

*Extract from Part 9 FPR showing proposed amendments for:*

*a) full procedural delinking*

*b) changes relating to the “fast track” procedure in Chapter 5 (the name of the procedure, the cases to which it applies, and procedural changes)*

*Proposed amendments are underlined/ struck through.*

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## Part 9 FPR: APPLICATIONS FOR A FINANCIAL REMEDY

### CHAPTER 1: APPLICATION AND INTERPRETATION

#### Application

**9.1** The rules in this Part apply to an application for a financial remedy.

(‘Financial remedy’ and ‘financial order’ are defined in rule 2.3)

**9.2** [*revoked previously*]

#### Interpretation

**9.3 (1)** In this Part –

‘avoidance of disposition order’ means –

- (a) in proceedings under the 1973 Act, an order under section 37(2)(b) or (c) of that Act;
- (b) in proceedings under the 1984 Act, an order under section 23 (2)(b) or 23(3) of that Act;
- (c) in proceedings under Schedule 5 to the 2004 Act, an order under paragraph 74(3) or (4);  
or
- (d) in proceedings under Schedule 7 to the 2004 Act, an order under paragraph 15(3) or (4);

‘the Board’ means the Board of the Pension Protection Fund;

“fast-track procedure” means the procedure set out in Chapter 5;

‘FDR appointment’ means a Financial Dispute Resolution appointment in accordance with rule 9.17;

‘Financial Circumstances Form’ means the Financial Circumstances Form published by the Permanent Bureau of the Hague Conference under Article 11(4) of the 2007 Hague Convention for use in relation to applications under Article 10 of that Convention;

‘order preventing a disposition’ means –

- (a) in proceedings under the 1973 Act, an order under section 37(2)(a) of that Act;
- (b) in proceedings under the 1984 Act, an order under section 23(2)(a) of that Act;
- (c) in proceedings under Schedule 5 to the 2004 Act, an order under paragraph 74(2); or
- (d) in proceedings under Schedule 7 to the 2004 Act, an order under paragraph 15(2);

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‘pension arrangement’ means –

- (a) an occupational pension scheme;
- (b) a personal pension scheme;
- (c) shareable state scheme rights;
- (d) a retirement annuity contract;
- (e) an annuity or insurance policy purchased, or transferred, for the purpose of giving effect to rights under an occupational pension scheme or a personal pension scheme; and
- (f) an annuity purchased, or entered into, for the purpose of discharging liability in respect of a pension credit under section 29(1)(b) of the Welfare Reform and Pensions Act 1999 or under corresponding Northern Ireland legislation;

‘pension attachment order’ means –

- (a) in proceedings under the 1973 Act, an order making provision under section 25B or 25C of that Act<sup>3</sup>;
- (b) in proceedings under the 1984 Act, an order under section 17(1)(a)(i) of that Act making provision equivalent to an order referred to in paragraph (a);
- (c) in proceedings under Schedule 5 to the 2004 Act, an order making provision under paragraph 25 or paragraph 26; or
- (d) in proceedings under Schedule 7 to the 2004 Act, an order under paragraph 9(2)<sup>4</sup> or (3) making provision equivalent to an order referred to in paragraph (c);

‘pension compensation attachment order’ means –

- (a) in proceedings under the 1973 Act, an order making provision under section 25F of that Act;
- (b) in proceedings under the 1984 Act, an order under section 17(1)(a)(i) of that Act making provision equivalent to an order referred in to paragraph (a);
- (c) in proceedings under Schedule 5 to the 2004 Act, an order under paragraph 34A; and
- (d) in proceedings under Schedule 7 to the 2004 Act, an order under paragraph 9(2) or (3) making provision equivalent to an order referred to in paragraph (c);

‘pension compensation sharing order’ means –

- (a) in proceedings under the 1973 Act, an order under section 24E of that Act<sup>7</sup>;
- (b) in proceedings under the 1984 Act, an order under section 17(1)(c) of that Act;
- (c) in proceedings under Schedule 5 to the 2004 Act, an order under paragraph 19A ; and
- (d) in proceedings under Schedule 7 to the 2004 Act, an order under paragraph 9(2) or (3) making provision equivalent to an order referred to in paragraph (c);

