

2009/190



Family Proceedings Amendment Rules 2009

Rt Hon Dame Sian Elias, Administrator of the Government

Order in Council

At Wellington this 29th day of June 2009

Present:

Her Excellency the Administrator of the Government in Council

Pursuant to section 188 of the Family Proceedings Act 1980, Her Excellency the Administrator of the Government, acting on the advice and with the consent of the Executive Council, makes the following rules.

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Rules

1 Title

These rules are the Family Proceedings Amendment Rules 2009.

2 Commencement

These rules come into force on 3 August 2009.

3 Principal rules amended

These rules amend the Family Proceedings Rules 1981.

4 New rule 27B substituted

Rule 27B is revoked and the following rule substituted:

“27B Non-compliance with rules 27 and 27A

- “(1) This rule applies to a respondent who—
 - “(a) is served with an application; and
 - “(b) fails to file and serve a notice of defence within the time specified in or under rules 27 and 27A.
- “(2) If the respondent appears on the day of the hearing of the application to oppose or support the application, the Judge must decide whether it is in the interests of justice to allow the respondent to be heard.
- “(3) In deciding, for the purpose of subclause (2), whether to allow the respondent to be heard in relation to the application, the Judge must take into account the following matters:
 - “(a) any reason given by the person for failing to comply with rules 27 and 27A; and
 - “(b) the effect of the respondent’s failure to comply with rules 27 and 27A on—
 - “(i) the other parties to the proceeding;
 - “(ii) the management of the proceeding.
- “(4) The Judge may—
 - “(a) allow the respondent to be heard in relation to the application on such terms as the Judge thinks fit; or
 - “(b) decline to allow the respondent to be heard.
- “(5) If the Judge allows the respondent to be heard in relation to the application, the Judge may—
 - “(a) either—

- “(i) proceed with the hearing of the application in accordance with any directions that the Judge thinks fit; or
- “(ii) adjourn the hearing of the application and give any directions about the adjourned hearing that the Judge thinks fit; and
- “(b) make an order against the respondent for costs properly incurred in consequence of his or her failure to comply with rules 27 and 27A.

“(6) If the Judge declines to allow the respondent to be heard, the Judge may proceed with the hearing of the application as if the respondent had not appeared.”

5 Schedule 1 amended

- (1) Form FP 16 of Schedule 1 is amended by inserting the following paragraphs after the first paragraph under the heading “*Notice of defence*”:

“You should note that if you do not file and serve a notice of defence within that time you may not be able to defend the application. On the day of the hearing of the application, should you appear, the Judge may—

 - “(a) allow you to take part in the hearing of the application only on such terms as the Judge thinks fit; or
 - “(b) decline to allow you to take part.

“You should also note that the Judge may make an order against you for costs properly incurred as a consequence of your failure to file and serve a notice of defence within time.”
- (2) Form FP 17 of Schedule 1 is amended by omitting the last paragraph under the heading “*Notice of defence*” and substituting the following paragraphs:

“You should note that if you do not file and serve a notice of defence within that time you may not be able to defend the application. On the day of the hearing of the application, should you appear, the Judge may—

 - “(a) allow you to take part in the hearing of the application only on such terms as the Judge thinks fit; or
 - “(b) decline to allow you to take part.

“You should also note that the Judge may make an order against you for costs properly incurred as a consequence of your failure to file and serve a notice of defence within time. “If you do not file and serve a notice of defence, the case may proceed without further notice to you.”

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the rules, but is intended to indicate their general effect.

These rules, which come into force on 3 August 2009, amend the Family Proceedings Rules 1981 (the **principal rules**).

The amendments—

- substitute a *new rule 27B* in the principal rules that sets out the options available to a Judge where a respondent appears at the hearing of an application without having filed a notice of defence within the time specified. These options include declining to allow the respondent to be heard and proceeding with the hearing as if the respondent had not appeared;
- insert further information in forms FP 16 and FP 17 of Schedule 1 of the principal rules to take account of *new rule 27B*.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 2 July 2009.

These rules are administered by the Ministry of Justice.
