

2007 No. 2187 (L. 17)

FAMILY PROCEEDINGS

SUPREME COURT OF ENGLAND AND WALES

COUNTY COURTS, ENGLAND AND WALES

The Family Proceedings (Amendment) (No.2) Rules 2007

<i>Made</i> - - - -	<i>23rd July 2007</i>
<i>Laid before Parliament</i>	<i>26th July 2007</i>
<i>Coming into force</i> - -	<i>1st October 2007</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 2007 and shall come into force on 1st October 2007.

Amendments to the Family Proceedings Rules 1991

2. The Family Proceedings Rules 1991(b) shall be amended in accordance with the provisions of these Rules.

3. In the Arrangement of Rules—

(a) after the entry for rule 4.11A insert—

“4.11AA Additional powers and duties of officers of the service and Welsh family proceedings officers: family assistance order reports and risk assessments”;

(b) after the entry for rule 4.13 insert—

“4.13A Local authority officers preparing family assistance order reports ”; and

(c) after the entry for rule 4.17A insert—

“4.17AA Service of risk assessments ”.

4. In rule 2.9(2)(a), for the words “person under disability” substitute “child or protected party”.

(a) 1984 c.42; section 40(1) was amended by the Courts and Legal Services Act 1990 (c.41), Schedule 18, paragraph 50, the Children Act 2004 (c.31), section 62(5) and the Constitutional Reform Act 2005 (c.4), Schedule 4, paragraphs 379 and 380 and will be repealed (on a date to be appointed) by the Courts Act 2003 (c.39), Schedule 8, paragraph 278 and Schedule 10.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) S.I. 1991/1247, amended by S.I. 1991/2113, S.I. 1992/2067, S.I. 1994/3155, S.I. 1997/1056, S.I. 2000/774, S.I. 2001/821, S.I. 2003/2839, S.I. 2005/559, S.I. 2005/1976 and S.I. 2005/2922; there are other amending instruments but none is relevant.

5. In rule 2.24(1)(a), for the words “person under disability” substitute “child or protected party within the meaning of rule 9.1”.

6. In rule 3.4(4)(c)—

- (a) for the word “minor” substitute “child”; and
- (b) for the word “patient” substitute “protected party”.

7. In rule 4.1—

- (a) in paragraph (1)—
 - (i) after the definition of “emergency protection order” insert—
““family assistance order report” means a report to the court pursuant to a direction in a family assistance order under section 16(6);”(a); and
 - (ii) after the definition of “recovery order” insert—
““risk assessment” has the meaning assigned to it by section 16A(3);”(b) and
- (b) in paragraph (2)(c), delete “16(6);”.

8. In rule 4.5—

- (a) in paragraph (3)—
 - (i) after “children’s guardian” delete “or” and insert “;”;
 - (ii) after “welfare officer” delete “or” and insert “;”;
 - (iii) after “children and family reporter” insert “, or the officer of the service or the Welsh family proceedings officer who is preparing or has prepared a family assistance order report or a risk assessment”;
- (b) in paragraph (4)—
 - (i) in sub-paragraph (a)—
 - (aa) for “or” the third time it appears substitute “, the”; and
 - (bb) after “children and family reporter” insert “or the officer of the service or the Welsh family proceedings officer who is preparing or has prepared a family assistance order report or a risk assessment”; and
 - (ii) in sub-paragraph (b)—
 - (aa) after “the children’s guardian” delete “and” and insert “;”;
 - (bb) after “welfare officer” delete “or” and insert “;”;
 - (cc) after “children and family reporter” insert “and the officer of the service or the Welsh family proceedings officer who is preparing or has prepared a family assistance order report or a risk assessment”.

9. In rule 4.11—

- (a) in paragraph (1) after “section 7(1)(a)” delete “or” and insert “, section 16(6), section 16A”; and
- (b) in paragraph (3) after “4.11A” insert “, 4.11AA”.

10. After rule 4.11A insert the following rule—

“Additional powers and duties of officers of the service and Welsh family proceedings officers: family assistance order reports and risk assessments

4.11AA.—(1) This rule applies where an officer of the service or a Welsh family proceedings officer is preparing or has prepared—

(a) Section 16(6) Children Act 1989 (c.41) was amended by section 6(5) Children and Adoption Act 2006 (c.20).
(b) Section 16A Children Act 1989 was inserted by section 7 Children and Adoption Act 2006.

