

2005 No. 2921 (L. 25)

FAMILY PROCEEDINGS

CIVIL PARTNERSHIP

SUPREME COURT OF ENGLAND AND WALES

COUNTY COURTS, ENGLAND AND WALES

The Family Proceedings (Civil Partnership: Staying of Proceedings) Rules 2005

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| <i>Made</i> - - - - | <i>18th October 2005</i> |
| <i>Laid before Parliament</i> | <i>25th October 2005</i> |
| <i>Coming into force</i> - - | <i>5th December 2005</i> |

The persons appointed under section 40(1) of the Matrimonial and Family Proceedings Act 1984(a) make the following Rules in exercise of the powers conferred by that section as extended by section 223 of the Civil Partnership Act 2004(b):

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Family Proceedings (Civil Partnership: Staying of Proceedings) Rules 2005 and shall come into force on the 5th December 2005.

(2) In these Rules—

- (a) “civil partnership proceedings” means proceedings under the Civil Partnership Act 2004 of a kind mentioned in sub-paragraph (b);
- (b) the proceedings referred to in sub-paragraph (a) are proceedings so far as they are for one or more of the following—
 - (i) a dissolution order,
 - (ii) a separation order,
 - (iii) a nullity order,
 - (iv) a declaration as to the validity of a civil partnership of the petitioner,
 - (v) a declaration as to the subsistence of such a civil partnership;
- (c) “another jurisdiction” means any jurisdiction outside England and Wales;

(a) 1984 c.42; section 40 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 50 and will be repealed (on a date to be appointed) by the Courts Act 2003 (c. 39), Schedule 8, paragraph 278 and Schedule 10.
(b) 2004 c.33.

- (d) “related jurisdiction” means Scotland, Northern Ireland, Jersey, Guernsey and the Isle of Man (the reference to Guernsey being treated as including Alderney and Sark);
- (e) references to the trial in any proceedings are, where there is more than one trial, references to the first trial in those proceedings, but do not include the separate trial of an issue as to jurisdiction only;
- (f) references to proceedings in another jurisdiction are references to proceedings in a court of that jurisdiction and to any proceedings which are instituted before a tribunal or other authority having power under the law having effect there to determine questions of status;
- (g) references to proceedings which are continuing in another jurisdiction are references to proceedings which have been begun and have not been finally disposed of;
- (h) references to proceedings before the court which are continuing are references to proceedings which are pending and not stayed; and
- (i) proceedings are relevant proceedings if they are in respect of the same civil partnership or are capable of affecting its validity or subsistence.

Duty to give particulars of concurrent proceedings in another jurisdiction

2.—(1) Where civil partnership proceedings are pending before the court in respect of a civil partnership and the trial in those proceedings has not begun—

- (a) the petitioner, or
- (b) a respondent who has included a prayer for relief in his answer,
 - must provide to the court such particulars of any relevant proceedings which he knows to be continuing in another jurisdiction as are required by paragraph (2).

(2) The particulars required by paragraph (1) are—

- (a) in the case of a petitioner, the particulars required by paragraph 1(j) of Appendix 2 to the Family Proceedings Rules 1991(a); and
- (b) in the case of a respondent, the particulars required by paragraph 1(j) of Appendix 2 to the Family Proceedings Rules 1991 in so far as they have not been given by the petitioner.

Obligatory stays of civil partnership proceedings

3.—(1) Where, before the beginning of the trial in any proceedings before the court for a dissolution order which are continuing, it appears to the court on the application of a party to the civil partnership—

- (a) that, in respect of the same civil partnership, proceedings for the dissolution or annulment of the civil partnership are continuing in a related jurisdiction;
- (b) that the parties to the civil partnership have lived together after its formation;
- (c) that the place where they lived together—
 - (i) on the date when the proceedings before the court were begun, or
 - (ii) if they did not live together at that date, where they last lived together before those proceedings were begun,
 is in that jurisdiction; and
- (d) that either of those parties was habitually resident in that jurisdiction throughout the year ending with the date on which they last lived together before the proceedings before the court were begun,

the court must order that the proceedings before it be stayed.

