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STATUTORY INSTRUMENTS

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**2005 No. 2795 (L. 22)**

**CHILDREN AND YOUNG  
PERSONS, ENGLAND AND WALES**

**The Family Procedure (Adoption) Rules 2005**

*Made* - - - - - *10th October 2005*  
*Laid before Parliament* *12th October 2005*  
*Coming into force* - - - *30th December 2005*

The Family Procedure Rule Committee makes the following Rules in exercise of the powers conferred by sections 75 and 76 of the Courts Act 2003<sup>(1)</sup>, sections 52(7) and (8), 60(4), 90(1), 102, 109(2) and 141(1) and (3) of, and paragraphs 1(4), 4(4) and 6(2) of Schedule 1 to, the Adoption and Children Act 2002<sup>(2)</sup> and section 54(1) of the Access to Justice Act 1999<sup>(3)</sup>.

In accordance with section 79 of the Courts Act 2003 the Committee has consulted with persons it considered appropriate.

These Rules may be cited as the Family Procedure (Adoption) Rules 2005.

**PART 1**

**OVERRIDING OBJECTIVE**

**The overriding objective**

1.—(1) These Rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly, having regard to the welfare issues involved.

(2) Dealing with a case justly includes, so far as is practicable—

- (a) ensuring that it is dealt with expeditiously and fairly;
- (b) dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues;
- (c) ensuring that the parties are on an equal footing;

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(1) 2003 c. 39.

(2) 2002 c. 38. Section 102 was amended by section 40 of, and paragraphs 15 and 16 of Schedule 3 to, the Children Act 2004 (c. 31). Section 141(1) was amended, and section 141(2) was revoked, by section 109 of, paragraph 413 of Schedule 8, and Schedule 10, to the Courts Act 2003 (c. 39). Section 141(6) was inserted by section 62(6) of the Children Act 2004.

(3) 1999 c. 22.

- (d) saving expense; and
- (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

**Application by the court of the overriding objective**

- 2. The court must seek to give effect to the overriding objective when it—
  - (a) exercises any power given to it by these Rules; or
  - (b) interprets any rule.

**Duty of the parties**

- 3. The parties are required to help the court to further the overriding objective.

**Court's duty to manage cases**

- 4.—(1) The court must further the overriding objective by actively managing cases.
- (2) Active case management includes—
  - (a) encouraging the parties to co-operate with each other in the conduct of the proceedings;
  - (b) identifying at an early stage—
    - (i) the issues; and
    - (ii) who should be a party to the proceedings;
  - (c) deciding promptly—
    - (i) which issues need full investigation and hearing and which do not; and
    - (ii) the procedure to be followed in the case;
  - (d) deciding the order in which issues are to be resolved;
  - (e) encouraging the parties to use an alternative dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure;
  - (f) helping the parties to settle the whole or part of the case;
  - (g) fixing timetables or otherwise controlling the progress of the case;
  - (h) considering whether the likely benefits of taking a particular step justify the cost of taking it;
  - (i) dealing with as many aspects of the case as it can on the same occasion;
  - (j) dealing with the case without the parties needing to attend at court;
  - (k) making use of technology; and
  - (l) giving directions to ensure that the case proceeds quickly and efficiently.

**PART 2**

**INTERPRETATION AND APPLICATION OF OTHER RULES**

**Extent and application of other rules**

- 5.—(1) Unless the context otherwise requires, these Rules apply to proceedings in—
  - (a) the High Court;

- (b) a county court; and
- (c) a magistrates' court.

(2) Rule 35.15 of the CPR shall apply in detailed assessment proceedings in the High Court and a county court.

(3) Subject to paragraph (4), Parts 43, 44 (except rules 44.3(2) and (3) and 44.9 to 44.12A), 47 and 48 and rule 45.6 of the CPR apply to costs in proceedings, with the following modifications—

- (a) in rule 43.2(1)(c)(ii), “district judge” includes a district judge of the principal registry of the Family Division;
- (b) after rule 43.2(1)(d)(iv), insert—
  - “or
  - (v) a magistrates' court.”; and
- (c) in rule 48.7(1) after “section 51(6) of the Supreme Court Act 1981” insert “or section 145A of the Magistrates' Courts Act 1980(4)”.

(4) Part 47 of the CPR does not apply to proceedings in a magistrates' court.

(5) Parts 50 and 70 to 74 of, and Schedules 1 and 2 to, the CPR apply, as far as they are relevant, to the enforcement of orders made in proceedings in the High Court and county courts with necessary modifications.

## Interpretation

6.—(1) In these Rules—

“the Act” means Part 1 of the Adoption and Children Act 2002;

“the 1989 Act” means the Children Act 1989(5);

“adoption proceedings” means proceedings for the making of an adoption order under the Act;

“application notice” means a document in which the applicant states his intention to seek a court order in accordance with the procedure in Part 9;

“business day” means any day other than—

- (a) a Saturday, Sunday, Christmas Day or Good Friday; or
- (b) a bank holiday under the Banking and Financial Dealings Act 1971(6), in England and Wales;

“Central Authority” means, in relation to England, the Secretary of State for Education and Skills, and in relation to Wales, the National Assembly for Wales;

“child”—

- (a) means, subject to paragraph (b), a person under the age of 18 years who is the subject of the proceedings; and
- (b) in adoption proceedings, also includes a person who has attained the age of 18 years before the proceedings are concluded;

“children and family reporter” means an officer of the Service or a Welsh family proceedings officer who prepares a report on matters relating to the welfare of the child;

“children’s guardian” means an officer of the Service or a Welsh family proceedings officer appointed to act on behalf of a child who is a party to the proceedings with the duty of safeguarding the interests of the child;

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(4) 1980 c. 43. Section 145A was inserted by section 112 of the Courts and Legal Services Act 1990 (c. 41).

(5) 1989 c. 41.

(6) 1971 c. 80.

“civil restraint order” means an order restraining a party—

- (a) from making any further applications in current proceedings (a limited civil restraint order);
- (b) from making certain applications in specified courts (an extended civil restraint order); or
- (c) from making any application in specified courts (a general civil restraint order);

“court officer” means, in the High Court and a county court, a member of court staff, and in a magistrates' court, the designated officer;

“CPR” means the Civil Procedure Rules 1998<sup>(7)</sup>;

“detailed assessment proceedings” means the procedure by which the amount of costs is decided in accordance with Part 47 of the CPR;

“filing”, in relation to a document, means delivering it, by post or otherwise, to the court office;

“jurisdiction” means, unless the context requires otherwise, England and Wales and any part of the territorial waters of the United Kingdom adjoining England and Wales;

“legal representative” means a barrister or a solicitor, solicitor’s employee or other authorised litigator (as defined in section 119 of the Courts and Legal Services Act 1990<sup>(8)</sup>) who has been instructed to act for a party in relation to an application;

“litigation friend” has the meaning given by section 1 of Part 7;

“non-subject child” means a person under the age of 18 years who is a party to the proceedings but is not the subject of the proceedings;

“officer of the Service” has the meaning given by section 11(3) of the Criminal Justice and Court Services Act 2000<sup>(9)</sup>;

“patient” means a party to proceedings who, by reason of mental disorder within the meaning of the Mental Health Act 1983<sup>(10)</sup>, is incapable of managing and administering his property and affairs;

“placement proceedings” means proceedings for the making, varying or revoking of a placement order under the Act;

“proceedings” means, unless the context otherwise requires, proceedings brought under the Act (whether at first instance or appeal) or proceedings for the purpose of enforcing an order made in any proceedings under that Act, as the case may be;

“provision for contact” means a contact order under section 8 or 34 of the 1989 Act or a contact order under section 26;

“reporting officer” means an officer of the Service or a Welsh family proceedings officer appointed to witness the documents which signify a parent or guardian’s consent to the placing of the child for adoption or to the making of an adoption order or a section 84 order;

“section 84 order” means an order made by the High Court under section 84 giving parental responsibility prior to adoption abroad;

“section 88 direction” means a direction given by the High Court under section 88 that section 67(3) (status conferred by adoption) does not apply or does not apply to any extent specified in the direction;

“section 89 order” means an order made by the High Court under section 89—

- (a) annulling a Convention adoption or Convention adoption order;

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(7) S.I.1998/3132.

(8) 1990 c. 41.

(9) 2000 c. 43.

(10) 1983 c. 20.

- (b) providing for an overseas adoption or determination under section 91 to cease to be valid; or
- (c) deciding the extent, if any, to which a determination under section 91 has been affected by a subsequent determination under that section;

“the Service Regulation” means Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters;

“Welsh family proceedings officer” has the meaning given by section 35(4) of the Children Act 2004(11).

(2) A section or Schedule referred to by number alone means the section or Schedule so numbered in the Adoption and Children Act 2002.

(3) Any provision in these Rules—

- (a) requiring or permitting directions to be given by the court is to be taken as including provision for such directions to be varied or revoked; and
- (b) requiring or permitting a date to be set is to be taken as including provision for that date to be set aside.

### **Power to perform functions of the court**

7.—(1) Where these Rules or a practice direction provide for the court to perform any act then, except where any rule or practice direction, any other enactment, or the Family Proceedings (Allocation to Judiciary) Directions(12), provides otherwise, that act may be performed—

- (a) in relation to proceedings in the High Court or in a district registry, by any judge or district judge of that Court including a district judge of the principal registry of the Family Division;
- (b) in relation to proceedings in a county court, by any judge or district judge including a district judge of the principal registry of the Family Division when the principal registry of the Family Division is treated as if it were a county court(13); and
- (c) in relation to proceedings in a magistrates' court—
  - (i) by any family proceedings court constituted in accordance with sections 66 and 67 of the Magistrates' Courts Act 1980(14); or
  - (ii) by a single justice of the peace who is a member of the family panel—
    - (aa) where an application without notice is made under section 41(2) (recovery orders); and
    - (bb) in accordance with the relevant practice direction.

(The Justices' Clerks Rules 2005(15) make provision for a justices' clerk or assistant clerk to carry out certain functions of a single justice of the peace.)

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(11) 2004 c. 31.

(12) The Family Proceedings (Allocation to Judiciary) Directions [1999] 2 FLR 799 provides that circuit judges, deputy circuit judges, recorders (subject to certain exceptions), district judges and deputy district judges must be nominated as a judge to whom adoption proceedings may be allocated by the President of the Family Division.

(13) By virtue of article 19 of the Children (Allocation of Proceedings) Order 1991 (S.I. 1991/1677) the principal registry of the Family Division is treated as a county court.

(14) 1980 c. 43. Section 67 was substituted by section 49 of the Courts Act 2003 (c. 39).

(15) S.I. 2005/545 (L.10), amended by S.I. 2005/2796 (L. 23).

(2) A deputy High Court judge and a district judge, including a district judge of the principal registry of the Family Division, may not try a claim for a declaration of incompatibility in accordance with section 4 of the Human Rights Act 1998<sup>(16)</sup>.

#### **Court's discretion as to where it deals with cases**

8. The court may deal with a case at any place that it considers appropriate.

#### **Court documents**

9.—(1) A court officer must seal<sup>(17)</sup>, or otherwise authenticate with the stamp of the court, the following documents on issue—

- (a) the application form;
- (b) the order; and
- (c) any other document which a rule or practice direction requires it to seal or stamp.

(2) The court officer may place the seal or the stamp on the document—

- (a) by hand; or
- (b) by printing a facsimile of the seal on the document whether electronically or otherwise.

(3) A document purporting to bear the court's seal or stamp will be admissible in evidence without further proof.

(4) The relevant practice direction contains provisions about court documents.

#### **Computation of time**

10.—(1) This rule shows how to calculate any period of time for doing any act which is specified—

- (a) by these Rules;
- (b) by a practice direction; or
- (c) by a direction or order of the court.

(2) A period of time expressed as a number of days must be computed as clear days.

(3) In this rule “clear days” means that in computing the numbers of days—

- (a) the day on which the period begins; and
- (b) if the end of the period is defined by reference to an event, the day on which that event occurs

are not included.

(4) Where the specified period is 7 days or less and would include a day which is not a business day, that day does not count.

(5) When the period specified—

- (a) by these Rules or a practice direction; or
- (b) by any direction or order of the court,

for doing any act at the court office ends on a day on which the office is closed, that act will be in time if done on the next day on which the court office is open.

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<sup>(16)</sup> 1998 c. 42.

<sup>(17)</sup> A seal is a mark which the court puts on a document to indicate that the document has been issued by the court.

### **Dates for compliance to be calendar dates and to include time of day**

**11.**—(1) Where the court makes an order or gives a direction which imposes a time limit for doing any act, the last date for compliance must, wherever practicable—

- (a) be expressed as a calendar date; and
- (b) include the time of day by which the act must be done.

(2) Where the date by which an act must be done is inserted in any document, the date must, wherever practicable, be expressed as a calendar date.

(3) Where “month” occurs in any order, direction or other document, it means a calendar month.

## **PART 3**

### **GENERAL CASE MANAGEMENT POWERS**

#### **The court’s general powers of management**

**12.**—(1) The list of powers in this rule is in addition to any powers given to the court by any other rule or practice direction or by any other enactment or any powers it may otherwise have.

(2) Except where these Rules provide otherwise, the court may—

- (a) extend or shorten the time for compliance with any rule, practice direction or court direction (even if an application for extension is made after the time for compliance has expired);
- (b) adjourn or bring forward a hearing;
- (c) require a party or a party’s legal representative to attend the court;
- (d) hold a hearing and receive evidence by telephone or by using any other method of direct oral communication;
- (e) direct that part of any proceedings be dealt with as separate proceedings;
- (f) stay the whole or part of any proceedings or judgment either generally or until a specified date or event;
- (g) consolidate proceedings;
- (h) hear two or more applications on the same occasion;
- (i) direct a separate hearing of any issue;
- (j) decide the order in which issues are to be heard;
- (k) exclude an issue from consideration;
- (l) dismiss or give judgment on an application after a decision on a preliminary issue;
- (m) direct any party to file and serve an estimate of costs; and
- (n) take any other step or give any other direction for the purpose of managing the case and furthering the overriding objective.

(3) The court may not extend the period within which a section 89 order must be made.

(4) Paragraph (2)(f) does not apply to proceedings in a magistrates' court.

#### **Exercise of powers of court’s own initiative**

**13.**—(1) Except where an enactment provides otherwise, the court may exercise the powers in rule 12 on an application or of its own initiative.

(Part 9 sets out the procedure for making an application.)

- (2) Where the court proposes to exercise its powers of its own initiative—
  - (a) it may give any person likely to be affected an opportunity to make representations; and
  - (b) where it does so it must specify the time by and the manner in which the representations must be made.
- (3) Where the court proposes to hold a hearing to decide whether to exercise its powers of its own initiative it must give each party likely to be affected at least 3 days' notice of the hearing.
- (4) The court may exercise its powers of its own initiative, without hearing the parties or giving them an opportunity to make representations.
- (5) Where the court has exercised its powers under paragraph (4)—
  - (a) a party affected by the direction may apply to have it set aside or varied; and
  - (b) the direction must contain a statement of the right to make such an application.
- (6) An application under paragraph (5)(a) must be made—
  - (a) within such period as may be specified by the court; or
  - (b) if the court does not specify a period, within 7 days beginning with the date on which the order was served on the party making the application.
- (7) If the High Court or a county court of its own initiative dismisses an application (including an application for permission to appeal) and it considers that the application is totally without merit—
  - (a) the court's order must record that fact; and
  - (b) the court must at the same time consider whether it is appropriate to make a civil restraint order.

#### **Court officer's power to refer to the court**

14. Where these Rules require a step to be taken by a court officer—
  - (a) the court officer may consult the court before taking that step;
  - (b) the step may be taken by the court instead of the court officer.