‘pension sharing order’ means –

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- (a) in proceedings under the 1973 Act, an order making provision under section 24B of that Act;
- (b) in proceedings under the 1984 Act, an order under section 17(1)(b) of that Act;
- (c) in proceedings under Schedule 5 to the 2004 Act, an order under paragraph 15; or
- (d) in proceedings under Schedule 7 to the 2004 Act, an order under paragraph 9(2) or (3) making provision equivalent to an order referred to in paragraph (c);

‘pension scheme’ means, unless the context otherwise requires, a scheme for which the Board has assumed responsibility in accordance with Chapter 3 of Part 2 of the Pensions Act 2004 (pension protection) or any provision in force in Northern Ireland corresponding to that Chapter;

‘PPF compensation’ has the meaning given to it –

- (a) in proceedings under the 1973 Act, by section 21C of the 1973 Act;
- (b) in proceedings under the 1984 Act, by section 18(7) of the 1984 Act; and
- (c) in proceedings under the 2004 Act, by paragraph 19F of Schedule 5 to the 2004 Act;

‘relevant valuation’ means a valuation of pension rights or benefits as at a date not more than 12 months earlier than the date fixed for the first appointment which has been furnished or requested for the purposes of any of the following provisions –

- (a) the Pensions on Divorce etc (Provision of Information) Regulations 2000;
- (b) regulation 5 of and Schedule 2 to the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 and regulation 11 of and Schedule 1 to the Occupational Pension Schemes (Transfer Value) Regulations 1996;
- (c) section 93A or 94(1)(a) or (aa) of the Pension Schemes Act 1993;
- (d) section 94(1)(b) of the Pension Schemes Act 1993 or paragraph 2(a) (or, where applicable, 2(b)) of Schedule 2 to the Personal Pension Schemes (Disclosure of Information) Regulations 1987;
- (e) the Dissolution etc. (Pensions) Regulations 2005;

“standard procedure” means the procedure set out in Chapter 4;

‘variation order’ means –

- (a) in proceedings under the 1973 Act, an order under section 31 of that Act; or
- (b) in proceedings under the 2004 Act, an order under Part 11 of Schedule 5 to that Act.

(2) *[revoked previously]*

(3) (a) Where an application is made under Article 56 of, and using the form in Annex VII to, the Maintenance Regulation, references in this Part to ‘financial statement’ apply to the applicant as if for the words ‘financial statement’ were substituted ‘the form in Annex VII to the Maintenance Regulation’;

(aa) where an application for establishment or modification of maintenance is made under Article 10 of the 2007 Hague Convention, references in this Part to 'financial statement' apply to the applicant as if for 'financial statement' there were substituted 'Financial Circumstances Form';

(b) Sub-paragraphs (a) and (aa) do not apply where the relief sought includes relief which is of a type to which the Maintenance Regulation or the 2007 Hague Convention, as the case may be, does not apply.

## CHAPTER 2: PROCEDURE FOR APPLICATIONS

### When an application for a financial order may be made

9.4 (1) An application for a financial order may be made at any time after an application for a matrimonial or civil partnership order has been made unless the application for a matrimonial or civil partnership order has been-

(a) struck out;

(b) withdrawn under rule 7.9;

(c) dismissed; or

(d) stayed, and the stay remains in force.

(2) Paragraph (1)(c) does not apply where section 23(2) of the 1973 Act or paragraph 1(2) of Schedule 5 to the 2004 Act applies.

(Section 23(2) of the 1973 Act and paragraph 1(2) of Schedule 5 to the 2004 Act set out circumstances in which the court can make certain financial orders where matrimonial or civil partnership proceedings have been dismissed.)

(3) An application for a financial order cannot be made within an application for a matrimonial or civil partnership order.

(4) The application for a financial order must include information about the stage which court proceedings for a matrimonial or civil partnership order have reached.

~~An application for a financial order may be made—~~

~~(a) in an application for a matrimonial or civil partnership order; or~~

~~(b) at any time after an application for a matrimonial or civil partnership order has been made.~~

### ~~Where to start proceedings~~

~~9.5 (1) An application for a financial remedy must be filed—~~

~~(a) if there are proceedings for a matrimonial order or a civil partnership order which are proceeding in the family court, in that court; or~~

~~(b) if there are proceedings for a matrimonial order or a civil partnership order which are proceeding in the High Court, in the registry in which those proceedings are taking place.~~

(2) *[revoked previously]*

(3) [Note: paragraph (3) is to be revoked by the Family Procedure (Amendment No.2) Rules 2017, coming into force 7 August 2017, so the text is not included here]

#### **Application for an order preventing a disposition**

**9.6** (1) The Part 18 procedure applies to an application for an order preventing a disposition.

(2) An application for an order preventing a disposition may be made without notice to the respondent.

