

EXECUTIVE COUNCIL

PUBLIC

Title:	Amendment to the Court Fees (Family Proceedings) Rules 1992
Paper Number:	31/18
Date:	21 March 2018
Responsible Director:	Director of Development and Commercial Services
Report Author:	Head of Courts and Tribunals Service
Portfolio Holder:	Dr Barry Elsby
Reason for paper:	This paper is submitted to Executive Council: For policy decision
Publication:	Yes
Previous papers:	74/15
List of Documents:	Appendix A: Court Fees (Family Proceedings) (Amendment) Rules 2018

1. Recommendations

Honourable Members are recommended to approve the amendment to the Court Fees (Family Proceedings) Rules 1992 (Appendix A) to clarify that the fees set out in the Schedule to those Rules apply to Family Proceedings brought in all courts.

2. Additional Budgetary Implications

None.

3. Executive Summary

3.1. Amendments were made to court fees within the Finance Ordinance 2016. Shortly following the publication of that Ordinance, it was appreciated that the wording of the Court Fees (Family Proceedings) Rules 1992 (“the 1992 Rules”) was such that the fees within the 1992 Rules applied only to proceedings brought in the Supreme Court.

3.2. Most Family Proceedings are in fact brought in the Magistrate’s Court, or occasionally the Summary Court. An amending rule was introduced in 2016 (“the 2016 Rules”) to delete the reference to ‘the Supreme Court’ in rule 4 of the 1992 Rules.

3.3. Unfortunately at the time of the 2016 Rules it was not appreciated that a like reference to the Supreme Court remained in rule 2 of the 1992 Rules.

3.4. In order to place beyond doubt that the fees set out in the 1992 Rules apply to all Family Proceedings, notwithstanding the court the proceedings are commenced in, Honourable Members are requested to authorise a further amendment to delete the reference to ‘the Supreme Court’ in rule 2 of the 1992 Rules.

4. Options and Reasons for Recommending Relevant Option

4.1 A number of possible options have been considered, namely:

- (i) **Do Nothing** – the present state of the 1992 Rules is such that rule 2 and rule 4 are, arguably, contradictory. There is the potential for parties to proceedings to refuse to pay fees otherwise due on the ground that the legislation does not clearly provide that the fees are payable.
- (ii) **Amend the 1992 Rules** – deleting the reference to ‘the Supreme Court’ in rule 2 of the 1992 Rules will ensure that the fact that the fees within the 1992 Rules apply to all family proceedings is placed beyond doubt.

4.2 Option (ii) is the recommended option to remove the existing inconsistency and provide the necessary clarity to all parties.

5. Resource Implications

5.1. Financial Implications

None.

5.2. Human Resource Implications

None.

5.3. Other Resource Implications

None.

6. Legislative Proposal

6.1 An amendment has been prepared and is appended to this paper.

7. Environmental & Sustainability Implications

None.

8. Significant Risks

To leave the 1992 Rules as they currently stand leaves open the possibility of challenge to the fees being charged in the Magistrate’s Court and Summary Court.

27.02.2018

SUBSIDIARY LEGISLATION

COURTS AND LEGAL SERVICES

Court Fees (Family Proceedings) (Amendment) Rules 2018

S. R. & O. No. of 2018

Made: 2018

Published: 2018

Coming into force:

1. Title

These rules are the Court Fees (Family Proceedings) (Amendment) Rules 2018.

2. Commencement

These rules come into force on publication.

3. Amendment of rule 2 -- Application

Rule 2 of the Court Fees (Family Proceedings) Rules 1992 is amended by deleting the words “in the Supreme Court”.

4. Amendment to rule 4 — Fees

Rule 4(7) is amended by adding “(1)” immediately after “paragraph”.

Made this2018.

Nigel Phillips, C. B. E.
Governor.

EXPLANATORY NOTES

(not forming part of the Rules)

These rules amend the Court Fees (Family Proceedings) Rules 1992.

Rule 2 of the Rules is amended to reflect that the rules cover family proceedings in all courts and are not just limited to the Supreme Court. This amendment will ensure that rule 2 is consistent with other rules. Rule 4(7) is amended to provide the cross-reference to the paragraph referred to which specifies fees to be paid.