
STATUTORY INSTRUMENTS

1996 No. 816 (L. 1)

FAMILY PROCEEDINGS

SUPREME COURT OF ENGLAND AND WALES

COUNTY COURTS

The Family Proceedings (Amendment) Rules 1996

Made - - - - *15th March 1996*

Laid before Parliament *18th March 1996*

Coming into force - - *1st May 1996*

We, the authority having the 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, and of all other powers enabling us in that behalf, hereby make the following rules:

1. These rules may be cited as the Family Proceedings (Amendment) Rules 1996 and shall come into force on 1st May 1996.

2. The Family Proceedings Rules 1991(2) shall be amended in accordance with the following provisions of these Rules and, in those provisions, any reference to a rule, Part or Appendix by number alone shall be construed as a reference to the rule, Part or Appendix so numbered in the said Rules of 1991.

Amendments to Forms in consequence of the provisions of the Law Reform (Succession) Act 1995(3)

3.—(1) Form M5 shall be amended as follows:—

- (a) for the word “divorce” in line 1 there shall be substituted the word “[divorce]”;
- (b) in paragraph (b) of note 5 the words “of divorce” shall be omitted;
- (c) for paragraph (c) of note 5, there shall be substituted—

“Once the Court grants a decree absolute or decree of judicial separation, you will lose your right to inherit from the petitioner if he or she dies without having made a will, and if the petitioner has made a will a decree absolute will deprive

(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, relevant amending instruments are S.I. 1992/456, 2067, 1993/295 and 3155.
(3) 1995 c. 41.

you of any right which you may have under that will to act as executor, trustee or as a donee of a power of appointment or to take any gift under the will, unless a contrary intention appears in the will. In addition, if the petitioner has appointed you to become, on the petitioner's death, guardian of his or her children, a decree absolute will deprive you of any right which you may have to act as guardian subject to any expressed contrary intention.”;

- (d) the following paragraphs shall be substituted for paragraph 7 of the note to Form M5—
“where a petition is based on section 1(2)(d) of the Matrimonial Causes Act 1973(4), the following form shall be followed:—

(7) The petitioner relies in support of the petition on the fact that the parties to the marriage have lived apart for at least two years and the respondent has consented to a decree being granted. Section 10 of the Matrimonial Causes Act 1973 provides that if in such a case the respondent applies to the Court for it to consider the respondent's financial position after the divorce, a decree nisi based on two years' separation with the respondent's consent cannot be made absolute unless the Court is satisfied that the petitioner has or will make proper provision for the respondent, or else that the petitioner should not be required to make any financial provision for the respondent. It is important that you should consider this carefully before answering Question 8 in the acknowledgement.]*

or, where a petition is based on section 1(2)(e) of the Matrimonial Causes Act 1973, the following form shall be followed:—

(7) The petitioner relies in support of the petition on the fact that the parties to the marriage have lived apart for at least five years. Section 10 of the Matrimonial Causes Act 1973 provides that if in such a case the respondent applies to the Court for it to consider the respondent's financial position after the divorce, a decree nisi based on five years' separation only cannot be made absolute unless the Court is satisfied that the petitioner has or will make proper provision for the respondent, or else that the petitioner should not be required to make any financial provision for the respondent. Paragraph of the petition will tell you whether the petitioner proposes to make any financial provision for you. It is important that you should consider this information carefully before answering Question 8 in the acknowledgement.]*

** Delete as applicable. ”; and*

- (e) for the word “rejection” at the end of paragraph (a) of note 9 there shall be substituted the word “objection”.
- (2) The following paragraphs shall be substituted for the note to Form M9:—

“Divorce affects inheritance under a will

1. Where a will has already been made by either party to a marriage then, by virtue of section 18A of the Wills Act 1837(5):

- (a) any provisions of the will appointing the former spouse executor or trustee or conferring a power of appointment on the former spouse shall take effect as if the former spouse had died on the date on which the marriage is dissolved unless a contrary intention appears in the will;

(4) 1973 c. 18.

