STATUTORY INSTRUMENTS

# 2016 No. 355 (L. 4)

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

## The Family Procedure (Amendment) Rules 2016

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| *Made - - - -* | *10th March 2016* |
| *Laid before Parliament* | *15th March 2016* |
| *Coming into force - -* | *6th April 2016* |

The Family Procedure Rule Committee makes the following rules in exercise of the powers conferred by sections 6(3), 9(3) and 14(4) of the Attachment of Earnings Act 1971(**1**) and sections 75 and 76 of the Courts Act 2003(**2**), after consulting in accordance with section 79 of the Courts Act 2003(**3**).

### Citation and commencement

**1.**—(1) These Rules may be cited as the Family Procedure (Amendment) Rules 2016.

(2) These Rules come into force on 6th April 2016.

### Amendment of the Family Procedure Rules 2010

**2.** The Family Procedure Rules 2010(**4**) are amended in accordance with rules 3 to 8.

(**1**) 1971 c. 32. Section 6 was amended by section 19(5) of the Administration of Justice Act 1977 (c. 38), paragraph 5 of Schedule 17 to the Courts and Legal Services Act 1990 (c. 41), paragraph 142 of Schedule 8 to the Courts Act 2003, paragraph 2 of Part 1 of Schedule 15 to the Tribunals, Courts and Enforcement Act 2007, paragraph 25 of Part 2 of Schedule 9 and paragraph 24 of Schedule 10 to the Crime and Courts Act 2013 and by S.I. 2006/1737. Section 9 was amended by paragraphs 1 and 4 of Part 1 of Schedule 15 to the Tribunals, Courts and Enforcement Act 2007 and by S.I. 2006/1737. Section 14 was amended by section 53(1) of the Administration of Justice Act 1982 (c. 53), paragraph 1 of Part 1 of and paragraphs 9 to 15 of Part 2 of Schedule 15 to the Tribunals, Courts and Enforcement Act 2007 (c. 15), paragraph 25 of Part 2 of Schedule 9 to the Crime and Courts Act 2013 and by S.I. 2006/1737.

(**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 27 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**) Section 79 was amended by paragraph 341 of Schedule 4 and Part 2 of Schedule 18 to the Constitutional Reform Act 2005.

(**4**) S.I. 2010/2955. Relevant amending instruments are S.I. 2013/3204, 2014/667 and 2015/1868.

**Amendment of rule 4.4**

**3.** In rule 4.4 (power to strike out a statement of case) after paragraph (1) insert—

"(1A) When the court is considering whether to exercise the power to strike out a statement of case, it must take into account any written evidence filed in relation to the application or answer.".

**Substitution of rules 33.19 and 33.19A**

**4.** For rules 33.19 (Application of CCR Order 27: enforcement of a judgment debt) and 33.19A (application of CCR Order 27: enforcement of a maintenance order) substitute—

"**Enforcement by attachment of earnings order**

**33.19.** Part 39 applies to applications for an attachment of earnings order to secure payments under a maintenance order.".

**Amendment of rule 33.25**

**5.** For rule 33.25 (application of the CPR) substitute—

"**Application for a charging order, stop order or stop notice**

**33.25.** Part 40 applies for the enforcement of a judgment or order made in family proceedings by way of a charging order, stop order or stop notice.".

**Amendment of rule 37.30**

**6.** In rule 37.30(3)(a) (discharge of a person in custody) omit "CCR Order 27 rule 8, or".

**Amendment of rule 37.35**

**7.** In rule 37.35 (notice to give evidence before or after a fine is imposed under section 55 of the Act) in the heading and in paragraph (1) for "section 55 of the Act" substitute "section 31G of the 1984 Act(**5**)".

**Insertion of new Parts 39 and 40**

**8.** After rule 38.15 (application under Article 14(2)) insert—

(a) new Part 39 (attachment of earnings) as set out in Schedule 1 to these Rules; and

(b) new Part 40 (charging order, stop order, stop notice) as set out in Schedule 2 to these Rules.

**Transitional provision**

**9.**—(1) Subject to paragraph (2), the Family Procedure Rules 2010 as amended by these Rules apply from 6th April 2016 to any proceedings which were commenced but not disposed of before that date, as they apply to proceedings commenced on or after that date.

(2) In any proceedings which were commenced but not disposed of before 6th April 2016, the court may give any directions for the purpose of ensuring that the proceedings are dealt with fairly and, in particular, may—

(**5**) The Matrimonial and Family Proceedings Act 1984 (c. 42). Section 31G was inserted by paragraph 1 of Schedule 10 to the Crime and Courts Act 2013.

(a) apply any provision in rules of court which applied to the proceedings before 6th April 2016; or

(b) disapply provisions of the Family Procedure Rules 2010 as amended by these Rules.