#### **General power of the court to rectify matters where there has been an error of procedure**

15. Where there has been an error of procedure such as a failure to comply with a rule or practice direction—
  - (a) the error does not invalidate any step taken in the proceedings unless the court so orders; and
  - (b) the court may make an order to remedy the error.

#### **Power of the court to make civil restraint orders**

16. The relevant practice direction sets out—
  - (a) the circumstances in which the High Court or a county court has the power to make a civil restraint order against a party to proceedings;
  - (b) the procedure where a party applies for a civil restraint order against another party; and
  - (c) the consequences of the court making a civil restraint order.



## PART 4

### HOW TO START PROCEEDINGS

#### **Forms**

17. Subject to rule 28(2) and (3), the forms set out in the relevant practice direction or forms to the like effect must be used in the cases to which they apply.

#### **Documents to be attached to the application form**

18. The application form must have attached to it any documents referred to in the application form.

#### **How to start proceedings**

19.—(1) Proceedings are started when a court officer issues an application at the request of the applicant.

(2) An application is issued on the date entered in the application form by the court officer.

(Restrictions on where proceedings may be started are set out in the Children (Allocation of Proceedings) Order 1991(18).)

#### **Application for a serial number**

20.—(1) This rule applies to any application in proceedings by a person who intends to adopt the child.

(2) If the applicant wishes his identity to be kept confidential in the proceedings, he may, before those proceedings have started, request a court officer to assign a serial number to him to identify him in connection with the proceedings, and a number will be assigned to him.

(3) The court may at any time direct that a serial number identifying the applicant in the proceedings referred to in paragraph (2) must be removed.

(4) If a serial number has been assigned to a person under paragraph (2)—

(a) the court officer will ensure that any application form or application notice sent in accordance with these Rules does not contain information which discloses, or is likely to disclose, the identity of that person to any other party to that application who is not already aware of that person's identity; and

(b) the proceedings on the application will be conducted with a view to securing that the applicant is not seen by or made known to any party who is not already aware of his identity except with his consent.

#### **Personal details**

21.—(1) Unless the court directs otherwise, a party is not required to reveal—

(a) the address or telephone number of their private residence;

(b) the address of the child;

(c) the name of a person with whom the child is living, if that person is not the applicant; or

(d) in relation to an application under section 28(2) (application for permission to change the child's surname), the proposed new surname of the child.

(2) Where a party does not wish to reveal any of the particulars in paragraph (1), he must give notice of those particulars to the court and the particulars will not be revealed to any person unless the court directs otherwise.

(3) Where a party changes his home address during the course of proceedings, he must give notice of the change to the court.

## PART 5

### PROCEDURE FOR APPLICATIONS IN ADOPTION, PLACEMENT AND RELATED PROCEEDINGS

#### Application of this Part

**22.** The rules in this Part apply to the following proceedings—

- (a) adoption proceedings;
- (b) placement proceedings; or
- (c) proceedings for—
  - (i) the making of a contact order under section 26;
  - (ii) the variation or revocation of a contact order under section 27;
  - (iii) an order giving permission to change a child's surname or remove a child from the United Kingdom under section 28(2) and (3);
  - (iv) a section 84 order;
  - (v) a section 88 direction;
  - (vi) a section 89 order; or
  - (vii) any other order that may be referred to in a practice direction.

(Parts 9 and 10 set out the procedure for making an application in proceedings not dealt with in this Part.)

#### Who the parties are

**23.**—(1) In relation to the proceedings set out in column 1 of each of the following tables, column 2 of Table 1 sets out who the application may be made by and column 2 of Table 2 sets out who the respondents to those proceedings will be.

**Table 1**

<b>Proceedings for</b>	<b>Applicants</b>
An adoption order (section 46)	The prospective adopters (section 50 and 51).
A section 84 order	The prospective adopters asking for parental responsibility prior to adoption abroad.
A placement order (section 21)	A local authority (section 22).
An order varying a placement order (section 23)	The joint application of the local authority authorised by the placement order to place the child for adoption and the local authority which is to be substituted for that authority (section 23).

<b>Proceedings for</b>	<b>Applicants</b>
An order revoking a placement order (section 24)	The child;  the local authority authorised to place the child for adoption; or  where the child is not placed for adoption by the authority, any other person who has the permission of the court to apply (section 24).
A contact order (section 26)	The child;  the adoption agency;  any parent, guardian or relative;  any person in whose favour there was provision for contact under the 1989 Act which ceased to have effect on an adoption agency being authorised to place a child for adoption, or placing a child for adoption who is less than six weeks old (section 26(1));  a person in whose favour there was a residence order in force immediately before the adoption agency was authorised to place the child for adoption or placed the child for adoption at a time when he was less than six weeks old;  a person who by virtue of an order made in the exercise of the High Court's inherent jurisdiction with respect to children had care of the child immediately before that time; or  any person who has the permission of the court to make the application (section 26).
An order varying or revoking a contact order (section 27)	The child;  the adoption agency; or  any person named in the contact order (section 27(1)).
An order permitting the child's name to be changed or the removal of the child from the United Kingdom (section 28(2) and (3))	Any person including the adoption agency or the local authority authorised to place, or which has placed, the child for adoption (section 28(2)).
A section 88 direction	The adopted child;  the adopters;  any parent; or

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<b>Proceedings for</b>	<b>Applicants</b>
A section 89 order	<p>any other person.</p> <p>The adopters;</p> <p>the adopted person;</p> <p>any parent;</p> <p>the relevant Central Authority;</p> <p>the adoption agency;</p> <p>the local authority to whom notice under section 44 (notice of intention to adopt or apply for a section 84 order) has been given;</p> <p>the Secretary of State for the Home Department; or</p> <p>any other person.</p>

**Table 2**

<b>Proceedings for</b>	<b>Respondents</b>
An adoption order (section 46) or a section 84 order	<p>Each parent who has parental responsibility for the child or guardian of the child unless he has given notice under section 20(4)(a) (statement of wish not to be informed of any application for an adoption order) which has effect;</p> <p>any person in whose favour there is provision for contact;</p> <p>any adoption agency having parental responsibility for the child under section 25;</p> <p>any adoption agency which has taken part at any stage in the arrangements for adoption of the child;</p> <p>any local authority to whom notice under section 44 (notice of intention to adopt or apply for a section 84 order) has been given;</p> <p>any local authority or voluntary organisation which has parental responsibility for, is looking after, or is caring for, the child; and</p> <p>the child where—</p>

<b>Proceedings for</b>	<b>Respondents</b>
	<p>permission has been granted to a parent or guardian to oppose the making of the adoption order (section 47(3) or 47(5));</p> <p>he opposes the making of an adoption order;</p> <p>a children and family reporter recommends that it is in the best interests of the child to be a party to the proceedings and that recommendation is accepted by the court;</p> <p>he is already an adopted child;</p> <p>any party to the proceedings or the child is opposed to the arrangements for allowing any person contact with the child, or a person not being allowed contact with the child after the making of the adoption order;</p> <p>the application is for a Convention adoption order or a section 84 order;</p> <p>he has been brought into the United Kingdom in the circumstances where section 83(1) applies (restriction on bringing children in);</p> <p>the application is for an adoption order other than a Convention adoption order and the prospective adopters intend the child to live in a country or territory outside the British Islands after the making of the adoption order; or</p> <ul style="list-style-type: none"><li>the prospective adopters are relatives of the child.</li></ul>
A placement order (section 21)	<p>Each parent who has parental responsibility for the child or guardian of the child;</p> <p>any person in whose favour an order under the 1989 Act is in force in relation to the child;</p> <p>any adoption agency or voluntary organisation which has parental responsibility for, is looking after, or is caring for, the child;</p> <p>the child; and</p> <p>the parties or any persons who are or have been parties to proceedings for a care order in respect of the child where those proceedings have led to the application for the placement order.</p>

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<b>Proceedings for</b>	<b>Respondents</b>
An order varying a placement order (section 23)	<p>The parties to the proceedings leading to the placement order which it is sought to have varied except the child who was the subject of those proceedings; and</p> <p>any person in whose favour there is provision for contact.</p>
An order revoking a placement order (section 24)	<p>The parties to the proceedings leading to the placement order which it is sought to have revoked; and</p> <p>any person in whose favour there is provision for contact.</p>
A contact order (section 26)	<p>The adoption agency authorised to place the child for adoption or which has placed the child for adoption;</p> <p>the person with whom the child lives or is to live;</p> <p>each parent with parental responsibility for the child or guardian of the child; and</p> <p>the child where—</p> <p>the adoption agency authorised to place the child for adoption or which has placed the child for adoption or a parent with parental responsibility for the child opposes the making of the contact order under section 26;</p> <p>he opposes the making of the contact order under section 26;</p> <p>existing provision for contact is to be revoked;</p> <p>relatives of the child do not agree to the arrangements for allowing any person contact with the child, or a person not being allowed contact with the child; or</p> <p>he is suffering or is at risk of suffering harm within the meaning of the 1989 Act.</p>
An order varying or revoking a contact order (section 27)	<p>The parties to the proceedings leading to the contact order which it is sought to have varied or revoked; and</p> <p>any person named in the contact order.</p>

<b>Proceedings for</b>	<b>Respondents</b>
An order permitting the child's name to be changed or the removal of the child from the United Kingdom (section 28(2) and (3))	The parties to proceedings leading to any placement order;  the adoption agency authorised to place the child for adoption or which has placed the child for adoption;  any prospective adopters with whom the child is living; and  each parent with parental responsibility for the child or guardian of the child.
A section 88 direction	The adopters;  the parents;  the adoption agency;  the local authority to whom notice under section 44 (notice of intention to apply for a section 84 order) has been given; and  the Attorney-General.
A section 89 order	The adopters;  the parents;  the adoption agency; and  the local authority to whom notice under section 44 (notice of intention to adopt or apply for a section 84 order) has been given.

(2) The court may at any time direct that a child, who is not already a respondent to proceedings, be made a respondent to proceedings where—

- (a) the child—
  - (i) wishes to make an application; or
  - (ii) has evidence to give to the court or a legal submission to make which has not been given or made by any other party; or
- (b) there are other special circumstances.

(3) The court may at any time direct that—

- (a) any other person or body be made a respondent to proceedings; or
- (b) a respondent be removed.

(4) If the court makes a direction for the addition or removal of a party, it may give consequential directions about—

- (a) serving a copy of the application form on any new respondent;
- (b) serving relevant documents on the new party; and

- (c) the management of the proceedings.

**What the court or a court officer will do when the application has been issued**

**24.—(1)** As soon as practicable after the application has been issued in proceedings—

- (a) the court will—
    - (i) if section 48(1) (restrictions on making adoption orders) applies, consider whether it is proper to hear the application;
    - (ii) subject to paragraph (4), set a date for the first directions hearing;
    - (iii) appoint a children’s guardian in accordance with rule 59;
    - (iv) appoint a reporting officer in accordance with rule 69;
    - (v) consider whether a report relating to the welfare of the child is required, and if so, request such a report in accordance with rule 73;
    - (vi) set a date for the hearing of the application; and
    - (vii) do anything else that may be set out in a practice direction; and
  - (b) a court officer will—
    - (i) subject to receiving confirmation in accordance with paragraph (2)(b)(ii), give notice of any directions hearing set by the court to the parties and to any children’s guardian, reporting officer or children and family reporter;
    - (ii) serve a copy of the application form (but, subject to sub-paragraphs (iii) and (iv), not the documents attached to it) on the persons referred to in the relevant practice direction;
    - (iii) send a copy of the certified copy of the entry in the register of live-births or Adopted Children Register and any health report attached to an application for an adoption order to—
      - (aa) any children’s guardian, reporting officer or children and family reporter; and
      - (bb) the local authority to whom notice under section 44 (notice of intention to adopt or apply for a section 84 order) has been given;
    - (iv) if notice under rule 27 has been given (request to dispense with consent of parent or guardian), in accordance with that rule inform the parent or guardian of the request and send a copy of the statement of facts to—
      - (aa) the parent or guardian;
      - (bb) any children’s guardian, reporting officer or children and family reporter;
      - (cc) any local authority to whom notice under section 44 (notice of intention to adopt or apply for a section 84 order) has been given; and
      - (dd) any adoption agency which has placed the child for adoption; and
    - (v) do anything else that may be set out in a practice direction.
- (2) In addition to the matters referred to in paragraph (1), as soon as practicable after an application for an adoption order or a section 84 order has been issued the court or the court officer will—
- (a) where the child is not placed for adoption by an adoption agency—
    - (i) ask either the Service or the Assembly to file any relevant form of consent to an adoption order or a section 84 order; and



- (ii) ask the local authority to prepare a report on the suitability of the prospective adopters if one has not already been prepared; and
- (b) where the child is placed for adoption by an adoption agency, ask the adoption agency to—
  - (i) file any relevant form of consent to—
    - (aa) the child being placed for adoption;
    - (bb) an adoption order;
    - (cc) a future adoption order under section 20; or
    - (dd) a section 84 order;
  - (ii) confirm whether a statement has been made under section 20(4)(a) (statement of wish not to be informed of any application for an adoption order) and if so, to file that statement;
  - (iii) file any statement made under section 20(4)(b) (withdrawal of wish not to be informed of any application for an adoption order) as soon as it is received by the adoption agency; and
  - (iv) prepare a report on the suitability of the prospective adopters if one has not already been prepared.
- (3) In addition to the matters referred to in paragraph (1), as soon as practicable after an application for a placement order has been issued—
  - (a) the court will consider whether a report giving the local authority’s reasons for placing the child for adoption is required, and if so, will direct the local authority to prepare such a report; and
  - (b) the court or the court officer will ask either the Service or the Assembly to file any form of consent to the child being placed for adoption.
- (4) Where it considers it appropriate the court may, instead of setting a date for a first directions hearing, give the directions provided for by rule 26.

**Date for first directions hearing**

25. Unless the court directs otherwise, the first directions hearing must be within 4 weeks beginning with the date on which the application is issued.

**The first directions hearing**

- 26.—(1) At the first directions hearing in the proceedings the court will—
- (a) fix a timetable for the filing of—
    - (i) any report relating to the suitability of the applicants to adopt a child;
    - (ii) any report from the local authority;
    - (iii) any report from a children’s guardian, reporting officer or children and family reporter;
    - (iv) if a statement of facts has been filed, any amended statement of facts;
    - (v) any other evidence, andgive directions relating to the reports and other evidence;
  - (b) consider whether an alternative dispute resolution procedure is appropriate and, if so, give directions relating to the use of such procedure;

- (c) consider whether the child or any other person should be a party to the proceedings and, if so, give directions in accordance with rule 23(2) or (3) joining that child or person as a party;
  - (d) give directions relating to the appointment of a litigation friend for any patient or non-subject child unless a litigation friend has already been appointed;
  - (e) consider whether the case needs to be transferred to another court and, if so, give directions to transfer the proceedings to another court in accordance with any order made by the Lord Chancellor under Part I of Schedule 11 to the 1989 Act;
  - (f) give directions about—
    - (i) tracing parents or any other person the court considers to be relevant to the proceedings;
    - (ii) service of documents;
    - (iii) subject to paragraph (2), disclosure as soon as possible of information and evidence to the parties; and
    - (iv) the final hearing; and
- (2) Rule 77(2) applies to any direction given under paragraph (1)(f)(iii) as it applies to a direction given under rule 77(1).
- (3) In addition to the matters referred to in paragraph (1), the court will give any of the directions listed in the relevant practice direction in proceedings for—
- (a) a Convention adoption order;
  - (b) a section 84 order;
  - (c) a section 88 direction;
  - (d) a section 89 order; or
  - (e) an adoption order where section 83(1) applies (restriction on bringing children in).
- (4) The parties or their legal representatives must attend the first directions hearing unless the court directs otherwise.
- (5) Directions may also be given at any stage in the proceedings—
- (a) of the court’s own initiative; or
  - (b) on the application of a party or any children’s guardian or, where the direction concerns a report by a reporting officer or children and family reporter, the reporting officer or children and family reporter.
- (6) For the purposes of giving directions or for such purposes as the court directs—
- (a) the court may set a date for a further directions hearing or other hearing; and
  - (b) the court officer will give notice of any date so fixed to the parties and to any children’s guardian, reporting officer or children and family reporter.
- (7) After the first directions hearing the court will monitor compliance with the court’s timetable and directions by the parties.

