

2009 No. 857 (L. 8)

FAMILY PROCEEDINGS

SUPREME COURT OF ENGLAND AND WALES

COUNTY COURTS, ENGLAND AND WALES

The Family Proceedings (Amendment) (No.2) Rules 2009

<i>Made</i> - - - -	<i>1st April 2009</i>
<i>Laid before Parliament</i>	<i>6th April 2009</i>
<i>Coming into force</i> - -	<i>27th April 2009</i>

The Family Proceedings Rule Committee makes the following Rules in exercise of the powers conferred by section 40(1) and (4)(aa) of the Matrimonial and Family Proceedings Act 1984(a):

Citation and commencement

1. These rules may be cited as the Family Proceedings (Amendment) (No. 2) Rules 2009 and come into force on 27th April 2009.

Amendments to the Family Proceedings Rules 1991

2. The Family Proceedings Rules 1991(b) are amended in accordance with rules 3 to 5 of these rules.

3. In the Arrangement of Rules—

(a) after the entry for rule 10.20, omit the entry “10.20A Communication of information relating to proceedings”; and

(b) after the entry for rule 10.27, insert—

“10.28 Attendance at private hearings

(a) 1984 c.42. Section 40(1) was amended by section 125(3) of and paragraph 50 of Schedule 18 to the Courts and Legal Services Act 1990 (c.41) and section 15(1) of and paragraphs 379 and 380 of Schedule 4 to the Constitutional Reform Act 2005 (c.4) and will be repealed (on a date to be appointed) by section 109(1) of and paragraph 278 of Schedule 8 to, and Schedule 10 to, the Courts Act 2003 (c.39). Subsection (4) was amended by section 10 and paragraph 3 of Schedule 2 to the Civil Procedure Act 1997 (c.12) and section 261 and paragraph 95 of Schedule 27 to the Civil Partnership Act 2004 (c.33). Subsection (4)(aa) was inserted by section 62(5) of the Children Act 2004 (c.31).

(b) S.I. 1991/1247. Relevant amending instruments are S.I. 1993/295, 2003/184, 2005/1976 and 2922, 2007/2187 and 2008/2446.

PART XI

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4. In Part 10—

- (a) in rule 10.20(3), after “3.16(10) and”, for “10.20A” substitute “Part XI”;
- (b) omit rule 10.20A;
- (c) in rule 10.21A(1), after “nothing in rules 10.20 (inspection etc of documents in court)”, for “10.20A (communication of information relating to proceedings)”, substitute “Part XI (communication of information: proceedings relating to children)”; and
- (d) after rule 10.27, insert—

“Attendance at private hearings

10.28.—(1) This rule applies when proceedings are held in private, except in relation to hearings conducted for the purpose of judicially assisted conciliation or negotiation.

(2) For the purposes of these Rules, a reference to proceedings held “in private” means proceedings at which the general public have no right to be present.

(3) When this rule applies no person shall be present during any hearing other than—

- (a) an officer of the court;
- (b) a party to the proceedings;
- (c) a litigation friend for any party, or legal representative instructed to act on that party’s behalf;
- (d) an officer of the service or Welsh family proceedings officer;
- (e) a witness;
- (f) duly accredited representatives of news gathering and reporting organisations; and
- (g) any other person whom the court permits to be present.

(4) At any stage of the proceedings the court may direct that persons within paragraph (3)(f) shall not attend the proceedings or any part of them, where satisfied that—

- (a) this is necessary—
 - (i) in the interests of any child concerned in, or connected with, the proceedings;
 - (ii) for the safety or protection of a party, a witness in the proceedings, or a person connected with such a party or witness; or
 - (iii) for the orderly conduct of the proceedings; or
- (b) justice will otherwise be impeded or prejudiced.

(5) The court may exercise the power in paragraph (4) of its own motion or pursuant to representations made by any of the persons listed in paragraph (6), and in either case having given to any person within paragraph (3)(f) who is in attendance an opportunity to make representations.

