

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(a) 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(b).

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”;

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

“10.27 Costs”.

(a) 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.

(b) 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.

3. After rule 2.45 insert—

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

(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.

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

(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(a);

(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(b); 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.”.

(a) 1984 c. 28.

(b) Amended by S.I. 2002/439.

16. After rule 10.26 insert—

“10.27 Costs

(1) Order 38 of the County Court Rules 1981(a) and Order 62 of the Rules of the Supreme Court 1965(b) shall not apply to costs in family proceedings, and CPR Parts 43, 44 (except rules 44.9 to 44.12), 47 and 48(c) 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—

- (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(d) shall cease to have effect.

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Dated 28th January 2003

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- (a) 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.
 - (b) 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.
 - (c) 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).
 - (d) S.I. 1999/1012.

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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