

SUBSIDIARY LEGISLATION 12.20

THE CIVIL COURT (FAMILY SECTION), THE FIRST HALL OF THE CIVIL COURT AND THE COURT OF MAGISTRATES (GOZO) (SUPERIOR JURISDICTION) (FAMILY SECTION) REGULATIONS

16th December, 2003

*LEGAL NOTICE 397 of 2003, as amended by Legal Notices 9 of 2004,
181 and 186 of 2006, 370 and 386 of 2011, 111 of 2012 and Act XIII of
2018.*

1. The title of these regulations is The Civil Court (Family Section), The First Hall of the Civil Court and The Court of Magistrates (Gozo) (Superior Jurisdiction) (Family Section) Regulations. Citation.
Amended by:
L.N. 9 of 2004.
2. In these regulations unless the context otherwise requires: Interpretation.
 - (a) the Civil Court (Family Section), the Civil Court (Voluntary Jurisdiction Section) and the Court of Magistrates (Gozo) (Superior Jurisdiction) (Family Section) are the sections of the respective courts established by the Civil Courts (Establishment of Sections) Order, reproduced in the Schedule; S.L. 12.19
 - (b) "Minister" means the Minister responsible for Justice.
3. (1) The Minister shall in accordance with article 89 of the Code of Organization and Civil Procedure appoint panels of experts as follows: Appointment of
Mediators etc.
Amended by:
XIII.2018.33.
Cap. 12.
 - (a) a panel of experts in family matters (hereinafter in these regulations called mediators) being persons who in the opinion of the Minister have the necessary qualities to undertake the functions assigned to mediators by these regulations which panel shall consist of two lists as follows:
 - (i) a first list consisting of persons qualified as aforesaid from amongst whom the parties in a case may select by mutual consent a person to act as mediator; and
 - (ii) a second list of persons qualified as aforesaid who shall be appointed by the Court on a roster basis to act as mediators in a particular case.A person who has the necessary qualities as aforesaid may be included in both the first and second list;
 - (b) a panel of experts in family law (hereinafter in these regulations called children's advocates) being persons in possession of the warrant to practice as advocates.
- (2) Mediators and children's advocates shall be paid such fees

for their services as the Minister may from time to time establish. Where the parties select a mediator by mutual consent from the first list of mediators the fees due to such mediator shall be charged to the parties, otherwise the fees due to mediators and children's advocates shall be paid by the Registrar.

(3) Before making the appointments as aforesaid the Minister shall consult the judge or judges, presiding over the Civil Court (Family Section).

(4) Before assuming the functions of their office the mediators and children's advocates shall subscribe to an oath in the hands of the Attorney General to discharge the duties of their office faithfully and impartially and not to divulge any information which may come to their knowledge through the performance of their duties. Such oath shall be filed in the registry of the Civil Court by means of a note and the Registrar shall keep such note in a special book which shall be properly indexed and be subject to public inspection at all times during which the said Registry is open.

(5) A mediator may request to abstain from performing his functions in any particular case and may be challenged on the same grounds on which according to law a judge may abstain or be challenged. The judge or magistrate presiding the Court before which the case is being heard shall decide on such request for abstention or challenge and the decision of the judge or magistrate, as the case may be, shall be final and may not be appealed against or challenged before any Court.

(6) The Minister shall in accordance with article 89 of the Code of Organization and Civil Procedure appoint a panel of experts in family and child matters (hereinafter in these regulations called support persons) being persons who in the opinion of the Minister have the necessary qualities to undertake the functions assigned to support persons, which panel shall consist of persons qualified as aforesaid who shall be appointed by the Court on a roster basis to act as support persons in a particular case.

(7) The functions of the support person shall include, *inter alia*:

- (a) guiding and assisting the minor in a sensitive manner, both during and after the proceedings, as appropriate;
- (b) the provision of general emotional support to the minor;
- (c) advising the Court as to whether therapy or counselling is necessary, both during and after the proceedings;
- (d) liaising with the minor's parents or legal guardians, family members, and advocate, as appropriate;
- (e) informing the minor about the proceedings at court and his role during the proceedings;

- (f) advising or requesting the Court on the issuing of protection orders, both during and after the proceedings, as appropriate;
- (g) monitoring the adherence to Court orders by perpetrators following the conclusion of the proceedings;
- (h) monitoring the relationship between the minor and the perpetrators following the conclusion of the proceedings, as appropriate;
- (i) liaising with the appropriate agencies and, or professionals to ensure that the necessary counselling and, or treatment is provided, as appropriate;
- (j) advising or requesting the Court to issue any special measures as may be necessary in the minor's best interest.