(5) 1837 c. 26. Section 18A was inserted in the Wills Act 1837 as respects England and Wales by the Administration of Justice Act 1982, section 18(2), but does not, by virtue of section 73(6) of that Act, affect the will of a testator who died before 1 January 1983 (the date section 18(2) of the 1982 Act came into force).

- (b) any property which, or an interest in which, is devised or bequeathed to the former spouse shall pass as if the former spouse had died on the date on which the marriage is dissolved unless a contrary intention appears in the will.

Divorce affects the appointment of a guardian

2. Unless a contrary intention is shown in the instrument of appointment, any appointment under section 5(3) or 5(4) of the Children Act 1989⁽⁶⁾ by one spouse of his or her former spouse as guardian is, by virtue of section 6 of that Act, deemed to have been revoked at the date of dissolution of the marriage.”

- (3) The following paragraphs shall be substituted for the note to Form M10:—

“Nullity affects inheritance under a will

1. Where a will has already been made by either party to a marriage then, by virtue of section 18A of the Wills Act 1837:

- (a) any provisions of the will appointing the former spouse executor or trustee or conferring a power of appointment on the former spouse shall take effect as if the former spouse had died on the date on which the marriage is annulled unless a contrary intention appears in the will;
- (b) any property which, or an interest in which, is devised or bequeathed to the former spouse shall pass as if the former spouse had died on the date on which the marriage is annulled unless a contrary intention appears in the will.

Nullity affects the appointment of a guardian

2. Unless a contrary intention is shown in the instrument of appointment, any appointment under section 5(3) or 5(4) of the Children Act 1989 by one spouse of his or her former spouse as guardian is, by virtue of section 6 of that Act, deemed to have been revoked at the date of annulment of the marriage.”

Amendments in consequence of the provisions of the Private International Law (Miscellaneous Provisions) Act 1995⁽⁷⁾

4. In paragraph (1) of rule 3.11, for the words “entered into under a law which permits polygamy” there shall be substituted the words “where either party to the marriage is, or has during the subsistence of the marriage been, married to more than one person”.

Amendments in respect of Proceedings under the Maintenance Orders (Reciprocal Enforcement) Act 1972⁽⁸⁾

5.—(1) In rule 7.30 for the reference to rule 7.38 there shall be substituted a reference to rule 7.39.

(2) Rule 7.30 shall stand as paragraph (1) of that rule and the following paragraphs shall be inserted after paragraph (1)—

“(2) The references in the Act of 1972 to the prescribed officer shall be construed as references to the proper officer within the meaning of rule 1.2(1).

(3) The reference in section 21 of the Act of 1972 to the proper officer shall be the proper officer within the meaning of rule 1.2(1).”

(6) 1989 c. 41.
(7) 1995 c. 42.
(8) 1972 c. 18.

6.—(1) After paragraph (1) of rule 7.37 there shall be inserted the following new paragraph—

“(1A) A reference to the Act of 1972 in this rule, and in any rule which has effect in relation to the Republic of Ireland by virtue of this rule, shall be a reference to the said Act as modified by Schedule 2 to the Reciprocal Enforcement of Maintenance Orders (Republic of Ireland) Order 1993⁽⁹⁾.”

(2) In paragraph (1) of rule 7.32 as it applies to the Republic of Ireland by virtue of paragraph (3) of rule 7.37, the words “subsection (3)” shall be substituted for the words “subsection (2)”.

(3) In rule 7.35 as it applies to the Republic of Ireland by virtue of paragraph (5) of rule 7.37, the words “subsection (3)” shall be substituted for the words “subsection (2)”.

7.—(1) After paragraph (1) of rule 7.38 there shall be inserted the following new paragraph—

“(1A) A reference to the Act of 1972 in this rule, and in any rule which has effect in relation to the Hague Convention countries by virtue of this rule, shall be a reference to the said Act as modified by Schedule 3 to the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1993⁽¹⁰⁾.”

(2) In paragraph (1) of rule 7.35 as it applies to the Hague Convention countries by virtue of paragraph (5) of rule 7.38, the words “subsection (8)” shall be substituted for the words “subsection (7)”.

