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STATUTORY INSTRUMENTS

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**2008 No. 2861**

**The Family Proceedings (Amendment) (No.2) Rules 2008**

**Citation and commencement**

1. These Rules may be cited as the Family Proceedings (Amendment) (No.2) Rules 2008 and shall come into force on 8th December 2008.

**Amendments to the Family Proceedings Rules 1991**

2. The Family Proceedings Rules 1991(1) shall be amended in accordance with the provisions of rules 3 to 23.

3. In the Arrangement of Rules—

(a) after the entry for rule 4.4, insert—

“**4.4A** Application for a warning notice or application to amend enforcement order by reason of change of residence”;

(b) in the entry for rule 4.11AA, omit “family assistance order”;

(c) after the entry for rule 4.13A, insert—

“**4.13B** Section 11J or 11O: duties of person notified”;

(d) after the entry for rule 4.21, insert—

“**4.21AA.** Service of enforcement order or order amending or revoking enforcement order”; and

(e) after the entry for rule 4.21A, insert—

“**4.21B** Order with notice attached: committal”.

4. In rule 1.2, after the definition for “the Act of 2004”, insert—

““the Act of 2006” means the Children and Adoption Act 2006(2);”.

5. In rule 4.1—

(a) in paragraph (1)—

(i) after the definition of “children’s guardian”, insert—

““contact activity condition” has the meaning assigned to it by section 11C(2);

“contact activity direction” has the meaning assigned to it by section 11A(3);

“contact order” has the meaning assigned to it by section 8(1);”;

(ii) after the definition of “emergency protection order” insert—

““enforcement order” has the meaning assigned to it by section 11J(2);”

(iii) after the definition of “family assistance order report”, insert—

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(1) S.I. 1991/1247. Relevant amending instruments are S.I. 1991/2113, 1992/456 and 2067, 1993/295, 1994/3155, 1996/816, 1997/637, 1056 and 1893, 1998/1901, 1999/3491, 2000/2267, 2001/821, 2003/184, 2839 and 3079, 2004/3375, 2005/264, 412, 559 and 2922 and 2007/1622 and 2187.

(2) 2006 c.20.

- ““financial compensation order” means an order made under section 11O(2);”;  
and
- (iv) after the definition of “specified proceedings”, insert—  
““warning notice” means a notice attached to a contact order pursuant to section 8(2) of the Act of 2006;” and
- (b) in paragraph (2)—
- (i) in sub-paragraph (c), after “6(7),” insert “11J(5), 11O(5),”;
- (ii) after sub-paragraph (d), insert—  
“(da) on an application under paragraph 4(3), 5(3), 6(4), 7(3) or 9(5) of Schedule A1;”;
- (iii) in sub-paragraph (g), omit “or” the second time it appears;
- (iv) in sub-paragraph (h), for “.” substitute “; or”; and
- (v) after sub-paragraph (h), insert—  
“(i) on an application for a warning notice.”.
6. In rule 4.4—
- (a) in paragraph (1) after “paragraph (4)” insert “and rule 4.4A”;
- (b) in paragraph (1A)—
- (i) in sub-paragraph (a)(i)—
- (aa) after “C1,” insert “C100,”;
- (bb) for “or”, substitute “,”; and
- (cc) after “C51”, insert “or C79”; and
- (ii) in sub-paragraph (a)(iii), after “C1,” insert “or (as the case may be) question 5 on Form C100,”; and
- (c) after paragraph (3), insert—  
“(3A) In the case of an application under—
- (a) section 11J; or
- (b) section 11O,
- in addition to complying with paragraph (3), the applicant shall serve a copy of the application on the person who was the children’s guardian, guardian ad litem, next friend or legal representative as referred to in the relevant entry in column (iv) of Appendix 3 to these rules.”.
7. After rule 4.4, insert—

**“Application for a warning notice or application to amend enforcement order by reason of change of residence**

**4.4A.—**(1) This rule applies in relation to an application for a warning notice or for an order under paragraph 5 of Schedule A1 (to amend an enforcement order by reason of change of residence).

- (2) The application shall be made—
- (a) in the case of an application for a warning notice, ex parte on Form C78; or
- (b) in the case of an application for an order under paragraph 5 of Schedule A1, ex parte on Form C79.