### **Requesting the court to dispense with the consent of any parent or guardian**

**27.—**(1) The following paragraphs apply where the applicant wants to ask the court to dispense with the consent of any parent or guardian of a child to—

- (a) the child being placed for adoption;
- (b) the making of an adoption order except a Convention adoption order; or
- (c) the making of a section 84 order.

- (2) The applicant requesting the court to dispense with the consent must—
  - (a) give notice of the request in the application form or at any later stage by filing a written request setting out the reasons for the request; and
  - (b) file a statement of facts setting out a summary of the history of the case and any other facts to satisfy the court that—
    - (i) the parent or guardian cannot be found or is incapable of giving consent; or
    - (ii) the welfare of the child requires the consent to be dispensed with.
- (3) If a serial number has been assigned to the applicant under rule 20, the statement of facts supplied under paragraph (2)(b) must be framed so that it does not disclose the identity of the applicant.
- (4) On receipt of the notice of the request—
  - (a) a court officer will—
    - (i) inform the parent or guardian of the request; and
    - (ii) send a copy of the statement of facts filed in accordance with paragraph (2)(b) to—
      - (aa) the parent or guardian;
      - (bb) any children’s guardian, reporting officer or children and family reporter;
      - (cc) any local authority to whom notice under section 44 (notice of intention to adopt or apply for a section 84 order) has been given; and
      - (dd) any adoption agency which has placed the child for adoption; and
  - (b) if the applicant considers that the parent or guardian is incapable of giving consent, the court will consider whether to—
    - (i) appoint a litigation friend for the parent or guardian under rule 55(1); or
    - (ii) give directions for an application to be made under rule 55(3), unless a litigation friend is already appointed for that parent or guardian.

## **Consent**

- 28.**—(1) Consent of any parent or guardian of a child—
  - (a) under section 19, to the child being placed for adoption; and
  - (b) under section 20, to the making of a future adoption ordermust be given in the form required by the relevant practice direction or a form to the like effect.
- (2) Subject to paragraph (3), consent—
    - (a) to the making of an adoption order; or
    - (b) to the making of a section 84 order,may be given in the form required by the relevant practice direction or a form to the like effect.
  - (3) Any consent to a Convention adoption order must be in a form which complies with the internal law relating to adoption of the Convention country of which the child is habitually resident.
  - (4) Any form of consent executed in Scotland must be witnessed by a Justice of the Peace or a Sheriff.
  - (5) Any form of consent executed in Northern Ireland must be witnessed by a Justice of the Peace.
  - (6) Any form of consent executed outside the United Kingdom must be witnessed by—
    - (a) any person for the time being authorised by law in the place where the document is executed to administer an oath for any judicial or other legal purpose;

- (b) a British Consular officer;
- (c) a notary public; or
- (d) if the person executing the document is serving in any of the regular armed forces of the Crown, an officer holding a commission in any of those forces.

### **Reports by the adoption agency or local authority**

**29.**—(1) The adoption agency or local authority must file the report on the suitability of the applicant to adopt a child within the timetable fixed by the court.

(2) A local authority that is directed to prepare a report on the placement of the child for adoption must file that report within the timetable fixed by the court.

(3) The reports must cover the matters specified in the relevant practice direction.

(4) The court may at any stage request a further report or ask the adoption agency or local authority to assist the court in any other manner.

(5) A court officer will send a copy of any report referred to in this rule to any children’s guardian, reporting officer or children and family reporter.

(6) Any report to the court under this rule will be confidential.

### **Health reports**

**30.**—(1) Reports by a registered medical practitioner (“health reports”) made not more than three months earlier on the health of the child and of each applicant must be attached to an application for an adoption order or a section 84 order except where—

- (a) the child was placed for adoption with the applicant by an adoption agency;
- (b) the applicant or one of the applicants is a parent of the child; or
- (c) the applicant is the partner of a parent of the child.

(2) Health reports must contain the matters set out in the relevant practice direction.

(3) Any health report will be confidential.

### **Notice of final hearing**

**31.** A court officer will give notice to the parties, any children’s guardian, reporting officer or children and family reporter and to any other person that may be referred to in a practice direction—

- (a) of the date and place where the application will be heard; and
- (b) of the fact that, unless the person wishes or the court requires, the person need not attend.

### **The final hearing**

**32.**—(1) Any person who has been given notice in accordance with rule 31 may attend the final hearing and, subject to paragraph (2), be heard on the question of whether an order should be made.

(2) A person whose application for the permission of the court to oppose the making of an adoption order under section 47(3) or (5) has been refused is not entitled to be heard on the question of whether an order should be made.

(3) Any member or employee of a party which is a local authority, adoption agency or other body may address the court at the final hearing if he is authorised to do so.

(4) The court may direct that any person must attend a final hearing.

(5) Paragraphs (6) and (7) apply to—

- (a) an adoption order;
- (b) a section 84 order; or
- (c) a section 89 order.

(6) Subject to paragraphs (7) and (8), the court cannot make an order unless the applicant and the child personally attend the final hearing.

(7) The court may direct that the applicant or the child need not attend the final hearing.

(8) In a case of adoption by a couple<sup>(19)</sup> under section 50 the court may make an adoption order after personal attendance of one only of the applicants if there are special circumstances.

(9) The court cannot make a placement order unless a legal representative of the applicant attends the final hearing.

### **Proof of identity of the child**

**33.**—(1) Unless the contrary is shown, the child referred to in the application will be deemed to be the child referred to in the form of consent—

- (a) to the child being placed for adoption;
- (b) to the making of an adoption order; or
- (c) to the making of a section 84 order

where the conditions in paragraph (2) apply.

(2) The conditions are—

- (a) the application identifies the child by reference to a full certified copy of an entry in the registers of live-births;
- (b) the form of consent identifies the child by reference to a full certified copy of an entry in the registers of live-births attached to the form; and
- (c) the copy of the entry in the registers of live-births referred to in sub-paragraph (a) is the same or relates to the same entry in the registers of live-births as the copy of the entry in the registers of live-births attached to the form of consent.

(3) Where the child is already an adopted child paragraph (2) will have effect as if for the references to the registers of live-births there were substituted references to the Adopted Children Register.

(4) Subject to paragraph (7), where the precise date of the child's birth is not proved to the satisfaction of the court, the court will determine the probable date of birth.

(5) The probable date of the child's birth may be specified in the placement order, adoption order or section 84 order as the date of his birth.

(6) Subject to paragraph (7), where the child's place of birth cannot be proved to the satisfaction of the court—

- (a) he may be treated as having been born in the registration district of the court where it is probable that the child may have been born in—
  - (i) the United Kingdom;
  - (ii) the Channel Islands; or
  - (iii) the Isle of Man; or
- (b) in any other case, the particulars of the country of birth may be omitted from the placement order, adoption order or section 84 order.

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<sup>(19)</sup> A couple is defined in section 144(4) of the Adoption and Children Act 2002.

(7) A placement order identifying the probable date and place of birth of the child will be sufficient proof of the date and place of birth of the child in adoption proceedings and proceedings for a section 84 order.

## PART 6 SERVICE

### SECTION 1

#### GENERAL RULES ABOUT SERVICE

##### Scope of this Part

**34.** The rules in this Part apply to the service of documents, including a document that is required to be given or sent by these Rules or any practice direction, except where—

- (a) any other enactment, a rule in another Part or a practice direction makes a different provision; or
- (b) the court directs otherwise.

##### Methods of service

**35.—**(1) Subject to paragraph (2), a document may be served—

- (a) where it is not known whether a solicitor is acting on behalf of a party—
  - (i) by delivering it to the party personally; or
  - (ii) by delivering it at, or by sending it by first class post to, the party's residence or last known residence; or
- (b) where a solicitor is known to be acting on behalf of a party—
  - (i) by delivering the document at, or sending it by first class post to, the solicitor's address for service; or
  - (ii) through a document exchange in accordance with the relevant practice direction.

(2) A notice of hearing must be served in accordance with paragraph (1)(a)(i) or (ii) irrespective of whether a solicitor is acting on behalf of a party.

(3) Where it appears to the court that there is a good reason to authorise service by a method not permitted by paragraph (1), the court may direct that service is effected by an alternative method.

- (4) A direction that service is effected by an alternative method must specify—
  - (a) the method of service; and
  - (b) the date when the document will be deemed to be served.

##### Who is to serve

**36.—**(1) A document which has been issued or prepared by a court officer will be served by the court officer except where—

- (a) a practice direction provides otherwise; or
- (b) the court directs otherwise.

(2) Where a court officer is to serve a document, it is for the court to decide which of the methods of service specified in rule 35(1) is to be used.

**Service of documents on children and patients**

37.—(1) The following table shows the person on whom a document must be served if it is a document which would otherwise be served on a child, non-subject child or patient—

<b>Nature of party</b>	<b>Type of document</b>	<b>Person to be served</b>
Child who is not also a patient	Any document	The solicitor acting for the child;  where there is no such solicitor, the children’s guardian or the children and family reporter.
Non-subject child who is not also a patient	Application form	One of the non-subject child’s parents or guardians;  if there is no parent or guardian, the person with whom the non-subject child resides or in whose care the non-subject child is.
Patient	Application form	The person authorised under Part VII of the Mental Health Act 1983(20) to conduct the proceedings in the name of the patient or on his behalf;  if there is no person so authorised, the person with whom the patient resides or in whose care the patient is.
Non-subject child or patient	Application for an order appointing a litigation friend, where the non-subject child or patient has no litigation friend	See rule 57.
	Any other document	The litigation friend who is conducting proceedings on behalf of the non-subject child or patient.

(2) Where a child is directed by the court to serve a document, service is to be effected by—

- (a) the solicitor acting for the child;
- (b) where there is no such solicitor, the children’s guardian;
- (c) where there is neither a solicitor or children’s guardian, the litigation friend; or
- (d) where there is neither a solicitor, children’s guardian, or litigation friend, a court officer.

(3) Where a non-subject child or patient is directed by the court to serve a document, service is to be effected by—

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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- (a) the solicitor acting for the non-subject child or patient; or
- (b) where there is no such solicitor, the litigation friend.

(4) The court may give directions permitting a document to be served on the child, non-subject child or patient, or on some other person other than the person specified in the table in this rule.

(5) The court may direct that, although a document has been served on someone other than the person specified in the table, the document is to be treated as if it had been properly served.

(6) This rule does not apply where a non-subject child is conducting proceedings without a litigation friend in accordance with rule 51.

### Deemed service

**38.**—(1) Unless the contrary is proved, a document which is served in accordance with these Rules or any relevant practice direction will be deemed to be served on the day shown in the following table—

Method of service	Deemed day of service
First class post	The second day after it was posted.
Document exchange	The second day after it was left at the document exchange.
Delivering the document to address	The day after the document was delivered to that address.

(2) If a document is served personally—

- (a) after 5 p.m. on a business day; or
- (b) at any time on a day which is not a business day

it will be treated as being served on the next business day.

### Power of court to dispense with service

**39.** Where a rule or practice direction requires a document to be served, the court may direct that the requirement is dispensed with.

### Certificate of service

**40.**—(1) Where a rule, practice direction or court order requires a certificate of service, the certificate must state the details set out in the following table—

Method of service	Details to be certified
Post	Date of posting.
Personal	Date of personal service.
Document exchange	Date of delivery to the document exchange.
Delivery of document to address	Date when the document was delivered to the address.
Alternative method permitted by the court	As required by the court.

(2) Where an application form is to be served by the applicant he must file a certificate of service within 7 days beginning with the date on which the application form was served.



### **Notice of non-service**

**41.** Where a person fails to serve any document under these Rules or as directed by the court he must file a certificate of non-service stating the reason why service has not been effected.

## *SECTION 2*

### *SERVICE OUT OF THE JURISDICTION*

#### **Scope and definitions**

**42.**—(1) This Section contains rules about—

- (a) service out of the jurisdiction; and
- (b) the procedure for serving out of the jurisdiction.

(Rule 6 defines “jurisdiction”.)

(2) In this Section—

“application form” includes application notice; and

“the Hague Convention” means the Convention on the service abroad of judicial and extra-judicial documents in civil or commercial matters signed at the Hague on November 15, 1965<sup>(21)</sup>.

#### **Service of documents**

**43.**—(1) Any document to be served for the purposes of these Rules may be served out of the jurisdiction without the permission of the court.

(2) Subject to paragraph (4) or (5), any document served out of the jurisdiction in a country in which English is not the official language must be accompanied by a translation of the document—

- (a) in the official language of the country in which the document is to be served; or
- (b) if there is more than one official language of the country, in any one of those languages which is appropriate to the place in that country in which the document is to be served.

(3) Every translation filed under this rule must be signed by the translator to certify that the translation is accurate.

(4) Any document served out of the jurisdiction in a country in which English is not the official language need not be accompanied by a translation of the document where—

- (a) the person on whom the document is to be served is able to read and understand English; and
- (b) service of the document is to be effected directly on that person.

(5) Paragraphs (2) and (3) do not apply where service is to be effected in accordance with the Service Regulation.

#### **Method of service – general provisions**

**44.**—(1) Where an application form is to be served out of the jurisdiction, it may be served by any method—

- (a) permitted by the law of the country in which it is to be served; or
- (b) provided for by—

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(21) Cmnd. 3986.

- (i) rule 45 (service through foreign governments, judicial authorities and British Consular authorities); or
- (ii) rule 47 (service in accordance with the Service Regulation).

(2) Nothing in this rule or in any court order will authorise or require any person to do anything in the country where the application form is to be served which is against the law of that country.

#### **Service through foreign governments, judicial authorities and British Consular authorities**

**45.**—(1) Where an application form is to be served on a respondent in any country which is a party to the Hague Convention, the application form may be served—

- (a) through the authority designated under the Hague Convention in respect of that country; or
- (b) if the law of that country permits—
  - (i) through the judicial authorities of that country; or
  - (ii) through a British Consular authority in that country.

(2) Where an application form is to be served on a respondent in any country which is not a party to the Hague Convention, the application form may be served, if the law of that country so permits—

- (a) through the government of that country, where that government is willing to serve it; or
- (b) through a British Consular authority in that country.

(3) Paragraph (2) does not apply where the application form is to be served in—

- (a) Scotland, Northern Ireland, the Isle of Man or the Channel Islands;
- (b) any Commonwealth State; or
- (c) any United Kingdom Overseas Territory listed in the relevant practice direction.

(4) This rule does not apply where service is to be effected in accordance with the Service Regulation.

#### **Procedure where service is to be through foreign governments, judicial authorities and British Consular authorities**

**46.**—(1) This rule applies where the applicant wishes to serve the application form through—

- (a) the judicial authorities of the country where the application form is to be served;
- (b) a British Consular authority in that country;
- (c) the authority designated under the Hague Convention in respect of that country; or
- (d) the government of that country.

(2) Where this rule applies, the applicant must file—

- (a) a request for service of the application form by the method in paragraph (1) that he has chosen;
- (b) a copy of the application form;
- (c) any translation required under rule 43; and
- (d) any other documents, copies of documents or translations required by the relevant practice direction.