(a) S.I.1991/1247; relevant amending instruments are S.I. 1991/2113, 1992/456, 1992/2067 1993/295, 1994/3155, 1996/816, 1997/1056, 1998/1901, 2000/2267, 2001/821, 2003/184, 2003/2839, 2004/3375, 2005/264, 2005/412, 2005/559 and 2005/1976.

(2) But paragraph (1) does not apply if rule 5(3) applies.

(3) Where the proceedings before the court referred to in paragraph (1) are also proceedings other than for a dissolution order, this rule applies only to the proceedings so far as they are for a dissolution order.

Discretionary stays of civil partnership proceedings

4.—(1) Paragraph (2) applies where, before the beginning of the trial in any civil partnership proceedings before the court which are continuing, it appears to the court—

- (a) that any relevant proceedings are continuing in another jurisdiction, and
- (b) that the balance of fairness (including convenience) as between the parties to the civil partnership makes it appropriate for the proceedings in that jurisdiction to be disposed of before further steps are taken—
 - (i) in the proceedings before the court, or
 - (ii) in those proceedings so far as they consist of a particular kind of civil partnership proceedings.

(2) The court may, if it thinks fit, order that—

- (a) the proceedings before it, or
- (b) those proceedings, so far as they consist of a particular kind of civil partnership proceedings,

be stayed.

(3) In considering the balance of fairness and convenience for the purposes of paragraph (1)(b), the court must have regard to all factors appearing to be relevant, including the convenience of witnesses and any delay or expense which may result from the proceedings being stayed, or not being stayed.

(4) In the case of any proceedings so far as they are proceedings for a dissolution order, the court must not exercise the power conferred on it by paragraph (2) when an application under rule 3 is pending in respect of the proceedings.

(5) Where, after the beginning of the trial in any civil partnership proceedings which are continuing before the court, the court makes an order under paragraph (6), paragraphs (1) and (2) of this rule have effect in relation to those proceedings, and to the other proceedings by reference to which that order is made, as if the words “before the beginning of the trial” in paragraph (1) were omitted.

(6) The order referred to in paragraph (5) is an order declaring that the court is satisfied that a person has failed to perform the duty imposed on him in respect of the proceedings by rule 2.

(7) No action lies in respect of the failure of a person to comply with rule 2.

Discharge of orders

5.—(1) A party to proceedings which are stayed by an order made under rule 3 or 4 may apply to discharge that order.

(2) On such an application the court may discharge the order if it appears that the proceedings by reference to which the order was made are stayed or concluded, or that a party to those other proceedings has delayed unreasonably in prosecuting them.

(3) If the court discharges an order staying any proceedings under rule 3 no further order staying those proceedings may be made under that rule.

Supplementary

6.—(1) Rules 7 and 8 apply where proceedings for a dissolution, separation or nullity order are stayed by reference to proceedings in a related jurisdiction for the dissolution or annulment of a civil partnership, or the legal separation of civil partners.