*Marie Brock*
*Richard Burton*
*Melanie Carew*
*Paul Carr*
*Chris Darbyshire*
*Jane Harris*
*Michael Horton*
*Dylan Jones*
*Hannah Perry*
*HHJ Alison Raeside*
*Lucy Theis, J*
*Will Tyler*

I allow these Rules

*Caroline Dinenage*
Parliamentary Under-Secretary of State
Ministry of Justice

10th March 2016

SCHEDULE 1 Rule 8(a)

NEW PART 39 OF THE FAMILY PROCEDURE RULES 2010

# "PART 39

# ATTACHMENT OF EARNINGS

## CHAPTER I

## GENERAL

### Application of this Part

**39.1.**—(1) Chapter 2 of this Part applies where an attachment of earnings order is sought in the family court to secure payments under a family court or High Court maintenance order whether or not arrears have accrued.

(2) Chapter 3 of this Part applies where an attachment of earnings order is sought in the High Court to secure payments under a High Court maintenance order whether or not arrears have accrued.

(Section 1 of the 1971 Act(**6**) makes provision for when the family court or the High Court may make an attachment of earnings order.)

### Interpretation of this Part

**39.2.** In this Part—

"the 1971 Act" means the Attachment of Earnings Act 1971 and unless the context otherwise requires or this Part otherwise provides, expressions used in that Act, including the term "maintenance order", have the same meaning as in that Act;

"creditor" means the person who is entitled to enforce a maintenance order; and

"debtor" means the person against whom a maintenance order was made.

### Search of court records

**39.3.** If requested to do so by any person having a maintenance order against a debtor, the court officer must—

(a) cause a search to be made in the court records to determine whether there is an attachment of earnings order in force in relation to that debtor; and

(b) issue a certificate of the result of the search.

(**6**) Section 1 was amended by paragraph 6 of Part 1 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), paragraph 25 of Part 2 of Schedule 9 and paragraphs 20 and 21 of Part 2 of Schedule 10 to the Crime and Courts Act 2013 and S.I. 2006/1737.

## CHAPTER 2

## SECURING PAYMENTS UNDER A MAINTENANCE ORDER IN THE FAMILY COURT – ATTACHMENT OF EARNINGS ORDER

### Where to apply

**39.4.** An application for an attachment of earnings order to which this Chapter applies must be sent to the family court.

(Her Majesty's Courts and Tribunals Service publishes information to identify the appropriate location to which an application for an attachment of earnings order should be sent.)

### Application for an attachment of earnings order

**39.5.**—(1) Where an application is made for an attachment of earnings order on the making of the maintenance order or of an order varying the maintenance order, the remainder of this rule and rule 39.6 do not apply.

(2) A creditor who wishes to apply for an attachment of earnings order must file—

(a) an application in accordance with rule 33.3(1); and

(b) a copy of the sealed (GL) maintenance order.

(3) When the documents mentioned in paragraph (2) are filed with the court, the court officer must fix a day for the hearing of the application.

### Service and reply

**39.6.**—(1) Notice of the application and a reply form must be served by the court on the debtor in accordance with Chapter 3 of Part 6.

(2) The notice of application must include an instruction to the debtor to file the reply form within 8 days after service, and that instruction constitutes a requirement imposed under section 14(4) of the 1971 Act.

(3) No proceedings may be brought for an alleged offence under section 23(2)(c) or (f) of the 1971 Act(**7**) in relation to the requirement to reply unless—

(a) the notice of application and reply form have been served personally on the debtor; or

(b) the court is satisfied that those documents came to the debtor's knowledge in sufficient time to comply with the requirement.

(4) The court officer must send to the creditor a copy of any reply form received from the debtor.

### Notice to the debtor's employer

**39.7.**—(1) Without prejudice to the power conferred by section 14(1) of the 1971 Act, a court officer may, at any stage of the proceedings, send to any person appearing to be the debtor's employer a notice requesting that person to give to the court a statement of the debtor's earnings.

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(**7**) Section 23 was amended by paragraph 6 of Part III of Schedule 2 to the Contempt of Court Act 1981 (c. 49), section 53 of the Administration of Justice Act 1982, sections 37 and 38 of the Criminal Justice Act 1982 (c. 48), paragraph 41 of Schedule 2 to the County Courts Act 1984 (c. 28), paragraph 6 of Schedule 17 to the Courts and Legal Services Act 1990 (c. 41), Part 1 of Schedule 4 and paragraph 6 of Schedule 12 to the Criminal Justice Act 1991 (c. 53), paragraph 1 of Part 1 of and paragraphs 19 to 22 of Part 2 of Schedule 15 to the Tribunals, Courts and Enforcement Act 2007 and paragraph 25 of Schedule 9 and paragraph 33 of Schedule 10 to the Crime and Courts Act 2013.