(3) When the applicant files the documents specified in paragraph (2), a court officer will—

- (a) seal, or otherwise authenticate with the stamp of the court, the copy of the application form; and
- (b) forward the documents to the Senior Master of the Queen's Bench Division.

- (4) The Senior Master will send documents forwarded under this rule—
- (a) where the application form is being served through the authority designated under the Hague Convention, to that authority; or
  - (b) in any other case, to the Foreign and Commonwealth Office with a request that it arranges for the application to be served by the method indicated in the request for service filed under paragraph (2) or, where that request indicates alternative methods, by the most convenient method.
- (5) An official certificate will be evidence of the facts stated in the certificate if it—
- (a) states that the application form has been served in accordance with this rule either personally, or in accordance with the law of the country in which service was effected;
  - (b) specifies the date on which the application form was served; and
  - (c) is made by—
    - (i) a British Consular authority in the country where the application form was served;
    - (ii) the government or judicial authorities in that country; or
    - (iii) any other authority designated in respect of that country under the Hague Convention.
- (6) A document purporting to be an official certificate under paragraph (5) will be treated as such a certificate, unless it is proved not to be.
- (7) This rule does not apply where service is to be effected in accordance with the Service Regulation.

#### **Service in accordance with the Service Regulation**

- 47.**—(1) This rule applies where an application form is to be served in accordance with the Service Regulation.
- (2) The applicant must file the application form and any translations or other documents required by the Service Regulation.
- (3) When the applicant files the documents referred to in paragraph (2), a court officer will—
- (a) seal, or otherwise authenticate with the stamp of the court, the copy of the application form; and
  - (b) forward the documents to the Senior Master of the Queen’s Bench Division.
- (The Service Regulation is annexed to the relevant practice direction.)

#### **Undertaking to be responsible for expenses of the Foreign and Commonwealth Office**

- 48.** Every request for service filed under rule 46 (service through foreign governments, judicial authorities etc.) must contain an undertaking by the person making the request—
- (a) to be responsible for all expenses incurred by the Foreign and Commonwealth Office or foreign judicial authority; and
  - (b) to pay those expenses to the Foreign and Commonwealth Office or foreign judicial authority on being informed of the amount.

## PART 7

### LITIGATION FRIEND, CHILDREN'S GUARDIAN, REPORTING OFFICER AND CHILDREN AND FAMILY REPORTER

#### SECTION 1

#### LITIGATION FRIEND

##### **Application of this Section**

**49.**—(1) This Section—

- (a) contains special provisions which apply in proceedings involving non-subject children and patients; and
- (b) sets out how a person becomes a litigation friend.

(2) The provisions of this Section also apply to a child who does not have a children's guardian, in which case, any reference to a "non-subject child" in these Rules is to be taken as including a child.

##### **Requirement for litigation friend in proceedings**

**50.**—(1) Subject to rule 51, a non-subject child must have a litigation friend to conduct proceedings on his behalf.

(2) A patient must have a litigation friend to conduct proceedings on his behalf.

##### **Circumstances in which the non-subject child does not need a litigation friend**

**51.**—(1) A non-subject child may conduct proceedings without a litigation friend—

- (a) where he has obtained the court's permission to do so; or
- (b) where a solicitor—
  - (i) considers that the non-subject child is able, having regard to his understanding, to give instructions in relation to the proceedings; and
  - (ii) has accepted instructions from that child to act for him in the proceedings and, if the proceedings have begun, he is already acting.

(2) An application for permission under paragraph (1)(a) may be made by the non-subject child without notice.

(3) Where a non-subject child has a litigation friend in proceedings and he wishes to conduct the remaining stages of the proceedings without a litigation friend, the non-subject child may apply to the court, on notice to the litigation friend, for permission for that purpose and for the removal of the litigation friend.

(4) Where the court is considering whether to—

- (a) grant permission under paragraph (1)(a); or
- (b) grant permission under paragraph (3) and remove a litigation friend

it will grant the permission sought and, as the case may be, remove the litigation friend if it considers that the non-subject child concerned has sufficient understanding to conduct the proceedings concerned or proposed without a litigation friend.

(5) In exercising its powers under paragraph (4) the court may require the litigation friend to take such part in the proceedings as the court directs.

(6) The court may revoke any permission granted under paragraph (1)(a) where it considers that the non-subject child does not have sufficient understanding to participate as a party in the proceedings concerned without a litigation friend.

(7) Where a solicitor is acting for a non-subject child in proceedings without a litigation friend by virtue of paragraph (1)(b) and either of the conditions specified in paragraph (1)(b)(i) or (ii) cease to be fulfilled, he must inform the court immediately.

(8) Where—

(a) the court revokes any permission under paragraph (6); or

(b) either of the conditions specified in paragraph (1)(b)(i) or (ii) is no longer fulfilled

the court may, if it considers it necessary in order to protect the interests of the non-subject child concerned, appoint a person to be that child's litigation friend.

### **Stage of proceedings at which a litigation friend becomes necessary**

**52.**—(1) This rule does not apply where a non-subject child is conducting proceedings without a litigation friend in accordance with rule 51.

(2) A person may not without the permission of the court take any step in proceedings except—

(a) filing an application form; or

(b) applying for the appointment of a litigation friend under rule 55

until the non-subject child or patient has a litigation friend.

(3) If a party becomes a patient during proceedings, no party may take any step in proceedings without the permission of the court until the patient has a litigation friend.

### **Who may be a litigation friend for a patient without a court order**

**53.**—(1) This rule does not apply if the court has appointed a person to be a litigation friend.

(2) A person authorised under Part VII of the Mental Health Act 1983 to conduct legal proceedings in the name of a patient or on his behalf is entitled to be the litigation friend of the patient in any proceedings to which his authority extends.

(3) If nobody has been appointed by the court or, in the case of a patient, authorised under Part VII of the Mental Health Act 1983, a person may act as a litigation friend if he—

(a) can fairly and competently conduct proceedings on behalf of the non-subject child or patient;

(b) has no interest adverse to that of the non-subject child or patient; and

(c) subject to paragraph (4), undertakes to pay any costs which the non-subject child or patient may be ordered to pay in relation to the proceedings, subject to any right he may have to be repaid from the assets of the non-subject child or patient.

(4) Paragraph (3)(c) does not apply to the Official Solicitor, an officer of the Service or a Welsh family proceedings officer.

### **How a person becomes a litigation friend without a court order**

**54.**—(1) If the court has not appointed a litigation friend, a person who wishes to act as a litigation friend must follow the procedure set out in this rule.

(2) A person authorised under Part VII of the Mental Health Act 1983 must file an official copy<sup>(22)</sup> of the order or other document which constitutes his authorisation to act.

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(22) An official copy is a copy of an official document supplied and marked as such by the office that issued the original.

(3) Any other person must file a certificate of suitability stating that he satisfies the conditions specified in rule 53(3).

(4) A person who is to act as a litigation friend must file—

- (a) the authorisation; or
- (b) the certificate of suitability

at the time when he first takes a step in the proceedings on behalf of the non-subject child or patient.

(5) A court officer will send the certificate of suitability to every person on whom, in accordance with rule 37(1) (service on parent, guardian etc.), the application form should be served.

(6) This rule does not apply to the Official Solicitor, an officer of the Service or a Welsh family proceedings officer.

### **How a person becomes a litigation friend by court order**

**55.**—(1) The court may make an order appointing—

- (a) the Official Solicitor;
- (b) in the case of a non-subject child, an officer of the Service or a Welsh family proceedings officer (if he consents); or
- (c) some other person (if he consents)

as a litigation friend.

(2) An order appointing a litigation friend may be made by the court of its own initiative or on the application of—

- (a) a person who wishes to be a litigation friend; or
- (b) a party to the proceedings.

(3) The court may at any time direct that a party make an application for an order under paragraph (2).

(4) An application for an order appointing a litigation friend must be supported by evidence.

(5) Unless the court directs otherwise, a person appointed under this rule to be a litigation friend for a non-subject child or patient will be treated as a party for the purpose of any provision in these Rules requiring a document to be served on, or sent to, or notice to be given to, a party to the proceedings.

(6) Subject to rule 53(4), the court may not appoint a litigation friend under this rule unless it is satisfied that the person to be appointed complies with the conditions specified in rule 53(3).

### **Court's power to change litigation friend and to prevent person acting as litigation friend**

**56.**—(1) The court may—

- (a) direct that a person may not act as a litigation friend;
- (b) terminate a litigation friend's appointment; or
- (c) appoint a new litigation friend in substitution for an existing one.

(2) An application for an order under paragraph (1) must be supported by evidence.

(3) Subject to rule 53(4), the court may not appoint a litigation friend under this rule unless it is satisfied that the person to be appointed complies with the conditions specified in rule 53(3).

### **Appointment of litigation friend by court order – supplementary**

**57.**—(1) A copy of the application for an order under rule 55 or 56 must be sent by a court officer to every person on whom, in accordance with rule 37(1) (service on parent, guardian etc.), the application form should be served.

(2) Where an application for an order under rule 55 is in respect of a patient, the court officer must also send a copy of the application to the patient unless the court directs otherwise.

(3) A copy of an application for an order under rule 56 must also be sent to—

- (a) the person who is the litigation friend, or who is purporting to act as the litigation friend, when the application is made; and
- (b) the person who it is proposed should be the litigation friend, if he is not the applicant.

### **Procedure where appointment of litigation friend comes to an end**

**58.**—(1) When a non-subject child who is not a patient reaches the age of 18, a litigation friend's appointment comes to an end.

(2) When a party ceases to be a patient, the litigation friend's appointment continues until it is brought to an end by a court order.

(3) An application for an order under paragraph (2) may be made by—

- (a) the former patient;
- (b) the litigation friend; or
- (c) a party.

(4) A court officer will send a notice to the other parties stating that the appointment of the non-subject child or patient's litigation friend to act has ended.

## *SECTION 2*

### *CHILDREN'S GUARDIAN*

### **Appointment of children's guardian**

**59.**—(1) In proceedings to which Part 5 applies, the court will appoint a children's guardian where the child is a party to the proceedings unless it is satisfied that it is not necessary to do so to safeguard the interests of the child.

(2) At any stage in proceedings where the child is a party to the proceedings—

- (a) a party may apply, without notice to the other parties unless the court directs otherwise, for the appointment of a children's guardian; or
- (b) the court may of its own initiative appoint a children's guardian.

(3) The court will grant an application under paragraph (2)(a) unless it considers that such an appointment is not necessary to safeguard the interests of the child.

(4) When appointing a children's guardian the court will consider the appointment of anyone who has previously acted as a children's guardian of the same child.

### **What the court or a court officer will do once the court has made a decision about appointing a children's guardian**

**60.**—(1) Where the court refuses an application under rule 59(2)(a) it will give reasons for the refusal and the court or a court officer will—

- (a) record the refusal and the reasons for it; and
  - (b) as soon as practicable, notify the parties and either the Service or the Assembly of a decision not to appoint a children's guardian.
- (2) Where the court appoints a children's guardian under rule 59 a court officer will record the appointment and, as soon as practicable, will—
- (a) inform the parties and either the Service or the Assembly; and
  - (b) unless it has already been sent, send the children's guardian a copy of the application and copies of any document filed with the court in the proceedings.
- (3) A court officer also has a continuing duty to send the children's guardian a copy of any other document filed with the court during the course of the proceedings.

#### **Termination of the appointment of the children's guardian**

- 61.**—(1) The appointment of a children's guardian under rule 59 continues for such time as is specified in the appointment or until terminated by the court.
- (2) When terminating an appointment in accordance with paragraph (1), the court will give reasons for doing so, a note of which will be taken by the court or a court officer.

#### **Powers and duties of the children's guardian**

- 62.**—(1) The children's guardian is to act on behalf of the child upon the hearing of any application in proceedings to which Part 5 applies with the duty of safeguarding the interests of the child.
- (2) The children's guardian must also provide the court with such other assistance as it may require.

#### **How the children's guardian exercises his duties – investigations and appointment of solicitor**

- 63.**—(1) The children's guardian must make such investigations as are necessary for him to carry out his duties and must, in particular—
- (a) contact or seek to interview such persons as he thinks appropriate or as the court directs; and
  - (b) obtain such professional assistance as is available to him which he thinks appropriate or which the court directs him to obtain.
- (2) The children's guardian must—
- (a) appoint a solicitor for the child unless a solicitor has already been appointed;
  - (b) give such advice to the child as is appropriate having regard to his understanding; and
  - (c) where appropriate instruct the solicitor representing the child on all matters relevant to the interests of the child, including possibilities for appeal, arising in the course of proceedings.
- (3) Where the children's guardian is authorised in the terms mentioned by and in accordance with section 15(1) of the Criminal Justice and Court Services Act 2000<sup>(23)</sup> or section 37(1) of the Children Act 2004<sup>(24)</sup> (right of officer of the Service or Welsh family proceedings officer to conduct litigation or exercise a right of audience), paragraph (2)(a) will not apply if he intends to have conduct of the proceedings on behalf of the child unless—

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<sup>(23)</sup> 2000 c. 43.

<sup>(24)</sup> 2004 c. 31.



- (a) the child wishes to instruct a solicitor direct; and
- (b) the children’s guardian or the court considers that he is of sufficient understanding to do so.

**Where the child instructs a solicitor or conducts proceedings on his own behalf**

**64.**—(1) Where it appears to the children’s guardian that the child—

- (a) is instructing his solicitor direct; or
- (b) intends to conduct and is capable of conducting the proceedings on his own behalf

he must inform the court of that fact.

(2) Where paragraph (1) applies, the children’s guardian—

- (a) must perform the duties set out in rules 62, 63, 65 to 67 and this rule, other than those duties in rule 63(2)(a) and (c), and such other duties as the court may direct;
- (b) must take such part in the proceedings as the court may direct; and
- (c) may, with the permission of the court, have legal representation in the conduct of those duties.

**How the children’s guardian exercises his duties – attendance at court, advice to the court and reports**

**65.**—(1) The children’s guardian or the solicitor appointed under section 41(3) of the 1989 Act or in accordance with rule 63(2)(a) must attend all directions hearings unless the court directs otherwise.

(2) The children’s guardian must advise the court on the following matters—

- (a) whether the child is of sufficient understanding for any purpose including the child’s refusal to submit to a medical or psychiatric examination or other assessment that the court has the power to require, direct or order;
- (b) the wishes of the child in respect of any matter relevant to the proceedings including his attendance at court;
- (c) the appropriate forum for the proceedings;
- (d) the appropriate timing of the proceedings or any part of them;
- (e) the options available to it in respect of the child and the suitability of each such option including what order should be made in determining the application; and
- (f) any other matter on which the court seeks his advice or on which he considers that the court should be informed.

(3) The advice given under paragraph (2) may, subject to any direction of the court, be given orally or in writing.

(4) The children’s guardian must—

- (a) unless the court directs otherwise, file a written report advising on the interests of the child in accordance with the timetable set by the court; and
- (b) where practicable, notify any person the joining of whom as a party to those proceedings would be likely, in his opinion, to safeguard the interests of the child, of the court’s power to join that person as a party under rule 23 and must inform the court—
  - (i) of any notification;
  - (ii) of anyone whom he attempted to notify under this paragraph but was unable to contact; and
  - (iii) of anyone whom he believes may wish to be joined to the proceedings.

(5) Any report to the court under this rule will be confidential.

(Part 9 sets out the procedure for making an application to be joined as a party in proceedings.)

### **How the children’s guardian exercises his duties – service of documents and inspection of records**

**66.**—(1) The children’s guardian must—

- (a) serve documents on behalf of the child in accordance with rule 37(2)(b); and
- (b) accept service of documents on behalf of the child in accordance with the table in rule 37(1),

and, where the child has not himself been served and has sufficient understanding, advise the child of the contents of any document so served.