(6) At any stage of the proceedings, the following persons may make representations to the court regarding restricting the attendance of persons within paragraph (3)(f) in accordance with paragraph (4)—

- (a) a party to the proceedings;
- (b) any witness in the proceedings;
- (c) where appointed, any children’s guardian;
- (d) where appointed, an officer of the service or Welsh family proceedings officer, on behalf of the child the subject of the proceedings;
- (e) the child, if of sufficient age and understanding.

(7) This rule does not affect any power of the court to direct that witnesses shall be excluded until they are called for examination.

(8) In this rule “duly accredited” refers to accreditation in accordance with any administrative scheme for the time being approved for the purposes of this rule by the Lord Chancellor.”.

5. After Part X, insert—

“PART XI

COMMUNICATION OF INFORMATION: PROCEEDINGS RELATING TO CHILDREN

Application

11.1. The provisions of this Part apply to family proceedings which—

- (a) relate to the exercise of the inherent jurisdiction of the High Court with respect to minors;
- (b) are brought under the Act of 1989; or
- (c) otherwise relate wholly or mainly to the maintenance or upbringing of a minor.

Communication of information: general

11.2.—(1) For the purposes of the law relating to contempt of court, information relating to proceedings held in private (whether or not contained in a document filed with the court) may be communicated—

- (a) where the communication is to—
 - (i) a party;
 - (ii) the legal representative of a party;
 - (iii) a professional legal adviser;
 - (iv) an officer of the service or a Welsh family proceedings officer;
 - (v) the welfare officer;
 - (vi) the Legal Services Commission;
 - (vii) an expert whose instruction by a party has been authorised by the court for the purposes of the proceedings;
 - (viii) a professional acting in furtherance of the protection of children; or

(ix) an independent reviewing officer appointed in respect of a child who is, or has been, subject to proceedings to which this rule applies;

(b) where the court gives permission; or

(c) subject to any direction of the court, in accordance with rules 11.4 to 11.8.

(2) Nothing in this Part permits the communication to the public at large, or any section of the public, of any information relating to the proceedings.

(3) Nothing in rules 11.4 to 11.8 permits the disclosure of an unapproved draft judgment handed down by any court.

Instruction of experts

11.3.—(1) No party may instruct an expert for any purpose relating to proceedings, including to give evidence in those proceedings, without the leave of the court.

(2) Where the leave of the court has not been given under paragraph (1), no evidence arising out of an unauthorised instruction may be introduced without leave of the court.

Communication of information for purposes connected with the proceedings

11.4.—(1) A party or the legal representative of a party, on behalf of and upon the instructions of that party, may communicate information relating to the proceedings to any person where necessary to enable that party—

(a) by confidential discussion, to obtain support, advice or assistance in the conduct of the proceedings;

(b) to engage in mediation or other forms of alternative dispute resolution;

(c) to make and pursue a complaint against a person or body concerned in the proceedings; or

(d) to make and pursue a complaint regarding the law, policy or procedure relating to a category of proceedings to which this Part applies.

(2) Where information is communicated to any person in accordance with paragraph (1)(a) of this rule, no further communication by that person is permitted.

(3) When information relating to the proceedings is communicated to any person in accordance with paragraphs (1)(b),(c) or (d) of this rule—

(a) the recipient may communicate that information to a further recipient, provided that—

(i) the party who initially communicated the information consents to that further communication; and

(ii) the further communication is made only for the purpose or purposes for which the party made the initial communication; and

(b) the information may be successively communicated to and by further recipients on as many occasions as may be necessary to fulfil the purpose for which the information was initially communicated, provided that on each such occasion the conditions in sub-paragraph (a) are met.

