

TRANSITIONAL ARRANGEMENTS

This Practice Direction supplements FPR Part 36

Content of this Practice Direction

- 1.1** This Practice Direction deals with the application of the FPR to proceedings started before 6th April 2011 (existing proceedings).
- 1.2** In this Practice Direction the previous rules means, as appropriate, the Rules of the Supreme Court 1965 and County Court Rules 1981 as in force immediately before 26 April 1999, and the Maintenance Orders (Facilities for Enforcement) Rules 1922; the Magistrates' Courts (Guardianship of Minors) Rules 1974; the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) Rules 1974; the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Republic of Ireland) Rules 1975; the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Hague Convention Countries) Rules 1980; the Magistrates' Courts (Child Abduction and Custody) Rules 1986; the Magistrates' Courts (Civil Jurisdiction and Judgments Act 1982) Rules 1986; the Family Proceedings Rules 1991; the Family Proceedings Courts (Children Act 1989) Rules 1991; the Family Proceedings Courts (Matrimonial Proceedings etc.) Rules 1991 (in so far as those rules do not relate to enforcement or variation of orders); the Magistrates' Courts (Costs Against Legal Representatives in Civil Proceedings) Rules 1991 (in so far as those rules relate to family proceedings); the Family Proceedings Courts (Child Support Act 1991) Rules 1993; the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (United States of America) Rules 1995 (subject to the saving in paragraph 3.6 of this Practice Direction); the Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999 (in so far as those rules relate to family proceedings); and the Family Procedure (Adoption) Rules 2005, as in force immediately before 6th April 2011.
- 1.3** Insofar as they relate to family proceedings, the previous rules are revoked with effect from 6 April 2011 by operation of law and necessary implication. This is the case except where the previous rules continue to apply to existing family proceedings in accordance with this Practice Direction. The revocation of the previous rules arises from – the repeal of the powers under which the previous rules were made (by section 109(1) and (3) of, and paragraph 245(2) of Schedule 8 and Schedule 10 to, the Courts Act 2003) or in the case of the Family Procedure (Adoption) Rules 2005 by remaking the rules in the FPR, and the fact that the FPR are stated in terms to be a new procedural code and to apply to family proceedings in the High Court, a county court and a magistrates' court (FPR rules 1.1 and 2.1).

General scheme of transitional arrangements

2.1 The general scheme is

- (a)** to apply the FPR to existing proceedings so far as is practicable; but
- (b)** where this is not practicable, to apply the previous rules to such proceedings.

Where the previous rules will normally apply

General principle

3.1 Where an initiating step has been taken in a case before 6th April 2011, in particular a step using forms or other documentation required by the previous rules, the case will proceed in the first instance under the previous rules. Where a party must take a step in response to something done by another party in accordance with the previous rules, that step must also be in accordance with those rules.

Responding to old process

3.2 A party who is served with an old type of originating process (for example, an originating summons) on or after 6th April 2011 must respond in accordance with the previous rules and the instructions on any forms received.

Filing and service of pleadings where old process served

3.3 Where a case has been begun by an old type of originating process (whether served before or after 6th April 2011), filing and service of pleadings will continue according to the previous rules.

Pre-commencement order inconsistent with FPR

3.4 Where a court order has been made before 6th April 2011, that order must still be complied with on or after that date.

Steps taken before commencement

3.5 Where a party has, before 6th April 2011, taken any step in the proceedings in accordance with the previous rules, that step will remain valid on or after that date, and a party will not normally be required to take any action that would amount to taking such a step again under the FPR.

Saving Reciprocal enforcement of maintenance orders (United States of America)

3.6 Where, by virtue of article 6(2) of the Reciprocal Enforcement of Maintenance Orders (United States of America) Order 2007, the Reciprocal Enforcement of Maintenance (United States of America) Order 1995 continues in full force and effect, the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (United States of America) Rules 1995 shall, notwithstanding any provision in the FPR, continue to apply as if they had not been amended by the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Miscellaneous Amendment) Rules 2007.

Where the FPR will normally apply

General principle

- 4.1** Where a new step is to be taken in any existing proceedings on or after 6th April 2011, it is to be taken under the FPR.

Part 1 (Overriding objective) to apply

- 4.2** Part 1 of the FPR (Overriding objective) will apply to all existing proceedings from 6th April 2011 onwards.

Issuing of application forms after the FPR come into force

4.3

- (1) The general rule is that
- (a) only application forms under the FPR will be issued by the court on or after 6th April 2011; and
 - (b) if a request to issue an old type of form or originating process (summons, etc.) is received at the court on or after 6th April 2011, it will be returned unissued.
- (2) By way of exception to the general rule, the court may in cases of urgency direct that the form or process is to be issued as if the request to issue it had been a request to issue an application form under the FPR and, if it does so, the court may make such supplementary directions as it considers appropriate.

First time before a court on or after 6th April 2011

4.4

- (1) When proceedings come before a court (whether at a hearing or on paper) for the first time on or after 6th April 2011, the court may direct how the FPR are to apply to the proceedings and may disapply certain provisions of the FPR. The court may also give case management directions.
- (2) The general presumption will be that the FPR will apply to the proceedings from then on unless the court directs or this practice direction provides otherwise.
- (3) If an application has been issued before 6th April 2011 and the hearing of the application has been set on or after that date, the general presumption is that the application will be decided having regard to the FPR.
- (4) When the first occasion on which existing proceedings are before a court on or after 6th April 2011 is a hearing of a substantive issue, the general presumption is that the hearing will be conducted according to the FPR.

Costs

4.5

- (1) Any assessment of costs that takes place on or after 6th April 2011 will be in accordance with FPR Part 28 and the provisions of the Civil Procedure Rules as applied by that Part.

- (2) However, the general presumption is that no costs for work undertaken before 6th April 2011 will be disallowed if those costs would have been allowed on detailed assessment before that date.
- (3) The decision as to whether to allow costs for work undertaken on or after 6th April 2011 will generally be taken in accordance with FPR Part 28 and the provisions of the Civil Procedure Rules as applied by that Part.