- (a) a family assistance order report; or
- (b) a risk assessment.

(2) When an officer of the service or a Welsh family proceedings officer is preparing a family assistance order report or a risk assessment he must consider whether—

- (a) to notify the child of such of the contents of the report or assessment as he considers appropriate to the age and understanding of the child;
- (b) to recommend in the report or assessment that the court lists a hearing for the purposes of considering the report or assessment;
- (c) it is in the best interests of the child for the child to be made a party to the proceedings.

(3) If the officer of the service or the Welsh family proceedings officer decides to notify the child of any of the contents of the report or assessment, he must explain those contents to the child in a manner appropriate to the child's age and understanding.

(4) If the officer of the service or the Welsh family proceedings officer considers that the child should be made a party to the proceedings he must notify the court of his opinion together with the reasons for that opinion.

(5) If the officer of the service or the Welsh family proceedings officer considers that the court should exercise its discretion under rule 4.17AA(2) in relation to service of a risk assessment, he must state in the risk assessment—

- (a) the way in which he considers the court should exercise its discretion (including his view on the length of any suggested delay in service); and
- (b) his reasons for reaching his view.

(6) The officer of the service or the Welsh family proceedings officer must file the report or assessment with the court—

- (a) at or by the time directed by the court;
- (b) in the absence of any such direction, at least 14 days before a relevant hearing; or
- (c) where there has been no direction from the court and no relevant hearing is listed, as soon as possible following completion of the report or assessment.

(7) In paragraph (6), a hearing is a relevant hearing if the proper officer has given the officer of the service or the Welsh family proceedings officer notice that the report or assessment is to be considered at it.

(8) When an officer of the service or a Welsh family proceedings officer prepares a family assistance order report, he shall, as soon as practicable, serve copies of that report on—

- (a) each party; and
- (b) any local authority that is preparing or has prepared a report under section 14A(8) or (9).

(9) At any hearing where a family assistance order report or a risk assessment is considered, any party may question the officer of the service or the Welsh family proceedings officer about the report or assessment.”.

11. After rule 4.13 insert the following rule—

“Local authority officers preparing family assistance order reports

4.13A. Where a family assistance order directs a local authority officer to prepare a family assistance order report, rules 4.5, 4.13, 4.14(1)(a)(i) and (2), 4.15(2) and 4.17(1) shall apply to, or in respect of, the local authority officer preparing a family assistance order report as they would apply to, or in respect of, a welfare officer preparing a report in accordance with section 7(1)(b). ”.

12. In rule 4.14—

- (a) for paragraph (1) substitute—
 - “(1) In this rule, “party” includes the children’s guardian and, where a request or direction is or are concerned with—
 - (a) a report under—
 - (i) section 7, the welfare officer or children and family reporter;
 - (ii) section 14A(8) or (9), the local authority preparing that report;
 - (b) a family assistance order report, the officer of the service or the Welsh family proceedings officer who is preparing the report;
 - (c) a risk assessment, the officer of the service or the Welsh family proceedings officer who is preparing the assessment.”;
- (b) in paragraph (2)(k), after “considered” insert—
 - “;
 - (l) the preparation of family assistance order reports;
 - (m) listing a hearing for the purposes of considering the contents of a risk assessment”;
 - and
- (c) after paragraph (9) insert—
 - “(9A) After the filing of a family assistance order report or a risk assessment, the court may direct that the officer of the service or the Welsh family proceedings officer attend any hearing at which the report or assessment is to be considered.”.

13. In rule 4.15(2)(ii)—

- (a) for “or” the third time it appears substitute “, ”;
- (b) for “or” the fourth time it appears substitute “, the”; and
- (c) after “children and family reporter” insert “or the officer of the service or the Welsh family proceedings officer who is preparing or has prepared a family assistance order report or a risk assessment”.

14. In rule 4.17(1)—

- (a) for “or” the third time it appears substitute “, any”; and
- (b) after “children and family reporter” insert “, any officer of the service or any Welsh family proceedings officer who is preparing or has prepared a family assistance order report or a risk assessment”.