3A. The provisions of regulation 3 shall apply for the purposes of article 66J(1) of the Civil Code, such that the panels referred to in the said regulation 3 shall be deemed also to be the register of qualified persons referred to in the said article 66J(1) of the Civil Code and shall serve the same function."

Applicability of regulation 3.
Added by:
L.N. 370 of 2011.
Cap. 16.

4. (1) Any party wishing to proceed to initiate a suit for personal separation or divorce against the other spouse shall first demand authority to proceed from the Civil Court (Family Division), the Court of Magistrates (Gozo) (Superior Jurisdiction) (Family Division) as the case may be, each of such courts hereinafter in this regulation called the "Court", by filing a letter, in the case of personal separation, or by filing an application, in the case of divorce, as the case may be, to that effect in the registry of the Court addressed to the Registrar, stating the name and address both of the person filing the letter as well as that of the other spouse, and requesting the Court to authorise him or her to proceed. Such letter shall be signed and filed by the party personally or by an advocate or legal procurator on behalf of such party.

Authorisation to proceed to initiate proceedings for personal separation or for divorce.
Amended by:
L.N. 370 of 2011;
L.N. 386 of 2011;
XIII.2018.33.

(2) Where authority to proceed for personal separation or divorce is granted by the Court, it shall be lawful for either spouse to bring a suit before the Court, or counter claim for personal separation or divorce, as the case may be, on the same or any other of the grounds mentioned in the Civil Code as if such leave referred to both parties on all of the said grounds.

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(3) Before granting such leave the Court shall summon the parties to appear before a mediator, either appointed by it or with the mutual consent of the parties, and where the Court deems it expedient so to do, either of its own motion, or at the request of the mediator, or of either of the spouses, may appoint a children's advocate to represent the interests of any minor children of the parties:

Provided that where the letter referred to in this regulation is accompanied by evidence substantiating a claim of domestic violence, the Court shall summon the parties to appear before it to determine whether appearing before a mediator is in the best interest of both

parties.

(4) The mediator shall in the first place attempt to reconcile the parties. During this stage the mediator shall hear the parties.

(5) Where parties fail to reconcile the mediator shall mediate between them in an effort to reach an agreement to enter a deed of personal separation by mutual consent.

(6) The mediator may *in camera* hear the parties separately or together, in the presence of their advocates or legal procurators, and he may also hear any minor children of the spouses, the children's advocate, if any, and the advocates or legal procurators of the parties.

(7) The spouses and all other persons shall not be required to take any oath and no evidence may be adduced before any Court of anything divulged to the mediator in the conciliation or mediation procedures, of any proposal made by him or any other person during the procedures or of the reaction of either spouse to such proposals.

(8) Where the mediator manages to reconcile the parties he shall make a note to that effect in the records of the case, and transmit the records to the judge who shall thereupon close the proceedings.

(9) Where the parties have not reconciled, but they have through the office of the mediator or otherwise agreed to enter into a deed of personal separation by mutual consent or to file a joint application for divorce, the mediator shall transmit to the judge a draft of the deed of personal separation or of the divorce agreement, as the case may be, together with any comments thereon by the advocates or legal procurators of the parties, the children's advocate, if any, and his views, for the grant of the authorisation by the judge.

(10) The judge shall give his authorisation by decree *in camera*, but may before proceeding to give such decree hear either of the parties, the children or their respective advocates and legal procurators.

(11) (a) During the mediation period the parties may jointly request the Court to appoint a judicial assistant in order to receive evidence on oath intended to facilitate the proceedings before the mediator.

(b) The judge shall decree on any such demand *in camera*, after hearing, if he so deems fit, the spouses, the minor children, and, or, their respective advocates and legal procurators.

(12) Where the attempts of the mediator to reconcile the parties or to assist them in reaching an agreement as aforesaid have failed or upon the lapse of two months from the filing of the letter or of the application, as the case may be, referred to in sub-regulation (1) (or such longer period as the Court may for good reason grant) no such conciliation or agreement has been reached, the mediator shall

inform the judge in writing to that effect and the judge shall thereupon grant the leave requested:

Provided that where in the opinion of the mediator, it is unlikely that such conciliation can be achieved or such agreement reached, the mediator shall inform the judge in writing before the lapse of the said period of two months or before such longer period as aforesaid.

