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STATUTORY INSTRUMENTS

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**2010 No. 786**

**The Family Proceedings (Amendment) Rules 2010**

**Amendments to the Family Proceedings Rules 1991**

5. After Part III insert—

**“PART IIIA**

**APPLICATIONS FOR ORDERS PREVENTING AVOIDANCE  
UNDER SECTION 32L OF THE CHILD SUPPORT ACT 1991**

**Scope of this Part**

**3A.1** Subject to rule 3A.7, the rules in this Part apply to applications made under section 32L(1) and (2) of the Act of 1991.

**Interpretation**

**3A.2** In this Part—

“child support maintenance” has the meaning assigned to it in section 3(6) of the Act of 1991;

“reviewable disposition” has the meaning assigned to it in section 32L(5) of the Act of 1991.

**Application of CPR**

**3A.3** Subject to the provisions of this Part, CPR Part 8 (alternative procedure for claims) and CPR rules 31.17 to 31.19 apply as appropriate with any necessary modifications to proceedings in this Part.

**Where and how to start proceedings**

**3A.4.—**(1) The application shall be made to the High Court by originating summons out of—

(a) the principal registry; or

(b) any district registry.

(2) The application may be heard by—

(a) a judge;

(b) a district judge of the principal registry; or

(c) if directed by a judge, a district judge in a district registry.

(3) Unless the court directs otherwise, the application shall—

(a) include the following information—

- (i) the name and address of the person who owes child support maintenance;
  - (ii) the amount of outstanding child support maintenance and the period during which that amount has been outstanding;
  - (iii) details of the calculation of the amount of outstanding child support maintenance;
  - (iv) any steps taken to date to enforce payment of the amount of outstanding child support maintenance; and
  - (v) in the case of applications made without notice, the reasons why notice has not been given;
- (b) where the application relates to land—
- (i) state whether the title to the land is registered or unregistered and, if registered, the Land Registry title number; and
  - (ii) give particulars, as far as known to the applicant, of any mortgagee of the land or any other interest in the land;
- (c) in the case of an application under section 32L(2) of the Act of 1991, the name and address of the person in whose favour the reviewable disposition is alleged to have been made; and
- (d) state the facts relied on in support of the application including—
- (i) in the case of an application under section 32L(1) of the Act of 1991, the identity of the proposed disposition or other dealing with property which would have the consequence of making ineffective a step that has been or may be taken to recover the amount of outstanding child support maintenance;
  - (ii) in the case of an application under section 32L(2) of the Act of 1991, the identity of the disposition which is alleged to be reviewable and has had the consequence of making ineffective a step taken, or which may have been taken, to recover the amount of outstanding child support maintenance.

(4) Where the Commission is not relying on evidence to give rise to the presumption under section 32L(7) of the Act of 1991 (that the person who disposed of or is about to dispose of or deal with property did so or, as the case may be is about to do so, with the intention of avoiding payment of child support maintenance) then the Commission shall give other evidence supporting the person's intention of avoiding such payment.

### **Who the parties are**

**3A.5.—**(1) The applicant in the proceedings is the Commission and the respondent is the person who has failed to pay child support maintenance.

- (2) The court may at any time direct that—
- (a) any person be made a party to proceedings; or
  - (b) a party be removed from the proceedings.

### **Service of the application**

**3A.6.—**(1) The applicant shall serve the application, a copy of any sworn statement in support and the acknowledgement of service on—

- (a) any respondent;

(b) the person in whose favour the reviewable disposition is alleged to have been made; and

(c) such other persons as the court directs.

(2) Where an application includes an application relating to land, the applicant shall serve a copy of the application on any—

(a) mortgagee;

(b) trustee of a trust of land or settlement; and

(c) other person who has an interest in the land,

of whom particulars are given in the application.

(3) Any person served under paragraph (2) may make a request to the court in writing, within 14 days beginning with the date of service of the application, for a copy of the applicant's sworn statement in support of the application.

(4) Any person who—

(a) is served with copies of the application and the applicant's sworn statement in support of the application under paragraph (1); or

(b) receives a copy of the applicant's sworn statement in support of the application following a request under paragraph (3),

may within 14 days beginning with the date of service or receipt file a statement in answer.

(5) A statement in answer filed under paragraph (4) shall be sworn to be true.

#### **Applications without notice**

**3A.7.—**(1) This rule applies to an application under section 32L(1) of the Act of 1991.

(2) The court may grant an application made without notice if it appears to the court that there are good reasons for not giving notice.

(3) If the applicant makes an application without giving notice, the sworn statement in support of the application shall state the reasons why notice has not been given.

(4) If the court grants an application under paragraph (2) —

(a) the order shall include a provision allowing any respondent to apply to the court for the order to be reconsidered as soon as just and convenient at a full hearing; and

(b) the applicant shall, as soon as reasonably practicable, serve upon each respondent a copy of the order and copies of the application and sworn statement in support of the application.”.