(2) Where the children’s guardian inspects records of the kinds referred to in—

- (a) section 42 of the 1989 Act (right to have access to local authority records); or
- (b) section 103 (right to have access to adoption agency records)

he must bring all records and documents which may, in his opinion, assist in the proper determination of the proceedings to the attention of—

- (i) the court; and
- (ii) unless the court directs otherwise, the other parties to the proceedings.

### **How the children’s guardian exercises his duties – communication of a court’s decision to the child**

**67.** The children’s guardian must ensure that, in relation to a decision made by the court in the proceedings—

- (a) if he considers it appropriate to the age and understanding of the child, the child is notified of that decision; and
- (b) if the child is notified of the decision, it is explained to the child in a manner appropriate to his age and understanding.

### **Solicitor for child**

**68.**—(1) A solicitor appointed under section 41(3) of the 1989 Act or in accordance with rule 63(2)(a) must represent the child—

- (a) in accordance with instructions received from the children’s guardian unless the solicitor considers, having taken into account the views of the children’s guardian and any direction of the court under rule 64(2)—

- (i) that the child wishes to give instructions which conflict with those of the children’s guardian; and
- (ii) that he is able, having regard to his understanding, to give such instructions on his own behalf,

in which case the solicitor must conduct the proceedings in accordance with instructions received from the child;

- (b) where no children’s guardian has been appointed and the condition in section 41(4)(b) of the 1989 Act is satisfied, in accordance with instructions received from the child; or
- (c) in default of instructions under sub-paragraph (a) or (b), in furtherance of the best interests of the child.

(2) A solicitor appointed under section 41(3) of the 1989 Act or in accordance with rule 63(2)(a) must—

- (a) serve documents on behalf of the child in accordance with rule 37(2)(a); and
- (b) accept service of documents on behalf of the child in accordance with the table in rule 37(1),

and, where the child has not himself been served and has sufficient understanding, advise the child of the contents of any document so served.

(3) Where the child wishes an appointment of a solicitor under section 41(3) of the 1989 Act or in accordance with rule 63(2)(a) to be terminated—

- (a) he may apply to the court for an order terminating the appointment; and
- (b) the solicitor and the children’s guardian will be given an opportunity to make representations.

(4) Where the children’s guardian wishes an appointment of a solicitor under section 41(3) of the 1989 Act or in accordance with rule 63(2)(a) to be terminated—

- (a) he may apply to the court for an order terminating the appointment; and
- (b) the solicitor and, if he is of sufficient understanding, the child, will be given an opportunity to make representations.

(5) When terminating an appointment in accordance with paragraph (3) or (4), the court will give its reasons for so doing, a note of which will be taken by the court or a court officer.

(6) The court or a court officer will record the appointment under section 41(3) of the 1989 Act or in accordance with rule 63(2)(a) or the refusal to make the appointment.

### SECTION 3

#### REPORTING OFFICER

##### **When the court appoints a reporting officer**

**69.** In proceedings to which Part 5 applies, the court will appoint a reporting officer where—

- (a) it appears that a parent or guardian of the child is willing to consent to the placing of the child for adoption, to the making of an adoption order or to a section 84 order; and
- (b) that parent or guardian is in England or Wales.

##### **Appointment of the same reporting officer in respect of two or more parents or guardians**

**70.** The same person may be appointed as the reporting officer for two or more parents or guardians of the child.

##### **The duties of the reporting officer**

**71.** The reporting officer must witness the signature by a parent or guardian on the document in which consent is given to—

- (a) the placing of the child for adoption;
- (b) the making of an adoption order; or
- (c) the making of a section 84 order.

### **How the reporting officer exercises his duties**

72.—(1) The reporting officer must—

- (a) ensure so far as reasonably practicable that the parent or guardian is—
  - (i) giving consent unconditionally; and
  - (ii) with full understanding of what is involved;
- (b) investigate all the circumstances relevant to a parent’s or guardian’s consent to the placing of the child for adoption or to the making of an adoption order or a section 84 order; and
- (c) on completing his investigations the reporting officer must—
  - (i) make a report in writing to the court in accordance with the timetable set by the court, drawing attention to any matters which, in his opinion, may be of assistance to the court in considering the application; or
  - (ii) make an interim report to the court if a parent or guardian of the child is unwilling to consent to the placing of the child for adoption or to the making of an adoption order or section 84 order.

(2) On receipt of an interim report under paragraph (1)(c)(ii) a court officer must inform the applicant that a parent or guardian of the child is unwilling to consent to the placing of the child for adoption or to the making of an adoption order or section 84 order.

(3) The reporting officer may at any time before the final hearing make an interim report to the court if he considers necessary and ask the court for directions.

(4) The reporting officer must attend all directions hearings unless the court directs otherwise.

(5) Any report to the court under this rule will be confidential.

## *SECTION 4*

### *CHILDREN AND FAMILY REPORTER*

### **Request by court for a welfare report in respect of the child**

73.—(1) In proceedings to which Part 5 applies, where the court is considering an application for an order in proceedings the court may ask a children and family reporter to prepare a report on matters relating to the welfare of the child.

- (2) It is the duty of a children and family reporter to—
  - (a) comply with any request for a report under this rule; and
  - (b) provide the court with such other assistance as it may require.
- (3) Any report to the court under this rule will be confidential.

### **How the children and family reporter exercises his powers and duties**

74.—(1) The children and family reporter must make such investigations as may be necessary for him to perform his powers and duties and must, in particular—

- (a) contact or seek to interview such persons as he thinks appropriate or as the court directs; and
  - (b) obtain such professional assistance as is available to him which he thinks appropriate or which the court directs him to obtain.
- (2) The children and family reporter must—

- (a) notify the child of such contents of his report (if any) as he considers appropriate to the age and understanding of the child, including any reference to the child's own views on the application and his recommendation; and
  - (b) if he does notify the child of any contents of his report, explain them to the child in a manner appropriate to his age and understanding.
- (3) The children and family reporter must—
- (a) attend all directions hearings unless the court directs otherwise;
  - (b) advise the court of the child's wishes and feelings;
  - (c) advise the court if he considers that the joining of a person as a party to the proceedings would be likely to safeguard the interests of the child;
  - (d) consider whether it is in the best interests of the child for the child to be made a party to the proceedings, and if so, notify the court of his opinion together with the reasons for that opinion; and
  - (e) where the court has directed that a written report be made, file the report in accordance with the timetable set by the court.

## SECTION 5

### *WHO CAN ACT AS CHILDREN'S GUARDIAN, REPORTING OFFICER AND CHILDREN AND FAMILY REPORTER*

#### **Persons who may not be appointed as children's guardian, reporting officer or children and family reporter**

**75.**—(1) In adoption proceedings or proceedings for a section 84 order or a section 89 order, a person may not be appointed as a children's guardian, reporting officer or children and family reporter if he—

- (a) is a member, officer or servant of a local authority which is a party to the proceedings;
- (b) is, or has been, a member, officer or servant of a local authority or voluntary organisation who has been directly concerned in that capacity in arrangements relating to the care, accommodation or welfare of the child during the five years prior to the commencement of the proceedings; or
- (c) is a serving probation officer who has, in that capacity, been previously concerned with the child or his family.

(2) In placement proceedings, a person described in paragraph (1)(b) or (c) may not be appointed as a children's guardian, reporting officer or children and family reporter.

#### **Appointment of the same person as children's guardian, reporting officer and children and family reporter**

**76.** The same person may be appointed to act as one or more of the following—

- (a) the children's guardian;
- (b) the reporting officer; and
- (c) the children and family reporter.

## PART 8

### DOCUMENTS AND DISCLOSURE OF DOCUMENTS AND INFORMATION

#### **Confidential reports to the court and disclosure to the parties**

77.—(1) The court will consider whether to give a direction that a confidential report be disclosed to each party to the proceedings.

(2) Before giving such a direction the court will consider whether any information should be deleted including information which—

- (a) discloses, or is likely to disclose, the identity of a person who has been assigned a serial number under rule 20(2); or
  - (b) discloses the particulars referred to in rule 21(1) where a party has given notice under rule 21(2) (disclosure of personal details).
- (3) The court may direct that the report will not be disclosed to a party.

#### **Communication of information relating to proceedings**

78.—(1) For the purposes of the law relating to contempt of court, information (whether or not it is recorded in any form) relating to proceedings held in private may be communicated—

- (a) where the court gives permission;
- (b) unless the court directs otherwise, in accordance with the relevant practice direction; or
- (c) where the communication is to—
  - (i) a party;
  - (ii) the legal representative of a party;
  - (iii) a professional legal adviser;
  - (iv) an officer of the Service or a Welsh family proceedings officer;
  - (v) a welfare officer;
  - (vi) the Legal Services Commission;
  - (vii) an expert whose instruction by a party has been authorised by the court; or
  - (viii) a professional acting in furtherance of the protection of children.

(2) In this rule—

“professional acting in furtherance of the protection of children” includes—

- (a) an officer of a local authority exercising child protection functions;
- (b) a police officer who is—
  - (i) exercising powers under section 46 of the 1989 Act; or
  - (ii) serving in a child protection unit or a paedophile unit of a police force;
- (c) any professional person attending a child protection conference or review in relation to a child who is the subject of the proceedings to which the information relates; or
- (d) an officer of the National Society for the Prevention of Cruelty to Children;

“professional legal adviser” means a barrister or a solicitor, solicitor’s employee or other authorised litigator (as defined in section 119 of the Courts and Legal Services Act 1990(25)) who is providing advice to a party but is not instructed to represent that party in the proceedings;

“welfare officer” means a person who has been asked to prepare a report under section 7(1)(b) of the 1989 Act.

### **Orders for disclosure against a person not a party**

**79.**—(1) This rule applies where an application is made to the court under any Act for disclosure by a person who is not a party to the proceedings<sup>(26)</sup>.

- (2) The application must be supported by evidence.
- (3) The court may make an order under this rule only where—
  - (a) the documents of which disclosure is sought are likely to support the case of the applicant or adversely affect the case of one of the other parties to the proceedings; and
  - (b) disclosure is necessary in order to dispose fairly of the application or to save costs.
- (4) An order under this rule must—
  - (a) specify the documents or the classes of documents which the respondent must disclose; and
  - (b) require the respondent, when making disclosure, to specify any of those documents—
    - (i) which are no longer in his control; or
    - (ii) in respect of which he claims a right or duty to withhold inspection.
- (5) Such an order may—
  - (a) require the respondent to indicate what has happened to any documents which are no longer in his control; and
  - (b) specify the time and place for disclosure and inspection.
- (6) This rule does not apply to proceedings in a magistrates' court.

### **Rules not to limit other powers of the court to order disclosure**

- 80.**—(1) Rule 79 does not limit any other power which the court may have to order—
- (a) disclosure before proceedings have started; and
  - (b) disclosure against a person who is not a party to proceedings.
- (2) This rule does not apply to proceedings in a magistrates' court.

### **Claim to withhold inspection or disclosure of a document**

**81.**—(1) A person may apply, without notice, for an order permitting him to withhold disclosure of a document on the ground that disclosure would damage the public interest.

- (2) Unless the court orders otherwise, an order of the court under paragraph (1)—
  - (a) must not be served on any other person; and
  - (b) must not be open to inspection by any person.
- (3) A person who wishes to claim that he has a right or a duty to withhold inspection of a document, or part of a document, must state in writing—
  - (a) that he has such a right or duty; and
  - (b) the grounds on which he claims that right or duty.

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<sup>(26)</sup> An application for disclosure against a person who is not a party to proceedings is permitted under section 34 of the Supreme Court Act 1981 (c. 54) or section 53 of the County Courts Act 1984 (c. 28).

(4) The statement referred to in paragraph (3) must be made to the person wishing to inspect the document.

(5) A party may apply to the court to decide whether a claim made under paragraph (3) should be upheld.

(6) For the purpose of deciding an application under paragraph (1) (application to withhold disclosure) or paragraph (3) (claim to withhold inspection) the court may—

(a) require the person seeking to withhold disclosure or inspection of a document to produce that document to the court; and

(b) invite any person, whether or not a party, to make representations.

(7) An application under paragraph (1) or (5) must be supported by evidence.

(8) This rule does not affect any rule of law which permits or requires a document to be withheld from disclosure or inspection on the ground that its disclosure or inspection would damage the public interest.

(9) This rule does not apply to proceedings in a magistrates' court.

### **Custody of documents**

**82.** All documents relating to proceedings under the Act must, while they are in the custody of the court, be kept in a place of special security.

### **Inspection and copies of documents**

**83.** Subject to the provisions of these Rules, any practice direction or any direction given by the court—

(a) no document or order held by the court in proceedings under the Act will be open to inspection by any person; and

(b) no copy of any such document or order, or of an extract from any such document or order, will be taken by or given to any person.

### **Disclosing information to an adopted adult**

**84.—(1)** The adopted person has the right, at his request, to receive from the court which made the adoption order a copy of the following—

(a) the application form for an adoption order (but not the documents attached to that form);

(b) the adoption order and any other orders relating to the adoption proceedings;

(c) orders allowing any person contact with the child after the adoption order was made; and

(d) any other document or order referred to in the relevant practice direction.

(2) The court will remove any protected information from any copy of a document or order referred to in paragraph (1) before the copies are given to the adopted person.

(3) This rule does not apply to an adopted person under the age of 18 years.

(4) In this rule “protected information” means information which would be protected information under section 57(3) if the adoption agency gave the information and not the court.

### **Translation of documents**

**85.—(1)** Where a translation of any document is required for the purposes of proceedings for a Convention adoption order the translation must—

(a) unless the court directs otherwise, be provided by the applicant; and



- (b) be signed by the translator to certify that the translation is accurate.
- (2) This rule does not apply where the document is to be served in accordance with the Service Regulation.

## PART 9

### PROCEDURE FOR OTHER APPLICATIONS IN PROCEEDINGS

#### **Types of application for which Part 9 procedure may be followed**

- 86.**—(1) The Part 9 procedure is the procedure set out in this Part.
- (2) An applicant may use the Part 9 procedure if the application is made—
- (a) in the course of existing proceedings;
  - (b) to commence proceedings other than those to which Part 5 applies; or
  - (c) in connection with proceedings which have been concluded.
- (Rule 22 lists the proceedings to which Part 5 applies.)
- (3) Paragraph (2) does not apply—
- (a) to applications made in accordance with—
    - (i) section 60(3) (order to prevent disclosure of information to an adopted person);
    - (ii) section 79(4) (order for Registrar General to give any information referred to in section 79(3));
    - (iii) rule 27 (request to dispense with consent);
    - (iv) rule 59(2) (appointment of children’s guardian);
    - (v) rule 84 (disclosure of information to adopted adult);
    - (vi) rule 106 (withdrawal of application); or
    - (vii) rule 107 (recovery orders); or
  - (b) if a practice direction provides that the Part 9 procedure may not be used in relation to the type of application in question.
- (4) The following persons are to be respondents to an application under this Part—
- (a) where there are existing proceedings or the proceedings have concluded, the parties to those proceedings;
  - (b) where there are no existing proceedings—
    - (i) if notice has been given under section 44 (notice of intention to adopt or apply for a section 84 order), the local authority to whom notice has been given; and
    - (ii) if an application is made in accordance with—
      - (aa) section 26(3)(f) (permission to apply for contact order); or
      - (bb) section 42(6) (permission to apply for adoption order),any person who, in accordance with rule 23, will be a party to the proceedings brought if permission is granted; and
  - (c) any other person as the court may direct.

#### **Application notice to be filed**

- 87.**—(1) Subject to paragraph (2), the applicant must file an application notice.