- (3) The court may deal with the application without a hearing.
- (4) Where the court determines that the application shall be dealt with at a hearing—
  - (a) rule 4.4(1)(b) and (3) shall apply; and
  - (b) rule 4.4(2) shall apply as if for the words before “the proper officer” there were substituted “On the court determining that the application shall be dealt with at a hearing”.
- 8. In rule 4.5—
  - (a) in paragraph (3)—
    - (i) omit “either”; and
    - (ii) for “preparing or has prepared a family assistance order report or a risk assessment” substitute “acting or has acted under a duty referred to in rule 4.11AA(1)(a) to (g)”; and
  - (b) in paragraph (4)(a) and (b) for “preparing or has prepared a family assistance order report or a risk assessment” substitute “acting or has acted under a duty referred to in rule 4.11AA(1)(a) to (g)”.
- 9. In rule 4.8(7)—
  - (a) in sub-paragraph (a), after “respondent,” delete “and”; and
  - (b) after sub-paragraph (b), insert—
    - “and
    - (c) a copy of the application has been effected under rule 4.4(3A);”.
- 10. In rule 4.9—
  - (a) for paragraph (1) substitute—
    - “(1) Within 14 days of service of an application for—
      - (a) an order under section 4(1)(c);
      - (b) a section 8 order;
      - (c) an enforcement order;
      - (d) a financial compensation order;
      - (e) a special guardianship order;
      - (f) an order under Schedule 1;
      - (g) an order under Part 2 of Schedule A1; or
      - (h) an order for a warning notice to which rule 4.4A(4) applies,each respondent shall file, and serve on the parties, an acknowledgement of the application in Form C7 and, if both parts of question 6 or question 7 (or both) on Form C7 are answered in the affirmative, Form C1A.”; and
  - (b) for paragraph (3) substitute—
    - “(3) Following service of an application to which this Part applies, other than—
      - (a) an application under rule 4.3; and
      - (b) an application referred to in paragraph (1)(a), (b), (e) or (h),a respondent may, subject to paragraph (4), file a written answer, which shall be served on the other parties.”.
- 11. In rule 4.11(1)—

- (a) for “section 16, section 16A” substitute “or”; and
- (b) after “section 41(2)” insert “or in acting under a duty referred to in rule 4.11AA(1)”.

**12.** In rule 4.11AA—

- (a) in the heading, omit “family assistance order”;
- (b) for paragraph (1), substitute—
  - “(1) This rule applies where an officer of the service or a Welsh family proceedings officer is acting under a duty in accordance with —
  - (a) section 11E(7) (providing the court with information as to the making of a contact activity direction or a contact activity condition);
  - (b) section 11G(2) (monitoring compliance with a contact activity direction or a contact activity condition);
  - (c) section 11H(2) (monitoring compliance with a contact order);
  - (d) section 11L(5) (providing the court with information as to the making of an enforcement order);
  - (e) section 11M(1) (monitoring compliance with an enforcement order);
  - (f) section 16(6) (providing a family assistance order report to the court); and
  - (g) section 16A (making a risk assessment).”;
- (c) in paragraph (2)—
  - (i) for “preparing a family assistance order report or a risk assessment” substitute “acting under a duty referred to in paragraph (1)(a) to (g)”;
  - (ii) in sub-paragraph (a), for “the report or assessment” substitute “any report or risk assessment he makes”; and
  - (iii) in sub-paragraph (b), for “the report or assessment” the first time it appears substitute “any report or risk assessment he makes”;
- (d) in paragraphs (3), (6) and (6)(c), for “the report or assessment” substitute “any report or risk assessment he makes”;
- (e) in paragraph (8), for “a family assistance order report” substitute “a report as a result of acting under a duty referred to in paragraph (1)(a) to (f)”;
- (f) in paragraph (9), for “a family assistance order report” substitute “a report prepared as a result of acting under a duty referred to in paragraph (1)(a) to (f)”.

**13.** After rule 4.13A, insert—

**“Section 11J or 11O: duties of person notified**

**4.13B.** Where there has been a notification of an application in accordance with rule 4.4(3A), the person notified shall—

- (a) consider whether it is in the best interests of the child for the child to be a party to the proceedings to which that application relates; and
- (b) before the date fixed for the first hearing or directions appointment, notify the court, orally or in writing, of his opinion on this question, together with the reasons for this opinion.”

