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STATUTORY INSTRUMENTS

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**2016 No. 901 (L. 14)**

**FAMILY PROCEEDINGS**  
**SENIOR COURTS OF ENGLAND AND WALES**  
**FAMILY COURT, ENGLAND AND WALES**

**The Family Procedure (Amendment No. 2) Rules 2016**

*Made* - - - - *8th September 2016*  
*Laid before Parliament* *12th September 2016*  
*Coming into force* - - *3rd October 2016*

The Family Procedure Rule Committee makes the following rules in exercise of the powers conferred by section 17(2) of the Senior Courts Act 1981(1) and sections 75 and 76 of the Courts Act 2003(2).

**Citation and commencement**

1. These Rules may be cited as the Family Procedure (Amendment No. 2) Rules 2016 and come into force on 3rd October 2016.

**Amendments to the Family Procedure Rules**

2. The Family Procedure Rules 2010(3) are amended in accordance with rules 3 to 8.

**Amendment of rule 8.20**

3. In rule 8.20 (who the parties are)—

(a) in paragraph (1), in the table, in the row relating to applications for declarations of parentage, in the second column (respondent)—

(i) in paragraph (i) after “is in issue” insert “except where that person is a child”; and

(ii) in paragraph (ii) after “is the applicant” insert “or is a child”; and

(b) after paragraph (1) insert—

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(1) 1981 c.54.

(2) 2003 c.39. Section 75 was amended by paragraph 338 of Schedule 4 and Part 2 of Schedule 18 to the Constitutional Reform Act 2005 (c.4) and by paragraph 91 of Schedule 10 to the Crime and Courts Act 2013 (c.22). Section 76 was amended by section 62(7) of the Children Act 2004 (c.31), paragraph 172 of Schedule 2 to the Civil Partnership Act 2004 (c.33), paragraph 29 of Schedule 1 to the Constitutional Reform Act 2005 and paragraph 92 of Schedule 10 to the Crime and Courts Act 2013.

(3) S.I. 2010/2955. Relevant amending instruments are S.I. 2012/679 and 2013/530 and 1472.

“(Under rule 16.2 the court may make a child a party to certain proceedings (including applications for declarations of parentage) where it considers that to be in the best interests of the child.)”.

#### **Insertion of new rule 9.9A**

4. After rule 9.9 (application for periodical payments order at same rate as an order for maintenance pending outcome of proceedings) insert—

##### **“Application to set aside a financial remedy order**

**9.9A.**—(1) In this rule—

- (a) “financial remedy order” means an order or judgment that is a financial remedy, and includes—
  - (i) part of such an order or judgment; or
  - (ii) a consent order; and
- (b) “set aside” means—
  - (i) in the High Court, to set aside a financial remedy order pursuant to section 17(2) of the Senior Courts Act 1981 and this rule;
  - (ii) in the family court, to rescind or vary a financial remedy order pursuant to section 31F(6) of the 1984 Act<sup>(4)</sup>.

(2) A party may apply under this rule to set aside a financial remedy order where no error of the court is alleged.

(3) An application under this rule must be made within the proceedings in which the financial remedy order was made.

(4) An application under this rule must be made in accordance with the Part 18 procedure, subject to the modifications contained in this rule.

(5) Where the court decides to set aside a financial remedy order, it shall give directions for the rehearing of the financial remedy proceedings or make such other orders as may be appropriate to dispose of the application.”.

#### **Amendment of rule 16.4**

5. In rule 16.4 (appointment of a children’s guardian in proceedings not being specified proceedings or proceedings to which Part 14 applies)—

- (a) in paragraph (1) for “Without” substitute “Except in proceedings under section 55A of the 1986 Act<sup>(5)</sup> and without”;
- (b) after paragraph (1) insert—
  - “(1A) Without prejudice to rule 16.6, in proceedings under section 55A of the 1986 Act, the court must appoint a children’s guardian for a child where—
    - (a) the court has made the child a party in accordance with rule 16.2; and
    - (b) the child is the person whose parentage is in dispute in those proceedings.”; and
- (c) in paragraph (2), after “paragraph (1)” insert “or paragraph (1A)”.

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<sup>(4)</sup> 1984 c. 42. Section 31F was inserted by paragraph 1 of Schedule 10 to the Crime and Courts Act 2013.

<sup>(5)</sup> 1986 c. 55. Section 55A was inserted by section 83 of the Child Support, Pensions and Social Security Act 2000 (c. 19) and was amended by paragraph 97 of Schedule 11 to the Crime and Courts Act 2013.

### **Amendment of rule 16.5**

6. In rule 16.5 (requirement for a litigation friend)—
- (a) in paragraph (1) for “Without” substitute “Except in proceedings under section 55A of the 1986 Act and without”;
  - (b) after paragraph (1) insert—
    - “(1A) Without prejudice to rule 16.6, where a child is—
    - (a) a party to proceedings under section 55A of the 1986 Act; but
    - (b) not the person whose parentage is in dispute in those proceedings,the child must have a litigation friend to conduct proceedings on the child’s behalf.”; and
  - (c) in paragraph (2), after “paragraph (1)” insert “or paragraph (1A)”.

### **Amendment of rule 16.6**

7. In rule 16.6, in paragraph (1) (circumstances in which a child does not need a children’s guardian or litigation friend)—
- (a) in sub-paragraph (b) omit “or”;
  - (b) at the end of sub-paragraph (c) insert “; or”; and
  - (c) after sub-paragraph (c), insert—
    - “(d) under section 55A of the 1986 Act.”.

### **Amendment of rule 28.3**

8. In rule 28.3 (costs in financial remedy proceedings), after paragraph (8) insert—
- “(9) For the purposes of this rule “financial remedy proceedings” do not include an application under rule 9.9A.”.

### **Transitional provision**

9. The amendments made by rules 3, 5, 6 and 7 apply only to proceedings commenced on or after 3rd October 2016.

*Marie Brock  
Richard Burton  
Melanie Carew  
Chris Darbyshire  
Jane Harris  
Michael Horton  
Dylan Jones  
Lord Justice McFarlane  
HHJ Alison Raeside  
Will Tyler*

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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I allow these Rules

8th September 2016

*Dr Phillip Lee*  
Parliamentary Under Secretary of State  
Ministry of Justice

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## EXPLANATORY NOTE

*(This note is not part of the Rules)*

These rules amend the Family Procedure Rules 2010 ([S.I. 2010/2955](#)) (“the FPR”).

Rule 3 amends rule 8.20 of the FPR so that a child will not be automatically a party to proceedings for a declaration of parentage under section 55A of the Family Law Act 1986. Rules 5 to 7 amend Part 16 of the FPR to make provision for when a child who is made a respondent to an application under section 55A of the Family Law Act 1986 must have a children’s guardian or a litigation friend, and for circumstances when such a child may proceed without a children’s guardian or litigation friend.

Rule 4 inserts new rule 9.9A into Part 9 of the FPR to set out the procedure for applications to set aside financial remedy orders.

Rule 8 amends rule 28.3 of the FPR to provide that applications under the new rule 9.9A are not financial remedy proceedings for the purpose of rule 28.

No impact assessment has been produced for this instrument because no, or no significant, impact on the private, voluntary or public sectors is foreseen.