- (2) An applicant may make an application without filing an application notice if—
  - (a) this is permitted by a rule or practice direction; or
  - (b) the court dispenses with the requirement for an application notice.

#### **Notice of an application**

**88.**—(1) Subject to paragraph (2), a copy of the application notice will be served on each respondent.

(2) An application may be made without serving a copy of the application notice if this is permitted by—

- (a) a rule;
- (b) a practice direction; or
- (c) the court.

(Rule 91 deals with service of a copy of the application notice.)

#### **Time when an application is made**

**89.** Where an application must be made within a specified time, it is so made if the court receives the application notice within that time.

#### **What an application notice must include**

**90.**—(1) An application notice must state—

- (a) what order the applicant is seeking; and
- (b) briefly, why the applicant is seeking the order.

(2) The applicant may rely on the matters set out in his application notice as evidence if the application is verified by a statement of truth.

#### **Service of a copy of an application notice**

**91.**—(1) A court officer will serve a copy of the application notice—

- (a) as soon as practicable after it is filed; and
- (b) in any event at least 7 days before the court is to deal with the application.

(2) The applicant must, when he files the application notice, file a copy of any written evidence in support.

(3) When a copy of an application notice is served by a court officer it will be accompanied by—

- (a) a notice of the date and place where the application will be heard;
- (b) a copy of any witness statement in support; and
- (c) a copy of any draft order which the applicant has attached to his application.

(4) If—

- (a) an application notice is served; but
- (b) the period of notice is shorter than the period required by these Rules or a practice direction,

the court may direct that, in the circumstances of the case, sufficient notice has been given and hear the application.

(5) This rule does not require written evidence—

- (a) to be filed if it has already been filed; or

- (b) to be served on a party on whom it has already been served.

#### **Applications which may be dealt with without a hearing**

- 92.** The court may deal with an application without a hearing if—
- (a) the parties agree as to the terms of the order sought;
  - (b) the parties agree that the court should dispose of the application without a hearing; or
  - (c) the court does not consider that a hearing would be appropriate.

#### **Service of application where application made without notice**

**93.**—(1) This rule applies where the court has disposed of an application which it permitted to be made without service of a copy of the application notice.

(2) Where the court makes an order, whether granting or dismissing the application, a copy of the application notice and any evidence in support will, unless the court directs otherwise, be served with the order on all the parties in the proceedings.

(3) The order must contain a statement of the right to make an application to set aside or vary the order under rule 94.

#### **Application to set aside or vary order made without notice**

**94.**—(1) A person who was not served with a copy of the application notice before an order was made under rule 93 may apply to have the order set aside or varied.

(2) An application under this rule must be made within 7 days beginning with the date on which the order was served on the person making the application.

#### **Power of the court to proceed in the absence of a party**

**95.**—(1) Where the applicant or any respondent fails to attend the hearing of an application, the court may proceed in his absence.

- (2) Where—
- (a) the applicant or any respondent fails to attend the hearing of an application; and
  - (b) the court makes an order at the hearing,

the court may, on application or of its own initiative, re-list the application.

#### **Dismissal of totally without merit applications**

**96.** If the High Court or a county court dismisses an application (including an application for permission to appeal) and it considers that the application is totally without merit—

- (a) the court's order must record that fact; and
- (b) the court must at the same time consider whether it is appropriate to make a civil restraint order.

## PART 10

### ALTERNATIVE PROCEDURE FOR APPLICATIONS

#### Types of application for which Part 10 procedure may be followed

- 97.**—(1) The Part 10 procedure is the procedure set out in this Part.
- (2) An applicant may use the Part 10 procedure where the procedure set out in Part 9 does not apply and—
- (a) there is no form prescribed by a rule or practice direction in which to make the application;
  - (b) he seeks the court’s decision on a question which is unlikely to involve a substantial dispute of fact; or
  - (c) paragraph (5) applies.
- (3) The court may at any stage direct that the application is to continue as if the applicant had not used the Part 10 procedure and, if it does so, the court may give any directions it considers appropriate.
- (4) Paragraph (2) does not apply—
- (a) to applications made in accordance with—
    - (i) rule 27 (request to dispense with consent);
    - (ii) rule 59(2) (appointment of children’s guardian);
    - (iii) rule 84 (disclosure of information to adopted adult);
    - (iv) rule 106 (withdrawal of application); or
    - (v) rule 107 (recovery orders); or
  - (b) if a practice direction provides that the Part 10 procedure may not be used in relation to the type of application in question.
- (5) A rule or practice direction may, in relation to a specified type of proceedings—
- (a) require or permit the use of the Part 10 procedure; and
  - (b) disapply or modify any of the rules set out in this Part as they apply to those proceedings.

#### Contents of the application

- 98.**—(1) In this Part “application” means an application made under this Part.
- (2) Where the applicant uses the Part 10 procedure the application must state—
- (a) that this Part applies;
  - (b)
    - (i) the question which the applicant wants the court to decide; or
    - (ii) the order which the applicant is seeking and the legal basis of the application for that order;
  - (c) if the application is being made under an enactment, what that enactment is;
  - (d) if the applicant is applying in a representative capacity, what that capacity is; and
  - (e) if the respondent appears or is to appear in a representative capacity, what that capacity is.
- (3) A court officer will serve a copy of the application on the respondent.

### **Issue of application without naming respondents**

**99.**—(1) A practice direction may set out circumstances in which an application may be issued under this Part without naming a respondent.

(2) The practice direction may set out those cases in which an application for permission must be made before the application is issued.

(3) The application for permission—

(a) need not be served on any other person; and

(b) must be accompanied by a copy of the application that the applicant proposes to issue.

(4) Where the court gives permission it will give directions about the future management of the application.

### **Acknowledgement of service**

**100.**—(1) Subject to paragraph (2), each respondent must file an acknowledgement of service within 14 days beginning with the date on which the application is served.

(2) If the application is to be served out of the jurisdiction the respondent must file an acknowledgement of service within the period set out in the practice direction supplementing Part 6, section 2.

(3) A court officer will serve the acknowledgement of service on the applicant and any other party.

(4) The acknowledgement of service must—

(a) state whether the respondent contests the application;

(b) state, if the respondent seeks a different order from that set out in the application, what that order is; and

(c) be signed by the respondent or his legal representative.

### **Consequence of not filing an acknowledgement of service**

**101.**—(1) This rule applies where—

(a) the respondent has failed to file an acknowledgement of service; and

(b) the time period for doing so has expired.

(2) The respondent must attend the hearing of the application but may not take part in the hearing unless the court gives permission.

### **Filing and serving written evidence**

**102.**—(1) The applicant must file written evidence on which he intends to rely when he files his application.

(2) A court officer will serve the applicant's evidence on the respondent with the application.

(3) A respondent who wishes to rely on written evidence must file it when he files his acknowledgement of service.

(4) A court officer will serve the respondent's evidence, if any, on the other parties with the acknowledgement of service.

(5) The applicant may, within 14 days beginning with the date on which a respondent's evidence was served on him, file further written evidence in reply.

(6) If he does so, a court officer will serve a copy of that evidence on the other parties.

(7) The applicant may rely on the matters set out in his application as evidence under this rule if the application is verified by a statement of truth.

### **Evidence – general**

**103.**—(1) No written evidence may be relied on at the hearing of the application unless—

- (a) it has been served in accordance with rule 102; or
- (b) the court gives permission.

(2) The court may require or permit a party to give oral evidence at the hearing.

(3) The court may give directions requiring the attendance for cross-examination of a witness who has given written evidence.

### **Procedure where respondent objects to use of the Part 10 procedure**

**104.**—(1) Where a respondent contends that the Part 10 procedure should not be used because—

- (a) there is a substantial dispute of fact; and
- (b) the use of the Part 10 procedure is not required or permitted by a rule or practice direction,

he must state his reasons when he files his acknowledgement of service.

(2) When the court receives the acknowledgement of service and any written evidence it will give directions as to the future management of the case.

### **Applications under section 60(3) and 79(4) or rule 108**

**105.**—(1) The Part 10 procedure must be used in an application made in accordance with—

- (a) section 60(3) (order to prevent disclosure of information to an adopted person);
- (b) section 79(4) (order for Registrar General to give any information referred to in section 79(3)); and
- (c) rule 108 (directions of High Court regarding fathers without parental responsibility).

(2) The respondent to an application made in accordance with paragraph (1)(b) is the Registrar General.

## **PART 11**

### **MISCELLANEOUS**

#### **Withdrawal of application**

**106.**—(1) An application may be withdrawn with the permission of the court.

(2) Subject to paragraph (3), a person seeking permission to withdraw an application must file a written request for permission setting out the reasons for the request.

(3) The request under paragraph (2) may be made orally to the court if the parties and any children’s guardian, reporting officer or children and family reporter are present.

(4) A court officer will notify the other parties and any children’s guardian, reporting officer or children and family reporter of a written request.

(5) The court may deal with a written request under paragraph (2) without a hearing if the other parties and any children’s guardian, reporting officer or children and family reporter have had an opportunity to make written representations to the court about the request.

### **Application for recovery orders**

**107.**—(1) An application for any of the orders referred to in section 41(2) (recovery orders) may—

- (a) in the High Court or a county court, be made without notice in which case the applicant must file the application—
  - (i) where the application is made by telephone, the next business day after the making of the application; or
  - (ii) in any other case, at the time when the application is made; and
- (b) in a magistrates' court, be made, with the permission of the court, without notice in which case the applicant must file the application at the time when the application is made or as directed by the court.

(2) Where the court refuses to make an order on an application without notice it may direct that the application is made on notice in which case the application will proceed in accordance with Part 5.

(3) The respondents to an application under this rule are—

- (a) in a case where—
  - (i) placement proceedings;
  - (ii) adoption proceedings; or
  - (iii) proceedings for a section 84 orderare pending, all parties to those proceedings;
- (b) any adoption agency authorised to place the child for adoption or which has placed the child for adoption;
- (c) any local authority to whom notice under section 44 (notice of intention to adopt or apply for a section 84 order) has been given;
- (d) any person having parental responsibility for the child;
- (e) any person in whose favour there is provision for contact;
- (f) any person who was caring for the child immediately prior to the making of the application; and
- (g) any person whom the applicant alleges to have effected or to have been or to be responsible for taking or keeping the child.

### **Inherent jurisdiction and fathers without parental responsibility**

**108.** Where no proceedings have started an adoption agency or local authority may ask the High Court for directions on the need to give a father without parental responsibility notice of the intention to place a child for adoption.

### **Timing of applications for section 89 order**

**109.** An application for a section 89 order must be made within 2 years beginning with the date on which—

- (a) the Convention adoption or Convention adoption order; or
- (b) the overseas adoption or determination under section 91

to which it relates was made.

## Costs

**110.** The court may at any time make such order as to costs as it thinks just including an order relating to the payment of expenses incurred by any officer of the Service or a Welsh family proceedings officer.

(Rule 5(3) provides that Parts 43, 44 (except rules 44.3(2) and (3) and 44.9 to 44.12A), 47 and 48 and rule 45.6 of the CPR apply to costs in proceedings.)

## Orders

**111.—**(1) An order takes effect from the date when it is made, or such later date as the court may specify.

(2) In proceedings in Wales a party may request that an order be drawn up in Welsh as well as English.

## Copies of orders

**112.—**(1) Within 7 days beginning with the date on which the final order was made in proceedings or such shorter time as the court may direct a court officer will send—

- (a) a copy of the order to the applicant;
- (b) a copy, which is sealed, authenticated with the stamp of the court or certified as a true copy, of—
  - (i) an adoption order;
  - (ii) a section 89 order; or
  - (iii) an order quashing or revoking an adoption order or allowing an appeal against an adoption orderto the Registrar General;
- (c) a copy of a Convention adoption order to the relevant Central Authority;
- (d) a copy of a section 89 order relating to a Convention adoption order or a Convention adoption to the—
  - (i) relevant Central Authority;
  - (ii) adopters;
  - (iii) adoption agency; and
  - (iv) local authority;
- (e) unless the court directs otherwise, a copy of a contact order or a variation or revocation of a contact order to the—
  - (i) person with whom the child is living;
  - (ii) adoption agency; and
  - (iii) local authority; and
- (f) a notice of the making or refusal of—
  - (i) the final order; or
  - (ii) an order quashing or revoking an adoption order or allowing an appeal against an order in proceedings

to every respondent and, with the permission of the court, any other person.

(2) The court officer will also send notice of the making of an adoption order or a section 84 order to—



- (a) any court in Great Britain which appears to him to have made any such order as is referred to in section 46(2) (order relating to parental responsibility for, and maintenance of, the child); and
  - (b) the principal registry of the Family Division, if it appears to him that a parental responsibility agreement has been recorded at the principal registry.
- (3) A copy of any final order may be sent to any other person with the permission of the court.
- (4) The court officer will send a copy of any order made during the course of the proceedings to all the parties to those proceedings unless the court directs otherwise.
- (5) If an order has been drawn up in Welsh as well as English in accordance with rule 111(2) any reference in this rule to sending an order is to be taken as a reference to sending both the Welsh and English orders.

### **Amendment and revocation of orders**

- 113.**—(1) Subject to paragraph (2), an application under—
- (a) section 55 (revocation of adoptions on legitimation); or
  - (b) paragraph 4 of Schedule 1 (amendment of adoption order and revocation of direction)
- may be made without serving a copy of the application notice.
- (2) The court may direct that an application notice be served on such persons as it thinks fit.
- (3) Where the court makes an order granting the application, a court officer will send the Registrar General a notice—
- (a) specifying the amendments; or
  - (b) informing him of the revocation,
- giving sufficient particulars of the order to enable the Registrar General to identify the case.
- (4) The court may at any time correct an accidental slip or omission in an order.
- (5) A party may apply for a correction under paragraph (4) without notice to the other parties.

### **Keeping of registers**

- 114.**—(1) A magistrates' court officer will keep a register in which there will be entered a minute or memorandum of every adjudication of the court in proceedings to which these Rules apply.
- (2) The register may be stored in electronic form on the court computer system and entries in the register will include, where relevant, the following particulars—
- (a) the name and address of the applicant;
  - (b) the name of the child including, in adoption proceedings, the name of the child prior to, and after, adoption;
  - (c) the age and sex of the child;
  - (d) the nature of the application; and
  - (e) the minute of adjudication.
- (3) The part of the register relating to adoption proceedings will be kept separately to any other part of the register and will—
- (a) not contain particulars of any other proceedings; and
  - (b) be kept by the court in a place of special security.

## PART 12

### DISPUTING THE COURT'S JURISDICTION

#### Procedure for disputing the court's jurisdiction

**115.**—(1) A respondent who wishes to—

- (a) dispute the court's jurisdiction to hear the application; or
- (b) argue that the court should not exercise its jurisdiction

may apply to the court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have.

(2) An application under this rule must—

- (a) be made within 14 days beginning with the date on which the notice of the directions hearing is sent to the parties; and
- (b) be supported by evidence.

(3) If the respondent does not make an application within the period specified in paragraph (2) he is to be treated as having accepted that the court has jurisdiction to hear the application.

(4) An order containing a declaration that the court has no jurisdiction or will not exercise its jurisdiction may also make further provision including—

- (a) setting aside the application form;
- (b) discharging any order made before the application was commenced or, where applicable, before the application form was served; and
- (c) staying the proceedings.

(5) If a respondent makes an application under this rule, he must file his written evidence in support with the application notice, but he need not before the hearing of the application file any other written evidence.

(6) Paragraph (4) does not apply to proceedings in a magistrates' court.