- (2) But paragraph (1) is subject to rule 9.
- (3) In this rule and in rules 7 to 9—
- (a) “lump sum order” means—
 - (i) an order made under paragraph 1 of Schedule 5 to the Civil Partnership Act 2004 of a kind mentioned in paragraph 2(1)(f)(lump sum for child) of that Schedule, or
 - (ii) an order made under Schedule 1 to the Children Act 1989(a) of a kind mentioned in paragraph 1(2)(c)(lump sum for child) of that Schedule, if made in equivalent circumstances to an order of the kind mentioned in sub-paragraph (a)(i);
 - (b) “the other proceedings”, in relation to any stayed proceedings, means the proceedings in the other jurisdiction by reference to which the stay was imposed;
 - (c) “relevant order” means—
 - (i) an order under Part 8 of Schedule 5 to the Civil Partnership Act 2004 (maintenance pending outcome of dissolution, nullity or separation proceedings),
 - (ii) an order made under paragraph 1 of Schedule 5 to the Civil Partnership Act 2004 of a kind mentioned in paragraph 2(1)(d) or (e)(periodical payments for child) of that Schedule,
 - (iii) an order made under Schedule 1 to the Children Act 1989 of a kind mentioned in paragraph 1(2)(a) or (b) (periodical payments for child) of that Schedule, if made in equivalent circumstances to an order of a kind mentioned in sub-paragraph (c)(ii),
 - (iv) an order under section 8 of the Children Act 1989, or
 - (v) except for the purposes of rule 8, any order restraining a person from removing a child out of England and Wales or out of the care of another person; and
 - (d) “stayed” means stayed in pursuance of these Rules.
- (4) Nothing in rules 7 to 9 affects any power of the court—
- (a) to vary or discharge a relevant order which remains in force,
 - (b) to enforce a relevant order in relation to any period when it is or was in force, or
 - (c) to make a relevant order or a lump sum order in connection with proceedings which were, but are no longer, stayed.
- 7.—(1) Where proceedings to which this rule applies are stayed then—
- (a) the court must not make a relevant order or a lump sum order in connection with the stayed proceedings except under paragraph (2); and
 - (b) except as provided by paragraph (4), any relevant order made in connection with the stayed proceedings ceases to have effect on the expiration of three months from the date on which the stay was imposed, unless before that date the stay is removed or the order discharged.
- (2) The court may exercise the powers referred to in paragraph (3) if it considers that—
- (a) there are circumstances which must be dealt with urgently, and
 - (b) it is necessary to exercise those powers whilst the stay is in force in order to deal with those circumstances.
- (3) The powers are—
- (a) the power to make a lump sum order or a relevant order in connection with the stayed proceedings; and
 - (b) the power to extend, or further extend, the duration of a relevant order made in connection with the stayed proceedings.

(a) 1989 c.41.

(4) Where by virtue of paragraph (2) the court exercises any of the powers referred to in paragraph (3) in respect of a relevant order, paragraph (1)(b) does not apply to the order so made or extended.

(5) This rule does not alter the effect of the stay except as provided by this rule.

8.—(1) Where—

- (a) any proceedings to which this rule applies are stayed, and
- (b) an order (“the other order”) making provision of a kind referred to in paragraph (2) which was made in connection with the other proceedings—
 - (i) is in force at the time when the stay is imposed, or
 - (ii) comes into force subsequently,then paragraphs (3) to (6) apply.

(2) The provision referred to in paragraph (1) is—

- (a) provision for periodical payments for a civil partner of the civil partnership in question;
- (b) provision for periodical payments for a child;
- (c) any provision which could be made by an order under section 8 of the Children Act 1989.

(3) Any relevant order made in connection with the stayed proceedings ceases to have effect in so far as it makes any provision for a civil partner or child which (whether it makes the same or different provision) is of the same type as any provision for that civil partner or child made by the other order.

(4) The court must not make a relevant order in connection with the stayed proceedings containing provision for a civil partner or child in respect of any matter for which provision for that civil partner or child is made by the other order.

(5) If the other order contains provision for periodical payments for a child, the court must not make a lump sum order for that child in connection with the stayed proceedings.

(6) The provisions of paragraphs (3) to (5) have effect—

- (a) in a case where the other order is in force when the stay is imposed, from that date, and
- (b) in any other case, from the date when the other order comes into force.

(7) Where an order made under paragraph 1 of Schedule 5 to the Civil Partnership Act 2004, of a kind mentioned in paragraph (2)(1)(e) of that Schedule (secured periodical payments for, or for the benefit of, children) ceases to have effect by virtue of rule 7 or the preceding provisions of this rule, paragraph (8) applies.

(8) Any order made under Part 3 of that Schedule which requires the proceeds of sale of property to be used for securing the periodical payments also ceases to have effect.

