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STATUTORY INSTRUMENTS

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**2010 No. 2955**

**The Family Procedure Rules 2010**

**PART 4**

**GENERAL CASE MANAGEMENT POWERS**

**The court's general powers of management**

**4.1.**—(1) In this Part, “statement of case” means the whole or part of, an application form or answer.

(2) The list of powers in this rule is in addition to any powers given to the court by any other rule or practice direction or by any other enactment or any powers it may otherwise have.

(3) Except where these rules provide otherwise, the court may—

- (a) extend or shorten the time for compliance with any rule, practice direction or court order (even if an application for extension is made after the time for compliance has expired);
- (b) make such order for disclosure and inspection, including specific disclosure of documents, as it thinks fit;
- (c) adjourn or bring forward a hearing;
- (d) require a party or a party's legal representative to attend the court;
- (e) hold a hearing and receive evidence by telephone or by using any other method of direct oral communication;
- (f) direct that part of any proceedings be dealt with as separate proceedings;
- (g) stay<sup>(GL)</sup> the whole or part of any proceedings or judgment either generally or until a specified date or event;
- (h) consolidate proceedings;
- (i) hear two or more applications on the same occasion;
- (j) direct a separate hearing of any issue;
- (k) decide the order in which issues are to be heard;
- (l) exclude an issue from consideration;
- (m) dismiss or give a decision on an application after a decision on a preliminary issue;
- (n) direct any party to file and serve an estimate of costs; and
- (o) take any other step or make any other order for the purpose of managing the case and furthering the overriding objective.

(Rule 21.1 explains what is meant by disclosure and inspection.)

(4) When the court makes an order, it may—

- (a) make it subject to conditions, including a condition to pay a sum of money into court; and
- (b) specify the consequence of failure to comply with the order or a condition.

(5) Where the court gives directions it will take into account whether or not a party has complied with any relevant pre-action protocol<sup>(GL)</sup>.

(6) A power of the court under these rules to make an order includes a power to vary or revoke the order.

(7) Any provision in these rules—

(a) requiring or permitting directions to be given by the court is to be taken as including provision for such directions to be varied or revoked; and

(b) requiring or permitting a date to be set is to be taken as including provision for that date to be changed or cancelled.

(8) The court may not extend the period within which a section 89 order must be made.

### **Court officer's power to refer to the court**

**4.2.** Where a step is to be taken by a court officer—

(a) the court officer may consult the court before taking that step;

(b) the step may be taken by the court instead of the court officer.

### **Court's power to make order of its own initiative**

**4.3.—**(1) Except where an enactment provides otherwise, the court may exercise its powers on an application or of its own initiative.

(Part 18 sets out the procedure for making an application.)

(2) Where the court proposes to make an order of its own initiative—

(a) it may give any person likely to be affected by the order an opportunity to make representations; and

(b) where it does so it must specify the time by and the manner in which the representations must be made.

(3) Where the court proposes—

(a) to make an order of its own initiative; and

(b) to hold a hearing to decide whether to make the order,

it must give each party likely to be affected by the order at least 5 days' notice of the hearing.

(4) The court may make an order of its own initiative without hearing the parties or giving them an opportunity to make representations.

(5) Where the court has made an order under paragraph (4)—

(a) a party affected by the order may apply to have it set aside<sup>(GL)</sup>, varied or stayed<sup>(GL)</sup>; and

(b) the order must contain a statement of the right to make such an application.

(6) An application under paragraph (5)(a) must be made—

(a) within such period as may be specified by the court; or

(b) if the court does not specify a period, within 7 days beginning with the date on which the order was served on the party making the application.

(7) If the High Court or a county court of its own initiative strikes out a statement of case or dismisses an application (including an application for permission to appeal) and it considers that the application is totally without merit—

(a) the court's order must record that fact; and

- (b) the court must at the same time consider whether it is appropriate to make a civil restraint order.

#### **Power to strike out a statement of case**

**4.4.**—(1) Except in proceedings to which Parts 12 to 14 apply, the court may strike out<sup>(GL)</sup> a statement of case if it appears to the court—

- (a) that the statement of case discloses no reasonable grounds for bringing or defending the application;
- (b) that the statement of case is an abuse of the court’s process or is otherwise likely to obstruct the just disposal of the proceedings;
- (c) that there has been a failure to comply with a rule, practice direction or court order; or
- (d) in relation to applications for matrimonial and civil partnership orders and answers to such applications, that the parties to the proceedings consent.

(2) When the court strikes out a statement of case it may make any consequential order it considers appropriate.

(3) Where—

- (a) the court has struck out an applicant’s statement of case;
- (b) the applicant has been ordered to pay costs to the respondent; and
- (c) before paying those costs, the applicant starts another application against the same respondent, arising out of facts which are the same or substantially the same as those relating to the application in which the statement of case was struck out,

the court may, on the application of the respondent, stay<sup>(GL)</sup> that other application until the costs of the first application have been paid.

(4) Paragraph (1) does not limit any other power of the court to strike out<sup>(GL)</sup> a statement of case.

(5) If the High Court or a county court strikes out an applicant’s statement of case and it considers that the application is totally without merit—

- (a) the court’s order must record that fact; and
- (b) the court must at the same time consider whether it is appropriate to make a civil restraint order.

#### **Sanctions have effect unless defaulting party obtains relief**

**4.5.**—(1) Where a party has failed to comply with a rule, practice direction or court order, any sanction for failure to comply imposed by the rule, practice direction or court order has effect unless the party in default applies for and obtains relief from the sanction.

(Rule 4.6 sets out the circumstances which the court may consider on an application to grant relief from a sanction.)

(2) Where the sanction is the payment of costs, the party in default may only obtain relief by appealing against the order for costs.

(3) Where a rule, practice direction or court order—

- (a) requires a party to do something within a specified time; and
- (b) specifies the consequence of failure to comply,

the time for doing the act in question may not be extended by agreement between the parties.

### **Relief from sanctions**

**4.6.**—(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order the court will consider all the circumstances including—

- (a) the interests of the administration of justice;
- (b) whether the application for relief has been made promptly;
- (c) whether the failure to comply was intentional;
- (d) whether there is a good explanation for the failure;
- (e) the extent to which the party in default has complied with other rules, practice directions, court orders and any relevant pre-action protocol<sup>(GL)</sup>;
- (f) whether the failure to comply was caused by the party or the party's legal representative;
- (g) whether the hearing date or the likely hearing date can still be met if relief is granted;
- (h) the effect which the failure to comply had on each party; and
- (i) the effect which the granting of relief would have on each party or a child whose interest the court considers relevant.

(2) An application for relief must be supported by evidence.

### **General power of the court to rectify matters where there has been an error of procedure**

**4.7.** Where there has been an error of procedure such as a failure to comply with a rule or practice direction—

- (a) the error does not invalidate any step taken in the proceedings unless the court so orders; and
- (b) the court may make an order to remedy the error.

### **Power of the court to make civil restraint orders**

**4.8.** Practice Direction 4B sets out—

- (a) the circumstances in which the High Court or a county court has the power to make a civil restraint order against a party to proceedings;
- (b) the procedure where a party applies for a civil restraint order against another party; and
- (c) the consequences of the court making a civil restraint order.