## PART 13

### HUMAN RIGHTS

#### Human Rights Act 1998

**116.**—(1) A party who seeks to rely on any provision of or right arising under the Human Rights Act 1998<sup>(27)</sup> or seeks a remedy available under that Act must inform the court in his application or otherwise in writing specifying—

- (a) the Convention right which it is alleged has been infringed and details of the alleged infringement; and
- (b) the relief sought and whether this includes a declaration of incompatibility.

(2) The High Court may not make a declaration of incompatibility unless 21 days' notice, or such other period of notice as the court directs, has been given to the Crown.

(3) Where notice has been given to the Crown, a Minister, or other person permitted by that Act, will be joined as a party on giving notice to the court.

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(27) 1998 c. 42.

(4) Where a claim is made under section 7(1) of the Human Rights Act 1998 (claim that public authority acted unlawfully) in respect of a judicial act—

- (a) that claim must be set out in the application form or the appeal notice; and
- (b) notice must be given to the Crown.

(5) Where paragraph (4) applies and the appropriate person (as defined in section 9(5) of the Human Rights Act 1998) has not applied within 21 days, or such other period as the court directs, beginning with the date on which the notice to be joined as a party was served, the court may join the appropriate person as a party.

(6) On any application concerning a committal order, if the court ordering the release of the person concludes that his Convention rights have been infringed by the making of the order to which the application or appeal relates, the judgment or order should so state, but if the court does not do so, that failure will not prevent another court from deciding the matter.

(7) Where by reason of a rule, practice direction or court order the Crown is permitted or required—

- (a) to make a witness statement;
- (b) to swear an affidavit;
- (c) to verify a document by a statement of truth; or
- (d) to discharge any other procedural obligation,

that function will be performed by an appropriate officer acting on behalf of the Crown, and the court may if necessary nominate an appropriate officer.

(8) In this rule—

- “Convention right” has the same meaning as in the Human Rights Act 1998; and
- “declaration of incompatibility” means a declaration of incompatibility under section 4 of the Human Rights Act 1998.

(A practice direction makes provision for the notices mentioned in this rule.)

## PART 14

### INTERIM INJUNCTIONS

#### Scope of this Part

117. The rules in this Part do not apply to proceedings in a magistrates' court.

#### Order for interim injunction

- 118.—(1) The court may grant an interim injunction.
- (2) Paragraph (1) does not limit any other power which the court may have to grant an injunction.
  - (3) The court may grant an interim injunction whether or not there has been an application.

#### Time when an order for an interim injunction may be made

- 119.—(1) An order for an interim injunction may be made at any time, including—
- (a) before proceedings are started; and
  - (b) after judgment has been given.
- (Rule 19 provides that proceedings are started when the court issues an application form.)

- (2) However—
- (a) paragraph (1) is subject to any rule, practice direction or other enactment which provides otherwise; and
  - (b) the court may grant an interim injunction before an application has been made only if—
    - (i) the matter is urgent; or
    - (ii) it is otherwise desirable to do so in the interests of justice.
- (3) Where the court grants an interim injunction before an application has been commenced, it may give directions requiring an application to be commenced.

### **How to apply for an interim injunction**

**120.**—(1) The court may grant an interim injunction on an application made without notice if it appears to the court that there are good reasons for not giving notice.

(2) An application for an interim injunction must be supported by evidence, unless the court orders otherwise.

(3) If the applicant makes an application without giving notice, the evidence in support of the application must state the reasons why notice has not been given.

(Rule 12 lists general case-management powers of the court.)

(Part 9 contains general rules about making an application.)

### **Interim injunction to cease if application is stayed**

**121.** If—

- (a) the court has granted an interim injunction; and
- (b) the application is stayed other than by agreement between the parties,

the interim injunction shall be set aside unless the court orders that it should continue to have effect even though the application is stayed.

## **PART 15**

### **ADMISSIONS AND EVIDENCE**

#### **Making an admission**

**122.**—(1) A party may admit the truth of the whole or any part of another party’s case by giving notice in writing.

(2) The court may allow a party to amend or withdraw an admission.

#### **Power of court to control evidence**

**123.**—(1) The court may control the evidence by giving directions as to—

- (a) the issues on which it requires evidence;
- (b) the nature of the evidence which it requires to decide those issues; and
- (c) the way in which the evidence is to be placed before the court.

(2) The court may use its power under this rule to exclude evidence that would otherwise be admissible.

- (3) The court may limit cross-examination.

**Evidence of witnesses – general rule**

**124.**—(1) The general rule is that any fact which needs to be proved by the evidence of witnesses is to be proved—

- (a) at final hearing, by their oral evidence; and
  - (b) at any other hearing, by their evidence in writing.
- (2) This is subject—
- (a) to any provision to the contrary contained in these Rules or elsewhere; or
  - (b) to any order of the court.

**Evidence by video link or other means**

**125.** The court may allow a witness to give evidence through a video link or by other means.

**Service of witness statements for use at final hearing**

**126.**—(1) A witness statement is a written statement signed by a person which contains the evidence which that person would be allowed to give orally.

(2) The court will give directions about the service of any witness statement of the oral evidence which a party intends to rely on in relation to any issues of fact to be decided at the final hearing on the other parties.

- (3) The court may give directions as to—
- (a) the order in which witness statements are to be served; and
  - (b) whether or not the witness statements are to be filed.

**Use at final hearing of witness statements which have been served**

**127.**—(1) If—

- (a) a party has filed a witness statement which has been served on the other parties; and
- (b) he wishes to rely at the final hearing on the evidence of the witness who made the statement,

he must call the witness to give oral evidence unless the court directs otherwise or he puts the statement in as hearsay evidence.

(2) Where a witness is called to give oral evidence under paragraph (1), his witness statement shall stand as his evidence in chief unless the court directs otherwise.

- (3) A witness giving oral evidence at final hearing may with the permission of the court—
- (a) amplify his witness statement; and
  - (b) give evidence in relation to new matters which have arisen since the witness statement was served on the other parties.

(4) The court will give permission under paragraph (3) only if it considers that there is good reason not to confine the evidence of the witness to the contents of his witness statement.

(5) If a party who has filed a witness statement which has been served on the other parties does not—

- (a) call the witness to give evidence at final hearing; or

- (b) put the witness statement in as hearsay evidence, any other party may put the witness statement in as hearsay evidence.

### **Evidence in proceedings other than at final hearing**

**128.**—(1) Subject to paragraph (2), the general rule is that evidence at hearings other than the final hearing is to be by witness statement unless the court, a practice direction or any other enactment requires otherwise.

- (2) At hearings other than the final hearing, a party may, rely on the matters set out in—
  - (a) his application form; or
  - (b) his application notice, if it is verified by a statement of truth.

### **Order for cross-examination**

**129.**—(1) Where, at a hearing other than the final hearing, evidence is given in writing, any party may apply to the court for permission to cross-examine the person giving the evidence.

(2) If the court gives permission under paragraph (1) but the person in question does not attend as required by the order, his evidence may not be used unless the court gives permission.

### **Form of witness statement**

**130.** A witness statement must comply with the requirements set out in the relevant practice direction.

### **Witness summaries**

- 131.**—(1) A party who—
- (a) is required to file a witness statement for use at final hearing; but
  - (b) is unable to obtain one, may apply, without notice, for permission to file a witness summary instead.
- (2) A witness summary is a summary of—
- (a) the evidence, if known, which would otherwise be included in a witness statement; or
  - (b) if the evidence is not known, the matters about which the party filing the witness summary proposes to question the witness.
- (3) Unless the court directs otherwise, a witness summary must include the name and address of the intended witness.
- (4) Unless the court directs otherwise, a witness summary must be filed within the period in which a witness statement would have had to be filed.
- (5) Where a party files a witness summary, so far as practicable, rules 126 (service of witness statements for use at final hearing), 127(3) (amplifying witness statements), and 130 (form of witness statement) shall apply to the summary.

### **Cross-examination on a witness statement**

**132.** Where a witness is called to give evidence at final hearing, he may be cross-examined on his witness statement whether or not the statement or any part of it was referred to during the witness's evidence in chief.

### **False statements**

**133.**—(1) Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

- (2) Proceedings under this rule may be brought only—
- (a) by the Attorney General; or
  - (b) with the permission of the court.
- (3) This rule does not apply to proceedings in a magistrates' court.

### **Affidavit evidence**

**134.** Evidence must be given by affidavit instead of or in addition to a witness statement if this is required by the court, a provision contained in any other rule, a practice direction or any other enactment.

### **Form of affidavit**

**135.** An affidavit must comply with the requirements set out in the relevant practice direction.

### **Affidavit made outside the jurisdiction**

- 136.** A person may make an affidavit outside the jurisdiction in accordance with—
- (a) this Part; or
  - (b) the law of the place where he makes the affidavit.

### **Notarial acts and instruments**

**137.** A notarial act or instrument may be received in evidence without further proof as duly authenticated in accordance with the requirements of law unless the contrary is proved.

### **Use of plans, photographs and models as evidence**

- 138.**—(1) This rule applies to evidence (such as a plan, photograph or model) which is not—
- (a) contained in a witness statement, affidavit or expert's report; and
  - (b) to be given orally at the final hearing.
- (2) This rule includes documents which may be received in evidence without further proof under section 9 of the Civil Evidence Act 1995<sup>(28)</sup>.
- (3) Unless the court orders otherwise the evidence shall not be receivable at the final hearing unless the party intending to put it in evidence has given notice to the court in accordance with this rule and the court will give directions about service of the notice on any other party.
- (4) Where the party intends to use the evidence as evidence of any fact then, subject to paragraph (6), he must give notice not later than the latest date for filing witness statements.
- (5) He must give notice at least 21 days before the hearing at which he proposes to put in the evidence, if—
- (a) there are not to be witness statements; or

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<sup>(28)</sup> 1995 c. 38. Section 9 of the Civil Evidence Act 1995 provides that documents forming part of the records of a business or public authority, as defined in that section, may be received in evidence without further proof.

- (b) he intends to put in the evidence solely in order to disprove an allegation made in a witness statement.
- (6) Where the evidence forms part of expert evidence, he must give notice when the expert's report is filed.
- (7) Where the evidence is being produced to the court for any reason other than as part of factual or expert evidence, he must give notice at least 21 days before the hearing at which he proposes to put in the evidence.
- (8) Where a party has given notice that he intends to put in the evidence, the court may direct that every other party be given an opportunity to inspect it and to agree to its admission without further proof.

### **Evidence of finding on question of foreign law**

**139.**—(1) This rule sets out the procedure which must be followed by a party who intends to put in evidence a finding on a question of foreign law by virtue of section 4(2) of the Civil Evidence Act 1972(29).

- (2) He must give the court notice of his intention—
  - (a) if there are to be witness statements, not later than the latest date for filing them; or
  - (b) otherwise, not less than 21 days before the hearing at which he proposes to put the finding in evidence

and the court will give directions about service of the notice on any other party.

- (3) The notice must—
  - (a) specify the question on which the finding was made; and
  - (b) enclose a copy of a document where it is reported or recorded.

## **PART 16**

### **WITNESSES, DEPOSITIONS AND EVIDENCE FOR FOREIGN COURTS**

#### *SECTION 1*

#### *WITNESSES AND DEPOSITIONS*

#### **Scope of this Section**

- 140.**—(1) This Section of this Part provides—
- (a) for the circumstances in which a person may be required to attend court to give evidence or to produce a document; and
  - (b) for a party to obtain evidence before a hearing to be used at the hearing.
- (2) This Section, except for rule 149(2) to (4), does not apply to proceedings in a magistrates' court.
- (Section 97 of the Magistrates' Courts Act 1980(30) sets out the procedure for obtaining a witness summons in proceedings in a magistrates' court.)

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(29) 1972 c. 30.

(30) 1980 c. 43.



### **Witness summonses**

- 141.**—(1) A witness summons is a document issued by the court requiring a witness to—
- (a) attend court to give evidence; or
  - (b) produce documents to the court.
- (2) A witness summons must be in the relevant form.
- (3) There must be a separate witness summons for each witness.
- (4) A witness summons may require a witness to produce documents to the court either—
- (a) on the date fixed for a hearing; or
  - (b) on such date as the court may direct.
- (5) The only documents that a summons under this rule can require a person to produce before a hearing are documents which that person could be required to produce at the hearing.

### **Issue of a witness summons**

- 142.**—(1) A witness summons is issued on the date entered on the summons by the court.
- (2) A party must obtain permission from the court where he wishes to—
- (a) have a summons issued less than 7 days before the date of the final hearing;
  - (b) have a summons issued for a witness to attend court to give evidence or to produce documents on any date except the date fixed for the final hearing; or
  - (c) have a summons issued for a witness to attend court to give evidence or to produce documents at any hearing except the final hearing.
- (3) A witness summons must be issued by—
- (a) the court where the case is proceeding; or
  - (b) the court where the hearing in question will be held.
- (4) The court may set aside or vary a witness summons issued under this rule.

### **Time for serving a witness summons**

- 143.**—(1) The general rule is that a witness summons is binding if it is served at least 7 days before the date on which the witness is required to attend before the court or tribunal.
- (2) The court may direct that a witness summons shall be binding although it will be served less than 7 days before the date on which the witness is required to attend before the court or tribunal.
- (3) A witness summons which is—
- (a) served in accordance with this rule; and
  - (b) requires the witness to attend court to give evidence,
- is binding until the conclusion of the hearing at which the attendance of the witness is required.

### **Who is to serve a witness summons**

- 144.**—(1) Unless the court directs otherwise, a witness summons is to be served by the court.
- (2) Where the court is to serve the witness summons, the party on whose behalf it is issued must deposit, in the court office, the money to be paid or offered to the witness under rule 145.

### **Right of witness to travelling expenses and compensation for loss of time**

- 145.** At the time of service of a witness summons the witness must be offered or paid—

- (a) a sum reasonably sufficient to cover his expenses in travelling to and from the court; and
- (b) such sum by way of compensation for loss of time as may be specified in the relevant practice direction.

### **Evidence by deposition**

**146.**—(1) A party may apply for an order for a person to be examined before the hearing takes place.

(2) A person from whom evidence is to be obtained following an order under this rule is referred to as a “deponent” and the evidence is referred to as a “deposition”.

(3) An order under this rule shall be for a deponent to be examined on oath before—

- (a) a judge or district judge, including a district judge of the principal registry of the Family Division;
- (b) an examiner of the court; or
- (c) such other person as the court appoints.

(4) The order may require the production of any document which the court considers is necessary for the purposes of the examination.

(5) The order must state the date, time and place of the examination.

(6) At the time of service of the order the deponent must be offered or paid—

- (a) a sum reasonably sufficient to cover his expenses in travelling to and from the place of examination; and
- (b) such sum by way of compensation for loss of time as may be specified in the relevant practice direction.

(7) Where the court makes an order for a deposition to be taken, it may also order the party who obtained the order to file a witness statement or witness summary in relation to the evidence to be given by the person to be examined.

(Part 15 contains the general rules about witness statements and witness summaries.)

### **Conduct of examination**

**147.**—(1) Subject to any directions contained in the order for examination, the examination must be conducted in the same way as if the witness were giving evidence at a final hearing.

(2) If all the parties are present, the examiner may conduct the examination of a person not named in the order for examination if all the parties and the person to be examined consent.

(3) The examiner will conduct the examination in private unless he considers it is not appropriate to do so.

(4) The examiner must ensure that the evidence given by the witness is recorded in full.

(5) The examiner must send a copy of the deposition—

- (a) to the person who obtained the order for the examination of the witness; and
- (b) to the court where the case is proceeding.

(6) The court will make directions as to the service of a copy of the deposition on the other parties.

### **Enforcing attendance of witness**

**148.**—(1) If a person served with an order to attend before an examiner—

- (a) fails to attend; or

- (b) refuses to be sworn for the purpose of the examination or to answer any lawful question or produce any document at the examination,

a certificate of his failure or refusal, signed by the examiner, must be filed by the party requiring the deposition.