8. After rule 7.38, there shall be inserted the following new rule—

“Application of rules 7.30 to 7.36 to a Specified State of the United States of America

7.39.—(1) In this rule unless the context otherwise requires—

“specified State” means a State of the United States of America specified in Schedule 1 to the Reciprocal Enforcement of Maintenance Orders (United States of America) Order 1995⁽¹¹⁾.

(2) In relation to a specified State, rules 7.30, 7.31, 7.34, 7.35 and 7.36 shall have effect subject to the provisions of this rule, but rules 7.32 and 7.33 shall not apply.

(3) A reference to the Act of 1972 in this rule, and in any rule which has effect in relation to a specified State by virtue of this rule, shall be a reference to the said Act as modified by Schedule 3 to the Reciprocal Enforcement of Maintenance Orders (United States of America) Order 1995.

(4) A reference in rules 7.31 and 7.34 to a reciprocating country shall be construed as a reference to a specified State.

(5) Paragraph (c) of rule 7.31 shall not apply to a specified State.

(6) The following paragraphs shall be inserted after paragraph (a)(ii) of rule 7.31—

“(iii) the address of the payee;

(iv) such information as is known as to the whereabouts of the payer; and

(v) a description, so far as is known, of the nature and location of any assets of the payer available for execution.”.

(7) A reference in paragraph (b) of rule 7.31 to a certified copy shall be construed as a reference to 3 certified copies.

(8) In relation to a specified State the following rules shall apply in place of rules 7.35 and 7.36—

⁽⁹⁾ S.I. 1993/594.

⁽¹⁰⁾ S.I. 1993/593.

⁽¹¹⁾ S.I. 1995/2709.

“Notification of variation of revocation

7.35. Where the court makes an order varying or revoking a maintenance order to which section 5 of the Act of 1972, as modified, applies, the proper officer shall send to the Secretary of State such documents as are required by subsection (7) of that section, as it applies to specified States.

Transmission of documents

7.36. Any document required to be sent to a court in a specified State shall be sent to the Secretary of State for transmission to the court.””

Dated 15th March 1996

Mackay of Clashfern, C.

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 Order)

These Rules amend the Family Proceedings Rules 1991 as follows:

- (a) Rule 3 makes the necessary changes to the prescribed Forms M5, M9 and M10 in consequence of the provisions of the Law Reform (Succession) Act 1995 which came into force on 1 January 1996.

The 1995 Act does not change the basic principle of the present law that, unless a contrary intention is apparent from the will, a former spouse should not benefit from a will made before the divorce; but the will is not affected in any other way. It does, however, alter the means by which this basic principle is implemented by replacing the rule that gifts to the former spouse should lapse by one which deems the former spouse to have died on the date of divorce. In addition, the 1995 Act provides that unless a contrary intention is shown in the instrument of appointment, any appointment by the deceased testator of the former spouse as guardian is deemed to have been revoked at the date of the divorce. The changes also apply in cases of nullity of marriage.

- (b) Rule 4 makes a minor amendment in respect of certain marriages in consequence of the provisions of Part II of the Private International (Miscellaneous Provisions) Act 1995, which makes further provision as to marriages entered into by unmarried persons under a law which permits polygamy.
- (c) Rule 5 makes a minor amendment in consequence of the new rule 7.39 of the Family Proceedings Rules 1991 as inserted by rule 8. In addition, Rule 5 defines a prescribed officer and a proper officer for the purposes of proceedings under the Act of 1972.
- (d) Rule 6 makes minor amendments to the rules on reciprocal enforcement in relation to the Republic of Ireland.
- (e) Rule 7 makes minor amendments to the rules on reciprocal enforcement in relation to the Hague Convention countries.
- (f) Rule 8 makes provision, in relation to the High Court and county courts, for the various matters which are to be prescribed under Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972 as set out in Schedule 3 to the Reciprocal Enforcement of Maintenance Orders (United States of America) Order 1995. Rule 8 modifies the various provisions as to reciprocal enforcement in relation to States in the USA which are specified in the 1995 Order.