15. After rule 4.17A insert the following rule—

“Service of risk assessments

4.17AA.—(1) Where an officer of the service or a Welsh family proceedings officer has filed a risk assessment with the court, subject to paragraph (2), the proper officer shall as soon as practicable serve copies of the risk assessment on—

- (a) each party; and
- (b) any local authority that is preparing or has prepared a report under section 14A(8) or (9).

(2) Before serving the risk assessment, the court must consider whether, in order to prevent a risk of harm to the child, it is necessary for—

- (a) information to be deleted from a copy of the risk assessment before that copy is served on a party; or
- (b) service of a copy of the risk assessment (whether with information deleted from it or not) on a party to be delayed for a specified period,

and may direct accordingly.”.

16.—(1) In rule 9.1(1)—

(a) omit the definitions of –

- (i) “patient”,
- (ii) “person under disability”, and
- (iii) “Part VII”; and

(b) in the appropriate alphabetical position, insert –

““the 2005 Act” means the Mental Capacity Act 2005(a);

“child” means a person under 18;

“deputy” has the meaning given in section 16(2)(b) of the 2005 Act;

“enduring power of attorney” has the meaning given in Schedule 4 to the 2005 Act;

“lasting power of attorney” has the meaning given in section 9 of the 2005 Act;

“protected party” means a party, or an intended party, who lacks capacity (within the meaning of the 2005 Act) to conduct the proceedings;”.

(2) In rules 9.1(2) and (3), for each reference to “minors” substitute a reference to “children”.

17.—(1) In the title of rule 9.2, for the words “Person under disability” substitute “Child or protected party”.

(2) In rule 9.2—

(a) for each reference to “person under disability” substitute a reference to “child or protected party”;

(b) for each reference to “patient” substitute a reference to “protected party”;

(c) for each reference to “minor” substitute a reference to “child”; and

(d) for each reference to “is authorised under Part VII” substitute a reference to “has authority as a deputy”.

(3) In rule 9.2(3), for the word “authority”, substitute “power”.

(4) In rule 9.2(4), for the words “authorised under Part VII”, substitute “with authority as a deputy”.

(5) In rule 9.2(7) –

(a) in paragraph (b) –

(i) omit the words “under disability”, and

(ii) for the words “the order or other authorisation made or given under Part VII”, substitute “the document conferring his authority to act”; and

(b) in paragraph (c)(i) –

(i) omit the words “under disability”, and

(ii) for the words “authorised as aforesaid”, substitute “with authority as a deputy to conduct the proceedings in the name of a protected party or on his behalf”.

18.—(1) In the title of rule 9.2A, for the word “minors” substitute “children”.

(2) In rule 9.2A, for each reference to “minor”, substitute a reference to “child”.

19.—(1) In the title of rule 9.3, for the words “person under disability” substitute “child or protected party”.

(2) In rule 9.3—

(a) for each reference to “person under disability” substitute a reference to “child or protected party”; and

(b) for each reference to “patient” substitute a reference to “protected party”.

(a) 2005 c.9.

(3) In rule 9.3(1)(a), for the word “minor” substitute “child”.

(4) For rule 9.3(1)(b)(i), substitute –

“(i) on the person (if any) who is the attorney of a registered enduring power of attorney, donee of a lasting power of attorney or deputy of the protected party, or”.

(5) In rule 9.3(1)(b)(ii), for the words “person so authorised” substitute “attorney of a registered enduring power of attorney, donee of a lasting power of attorney or deputy of the protected party”.

20.—(1) Rule 10.20A is amended as follows.

(2) In the table in paragraph (3), after the entry relating to communication of information from a party to a health care professional or a person or body providing counselling services for children or families insert—

A party	The Secretary of State, a McKenzie Friend, a lay adviser or an appeal 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.

(3) In paragraph (5) after the definition of “accreditation body” insert—

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

21. In rule 10.21A—

(a) the existing paragraph shall stand as paragraph (1); and

(b) after paragraph (1) insert—

“(2) For the purposes of the law relating to contempt of court, information relating to ancillary relief proceedings held in private may be communicated, subject to any direction of the court, by a party to the proceedings to—

(a) the Secretary of State;

(b) a McKenzie Friend or a lay adviser; or

(c) an appeal tribunal dealing with an appeal made under section 20 of the Child Support Act 1991

for the purposes of making or responding to an appeal under section 20 of the Act of 1991 or the determination of such an appeal.

