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STATUTORY INSTRUMENTS

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**2011 No. 1329**

**The Magistrates' Courts (Enforcement or  
Variation of Orders Made in Family Proceedings  
and Miscellaneous Provisions) Rules 2011**

**PART 2**

**GENERAL PROVISION**

**CHAPTER 1**

**PROCEEDINGS WHERE THE FPR ARE NOT APPLIED**

**Application of this Chapter**

**4.** This Chapter applies in respect of Parts 3 and 4, rule 54, Chapter 2 of Part 5 and rules 73, 77 and 79.

**The overriding objective**

**5.—(1)** The provisions to which this Part applies have the overriding objective of enabling the court to deal with cases justly, having regard to any welfare issues involved.

(2) Dealing with a case justly includes, so far as is practicable—

- (a) ensuring that it is dealt with expeditiously and fairly;
- (b) dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues;
- (c) ensuring that the parties are on an equal footing;
- (d) saving expense; and
- (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

**Application by the court of the overriding objective**

- 6.** The court must seek to give effect to the overriding objective when it—
- (a) exercises any power given to it by the provisions to which this Part applies; or
  - (b) interprets any such provision.

**Duty of the parties**

- 7.** The parties are required to help the court to further the overriding objective.

### **Court's duty to manage cases**

- 8.—**(1) The court must further the overriding objective by actively managing cases.
- (2) Active case management includes—
- (a) encouraging the parties to co-operate with each other in the conduct of the proceedings;
  - (b) identifying at an early stage—
    - (i) the issues; and
    - (ii) who should be a party to the proceedings;
  - (c) deciding promptly—
    - (i) which issues need full investigation and hearing and which do not; and
    - (ii) the procedure to be followed in the case;
  - (d) deciding the order in which issues are to be resolved;
  - (e) encouraging the parties to use an alternative dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure;
  - (f) helping the parties to settle the whole or part of the case;
  - (g) fixing timetables or otherwise controlling the progress of the case;
  - (h) considering whether the likely benefits of taking a particular step justify the cost of taking it;
  - (i) dealing with as many aspects of the case as it can on the same occasion;
  - (j) dealing with the case without the parties needing to attend at court;
  - (k) making use of technology; and
  - (l) giving directions to ensure that the case proceeds quickly and efficiently.

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

- 9.—**(1) In this rule—
- “disclosure” means stating that a document exists or has existed;
  - “hearing” includes a directions appointment;
  - “inspection” of a document occurs when a party is permitted to inspect a document disclosed by another person.
- (2) For the purposes of the references to disclosure and inspection in this rule—
- “document” means anything in which information of any description is recorded; and
  - “copy” in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly.
- (3) 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.
- (4) Except where any provision to which this rule applies provides 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) consolidate proceedings;
  - (h) hear two or more applications on the same occasion;
  - (i) direct a separate hearing of any issue;
  - (j) decide the order in which issues are to be heard;
  - (k) exclude an issue from consideration;
  - (l) dismiss or give a decision on an application after a decision on a preliminary issue;
  - (m) direct any party to file and serve an estimate of costs; and
  - (n) take any other step or make any other order for the purpose of managing the case and furthering the overriding objective.
- (5) 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 consequences of failure to comply with the order or a condition.
- (6) Where the court gives directions, it will take into account whether or not a party has complied with any relevant pre-action protocol (being a statement of best practice about pre-action conduct which has been approved by the Lord Chief Justice and which is annexed to a practice direction).
- (7) A power of the court under the provisions to which this Part applies to make an order includes a power to vary or revoke the order.
- (8) Any provision to which this Part applies—
- (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.

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

**10.** Where in any provision to which this Part applies a step is to be taken by a designated officer the designated officer may consult the court before taking that step.

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

**11.** Where there has been an error of procedure such as a failure to comply with a rule or a 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.

### **Forms**

**12.—(1)** The forms referred to in the provisions to which this Chapter applies and in the Forms Practice Direction must be used in the cases to which they apply.

(2) A form may be varied by the court or a party if the variation is required by the circumstances of a particular case.

(3) A form must not be varied so as to leave out any information or guidance which the form gives to the recipient.

(4) Where the provisions to which this Part applies require a form to be sent by the court or by a party for another party to use, it must be sent without variation except such as is required by the circumstances of the particular case.

#### **Documents to be attached to a form**

**13.** Subject to any provision to which this Part applies, unless the court directs otherwise, a form must have attached to it any documents which, in the form, are—

- (a) stated to be required; or
- (b) referred to.

#### **Power of the single justice to perform functions conferred on the court by rules 4 to 13**

**14.** Where—

- (a) by virtue of section 65 of the 1980 Act the proceedings are treated by the court as family proceedings; and
- (b) rules 4 to 13 provide for a court to perform any function,

that function may be performed by a single justice of the peace except that such a justice cannot perform the functions referred to in rule 9(4)(k) and (l), 9(5)(a) and 9(6).

#### **Power of a justices' clerk to perform functions conferred on the court by rules 4 to 13**

**15.** Where rules 4 to 13 provide for a court to perform any function, that function may be performed by a justices' clerk except that such a justices' clerk cannot perform the functions referred to in rule 9(4)(k) and (l).

(Provision in respect of the enforcement of a magistrates' court maintenance order, or an order enforceable as a magistrates' court maintenance order is made in the Magistrates' Courts Rules 1981.)

## CHAPTER 2

### PROCEEDINGS WHERE THE FPR ARE APPLIED

#### **Application of this Chapter**

**16.** This Chapter applies in respect of rules 50 to 53, 69, 71, 74 to 76, 78 and 80.

#### **Power of the single justice where the FPR are applied**

**17.** Where proceedings are not treated by the court as family proceedings by virtue of section 65 of the 1980 Act, rule 2.5 of the FPR will not apply in respect of the powers of the single justice.

#### **Power of a justices' clerk where the FPR are applied**

**18.—(1)** Subject to the Justices' Clerks Rules 2005(1), a justices' clerk may perform all the functions which a single justice may perform in accordance with rule 2.5(1)(c)(ii) of the FPR.

(2) Where a justices' clerk—

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(1) [S.I. 2005/545](#); amended by [S.I. 2011/633](#); there are other amending instruments but none is relevant.

(a) is performing the function of a single justice in accordance with paragraph (1); and  
(b) considers, for whatever reason, that it is inappropriate to perform the function,  
the justices' clerk must refer the matter to the magistrates' court which may perform the function.

(3) Paragraph (1) applies irrespective of whether proceedings are treated by the court as family proceedings by virtue of section 65 of the 1980 Act.

### CHAPTER 3

#### ALL PROCEEDINGS TO WHICH THESE RULES APPLY

##### **Delegation by justices' clerk**

**19.**—(1) Anything authorised to be done by, to or before a justices' clerk under these Rules may be done instead by, to or before an assistant clerk where the assistant clerk has been specifically authorised in writing by the justices' clerk for that purpose.

(2) In this rule "assistant clerk" has the meaning assigned to it by section 27 of the Courts Act 2003.