(13) Without prejudice to sub-regulation (11), any party may during the pendency of the procedures in the conciliation, mediation, pre-trial or trial stages, request the Court to make such provisional orders or to issue such writ or warrant as may be necessary to safeguard its interest.

5. (1) Where during the conciliation or mediation stage the parties reach an agreement on the payment of an amount for maintenance that may be payable by one of them to the other either in respect of him or herself or in respect of the children, or agreement is reached as to the custody for visitation rights with respect to, the children, or on who is to continue to reside in the matrimonial home, the mediator shall make a note of such agreement which note shall be subscribed by the parties, and shall forthwith transmit such note to the Court which shall decree on the matter accordingly.

Decree agreements
on collateral
matters.

(2) Where any party is not assisted by an advocate or legal procurator the mediator shall inform that party of the importance of the agreement and of his or her right to be assisted by an advocate or legal procurator or to take legal advice before subscribing to any such agreement.

6. (a) Where two spouses agree to enter into a deed of personal separation by mutual consent otherwise than through the mediation of a mediator as provided in regulation 4, they shall file in a note to that effect signed by their notary and their respective advocates or legal procurators. Such note shall be filed in the Family Section of the Civil Court or of the Court of Magistrates (Gozo) (Superior Jurisdiction) together with a draft of the deed.

Consensual
separation.

(b) Upon receipt of the note the Court shall refer the matter to a mediator, either selected jointly by the parties from the first list and indicated by them in the note, or assigned by the Court.

(c) The mediator shall, not later than one month from the filing of the note, examine the said draft deed and if he deems fit, hear the parties in the presence of their legal counsel and if appropriate any minor children of the spouses, and may also request the Court to appoint a children's advocate. The mediator shall within the aforesaid period of one month send back the note to the Court together with his advice thereon.

(d) Upon the receipt of the advice, the Court shall after

hearing, if it so deems fit the spouses or any of their children, proceed to give its decree as soon as possible approving, amending or rejecting the said draft deed.

Trial in cases for personal separation or divorce.
 Amended by:
 L.N. 370 of 2011.

7. (1) Where the Court has authorised a spouse to proceed with a suit for personal separation or divorce, either party may initiate proceedings within two months or such longer period as the Court may, for grave reason, grant.

(2) Upon such case being initiated and upon the close of the written proceedings, the Court shall proceed to appoint a children's advocate where in its opinion this is required in the interests of any minor children of the spouses, and shall thereupon proceed with the pre-trial stage of the case in which the Court shall fix time limits within which the parties shall produce all documentary evidence in support of their case and produce such witnesses whose evidence cannot be produced by affidavit.

(3) The pre-trial period shall close when all the documents and other evidence of the parties have been produced or the time within which they were to be so produced has elapsed. During such period the Court may also appoint such experts as it may deem necessary to assist it.

(4) Except for grave and serious reasons to be stated by the Court, the pre-trial period shall not extend beyond one year after the close of the written proceedings.

(5) During the pre-trial period and until it passes to give judgement, the Court may, on the demand of either party, give such provisional orders as it may deem fit, and may likewise, where grave reasons or change of circumstances so necessitate, alter or revoke such orders.

(6) After the close of the pre-trial stage the judge shall fix the date for the trial where the advocates for the spouses and any children's advocates that may have been appointed shall make their submissions and counter submissions and the Court shall thereupon proceed to give judgement on all points at issue:

Provided that if the Court shall not be in a position to determine the manner in which any community of property between the parties is to be liquidated, it may first determine all the other issues and then proceed to give judgement on that point at a later stage. The Court may also at any stage encourage the parties to enter into an arbitration agreement as provided for in the proviso to article 15(6) of the Arbitration Act.

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Domestic violence during mediation proceedings.
 Added by:
 XIII.2018.33.

8. Where, in the course of mediation proceedings, the mediator becomes aware of, or has reason to suspect, the occurrence of domestic violence, the mediator shall immediately inform the Judge in writing to that effect.

Commencement of proceedings under these regulations.
 Renumbered by:
 XIII.2018.33.

9. Where under any law a person is required to proceed before a Court within a particular time, such proceedings shall for the purposes of these procedures be deemed to have been commenced upon filing in the registry of the Court of the letter referred to in

regulation 4(1).