**14.** In rule 4.14—

- (a) in paragraph (1)(b)—

- (i) for “a family assistance order report” substitute “ a duty referred to in rule 4.11AA(1)(a) to (f)”;
  - (ii) for “preparing the report” substitute “ acting under the duty in question”;
  - (b) in paragraph (2)—
    - (i) in sub-paragraph (m), for “.” substitute “,”;
    - (ii) after sub-paragraph (m) insert—
      - “(n) the exercise by an officer of the service or a Welsh family proceedings officer of any duty referred to in rule 4.11AA(1)(a) to (e).”;
  - (c) in paragraph (8) after “38” insert “or under paragraph 4, 5, 6 or 7 of Schedule A1”;
  - (d) in paragraph (9A), for “a family assistance order report” substitute “a report prepared as a result of acting under a duty referred to in rule 4.11AA(1)(a) to (f)”.
15. In rule 4.15(2)(ii), for “preparing or has prepared a family assistance order report or a risk assessment” substitute “acting or has acted under a duty referred to in rule 4.11AA(1)(a) to (g)”.
16. In rule 4.16, after paragraph (1) insert—  
“(1A) Paragraphs (2) to (4) do not apply where—  
(a) the hearing relates to—
  - (i) a decision about whether to make a contact activity direction or to attach a contact activity condition to a contact order; or
  - (ii) an application for a financial compensation order, an enforcement order or an order under paragraph 9(2) of Schedule A1; and  
(b) the court has yet to obtain sufficient evidence from, or in relation to, the person who may be the subject of the direction, condition or order to enable it to determine the matter.”.
17. In rule 4.17(1), for “preparing or has prepared a family assistance order report or a risk assessment” substitute “ acting or has acted under a duty referred to in rule 4.11AA(1)(a) to (g)”.
18. In rule 4.21(6), after “paragraph (7)” insert “and rule 4.21AA”.
19. After rule 4.21, insert—

**“Service of enforcement order or order amending or revoking enforcement order**

**4.21AA.**—(1) Paragraphs (2) and (3) apply where an enforcement order or an order under paragraph 9(2) of Schedule A1 is made by the court.

(2) As soon as practicable after an order has been made, a copy of it shall be served by the proper officer on—

- (a) the parties, except the person against whom the order is made;
- (b) the officer of the service or the Welsh family proceedings officer who is obliged to comply with a request under section 11M;
- (c) the responsible officer.

(3) Unless the court directs otherwise, the applicant shall serve a copy of the order personally on the person against whom the order is made.

(4) As soon as practicable after an order had been made under paragraph 4, 5, 6 or 7 of Schedule A1, a copy of the order shall be served by the proper officer on—

- (a) the parties;

- (b) the officer of the service or the Welsh family proceedings officer who is obliged to comply with a request under section 11M;
- (c) the responsible officer; and
- (d) in the case of an order made under paragraph 5 of Schedule A1, the responsible officer in the former local justice area.

(5) In this rule, “responsible officer” has the meaning given in paragraph 8(8) of Schedule A1.”.

20. In rule 4.21A, after “section 8 orders” insert “(except those referred to in rule 4.21B(a))”.

21. After rule 4.21A, insert—

**“Order with notice attached: committal**

**4.21B.** CCR Order 29, rule 1 (committal for breach of order or undertaking) shall apply to—

- (a) contact orders within the meaning of section 8(1) of the Children Act 1989 to which a notice has been attached under section 11I of that Act or under section 8(2) of the Children and Adoption Act 2006;
- (b) enforcement orders made under section 11J of the Children Act 1989;
- (c) enforcement orders amended or made pursuant to paragraph 9 of Schedule A1 to the Children Act 1989

as if paragraph (3) were omitted.”.

