
- (b) either of the conditions specified in paragraph (1)(b)(i) and (ii) is no longer fulfilled, the court may, if it considers it necessary in order to protect the interests of the minor concerned, order that some proper person be appointed his next friend or guardian ad litem. (11) Where a minor is of sufficient understanding to begin, prosecute or defend proceedings without a next friend or guardian ad litem—
 - (a) he may nevertheless begin, prosecute or defend them by his next friend or guardian ad litem; and
 - (b) where he is prosecuting or defending proceedings by his next friend or guardian ad litem, the respective powers and duties of the minor and next friend or guardian ad litem, except those conferred or imposed by this rule, shall not be affected by the minor's ability to dispense with a next friend or guardian ad litem under the provisions of this rule.”.

10. In rule 9.5(1), for “rule 2.57” there shall be substituted “rules 2.57 and 9.2A”. Miscellaneous amendments

11. In rule 2.46(6), the words “and in any other case it shall be made by the Queen’s Proctor” shall be omitted.

12. In rule 2.59(3)(a), the word “order” where it appears after the word “settlement” shall be omitted.

13. In rule 2.59(4), for “(3)” there shall be substituted “(2)”.

14. In rule 4.21(6), after the words “in which it was made” there shall be inserted the word “and”.

15. In rule 4.24—

- (a) at the end of paragraph (a) there shall be inserted the word “or”; and
- (b) paragraph (b) shall be omitted.

16. In Appendix 1,—

- (a) in the list of forms at the beginning of the Appendix,—
- (i) in the entry relating to Form M13, for the word “Petitioner” there shall be substituted the words “Petition or”;
 - (ii) the following shall be inserted after the entry relating to Form M31 in the list of forms—
“M32 Declaration as to an Adoption Effected Overseas under Section 57 of the Family Law Act 1986”; and
 - (iii) the following shall be inserted at the end—
“CHA66 Certificate of Transfer to a Magistrates' Court
CHA67 Order following Reconsideration of a Refusal to Transfer
CHA68 Direction to undertake an investigation CHA69Directions”;
- (b) in paragraph 9(a) of Form M5, for “Question 3” there shall be substituted “Question 9”;
- (c) in Form M11,—
- (i) for the words “14 days after you receive this notice” there shall be substituted the words “28 days after you receive a copy of the affidavit of the petitioner [or respondent]”; and
 - (ii) after the words “If you wish to allege that the petitioner” there shall be inserted “[or respondent]”;
- (d) in Form M12, for the words “If you wish to allege that the petitioner” there shall be substituted the words “If you wish to allege that the respondent”;
- (e) in Form CHA7, for the words from “remove the child from the jurisdiction of the UK” to “or the leave of the court” there shall be substituted the words “remove the child from the United Kingdom without either the written consent of every person who has parental responsibility for the child or the leave of the court; however, this does not prevent the removal of a child, for a period of less than one month, by the person in whose favour the residence order is made”;
- (f) in Form CHA13, for pages 5 and 6 of the Form there shall be substituted the three pages contained in Appendix 1 to these rules, and the remaining pages of that Form and Form CHA13A shall be renumbered accordingly;
- (g) in Form CHA13A, for the second page of the Form (hitherto numbered “9” in the sequence of pages beginning with the first page of Form CHA13) there shall be substituted the page contained in Appendix 2 to these rules;
- (h) in Form CHA14, for pages 2 and 3 of the Form there shall be substituted the pages contained in Appendix 3 to those rules; and
- (i) in Form CHA15, for pages 1 and 2 of the Form there shall be substituted the pages contained in Appendix 4 to these rules.

17. Rule 19(c) of the Family Proceedings (Amendment) Rules 1991(4) shall be amended by the substitution of “CHA59” for “CHA65”.

Dated 3rd March 1992

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

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Family Proceedings Rules 1991 and the Family Proceedings (Amendment) Rules 1991. Rules 3 to 10 inclusive enable minors to participate in proceedings under the Children Act 1989 and under the High Court's inherent jurisdiction with respect to minors without a next friend or guardian ad litem. A minor will be able to do so if a solicitor who regards him as having sufficient understanding to do so acts for him, or if the minor has obtained the leave of the court (which cannot be withheld if the court considers the minor to be of such understanding). Rules 11 to 14 inclusive correct simple clerical or grammatical errors in the principal rules. Rule 15 removes a provision which was inconsistent with section 33(7) of the Children Act 1989 (c. 41). Rule 16 amends various forms prescribed by the principal rules, chiefly by correcting simple clerical errors, inconsistencies with the body of the rules or misleading statements of the law. Paragraphs (f) to (i) expand some forms to elicit more detailed information which will be useful when the Maintenance Enforcement Act 1991 (c. 17) comes into force. Rule 17 corrects a wrong reference in the Family Proceedings (Amendment) Rules 1991.