Communication of information by a party etc. for other purposes

11.5. A person specified in the first column of the following table may communicate to a person listed in the second column such information as is specified in the third column for the purpose or purposes specified in the fourth column—

A party	A lay adviser, a McKenzie Friend, or a person arranging or providing pro bono legal services	Any information relating to the proceedings	To enable the party to obtain advice or assistance in relation to the proceedings
A party	A health care professional or a person or body providing counselling services for children or families		To enable the party or any child of the party to obtain health care or counselling
A party	The Secretary of State, a McKenzie Friend, a lay adviser or the First-tier Tribunal dealing with an appeal made under section 20 of the Child Support Act 1991(a)		For the purposes of making or responding to an appeal under section 20 of the Child Support Act 1991 or the determination of such an appeal
A party	An adoption panel		To enable the adoption panel to discharge its functions as appropriate
A party	The European Court of Human Rights		For the purpose of making an application to the European Court of Human Rights
A party or any person lawfully in receipt of information	The Children's Commissioner or the Children's Commissioner for Wales		To refer an issue affecting the interests of children to the Children's Commissioner or the Children's Commissioner for Wales
A party, any person lawfully in receipt of information or a proper officer	A person or body conducting an approved research project		For the purpose of an approved research project
A legal representative or a professional legal adviser	A person or body responsible for investigating or determining complaints in relation to legal representatives or professional legal advisers		For the purposes of the investigation or determination of a complaint in relation to a legal representative or a professional legal adviser

(a) 1991 c.48. Section 20 was substituted by section 10 of the Child Support, Pensions and Social Security Act 2000 (c.19) and was amended by section 13(4) of and paragraphs 1 and 14 of Schedule 3 to the Child Maintenance and Other Payments Act 2008 (c.6) and by S.I. 2008/2833.

A legal representative or a professional legal adviser	A person or body assessing quality assurance systems		To enable the legal representative or professional legal adviser to obtain a quality assurance assessment
A legal representative or a professional legal adviser	An accreditation body	Any information relating to the proceedings providing that it does not, or is not likely to, identify any person involved in the proceedings	To enable the legal representative or professional legal adviser to obtain accreditation
A party	A police officer	The text or summary of the whole or part of a judgment given in the proceedings	For the purpose of a criminal investigation
A party or any person lawfully in receipt of information	A member of the Crown Prosecution Service		To enable the Crown Prosecution Service to discharge its functions under any enactment

Communication for the effective functioning of Cafcass and CAFCASS CYMRU

11.6. An officer of the service or a Welsh family proceedings officer, as appropriate, may communicate to a person listed in the second column such information as is specified in the third column for the purpose or purposes specified in the fourth column—

A Welsh family proceedings officer	A person or body exercising statutory functions relating to inspection of CAFCASS CYMRU	Any information relating to the proceedings which is required by the person or body responsible for the inspection	For the purpose of an inspection of CAFCASS CYMRU by a body or person appointed by the Welsh Ministers
An officer of the service or a Welsh family proceedings officer	The General Social Care Council or the Care Council for Wales	Any information relating to the proceedings providing that it does not, or is not likely to, identify any person involved in the proceedings	For the purpose of initial and continuing accreditation as a social worker of a person providing services to Cafcass or CAFCASS CYMRU in accordance with s.13(2) of the Criminal Justice and Courts Services Act 2000 ^(a) or s.36 of the Children Act 2004 ^(b) as the case may be

(a) 2000 c.43.
(b) 2004 c.31.

An officer of the service or a Welsh family proceedings officer	A person or body providing services relating to professional development or training to Cafcass or CAFCASS CYMRU	Any information relating to the proceedings providing that it does not, or is not likely to, identify any person involved in the proceedings without that person's consent	To enable the person or body to provide the services, where the services cannot be effectively provided without such disclosure
An officer of the service or a Welsh family proceedings officer	A person employed by or contracted to Cafcass or CAFCASS CYMRU for the purposes of carrying out the functions referred to in column 4 of this row	Any information relating to the proceedings	Engagement in processes internal to Cafcass or CAFCASS CYMRU which relate to the maintenance of necessary records concerning the proceedings, or to ensuring that Cafcass or CAFCASS CYMRU functions are carried out to a satisfactory standard

Communication to and by Ministers of the Crown and Welsh Ministers

11.7. A person specified in the first column of the following table may communicate to a person listed in the second column such information as is specified in the third column for the purpose or purposes specified in the fourth column—

A party or any person lawfully in receipt of information relating to the proceedings	A Minister of the Crown with responsibility for a government department engaged, or potentially engaged, in an application before the European Court of Human Rights relating to the proceedings	Any information relating to the proceedings of which he or she is in lawful possession	To provide the department with information relevant, or potentially relevant, to the proceedings before the European Court of Human Rights
A Minister of the Crown	The European Court of Human Rights		For the purpose of engagement in an application before the European Court of Human Rights relating to the proceedings
A Minister of the Crown	Lawyers advising or representing the United Kingdom in an application before the European Court of Human Rights relating to the proceedings		For the purpose of receiving advice or for effective representation in relation to the application before the European Court of Human Rights.