(‘Order preventing a disposition’ is defined in rule 9.3.)

#### **Application for interim orders**

**9.7** (1) A party may apply at any stage of the proceedings for –

- (a) an order for maintenance pending suit;
- (b) an order for maintenance pending outcome of proceedings;
- (c) an order for interim periodical payments;
- (d) an interim variation order
- (da) an order for payment in respect of legal services; or
- (e) any other form of interim order.

(2) An application for an order mentioned in paragraph (1) shall be made using the Part 18 procedure.

(3) Where a party makes an application before filing a financial statement, the written evidence in support must –

- (a) explain why the order is necessary; and
- (b) give up to date information about that party's financial circumstances.

(4) Unless the respondent has filed a financial statement, the respondent must, at least 7 days before the court is to deal with the application, file a statement of his means and serve a copy on the applicant.

(5) An application for an order mentioned in paragraph (1)(e) may be made without notice.

#### **Application for periodical payments order at same rate as an order for maintenance pending suit**

**9.8** (1) This rule applies where there are matrimonial proceedings and –

- (a) a decree nisi of divorce or nullity of marriage has been made;
- (b) at or after the date of the decree nisi an order for maintenance pending suit is in force; and
- (c) the spouse in whose favour the decree nisi was made has made an application for an order for periodical payments.

(2) The spouse in whose favour the decree nisi was made may apply, using the Part 18 procedure, for an order providing for payments at the same rate as those provided for by the order for maintenance pending suit.

**Application for periodical payments order at same rate as an order for maintenance pending outcome of proceedings**

9.9 (1) This rule applies where there are civil partnership proceedings and –

- (a) a conditional order of dissolution or nullity of civil partnership has been made;
- (b) at or after the date of the conditional order an order for maintenance pending outcome of proceedings is in force;
- (c) the civil partner in whose favour the conditional order was made has made an application for an order for periodical payments.

(2) The civil partner in whose favour the conditional order was made may apply, using the Part 18 procedure, for an order providing for payments at the same rate as those provided for by, the order for maintenance pending the outcome of proceedings.

**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.

(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.

### **Standard and fast-track procedures for financial remedy proceedings**

**9.9B** (1) In this rule “periodical payments” and “lump sum provision” have the same meaning as in sub-paragraphs (d) and (e) of the definition of “financial order” in rule 2.3(1).

(2) Subject to paragraphs (3) and (4), an application for a financial remedy must be dealt with under the standard procedure.

(3) The fast-track procedure applies to-

(a) any application where the financial remedy sought is only for one or both of the following-

(i) an order for periodical payments;

(ii) an order for lump sum provision, where the amount of the lump sum sought does not exceed £25,000;

(b) any application made under-

(i) the 1978 Act;

(ii) Schedule 6 to the 2004 Act;

(iii) Article 56 of the Maintenance Regulation; or

(iv) Article 10 of the 2007 Hague Convention; and

(c) any application for the variation of an order for periodical payments, except where the applicant seeks the dismissal (immediate or otherwise) of the periodical payments order and its substitution with one or more of a lump sum order, a property adjustment order or a pension sharing order.

(4) At any stage in the proceedings the court may order that an application proceeding under the fast-track procedure must proceed under the standard procedure.

(Rules 9.18A and 9.20 provide for specific occasions when the court may direct that a case should proceed under the standard procedure.)

## **CHAPTER 3: APPLICATIONS FOR FINANCIAL REMEDIES FOR CHILDREN**

### **Application by parent, guardian etc for financial remedy in respect of children**

**9.10** (1) The following people may apply for a financial remedy in respect of a child –

(a) a parent, guardian or special guardian of any child of the family;

(b) any person who is named in a child arrangements order as a person with whom a child of the family is to live, and any applicant for such an order;

(c) any other person who is entitled to apply for a child arrangements order which names that person as a person with whom a child is to live;

(d) a local authority, where an order has been made under section 31(1)(a) of the 1989 Act placing a child in its care;

(e) the Official Solicitor, if appointed the children's guardian of a child of the family under rule 16.24; and

(f) subject to paragraph (1A), a child of the family who has been given permission to apply for a financial remedy.