(3) For the purposes of this rule the definitions of “McKenzie Friend” and “lay adviser” in rule 10.20A apply.”.

22. In Appendix 1, in form C42 (family assistance order)—

(a) immediately after the section headed “The Court directs” insert—

“Where—

(a) 1991 c.48; section 20 as originally enacted was substituted by the Social Security Act 1998 (c.14); and was further substituted by the Child Support, Pensions and Social Security Act 2000 (c.19); and modified by the Family Proceedings Appeals (Jurisdiction of Courts) Order 1993 S.I. 1993/961.

(b) S.I. 2005/389.

(c) S.I. 2005/1313.

- (a) there are no proceedings pending under Part 2 Children Act 1989;
- (b) the officer of the service / Welsh family proceedings officer made available under this order 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, the 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

- (b) for “6 months” substitute “12 months”.

23. In Appendix 2, in paragraph 4(b), for the words “person under disability” substitute “child or protected party within the meaning of rule 9.1”.

24. In Appendix 3, column (i), in the row which begins “Section 4(1)(c)”, omit “16(6)”.

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I allow these Rules

23rd July 2007

Jack Straw
Lord Chancellor

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Family Proceedings Rules 1991 (“the FPR 1991”) in relation to (a) the coming into force of sections 6 and 7 of the Children and Adoption Act 2006 (c.20) (“the 2006 Act”) (b) the coming into force of the Mental Capacity Act 2005 (c.9) (“the 2005 Act”) and (c) the communication of information relating to proceedings.

The Children and Adoption Act 2006

Section 6 of the 2006 Act amends section 16 of the Children Act 1989 (c.41) (“the 1989 Act”) to, inter alia, make provision for a family assistance order to direct the officer appointed under that order to prepare a report to the court on such matters relating to an order under section 8 of the 1989 Act as the court may require. Section 7 of the 2006 Act inserts a new section 16A in the 1989 Act to make provision for an officer of the service or a Welsh family proceedings officer to make a risk assessment in specified circumstances where he suspects that a child is at risk of harm.

Rule 7 amends rule 4.1 of the FPR 1991 to insert the new defined terms “family assistance order report” and “risk assessment”.

Rule 8, 9, 12, 13 and 14 amend various rules in the FPR 1991 to ensure that those rules apply to officers of the service or Welsh family proceedings officers preparing family assistance order reports or risk assessments. Rule 10 inserts a new rule 4.11AA in the FPR 1991 to make provision for additional powers and duties to apply to such officers.

Rule 11 inserts a new rule 4.13A in the FPR 1991 to ensure that all rules which apply to, or in respect of, local authority officers preparing section 7 reports apply equally to, or in respect of, local authority officers preparing family assistance order reports.

Rule 15 inserts a new rule 4.17AA in the FPR 1991 to make provision for service of risk assessments by the court.

Rule 22 amends the standard form of family assistance order (form C42) inter alia to provide that, where there are no proceedings pending, an officer of the service or a Welsh family proceedings officer who makes a risk assessment has the ability to apply to the court to revive the previous proceedings and to consider the risk assessment.

Rule 24 makes a consequential amendment in relation to relation to family assistance orders.

The Mental Capacity Act 2005

Rules 5, 16 to 19 and 23 make minor amendments to the FPR 1991 that are consequential upon the 2005 Act coming into force. These rules amend terms and references in line with terms and references used in the 2005 Act.

Communication of information in relation to proceedings

Rule 20 amends the table in rule 10.20A(3) of the FPR 1991 to enable a party to communicate any information relating to proceedings caught by rule 10.20A to an appeal tribunal under section 20 of the Child Support Act 1991 (c.48) (“the 1991 Act”), a McKenzie Friend, a lay adviser or the Secretary of State; and to an adoption panel to enable it to discharge its functions. A definition of an adoption panel is inserted in to paragraph (5) of rule 10.20A.

Rule 21 amends rule 10.21A of the FPR 1991 to enable a party to communicate any information relating to ancillary relief proceedings to an appeal tribunal under section 20 of the 1991 Act, a McKenzie Friend, a lay adviser or the Secretary of State.

£3.00

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E1156 8/2007 171156T 19585