A Minister of the crown or a Welsh Minister	Another Minister, or Ministers, of the Crown or a Welsh Minister	For the purpose of notification, discussion and the giving or receiving of advice regarding issues raised by the information in which the relevant departments have, or may have, an interest
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Communication by persons lawfully in receipt of information

11.8.—(1) This rule applies to communications made in accordance with rules 11.5, 11.6 and 11.7 and the reference in this rule to “the table” means the table in the relevant rule.

(2) A person in the second column of the table may only communicate information relating to the proceedings received from a person in the first column for the purpose or purposes—

- (a) for which he received that information; or
- (b) of professional development or training, providing that any communication does not, or is not likely to, identify any person involved in the proceedings without that person’s consent.

Interpretation

11.9. In this Part—

“accreditation body” means—

- (a) The Law Society,
- (b) Resolution, or
- (c) The Legal Services Commission;

“adoption panel” means a panel established in accordance with regulation 3 of the Adoption Agencies Regulations 2005(a) or regulation 3 of the Adoption Agencies (Wales) Regulations 2005(b);

“alternative dispute resolution” means methods of resolving a dispute, including mediation, other than through the normal court process;

“approved research project” means a project of research—

- (a) approved in writing by a Secretary of State after consultation with the President of the Family Division,
- (b) approved in writing by the President of the Family Division, or
- (c) conducted under section 83 of the Act of 1989(c) or section 13 of the Criminal Justice and Court Services Act 2000;

(a) S.I. 2005/389. Relevant amending instrument is S.I. 2005/3482.
 (b) S.I.2005/1313, to which there are amendments not relevant to these Rules.
 (c) Section 83 was amended by section 109 of and paragraph 336 of Schedule 8 to the Courts Act 2003 (c.39), section 116 of and paragraph 14 of Schedule 4 to the Care Standards Act 2000 (c.14), section 54 of the Children Act 2004 (c.31), section 33 of the Children and Young Persons Act 2008 (c.23) (in relation to Wales, from a date to be appointed) and by S.I. 2005/2078.

“body assessing quality assurance systems” includes—

- (a) The Law Society,
- (b) The Legal Services Commission, or
- (c) The General Council of the Bar;

“body or person responsible for investigating or determining complaints in relation to legal representatives or professional legal advisers” means—

- (a) The Law Society,
- (b) The General Council of the Bar,
- (c) The Institute of Legal Executives, or
- (d) The Legal Services Ombudsman;

“Cafcass” has the meaning assigned to it by section 11 of the Criminal Justice and Courts Services Act 2000;

“CAFCASS CYMRU” means the part of the Welsh Assembly Government exercising the functions of Welsh Ministers under Part 4 of the Children Act 2004(a);

“criminal investigation” means an investigation conducted by police officers with a view to it being ascertained—

- (a) whether a person should be charged with an offence, or
- (b) whether a person charged with an offence is guilty of it;

“health care professional” means—

- (a) a registered medical practitioner,
- (b) a registered nurse or midwife,
- (c) a clinical psychologist, or
- (d) a child psychotherapist;

“independent reviewing officer” means a person appointed in respect of a child in accordance with regulation 2A of the Review of Children’s Cases Regulations 1991(b), or regulation 3 of the Review of Children’s Cases (Wales) Regulations 2007(c);

“lay adviser” means a non-professional person who gives lay advice on behalf of an organisation in the lay advice sector;

“legal representative” means a barrister or a solicitor, solicitor’s employee or other authorised litigator (as defined in the Courts and Legal Services Act 1990) who has been instructed to act for a party in relation to the proceedings;

