Draft Rules laid before Parliament under section 31P(2) of the Matrimonial and Family Proceedings Act 1984, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No. XXX (L.XXX)

FAMILY COURT, ENGLAND AND WALES

The Justices' Clerks and Assistants Rules 2014

Made - - - - ***

Coming into force in accordance with rule 1

The Lord Chancellor makes the following Rules in exercise of the power conferred by sections 31O(1) and 31P(1) of the Matrimonial and Family Proceedings Act 1984(**1**), with the agreement of the President of the Family Division as the judicial office holder nominated by the Lord Chief Justice under section 31O(8) of that Act.

In accordance with section 31P(2) of that Act, a draft of these Rules has been laid before, and approved by a resolution of, each House of Parliament.

Before making these Rules, the Lord Chancellor has consulted the Family Procedure Rule Committee in accordance with section 31O(1) of that Act.

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Justices' Clerks and Assistants Rules 2014 and shall come into force on the day on which section 17(3) of the Crime and Courts Act 2013(**2**) comes fully into force.

(2) In these Rules—

"the Act" means the Matrimonial and Family Proceedings Act 1984;

"assistant justices' clerk" is an assistant to a justices' clerk within the meaning of section 27(5) of the Courts Act 2003(**3**);

"CPA" means the Civil Partnership Act 2004(**4**);

"FPR" means the Family Procedure Rules 2010(**5**);

"MCA" means the Matrimonial Causes Act 1973(**6**);

(**1**) 1984 c.42. Sections 31O and 31P were inserted by the Crime and Courts Act 2013 (c.22), section 17(6) and Schedule 10, paragraph 1 (which, together with section 17(3) of that Act, establish the family court in England and Wales).
(**2**) 2013 c.22.
(**3**) 2003 c.39.
(**4**) 2004 c.33.
(**5**) S.I. 2010/2955; relevant amending instruments are S.I. 2011/1328, 2012/679, 2007, 2046, 2806 and 3006, 2013/530 and 3204.
(**6**) 1973 c.18.

"undefended case" has the meaning given in FPR rule 7.1(3);

Functions which may be carried out by a justices' clerk

2. The functions of the family court or of a judge of the court that may be carried out by a justices' clerk are the functions of the family court or of a judge of the court specified in the provisions listed in the first column of the table in the Schedule subject to the exceptions or restrictions specified in the second column in relation to particular functions.

Functions which may be carried out by an assistant justices' clerk

3.—(1) An assistant justices' clerk may carry out any function that a justices' clerk may carry out pursuant to rule 2, provided that that assistant justices' clerk has been authorised by a justices' clerk to carry out that function.

(2) The functions specified in section 31O(2) of the Act may be carried out by an assistant justices' clerk.

(3) An authorisation by a justices' clerk under paragraph (1) above must be recorded in writing at the time the authorisation is given or as soon as practicable thereafter.

Duty to refer if inappropriate to carry out function

4.—(1) When considering carrying out a function specified in the Schedule, a justices' clerk must consider whether in the particular circumstances it would be inappropriate to carry out the function.

(2) If a justices' clerk determines that it would be inappropriate to carry out a function specified in the Schedule, the justices' clerk must refer the matter to the court.

(3) References in this rule to a justices' clerk include a person authorised in accordance with rule 3.

Signed by the authority of the Lord Chancellor

Name
Parliamentary Under Secretary of State
Ministry of Justice

Date

SCHEDULE

Rule 3

FPR rule 3.2	
FPR rule 3.3	
FPR rule 4.1(3)	Except 4.1(3)(e), (g), (i), (l), (m)
FPR rule 4.3(2)	
FPR rule 4.3(5)	
FPR rule 4.7(a) and (b)	
FPR rule 6.24(2)	
FPR rule 6.26(5)	
FPR rule 6.32	
FPR rule 6.36	
MCA, section 1(3)	Only in undefended cases
MCA, sections 1(4) and 1(5)	Only in undefended cases, and only the making "absolute" of decrees of divorce
MCA, section 6(2)	Only where the parties consent to the adjournment
MCA, sections 10A(2) and (3)	Only in an application under section 10A(2) to which the other party consents
MCA, section 17(2)	Only in undefended cases
CPA, section 37(1)(a) and (d)	Only in undefended cases, and only the making "final" of such orders
CPA, section 42(3)	Only where the parties consent to the adjournment
CPA, sections 44(2) and (4)	Only in undefended cases
FPR rule 7.14(1)	Only if the parties consent to the court giving such permission
FPR rule 7.20(2)	
FPR rule 7.20(3)	
FPR rule 7.20(5)	
FPR rule 7.30(1)(d)(ii) and (3)	Only where the application under section 10A(2) was made on consent
FPR 7.32(2)	
FPR rule 8.20(4)	Only where the parties consent to the person being made a respondent and where the person is not a child
FPR rule 9.18	
FPR rule 9.20	
FPR rule 9.26	

FPR rule 10.3(1)	
FPR rule 10.6(2)	
FPR rule 10.7	
FPR rule 12.3(2)	Only where the parties consent to the person being made a respondent and where the person is not a child
FPR rule 12.3(3)	Only where the parties consent to the person being made a respondent and where the person is not a child
FPR rule 12.3(4)	Only where otherwise authorised to add or remove the person as a party
FPR rule 12.4(5)	Only where the parties consent to the person being made a respondent and where the person is not a child
FPR rule 12.5	
FPR rule 12.6(a)-(c)	
Children Act 1989(**7**), section 7(1) and FPR rule 12.6(d)	
FPR rule 12.12	
FPR rule 12.13(1)	
FPR rule 12.13(2)	
FPR rule 12.14(3) and (4)	
FPR rule 12.15	
FPR rule 12.16(6)	
FPR rule 12.16(7)	
FPR rule 12.19(2) and (3)	
FPR rule 12.21(1)	
FPR rule 12.73(1)(b)	
Practice Direction 12G, paragraph 1.2	
Practice Direction 12J, paragraph 3	
Practice Direction 12J, paragraph 5	
Practice Direction 12J, paragraph 6	
Practice Direction 12J, paragraph 12	

(7) 1989 c.41.

Practice Direction 12J, paragraph 16	
FPR rule 12.23	
FPR rule 12.24	
FPR rule 12.25	
FPR rule 12.26	
FPR rule 12.29	
FPR rule 12.30	
Children Act 1989, section 41	
Children Act 1989, sections 10(1) and (2)	Only where— (a) a previous such order has been made in the same proceedings; (b) the terms of the order sought are the same as those of the last such order made; (c) the order is an order in the course of proceedings and does not dispose finally of the proceedings; and (d) a written request for such an order has been made and— (i) the other parties and any children's guardian consent to the request and they or their legal representatives have signed the request; or (ii) at least one of the other parties and any children's guardian consent to the request and they or their legal representatives have signed the request, and the remaining parties have not indicated that they either consent to or oppose the making of the order.
Children Act 1989, section 38(1)	Only where— (a) a previous such order has been made in the same proceedings; (b) the terms of the order sought are the same as those of the last such order made; and (c) a written request for such an order has been made and— (i) the other parties and any children's guardian consent to the request and they or their legal representatives have signed the request; or (ii) at least one of the other parties and any children's guardian consent to the request and they or their legal representatives have signed the request, and the remaining parties have not indicated that they either consent to or oppose the making of the order.
FPR rule 12.31	