22. In Appendix 1—

- (a) in the list of forms—
  - (i) in the entry for Form C1, in the third column, for “for an order”, substitute “Children Act 1989 except Section 8 orders and orders related to enforcement of a contact order”;
  - (ii) after the entry for Form C1, in the first column insert “C100”, in the second column “Application”, and in the third column “under the Children Act 1989 for a residence, contact or other section 8 order”; and
  - (iii) after the entry for Form C54 insert the list of forms set out in Schedule 1;
- (b) for Forms C1 and C7, substitute the forms set out in Schedule 2;
- (c) after Form C1, insert Form C100 as set out in Schedule 3;
- (d) in Form C43—
  - (i) immediately after the section headed “The Court orders” insert—
 

“Where—

    - (a) there are no proceedings pending under Part 2 Children Act 1989;
    - (b) an officer of the service or a Welsh family proceedings officer who remains involved with the case is given cause to suspect, whilst this order is in force, that the child concerned is at risk of harm; and
    - (c) as a result that officer makes a risk assessment under section 16A of that Act,

the officer may apply to the court for it to revive the previous proceedings and to consider that risk assessment and give such directions as the court thinks necessary.”; and

(ii) in the section headed “Warning” after “without the leave of the Court”, insert—

“Where a contact order is in force: if you do not comply with this contact order—

- (a) you may be held in contempt of court and be committed to prison or fined; and/or
- (b) the Court may make an order requiring you to undertake unpaid work (“an enforcement order”) and/or an order that you pay financial compensation.”; and

(e) after Form C54, insert the forms in the Schedule 4.

**23.** In Appendix 3—

- (a) in the row beginning “Section 4(1)(c)”, in column (i), after “Schedule 14” insert “or, where rule 4.4A(4) applies, section 8(2)(a) of the Act of 2006”;
- (b) after the row beginning “Section 4(1)(c)”, insert—

“Section 11J or 11O	14 days	Only the person who the applicant alleges has failed to comply with the contact order	Any officer of the service or Welsh family proceedings officer exercising a duty conferred on him by section 11H(2) (monitoring compliance with a contact order)  Where the child was a party to the proceedings in which the contact order was made— (a) the person who was the children’s guardian, guardian ad litem or next friend of the child in those proceedings; or (b) where there was no children’s guardian, guardian ad litem or next friend, the person who was the legal representative of the child
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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.*

in those proceedings.”

; and

(c) after the row beginning “Section 25”, insert—

“Paragraph 4 of Schedule A1	14 days	Only-  the person who was the applicant for the enforcement order, and  where the child was a party to the proceedings in which the enforcement order was made, the child	Any officer of the service or Welsh family proceedings officer exercising a duty conferred on him by section 11M(1) (monitoring compliance with an enforcement order)  and the responsible officer (as defined in section 197 of the Criminal Justice Act 2003(3) as modified by Schedule A1)
Paragraphs 5 to 7 of Schedule A1	14 days	Only the person who was the applicant for the enforcement order	Any officer of the service or Welsh family proceedings officer exercising a duty conferred on him by section 11M(1) (monitoring compliance with an enforcement order)  and the responsible officer (as defined in section 197 of the Criminal Justice Act 2003 as modified by Schedule A1)
Paragraph 9 of Schedule A1	14 days	Only –  the person who the applicant alleges has failed to comply with the unpaid work requirement	Any officer of the service or Welsh family proceedings officer exercising a duty conferred on him by section 11M(1)

(3) 2003 c.44. Section 197 was amended by S.I. 2005/886 and 2008/912 and by sections 6(2) and 149 of and paragraphs 71 and 83 of Schedule 4, and Schedule 28, to the Criminal Justice and Immigration Act 2008 (c.4). Section 197 is modified by paragraphs 1, 2 and 3(1) of Schedule A1 to the Children Act 1989.



	imposed by an enforcement order, and	(monitoring compliance with an enforcement order)
	where the child was a party to the proceedings in which the enforcement order was made, the child	and the responsible officer (as defined in section 197 of the Criminal Justice Act 2003 as modified by Schedule A1)".

**Transitional provision**

24. Where proceedings have been commenced before rule 6(b)(i)(aa) comes into force, the Family Proceedings Rules 1991 shall apply to those proceedings as if rules 6(b)(i)(aa) and (b)(ii) and 22(a)(i) and (ii), (b) and (c) had not been made.

*Mark Potter, P  
Bruce Edgington  
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I allow these Rules

3rd November 2008

*Bridget Prentice*  
Parliamentary Under Secretary of State  
Ministry of Justice