“McKenzie Friend” means any person permitted by the court to sit beside an unrepresented litigant in court to assist that litigant by prompting, taking notes and giving him advice;

“professional acting in furtherance of the protection of children” includes—

- (a) an officer of a local authority exercising child protection functions,
- (b) a police officer who is—
 - (i) exercising powers under section 46 of the Act of 1989, or
 - (ii) serving in a child protection unit or a paedophile unit of a police force,
- (c) any professional person attending a child protection conference or review in relation to a child who is the subject of the proceedings to which the information relates, or
- (d) an officer of the National Society for the Prevention of Cruelty to Children;

(a) Section 38 was repealed by sections 156 and 184 of and Schedule 18 to the Education and Inspections Act 2006 (c.40).
(b) S.I. 1991/895. Relevant amending instruments are S.I. 2004/1419 and 2007/307.
(c) S.I. 2007/307.

“professional legal adviser” means a barrister or a solicitor, solicitor’s employee or other authorised litigator (as defined in the Courts and Legal Services Act 1990) who is providing advice to a party but is not instructed to represent that party in the proceedings;

“social worker” has the meaning assigned to it by section 55 of the Care Standards Act 2000(a);

“welfare officer” means a person who has been asked to prepare a report under section 7(1)(b) of the Act of 1989(b).”.

*Mark Potter, P
Duncan Adam
Angela Finnerty
Jane Probyn
David Salter
Philip Waller*

I allow these Rules

1st April 2009

Bridget Prentice
Parliamentary Under Secretary of State
Ministry of Justice

(a) 2000 c.14. Section 55(2) was amended by section 139(1) and paragraphs 103 and 115 of Schedule 3 to the Adoption and Children Act 2002 (c.38).

(b) Section 7(1)(b) was amended by section 74 of and paragraphs 87 and 88 of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c.43) and section 40 of and paragraphs 5 and 6 of Schedule 3 to the Children Act 2004 (c.31).

EXPLANATORY NOTE

(This note is not part of the Rules)

These rules amend the Family Proceedings Rules 1991 (“the 1991 Rules”) in relation to the attendance of persons, in particular representatives of the media, during family proceedings heard in private and the communication of information regarding proceedings relating to children, giving effect, for family proceedings in the High Court and county courts, to policy changes arising out of the Ministry of Justice consultation *Confidence and confidentiality: openness in family courts – a new approach* (Cm 7131) and outlined in the response to consultation *Family Justice in View* (Cm 7502).

Rule 4 inserts into the 1991 Rules a new rule 10.28, which makes provision governing who may be present during a hearing in proceedings which are held in private (“in private” meaning when the general public have no right to be present). This in particular allows for duly accredited media representatives to be present, subject to a power for the court to direct their exclusion for all or a part of the proceedings for one of the reasons specified in paragraph (4) of the new rule.

Rule 5 inserts into the 1991 Rules a new Part XI, which replaces rule 10.20A, dealing with the communication of information relating to proceedings relating to children. New rule 11.1 defines the proceedings in relation to which the new rules apply, new rule 11.9 provides for interpretation of terms used in the new rules, and new rules 11.2 to 11.8 provide for communication of information. New rule 11.2 lists when it is permissible for the purposes of the law relating to contempt of court to communicate information: communication is allowed as a general rule to parties and their legal representatives and certain associated officers and professionals; or in more specific instances where the court gives permission, or (subject to any direction of the court) in accordance with rules 11.4 to 11.8. Paragraph (2) establishes that general publication, to the public at large or any section of the public, is not permitted by these rules; and paragraph (3) that where an unapproved draft judgment is handed down by a court, rules 11.4 to 11.8 do not allow for its disclosure. New rule 11.3 prohibits use of the rules so as to instruct an expert without the leave of the court and bars use without such leave of any evidence arising out of unauthorised instruction.

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STATUTORY INSTRUMENTS

2009 No. 857 (L. 8)

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COUNTY COURTS, ENGLAND AND WALES

The Family Proceedings (Amendment) (No.2) Rules 2009

£5.50