(1A) Where the application is –

(a) for the variation of an order under section 2(1)(c), 6 or 7 of the 1978 Act or paragraph 2(1)(c) of, or Part 2 or 3 of, Schedule 6 to the 2004 Act for periodical payments in respect of a child;

(b) the application is made by the child in question; and

(c) the child in question is aged 16 or over,

the child does not require permission to make the application.

### **Children to be separately represented on certain applications**

**9.11** (1) Where an application for a financial remedy includes an application for an order for a variation of settlement, the court must, unless it is satisfied that the proposed variation does not adversely affect the rights or interests of any child concerned, direct that the child be separately represented on the application.

(2) On any other application for a financial remedy the court may direct that the child be separately represented on the application.

(3) Where a direction is made under paragraph (1) or (2), the court may if the person to be appointed so consents, appoint –

(a) a person other than the Official Solicitor; or

(b) the Official Solicitor,

to be a children's guardian and rule 16.24(5) and (6) and rules 16.25 to 16.28 apply as appropriate to such an appointment.

## **CHAPTER 4: PROCEDURE AFTER FILING AN APPLICATION**

### **Duties of the court and the applicant upon issuing an application**

**9.12** (1) When an application under this Part is issued, except where Chapter 5 of this Part applies –

(a) the court will fix a first appointment not less than 12 weeks and not more than 16 weeks after the date of the filing of the application; and

(b) subject to paragraph (2), within 4 days beginning with the date on which the application was filed, a court officer will –

(i) serve a copy of the application on the respondent; and

(ii) give notice of the date of the first appointment to the applicant and the respondent.



(2) Where the applicant wishes to serve a copy of the application on the respondent and on filing the application so notifies the court

(a) paragraph (1)(b) does not apply;

(b) a court officer will return to the applicant the copy of the application and the notice of the date of the first appointment; and

(c) the applicant must, –

(i) within 4 days beginning with the date on which the copy of the application is received from the court, serve the copy of the application and notice of the date of the first appointment on the respondent; and

(ii) file a certificate of service at or before the first appointment.

(Rule 6.37 sets out what must be included in a certificate of service.)

(3) The date fixed under paragraph (1), or for any subsequent appointment, must not be cancelled except with the court's permission and, if cancelled, the court must immediately fix a new date.

(4) In relation to an application to which the Maintenance Regulation or the 2007 Hague Convention applies, where the applicant does not already know the address of the respondent at the time the application is issued, paragraph (2) does not apply and the court will serve the application in accordance with paragraph (1).

### **Service of application on mortgagees, trustees etc**

**9.13** (1) Where an application for a financial remedy includes an application for an order for a variation of settlement, the applicant must serve copies of the application on –

(a) the trustees of the settlement;

(b) the settlor if living; and

(c) such other persons as the court directs.

(2) In the case of an application for an avoidance of disposition order, the applicant must serve copies of the application on the person in whose favour the disposition is alleged to have been made.

(3) Where an application for a financial remedy includes an application relating to land, the applicant must serve a copy of the application on any mortgagee of whom particulars are given in the application.

(4) Any person served under paragraphs (1), (2) or (3) may make a request to the court in writing, within 14 days beginning with the date of service of the application, for a copy of the applicant's financial statement or any relevant part of that statement.

(5) Any person who –

(a) is served with copies of the application in accordance with paragraphs (1), (2) or (3); or

(b) receives a copy of a financial statement, or a relevant part of that statement, following an application made under paragraph (4),

may within 14 days beginning with the date of service or receipt file a statement in answer.

(6) Where a copy of an application is served under paragraphs (1), (2) or (3), the applicant must file a certificate of service at or before the first appointment.

(7) A statement in answer filed under paragraph (5) must be verified by a statement of truth.

### **Procedure before the first appointment**

**9.14** (1) Not less than 35 days before the first appointment both parties must simultaneously exchange with each other and file with the court a financial statement in the form referred to in Practice Direction 5A.

(2) The financial statement must—

(a) be verified by a statement of truth; and

(b) accompanied by the following documents only –

(i) any documents required by the financial statement;

(ii) any other documents necessary to explain or clarify any of the information contained in the financial statement; and

(iii) any documents provided to the party producing the financial statement by a person responsible for a pension arrangement, either following a request under rule 9.30 or as part of a relevant valuation; and

(iv) any notification or other document referred to in rule 9.37(2), (4) or (5) which has been received by the party producing the financial statement.

