

2021 No. 875 (L. 13)

FAMILY PROCEEDINGS

SENIOR COURTS OF ENGLAND AND WALES

FAMILY COURT, ENGLAND AND WALES

The Family Procedure (Amendment No. 2) Rules 2021

Made - - - - 15th July 2021

Laid before Parliament 22nd July 2021

Coming into force in accordance with rule 1

The Family Procedure Rule Committee makes the following Rules in exercise of the powers conferred by section 75 of the Courts Act 2003(a), having fulfilled the requirements of section 79(1) of that Act:

Citation and commencement

1. These Rules may be cited as the Family Procedure (Amendment No. 2) Rules 2021 and come into force on 1st October 2021, except for rules 3 to 6 which come into force on the day on which section 63 of the Domestic Abuse Act 2021(b) comes into force.

Amendment of the Family Procedure Rules 2010

2. The Family Procedure Rules 2010(c) are amended in accordance with rules 3 to 11 of these Rules.

Amendment of Part 3A

3. In rule 3A.1 (interpretation)—

(a) after the definition of “child” insert—

““domestic abuse” has the meaning given in section 1 of the Domestic Abuse Act 2021;”;

”; and

(a) 2003 c. 39. Section 75 was amended by paragraphs 308 and 338 of Schedule 4 and Part 2 of Schedule 18 to the Constitutional Reform Act 2005 (c. 4) and by paragraphs 83 and 91 of Schedule 10 to the Crime and Courts Act 2013 (c. 22).

(b) 2021 c. 17.

(c) S.I. 2010/2955. Relevant amendments were made by S.I. 2014/667, 2015/913, 2017/413 and 1033 and 2018/1413.

- (b) after the definition of “participation direction” insert—
““relative” has the meaning given by section 63(1) of the 1996 Act(a);
“victim” includes a child to whom section 3(2) of the Domestic Abuse Act 2021 applies; and”.

4. In rule 3A.2 (application of provisions in this Part) after paragraph (2) insert—

- “(3) Rules 3A.3 to 3A.5 do not apply to a party or witness who—
(a) falls within the assumption set out at rule 3A.2A(1); and
(b) has not made a request of a kind referred to in rule 3A.2A(2).”.

5. After rule 3A.2 (application of provisions in this Part) insert—

“Court’s duty to consider making participation directions: victims of domestic abuse

3A.2A.—(1) Subject to paragraph (2), where it is stated that a party or witness is, or is at risk of being, a victim of domestic abuse carried out by a party, a relative of another party, or a witness in the proceedings, the court must assume that the following matters are diminished—

- (a) the quality of the party’s or witness’s evidence;
(b) in relation to a party, their participation in the proceedings.

(2) The party or witness concerned can request that the assumption set out in paragraph (1) does not apply to them if they do not wish it to.

(3) Where the assumption set out in paragraph (1) applies, the court must consider whether it is necessary to make one or more participation directions.”.

6. In the heading to rule 3A.3 (court’s duty to consider vulnerability of a party or witness) for “a party or witness” substitute “other parties or witnesses”.

Amendment of Part 10

7. In rule 10.3(service of the application)—

- (a) in paragraph (1) after “must” insert “, subject to any order made under rule 6.35 or 6.36,”;
and
(b) omit the words in brackets after paragraph (4).

8. In rule 10.6(1) (service of an order) for “The applicant” substitute “Subject to any order made under rule 6.35 or 6.36, the applicant”.

9. In rule 10.10(3)(b) (service of an order on the officer for the time being in charge of a police station) for “the order was served following a request under rule 10.6(2) substitute “rule 10.6(2) applies”.

Amendment of rule 27.11

10. In rule 27.11 (attendance at private hearings)—

- (a) in paragraph (2)—
(i) at the end of sub-paragraph (f) omit “and”;

(a) The Family Law Act 1996 (c. 27). Section 63(1) was amended by paragraphs 85 and 88 of Schedule 3 to the Adoption and Children Act 2002 (c. 38), paragraph 41 of Schedule 10 to the Domestic Violence, Crime and Victims Act 2004 (c. 28), paragraph 14 of Part 1 of Schedule 9 and Schedule 30 to the Civil Partnership Act 2004 (c. 33), paragraph 3 of Part 1 of Schedule 2 to the Forced Marriage (Civil Protection) Act 2007 (c. 20), paragraph 37 of Part 1 of Schedule 6 to the Human Fertilisation and Embryology Act 2008 (c. 22), paragraphs 129 and 138 of Part 1 to Schedule 11 to the Crime and Courts Act 2013, section 18(2)(b) of the Children and Families Act 2014 (c. 6), paragraph 17 of Schedule 4 to the Serious Crime Act 2015 (c. 9) and S.I. 2018/1413.

- (ii) after sub-paragraph (f) insert—
 - “(ff) a duly authorised lawyer attending for journalistic, research or public legal educational purposes; and”;
- (b) in paragraphs (3) and (5) after “paragraph (2)(f)” insert “and (ff)”;
- (c) in paragraph (4) after “paragraph (2)(f)” insert “or (ff)”;
- (d) for paragraph (7) substitute—
 - “(7) In this rule—
 - “duly accredited” refers to accreditation in accordance with any administrative scheme for the time being approved for the purposes of this rule by the Lord Chancellor; and
 - “duly authorised lawyer” means a person who meets the criteria specified in Practice Direction 27B.”.

Amendment of rule 29.6

- 11. In rule 29.6(1) (documents in proceedings concerning gender recognition)—
 - (a) at the end of sub-paragraph (aa) omit “or”; and
 - (b) after sub-paragraph (aa) insert—
 - “(ab) section 50(1)(d) of the 2004 Act^(a);
 - (ac) section 50(1)(e) of the 2004 Act; or”.

Sir Andrew McFarlane, President of the Family Division

Poonam Bhari

District Judge Branston

Melanie Carew

Graeme Fraser

His Honour Judge Godwin

Mr Justice Mostyn

Her Honour Judge Raeside

District Judge Suh

Rhys Taylor

I allow these Rules

[Lord Wolfson QC]
 Parliamentary Under-Secretary of State
 Ministry of Justice

Date: 15th July 2021

EXPLANATORY NOTE

(This note is not part of the Rules)

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

Rules 3 to 6 insert provisions into Part 3A of the FPR as required by section 63 of the Domestic Abuse Act 2021 (c. 17). The amendments automatically deem victims of domestic abuse as “vulnerable” for the purposes of determining whether a participation direction should be made.

(a) The Civil Partnership Act 2004.

The court will therefore not need to make a determination as to vulnerability for parties or witnesses who state that they are, or are at risk of being, victims of domestic abuse before proceeding to consider which measures (if any) are necessary as a result of that vulnerability. The amendments also insert relevant statutory definitions from the Domestic Abuse Act 2021.

Rules 7 and 8 amend Part 10 of the FPR to clarify that the court may direct a means of service, other than personal service, of an application or order under Part 4 of the Family Law Act 1996 (c. 27).

Rule 9 amends rule 10.10 of the FPR to clarify that the court officer must notify the police of certain orders made under Part 4 of the Family Law Act 1996 where the court is to effect service of such an order in accordance with rule 10.6(2) of the FPR.

Rule 10 amends rule 27.11 of the FPR to make provision for the attendance at private hearings by duly authorised lawyers attending for specified purposes.

Rule 11 amends rule 29.6 of the FPR to refer to additional proceedings concerning gender recognition in relation to which documents, while in the custody of the court, must be kept in a place of special security.