10. (1) Without prejudice to the provisions of regulations 4 to 7 where any person desires to proceed before the Court in connection with -

- (a) disputes between parties, whether married or otherwise, concerning the custody and maintenance of, or visitation rights to their children; or
- (b) maintenance between spouses; or
- (c) variations of any matter regulated by any judgement of personal separation or by a deed of personal separation or by a decree or judgment of divorce; or
- (d) variation of any agreement in any matter referred to in paragraph (a),

Mediation proceedings to apply also in other cases.

*Amended by:
L.N. 370 of 2011.
Renumbered by:
XIII.2018.33.*

such party shall, in the first place, file a letter in the registry of the Court stating his or her claim containing the details listed in regulation 4(1) and signed and filed as therein provided.

(2) The court shall summon the parties to appear before a mediator, and the provisions of regulation 4(3) shall apply.

(3) The mediator shall mediate between the parties in an effort to make them reach an agreement on the matter in dispute and the provisions of regulation 4(6) and (7) shall apply to the mediation process.

(4) Where the parties reach an agreement it shall be recorded in writing and filed in the records of the proceedings, which shall thereupon be transmitted by the mediator to the Court, which shall unless there is anything therein contrary to public order, decree on the matter in dispute accordingly.

(5) Should the parties fail to reach an agreement the mediator shall inform the Court accordingly.

(6) During the mediation stage any of the parties may apply to the Court for the issue of any provisional order or the issue of any act or warrant to safeguard any of his or her rights.

11. (1) Upon being informed by the mediator that the parties have failed to reach an agreement, following the mediation proceedings under the preceding regulation, the Court shall authorise the parties to initiate proceedings within two months or such longer period as the Court may for grave reasons grant.

Trial in other cases.
*Renumbered by:
XIII.2018.33.*

(2) Upon such case being initiated and upon the close of the written proceedings, the Court shall proceed to appoint a children's advocate where in its opinion this is required in the interests of any minor children, and shall thereupon proceed with the pre-trial stage of the case in which the Court shall fix time limits within which the parties shall produce all documentary evidence in support of their case and produce such witnesses whose evidence cannot be produced by affidavit.

(3) The pre-trial period shall close when all the documents and other evidence of the parties have been produced or the time within

which they were to be so produced has elapsed. During such period the Court may also appoint such experts as it may deem necessary to assist it.

(4) Except for grave and serious reasons to be stated by the Court, the pre-trial period shall not extend beyond one year after the close of the written proceedings.

(5) During the pre-trial period and until it passes to give judgement, the Court may, on the demand of either party give such provisional orders as it may deem fit, and may likewise, where grave reasons or change of circumstances so necessitate, alter or revoke such orders.

(6) After the close of the pre-trial stage the judge shall fix the date for the trial where the advocates for the parties and any children's advocates that may have been appointed shall make their submissions and counter submissions and the Court shall thereupon proceed to give judgement on all points at issue.

Where party fails to appear before mediation.
Renumbered by:
XIII.2018.33.

12. Where a person has under the provisions of these regulations been summoned to appear before a mediator and fails to do so, the mediator shall inform the Court and indicate such failure together with any reason, if any, adduced by such person for the failure, and the Court when deciding the matter before it shall take due account and give due consideration to such failure.

Judge or magistrate may give all necessary directions.
Renumbered by:
XIII.2018.33.

13. The judge or magistrate, as the case may be, and any judicial assistant who may be assigned to the case under the direction of the Court, shall give all such guidance and directives as they may think fit for the better management of the case.

Transitory provision.
Added by:
L.N. 9 of 2004.
Amended by:
L.N. 181 of 2006;
L.N. 186 of 2006.
Renumbered by:
XIII.2018.33.
S.L. 12.19

14. The section of the Court which, in accordance with these Regulations and in accordance with the Civil Courts (Establishment of Sections) Order, is, according to the nature of the same and according to the territorial jurisdiction of the Court, to take cognizance of any act, application or sworn application, shall on the coming into force of these regulations take cognizance of those acts, applications or sworn applications that immediately before the coming into force of these Regulations or that Order were pending before the First Hall of the Civil Court, the Second Hall of the Civil Court and the Court of Magistrates (Gozo) (Superior Jurisdiction), and this according to the jurisdiction of each of those sections in accordance with these Regulations and that Order, so however that notwithstanding anything in these Regulations or that Order, the procedures to be followed in respect of each act, application or sworn application filed before the date of the coming into force of these Regulations or of that Order, the procedures to be followed in respect of each act, application or sworn application filed before the date of the coming into force of these Regulations or of that Order, shall be that in force immediately before that date.