(2ZA) Paragraph (2A) applies where the court has determined that the procedure in this Chapter should apply to an application under Article 56 of the Maintenance Regulation or Article 10 of the 2007 Hague Convention.

(2A) The requirement of paragraph (2)(a) relating to verification by a statement of truth does not apply to the financial statement of either party where the application has been made under—

(a) Article 56 of the Maintenance Regulation, using the form in Annex VII to that Regulation; or

(b) Article 10 of the 2007 Hague Convention, using the Financial Circumstances Form,

and the relief sought is limited to a type to which that Regulation or that Convention, as appropriate, applies, but the court may at any time direct that the financial statement of either party shall be verified by a statement of truth.

(3) Where a party was unavoidably prevented from sending any document required by the financial statement, that party must at the earliest opportunity –

(a) serve a copy of that document on the other party; and

(b) file a copy of that document with the court, together with a written explanation of the failure to send it with the financial statement.

(4) No disclosure or inspection of documents may be requested or given between the filing of the application for a financial remedy and the first appointment, except –

- (a) copies sent with the financial statement, or in accordance with paragraph (3); or
- (b) in accordance with paragraphs (5) and (6).

(Rule 21.1 explains what is meant by disclosure and inspection.)

(5) Not less than 14 days before the hearing of the first appointment, each party must file with the court and serve on the other party –

- (a) a concise statement of the issues between the parties;
- (b) a chronology;
- (c) a questionnaire setting out by reference to the concise statement of issues any further information and documents requested from the other party or a statement that no information and documents are required; and
- (d) a notice stating whether that party will be in a position at the first appointment to proceed on that occasion to a FDR appointment.

(6) Not less than 14 days before the hearing of the first appointment, the applicant must file with the court and serve on the respondent confirmation –

- (a) of the names of all persons served in accordance with rule 9.13(1) to (3); and
- (b) that there are no other persons who must be served in accordance with those paragraphs.

#### **Duties of the court at the first appointment**

**9.15** (1) The first appointment must be conducted with the objective of defining the issues and saving costs.

(2) At the first appointment the court must determine –

- (a) the extent to which any questions seeking information under rule 9.14(5)(c) must be answered; and
- (b) what documents requested under rule 9.14(5)(c) must be produced,

and give directions for the production of such further documents as may be necessary.

(3) The court must give directions where appropriate about –

- (a) the valuation of assets (including the joint instruction of joint experts);
- (b) obtaining and exchanging expert evidence, if required;
- (c) the evidence to be adduced by each party; and
- (d) further chronologies or schedules to be filed by each party.

(4) The court must direct that the case be referred for a FDR appointment unless-

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- (a) the first appointment or part of it has been treated as a FDR appointment and the FDR appointment has been effective; or
- (b) there are exceptional reasons which make a referral to a FDR appointment inappropriate.

Note: the new paragraph (4) above is included in the Family Procedure (Amendment No.2) Rules 2017, to come into force on 7 August 2017.

(5) If the court decides that a referral to a FDR appointment is not appropriate it must direct one or more of the following –

- (a) that a further directions appointment be fixed;
- (b) that an appointment be fixed for the making of an interim order;
- (c) that the case be fixed for a final hearing and, where that direction is given, the court must determine the judicial level at which the case should be heard.

(Under Part 3 the court may also direct that the case be adjourned if it considers that non-court dispute resolution is appropriate.)

(6) In considering whether to make a costs order under rule 28.3(5), the court must have particular regard to the extent to which each party has complied with the requirement to send documents with the financial statement and the explanation given for any failure to comply.

(7) The court may –

- (a) where an application for an interim order has been listed for consideration at the first appointment, make an interim order;
- (b) having regard to the contents of the notice filed by the parties under rule 9.14(5)(d), treat the appointment (or part of it) as a FDR appointment to which rule 9.17 applies;
- (c) in a case where a pension sharing order or a pension attachment order is requested, direct any party with pension rights to file and serve a Pension Inquiry Form, completed in full or in part as the court may direct; and
- (d) in a case where a pension compensation sharing order or a pension compensation attachment order is requested, direct any party with PPF compensation rights to file and serve a Pension Protection Fund Inquiry Form, completed in full or in part as the court may direct.

(8) Both parties must personally attend the first appointment unless the court directs otherwise.

### **After the first appointment**

**9.16 (1)** Between the first appointment and the FDR appointment, a party is not entitled to the production of any further documents except –

- (a) in accordance with directions given under rule 9.15(2); or
- (b) with the permission of the court.