9.—(1) Where —

- (a) civil partnership proceedings are proceedings for more than one of the orders mentioned in rule 1(2)(b)(i) to (iii); and
- (b) proceedings for some but not all of those orders are stayed,

then rules 7 and 8 do not apply.

(2) Where paragraph (1) applies the court must not make a relevant order or a lump sum order in connection with the proceedings so far as they are stayed.

(3) This rule does not affect the application of the stay except as provided by this rule.

Effect of stay apart from these Rules

10. These rules do not affect any power of the court to stay proceedings apart from that provided by these Rules.

Transitional provision

11. Where—

- (a) there are proceedings before the court in respect of a civil partnership which are continuing;
- (b) that civil partnership is treated as having been formed by virtue of section 215(1) of the Civil Partnership Act 2004; and
- (c) the overseas relationship by reference to which the parties are treated as having formed the civil partnership was registered before 5th December 2005,

then rule 3 applies to those proceedings as though the reference to the parties having lived together after the formation of the civil partnership is a reference to their having lived together after the registration of the overseas relationship.

*Mark Potter, P
William Charles
Philip Waller
David Salter
Bruce Edgington
Falconer of Thoroton, C*

18th October 2005

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules are made under section 223 of the Civil Partnership Act 2004 which allows for provision to be made in relation to civil partnerships corresponding to the provision made in respect of marriages by Schedule 1 to the Domicile and Matrimonial Proceedings Act 1973 (c.45). That Schedule makes provision about the relationship between domestic proceedings for divorce, judicial separation, nullity of marriage and declarations as to the validity and subsistence of a marriage of the petitioner, and proceedings in another jurisdiction of a similar type, and provides for when those domestic proceedings must or may be stayed.

These Rules make similar provision about the relationship between domestic proceedings for an order of dissolution, separation or nullity of civil partnership or for a declaration as to the validity or subsistence of a civil partnership, and proceedings in another jurisdiction of a similar type.

Rule 2 requires any party who is seeking an order in civil partnership proceedings to provide particulars of relevant overseas proceedings in accordance with the provisions of the Family Proceedings Rules 1991.

Rule 3 provides that where there are proceedings for a dissolution order before the court and the trial in those proceedings has not begun then, in certain circumstances, the court must stay those proceedings if similar proceedings in respect of the same civil partnership are continuing in Scotland, Northern Ireland, Jersey, Guernsey (including Alderney and Sark) or the Isle of Man (“a related jurisdiction”). **Rule 11** modifies the application of this provision in respect of a civil partnership which is a recognised overseas relationship registered before the coming into force of these Rules.

Rule 4 provides that where there are proceedings before the court and the trial in those proceedings has not begun then, if the balance of fairness makes it appropriate, the court can stay all or part of those proceedings if there are similar proceedings continuing in another jurisdiction. This rule also applies where the trial in the proceedings before the court has begun but one of the parties failed to tell the court about the proceedings in the other jurisdiction.

Rule 5 provides for the discharge of orders staying proceedings under rules 3 and 4.

Rule 7 makes provision about the court’s power to make certain ancillary relief orders where a stay is imposed under these Rules by reference to proceedings in a related jurisdiction. **Rule 8** makes provision about the effect of orders already made in civil partnership proceedings which have been stayed by reference to proceedings in a related jurisdiction. **Rule 6(4)** makes clear that these provisions do not affect the court’s power to deal with orders which remain in force, enforce orders in relation to any period when they were in force, or make orders once proceedings are no longer stayed.

Rule 9 provides that where proceedings are for more than one of the following: an order for dissolution, nullity or separation, but the proceedings are stayed only in so far as they are for some of those orders, rules 7 and 8 do not apply but the court may not make a lump sum order or a relevant order in respect of the proceedings so far as they are stayed.

Rule 10 makes clear that these Rules do not affect any other power which the court might have to stay the proceedings.

Rule 1 and the remainder of **rule 6** make provision consequential to that made by other rules.

STATUTORY INSTRUMENTS

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