14. In order to ensure that students training at the University of Malta to become mediators benefit from any placements with mediators, the following rules shall be observed:
- Training for students studying to become mediators.
Added by: L.N. 111 of 2012.
- (a) a student reading for a Master of Arts in Mediation at the University of Malta shall declare on oath that he will maintain the confidentiality of the proceedings. Such declaration shall be filed in the registry of the Civil Court (Family Section);
 - (b) prior to such a student attending mediation, the mediator shall obtain the prior consent of the parties;
 - (c) such student may take an active role in the mediation proceedings under the guidance of a mediator provided that the consent referred to in paragraph (b) has been obtained;
 - (d) should any party to a mediation process at any time request the student to leave the mediation sitting, then the student shall immediately withdraw from that sitting.

SCHEDULE

Added by: L.N. 9 of 2004.

(Regulation 2(a))

The Civil Courts (Establishment of Sections) Order

1. The title of this Order is the Civil Courts (Establishment of Sections) Order. Citation.
2. There shall be three sections in the Civil Court to which shall be assigned, as provided by this Order, the category of cases, hitherto falling within the jurisdiction of the Civil Court (First Hall) and the Civil Court (Second Hall), or as may be assigned to the Civil Court by any law. Civil Court to have three Sections.
3. The sections of the Civil Court shall be the Family Section, the Voluntary Jurisdiction Section and a general jurisdiction section to be styled the First Hall of the Civil Court. Designation of Sections.
Amended by: L.N. 8 of 2004.
4. To the Civil Court (Family Section) shall be assigned those cases falling within the competence of the Civil Court and which relate to matters regulated by: Assignment of cases of the Civil Court (Family Section).
- (a) Titles I, II and IV of Book First the Civil Code; Cap 16.
 - (b) the Maintenance Orders (Facilities for Enforcement) Ordinance; Cap 48.
 - (c) the Maintenance Orders (Reciprocal Enforcement) Act;
 - (d) the Marriage Act; and Cap 255.
 - (e) the Child Abduction and Child Custody Act. Cap 410.

Assignment of cases to the Civil Court (Voluntary Jurisdiction Section).
Cap. 16.

5. To the Civil Court (Voluntary Jurisdiction Section) shall be assigned applications falling within the Competence of the Civil Court and which relate to matters regulated by:

(a) Titles III, V, VI and VII of Book First of the Civil Code; and

Cap. 12.

(b) Part II of Book Second of the Code of Organisation and Civil Procedure.

Assignment of cases to the First Hall of the Civil Court.

6. To the First Hall of the Civil Court shall be assigned all cases within the competence of the Civil Court and not assigned to the Family Section or the Voluntary Jurisdiction Section.

Amended by:
L.N. 8 of 2004.

Registrar to assign cases.

7. Subject to any rules of court or to any regulation, cases shall be assigned to the different sections of the Civil Court by the Registrar in accordance with the category to which the case refers.

Chief Justice to determine Section in particular cases.

8. Where any dispute arises as to whether a case should be assigned to one section or another of the Civil Court, or where a case involves more than one category falling to be assigned to different sections of the Civil Court, the matter shall be referred to the Chief Justice who shall, *in camera*, determine the section to which the case shall be assigned. The determination by the Chief Justice shall be registered in the records of the case and shall be final.

Court of Magistrates (Gozo) in its Superior Jurisdiction.
Cap 12.

9. Without prejudice to the provisions of article 54 of the Code of Organisation and Civil Procedure there shall be in the Court of Magistrates (Gozo), in its Superior Jurisdiction, two Sections to be styled respectively "The Family Section" and "The General Jurisdiction Section". To the Family Section shall be assigned cases falling within the competence of that Court in its Superior Jurisdiction and which are regulated by the provisions referred to in article 4(a) to (e) of this Order, and to the General Jurisdiction Sections shall be assigned cases falling within the competence of the said Court in its Superior Jurisdiction which are not assigned to the Family Section or to which the said article 54 of the said Code does not apply. Articles 7 and 9 of this Order shall *mutatis mutandis* apply with respect to cases falling within the competence of the said Court in its Superior Jurisdiction with regard to the assignment of cases to the various Sections.