(2) At any stage –

- (a) a party may apply for further directions or a FDR appointment;
- (b) the court may give further directions or direct that parties attend a FDR appointment.

### **The FDR appointment**

**9.17** (1) The FDR appointment must be treated as a meeting held for the purposes of discussion and negotiation.

(2) The judge hearing the FDR appointment must have no further involvement with the application, other than to conduct any further FDR appointment or to make a consent order or a further directions order.

(3) Not less than 7 days before the FDR appointment, the applicant must file with the court details of all offers and proposals, and responses to them.

(4) Paragraph (3) includes any offers, proposals or responses made wholly or partly without prejudice<sup>(GL)</sup>, but paragraph (3) does not make any material admissible as evidence if, but for that paragraph, it would not be admissible.

(5) At the conclusion of the FDR appointment, any documents filed under paragraph (3), and any filed documents referring to them, must, at the request of the party who filed them, be returned to that party and not retained on the court file.

(6) Parties attending the FDR appointment must use their best endeavours to reach agreement on matters in issue between them.

(7) The FDR appointment may be adjourned from time to time.

(8) At the conclusion of the FDR appointment, the court may make an appropriate consent order.

(9) If the court does not make an appropriate consent order as mentioned in paragraph (8), the court must give directions for the future course of the proceedings including, where appropriate –

- (a) the filing of evidence, including up to date information; and
- (b) fixing a final hearing date.

(10) Both parties must personally attend the FDR appointment unless the court directs otherwise.

## **CHAPTER 5: ~~FAST-TRACK PROCEDURE AFTER FILING PARTICULAR APPLICATIONS~~**

### **Duties of the court and the applicant upon filing an application**

**9.18** (A1) This Chapter applies where, in accordance with rule 9.9B, the fast-track procedure applies to an application for a financial remedy. ~~an application is made –~~

~~(a) under –~~

- ~~(i) the 1978 Act;~~
- ~~(ii) Schedule 6 to the 2004 Act;~~

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- ~~(iii) Schedule 1 to the 1989 Act; or~~
- ~~(iv) Article 56 of the Maintenance Regulation; or~~
- ~~(v) Article 10 of the 2007 Hague Convention;~~

~~(b) for the variation of an order for a financial remedy.~~

(1) Where an application is issued –

(a) the court will fix a first hearing date not less than ~~4~~ 6 weeks and not more than ~~8~~ 10 weeks after the date of the filing of the application; and

(b) subject to paragraph (2), within 4 days beginning with the date on which the application was filed, a court officer will –

- (i) serve a copy of the application on the respondent;
- (ii) give notice of the date of the first hearing to the applicant and the respondent; ~~;~~  
and
- ~~(iii) send a blank financial statement to both the applicant and the respondent.~~

(2) Where the applicant wishes to serve a copy of the application on the respondent and, on filing the application, so notifies the court –

(a) paragraph (1)(b) does not apply;

(b) a court officer will return to the applicant the copy of the application and the notice of the date of the first hearing; and

(c) the applicant must –

- (i) within 4 days beginning with the date on which the copy of the application is received from the court, serve the copy of the application and notice of the date of the first hearing on the respondent;
- (ii) send a blank financial statement to the respondent; and
- (iii) file a certificate of service at or before the first hearing.

(3) The date fixed under paragraph (1), or for any other subsequent hearing or appointment must not be cancelled except with the court's permission and, if cancelled, the court must immediately fix a new date.

~~(4) The requirement in paragraph (1)(b)(iii) for the court officer to send a blank financial statement to the applicant does not apply where the application has been made under –~~

- ~~(a) Article 56 of the Maintenance Regulation, using the form in Annex VII to that Regulation; or~~
- ~~(b) Article 10 of the 2007 Hague Convention, using the Financial Circumstances Form.~~

(5) In relation to an application to which the Maintenance Regulation or the 2007 Hague Convention applies, where the applicant does not already know the address of the respondent at the time the application is issued, paragraph (2) does not apply and the court will serve the application in accordance with paragraph (1).

### Request for change of procedure

**9.18A** (1) ~~This rule applies if the applicant wishes to seek a direction from the court that the procedure in Chapter 4 of this Part should apply to an application for an order in proceedings referred to in rule 9.18(A1).~~ Paragraph (2) applies if the applicant wishes to seek a direction from the court that the standard procedure should apply to an application to which the fast-track procedure would otherwise apply.

(2) The application for the order must state –

- (a) that the applicant seeks a direction that the standard procedure in Chapter 4 of this Part should apply; and
- (b) the applicant's reasons for seeking such a direction.

(2A) Paragraph (3) applies where-

- (a) an application is made to which paragraph (2) applies; or
- (b) the respondent files an objection to the use of the fast-track procedure.

(3) The court will –

- (a) determine without notice to the parties and before the first hearing whether the standard procedure or the fast-track procedure in Chapter 4 or Chapter 5 of this Part should apply to the application; and
- (b) notify the parties of its determination and any directions made in consequence of that determination.

### Procedure before the first hearing

**9.19** (1) Not more than ~~21~~ 14 days after the date of the issue of the application both parties must simultaneously exchange with each other and file with the court a financial statement referred to in Practice Direction 5A.

(2) The financial statement must –

- (a) be verified by a statement of truth; and
- (b) contain the following documents only –
  - (i) any documents required by the financial statement; and
  - (ii) any other documents necessary to explain or clarify any of the information contained in the financial statement.

(2A) The requirement of paragraph (2)(a) relating to verification by statement of truth does not apply to the financial statement of either party where the application has been made under –

- (a) Article 56 of the Maintenance Regulation, using the form in Annex VII to that Regulation; or
- (b) Article 10 of the 2007 Hague Convention, using the Financial Circumstances Form,

but the court may at any time direct that the financial statement of either party shall be verified by a statement of truth.

(3) Where a party was unavoidably prevented from sending any document required by the financial statement, that party must at the earliest opportunity –

- (a) serve a copy of that document on the other party; and
- (b) file a copy of that document with the court, together with a statement explaining the failure to send it with the financial statement.

(4) No disclosure or inspection of documents may be requested or given between the filing of the application for a financial remedy and the first hearing except copies sent with the financial statement or in accordance with paragraph (3).

(Rule 21.1 explains what is meant by disclosure and inspection.)

#### **~~Power of the court to direct filing of evidence and set dates for further hearings~~**

~~9.20 Unless the court is able to determine the application at the first hearing the court may direct that further evidence be filed and set a date for a directions hearing or appointment or final hearing.~~

#### **Consideration of the application at the first hearing**

9.20 (1) If the court is able to determine the application at the first hearing, it must do so unless it considers that there are good reasons not to do so.

(2) Paragraphs (3) to (7) apply where the court does not determine the application at the first hearing.

(3) The court may give directions relating to-

- (a) the filing of further evidence;
- (b) the production of further documents;
- (c) any other matter required for the fair determination of the matter.

(4) The court may use the first hearing or part of it as a FDR appointment.

(5) Where the court uses the first hearing or part of it as a FDR appointment, rule 9.17 applies subject to a modification that the applicant must produce to the court at the first hearing all offers and proposals and responses to them.

(6) The court may direct that the application be referred to a FDR appointment.

(7) If the court does not direct that the application be referred to a FDR appointment, then at the first hearing the court-

- (a) may fix a date for a further directions hearing; and
- (b) must fix a date for a final hearing.



**Who the respondent is on an application under section 20 or section 20A of the 1978 Act<sup>19</sup> or Part 6 of Schedule 6 to the 2004 Act**

**9.21** In relation to proceedings set out in column 1 of the following table, column 2 sets out who the respondents to those proceedings will be.

Proceedings	Respondent
Application under section 20 of the 1978 Act	The other party to the marriage; and where the order to which the application relates requires periodical payments to be made to, or in respect of, a child who is 16 years of age or over, that child.
Application under paragraphs 30 to 34 of Schedule 6 to the 2004 Act	The other party to the civil partnership; and where the order to which the application relates requires periodical payments to be made to, or in respect of, a child who is 16 years of age or over, that child.
Application for the revival of an order under section 20A of the 1978 Act or paragraph 40 of Schedule 6 to the 2004 Act	The parties to the proceedings leading to the order which it is sought to have revived

**Duty to make entries in the court's register**

**9.21A** Where a court officer receives notice of any direction made in the High Court or family court under section 28 of the 1978 Act by virtue of which an order made under that Act or the 2004 Act ceases to have effect, particulars of the direction must be noted in the court's records.

*[No amendments are proposed to the remaining Chapters of Part 9, so they have not been included in this document.]*

[END]