(2) On the certificate being filed, the party requiring the deposition may apply to the court for an order requiring that person to attend or to be sworn or to answer any question or produce any document, as the case may be.

(3) An application for an order under this rule may be made without notice.

(4) The court may order the person against whom an order is made under this rule to pay any costs resulting from his failure or refusal.

### **Use of deposition at a hearing**

**149.**—(1) A deposition ordered under rule 146 may be given in evidence at a hearing unless the court orders otherwise.

(2) A party intending to put in evidence a deposition at a hearing must file notice of his intention to do so on the court and the court will make directions about serving the notice on every other party.

(3) He must file the notice at least 21 days before the day fixed for the hearing.

(4) The court may require a deponent to attend the hearing and give evidence orally.

### **Where a person to be examined is out of the jurisdiction – letter of request**

**150.**—(1) This rule applies where a party wishes to take a deposition from a person who is—

- (a) out of the jurisdiction; and

- (b) not in a Regulation State within the meaning of Section 2 of this Part.

(2) The High Court may order the issue of a letter of request to the judicial authorities of the country in which the proposed deponent is.

(3) A letter of request is a request to a judicial authority to take the evidence of that person, or arrange for it to be taken.

(4) The High Court may make an order under this rule in relation to county court proceedings.

(5) If the government of a country allows a person appointed by the High Court to examine a person in that country, the High Court may make an order appointing a special examiner for that purpose.

(6) A person may be examined under this rule on oath or affirmation or in accordance with any procedure permitted in the country in which the examination is to take place.

(7) If the High Court makes an order for the issue of a letter of request, the party who sought the order must file—

- (a) the following documents and, subject to paragraph (8), a translation of them,—

- (i) a draft letter of request;

- (ii) a statement of the issues relevant to the proceedings; and

- (iii) a list of questions or the subject matter of questions to be put to the person to be examined; and

- (b) an undertaking to be responsible for the Secretary of State's expenses.

(8) There is no need to file a translation if—

- (a) English is one of the official languages of the country where the examination is to take place; or

- (b) a practice direction has specified that country as a country where no translation is necessary.

### **Fees and expenses of examiner of the court**

- 151.**—(1) An examiner of the court may charge a fee for the examination.
- (2) He need not send the deposition to the court unless the fee is paid.
- (3) The examiner’s fees and expenses must be paid by the party who obtained the order for examination.
- (4) If the fees and expenses due to an examiner are not paid within a reasonable time, he may report that fact to the court.
- (5) The court may order the party who obtained the order for examination to deposit in the court office a specified sum in respect of the examiner’s fees and, where it does so, the examiner will not be asked to act until the sum has been deposited.
- (6) An order under this rule does not affect any decision as to the party who is ultimately to bear the costs of the examination.

## *SECTION 2*

### *TAKING OF EVIDENCE – MEMBER STATES OF THE EUROPEAN UNION*

#### **Interpretation**

**152.** In this Section—

- “designated court” has the meaning given in the relevant practice direction;
- “Regulation State” has the same meaning as “Member State” in the Taking of Evidence Regulation, that is all Member States except Denmark;
- “the Taking of Evidence Regulation” means Council Regulation (EC) No. 1206/2001 of 28 May 2001 on co-operation between the courts of the Member States in the taking of evidence in civil and commercial matters.

#### **Where a person to be examined is in another Regulation State**

- 153.**—(1) This rule applies where a party wishes to take a deposition from a person who is in another Regulation State—
- (a) outside the jurisdiction; and
- (b) in a Regulation State.
- (2) The court may order the issue of a request to a designated court (“the requested court”) in the Regulation State in which the proposed deponent is.
- (3) If the court makes an order for the issue of a request, the party who sought the order must file—
- (a) a draft Form A as set out in the annex to the Taking of Evidence Regulation (request for the taking of evidence);
- (b) subject to paragraph (4), a translation of the form;
- (c) an undertaking to be responsible for costs sought by the requested court in relation to—
- (i) fees paid to experts and interpreters; and
- (ii) where requested by that party, the use of special procedures or communications technology; and

- (d) an undertaking to be responsible for the court's expenses.
- (4) There is no need to file a translation if—
  - (a) English is one of the official languages of the Regulation State where the examination is to take place; or
  - (b) the Regulation State has indicated, in accordance with the Taking of Evidence Regulation, that English is a language which it will accept.
- (5) Where article 17 of the Taking of Evidence Regulation (direct taking of evidence by the requested court) allows evidence to be taken directly in another Regulation State, the court may make an order for the submission of a request in accordance with that article.
- (6) If the court makes an order for the submission of a request under paragraph (5), the party who sought the order must file—
  - (a) a draft Form I as set out in the annex to the Taking of Evidence Regulation (request for direct taking of evidence);
  - (b) subject to paragraph (4), a translation of the form; and
  - (c) an undertaking to be responsible for the court's expenses.

## PART 17

### EXPERTS

#### **Duty to restrict expert evidence**

**154.** Expert evidence shall be restricted to that which is reasonably required to resolve the proceedings.

#### **Interpretation**

**155.** A reference to an “expert” in this Part—

- (a) is a reference to an expert who has been instructed to give or prepare evidence for the purpose of court proceedings; and
- (b) does not include—
  - (i) a person who is within a prescribed description for the purposes of section 94(1) of the Act (persons who may prepare a report for any person about the suitability of a child for adoption or of a person to adopt a child or about the adoption, or placement for adoption, of a child); or
  - (ii) an officer of the Service or a Welsh family proceedings officer when acting in that capacity.

(Regulation 3 of the Restriction on the Preparation of Adoption Reports Regulations 2005 (S.I. 2005/1711) sets out which persons are within a prescribed description for the purposes of section 94(1) of the Act.)

#### **Experts – overriding duty to the court**

- 156.—**(1) It is the duty of an expert to help the court on the matters within his expertise.
- (2) This duty overrides any obligation to the person from whom he has received instructions or by whom he is paid.

### **Court's power to restrict expert evidence**

**157.**—(1) No party may call an expert or put in evidence an expert's report without the court's permission.

(2) When a party applies for permission under this rule he must identify—

- (a) the field in which he wishes to rely on expert evidence; and
- (b) where practicable the expert in that field on whose evidence he wishes to rely.

(3) If permission is granted under this rule it shall be in relation only to the expert named or the field identified under paragraph (2).

(4) The court may limit the amount of the expert's fees and expenses that the party who wishes to rely on the expert may recover from any other party.

### **General requirement for expert evidence to be given in a written report**

**158.** Expert evidence is to be given in a written report unless the court directs otherwise.

### **Written questions to experts**

**159.**—(1) A party may put to—

- (a) an expert instructed by another party; or
- (b) a single joint expert appointed under rule 160,

written questions about his report.

(2) Written questions under paragraph (1)—

- (a) may be put once only;
- (b) must be put within 5 days beginning with the date on which the expert's report was served; and
- (c) must be for the purpose only of clarification of the report,

unless in any case—

- (i) the court gives permission;
- (ii) the other party agrees; or
- (iii) any practice direction provides otherwise.

(3) An expert's answers to questions put in accordance with paragraph (1) shall be treated as part of the expert's report.

(4) Where—

- (a) a party has put a written question to an expert instructed by another party in accordance with this rule; and
- (b) the expert does not answer that question,

the court may make one or both of the following orders in relation to the party who instructed the expert—

- (i) that the party may not rely on the evidence of that expert; or
- (ii) that the party may not recover the fees and expenses of that expert from any other party.

### **Court's power to direct that evidence is to be given by a single joint expert**

**160.**—(1) Where two or more parties wish to submit expert evidence on a particular issue, the court may direct that the evidence on that issue is to be given by one expert only.

- (2) The parties wishing to submit the expert evidence are called “the instructing parties”.
- (3) Where the instructing parties cannot agree who should be the expert, the court may—
  - (a) select the expert from a list prepared or identified by the instructing parties; or
  - (b) direct that the expert be selected in such other manner as the court may direct.

#### **Instructions to a single joint expert**

**161.**—(1) Where the court gives a direction under rule 160 for a single joint expert to be used, each instructing party may give instructions to the expert.

(2) When an instructing party gives instructions to the expert he must, at the same time, send a copy of the instructions to the other instructing parties.

(3) The court may give directions about—

- (a) the payment of the expert’s fees and expenses; and
- (b) any inspection, examination or experiments which the expert wishes to carry out.

(4) The court may, before an expert is instructed, limit the amount that can be paid by way of fees and expenses to the expert.

(5) Unless the court otherwise directs, the instructing parties are jointly and severally liable for the payment of the expert’s fees and expenses.

#### **Power of court to direct a party to provide information**

**162.**—(1) Where a party has access to information which is not reasonably available to the other party, the court may direct the party who has access to the information to prepare and file a document recording the information.

(2) A court officer will send a copy of that document to the other party.

#### **Contents of report**

**163.**—(1) An expert’s report must comply with the requirements set out in the relevant practice direction.

(2) At the end of an expert’s report there must be a statement that—

- (a) the expert understands his duty to the court; and
- (b) he has complied with that duty.

(3) The expert’s report must state the substance of all material instructions, whether written or oral, on the basis of which the report was written.

(4) The instructions referred to in paragraph (3) shall not be privileged against disclosure.

#### **Use by one party of expert’s report disclosed by another**

**164.** Where a party has disclosed an expert’s report, any party may use that expert’s report as evidence at the final hearing.

#### **Discussions between experts**

**165.**—(1) The court may, at any stage, direct a discussion between experts for the purpose of requiring the experts to—

- (a) identify and discuss the expert issues in the proceedings; and
- (b) where possible, reach an agreed opinion on those issues.

- (2) The court may specify the issues which the experts must discuss.
- (3) The court may direct that following a discussion between the experts they must prepare a statement for the court showing—
  - (a) those issues on which they agree; and
  - (b) those issues on which they disagree and a summary of their reasons for disagreeing.

#### **Consequence of failure to disclose expert's report**

**166.** A party who fails to disclose an expert's report may not use the report at the final hearing or call the expert to give evidence orally unless the court gives permission.

#### **Expert's right to ask court for directions**

- 167.**—(1) An expert may file a written request for directions to assist him in carrying out his function as an expert.
- (2) An expert must, unless the court directs otherwise, provide a copy of any proposed request for directions under paragraph (1)—
    - (a) to the party instructing him, at least 7 days before he files the request; and
    - (b) to all other parties, at least 4 days before he files it.
  - (3) The court, when it gives directions, may also direct that a party be served with a copy of the directions.

## **PART 18**

### **CHANGE OF SOLICITOR**

#### **Change of solicitor – duty to give notice**

- 168.**—(1) This rule applies where—
- (a) a party for whom a solicitor is acting wants to change his solicitor;
  - (b) a party, after having conducted the application in person, appoints a solicitor to act on his behalf (except where the solicitor is appointed only to act as an advocate for a hearing); or
  - (c) a party, after having conducted the application by a solicitor, intends to act in person.
- (2) Where this rule applies, the party or his solicitor (where one is acting) must—
    - (a) file notice of the change; and
    - (b) where paragraph (1)(a) or (c) applies, serve notice of the change on the former solicitor.
  - (3) The court will give directions about serving notice of the change on every other party.
  - (4) The notice filed at court must state that notice has been served as required by paragraph (2)(b).
  - (5) Subject to paragraph (6), where a party has changed his solicitor or intends to act in person, the former solicitor will be considered to be the party's solicitor unless and until—
    - (a) notice is filed and served in accordance with paragraphs (2) and (3); or
    - (b) the court makes an order under rule 169 and the order is served as required by paragraph (3) of that rule.
  - (6) Where the certificate of a LSC funded client or an assisted person is revoked or discharged—



- (a) the solicitor who acted for that person will cease to be the solicitor acting in the case as soon as his retainer is determined under regulation 4 of the Community Legal Service (Costs) Regulations 2000<sup>(31)</sup>; and
  - (b) if that person wishes to continue where he appoints a solicitor to act on his behalf, paragraph (2) will apply as if he had previously conducted the application in person;
- (7) In this rule—
- “assisted person” means an assisted person within the statutory provisions relating to legal aid;
  - “certificate” means a certificate issued under the Funding Code (approved under section 9 of the Access to Justice Act 1999<sup>(32)</sup>);
  - “LSC funded client” means an individual who receives services funded by the Legal Services Commission as part of the Community Legal Service within the meaning of Part I of the Access to Justice Act 1999.

#### **Order that a solicitor has ceased to act**

**169.**—(1) A solicitor may apply for an order declaring that he has ceased to be the solicitor acting for a party.

- (2) Where an application is made under this rule—
  - (a) notice of the application must be given to the party for whom the solicitor is acting, unless the court directs otherwise; and
  - (b) the application must be supported by evidence.
- (3) Where the court makes an order that a solicitor has ceased to act—
  - (a) the court will give directions about serving the order on every party to the proceedings; and
  - (b) if it is served by a party or the solicitor, the party or the solicitor (as the case may be) must file a certificate of service.

#### **Removal of solicitor who has ceased to act on application of another party**

- 170.**—(1) Where—
- (a) a solicitor who has acted for a party—
    - (i) has died;
    - (ii) has become bankrupt;
    - (iii) has ceased to practice; or
    - (iv) cannot be found; and
  - (b) the party has not given notice of a change of solicitor or notice of intention to act in person as required by rule 168(2),

any other party may apply for an order declaring that the solicitor has ceased to be the solicitor acting for the other party in the case.

- (2) Where an application is made under this rule, notice of the application must be given to the party to whose solicitor the application relates unless the court directs otherwise.
- (3) Where the court makes an order made under this rule—
  - (a) the court will give directions about serving the order on every party to the proceedings; and
  - (b) where it is served by a party, that party must file a certificate of service.

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<sup>(31)</sup> S.I. 2000/441.

<sup>(32)</sup> 1999 c. 22.

## PART 19

### APPEALS

#### Scope and interpretation

171.—(1) The rules in this Part apply to appeals to—

- (a) the High Court; and
- (b) a county court.

(2) This Part does not apply to an appeal in detailed assessment proceedings against a decision of an authorised court officer. (Rules 47.20 to 47.23 of the CPR deal with appeals against a decision of an authorised court officer in detailed assessment proceedings.)

(3) In this Part—

“appeal” includes an appeal by way of case stated;

“appeal court” means the court to which an appeal is made;

“appeal notice” means an appellant’s or respondent’s notice;

“appellant” means a person who brings or seeks to bring an appeal;

“lower court” means the court from whose decision an appeal is brought;

“respondent” means—

- (a) a person other than the appellant who was a party to the proceedings in the lower court and who is affected by the appeal; and
- (b) a person who is permitted by the appeal court to be a party to the appeal.

(4) This Part is subject to any rule, enactment or practice direction which sets out special provisions with regard to any particular category of appeal.

#### Parties to comply with the practice direction

172. All parties to an appeal must comply with the relevant practice direction.

#### Permission

173.—(1) An appellant or respondent requires permission to appeal—

- (a) against a decision in assessment proceedings relating to costs in proceedings where the decision appealed against was made by a district judge or a costs judge; or
- (b) as provided by the relevant practice direction.

(2) An application for permission to appeal may be made—

- (a) to the lower court, if that court is a county court or the High Court, at the hearing at which the decision to be appealed was made; or
- (b) to the appeal court in an appeal notice.

(Rule 174 sets out the time limits for filing an appellant’s notice at the appeal court. Rule 175 sets out the time limits for filing a respondent’s notice at the appeal court. Any application for permission to appeal to the appeal court must be made in the appeal notice (see rules 174(1) and 175(3).)

(3) Where the lower court refuses an application for permission to appeal, a further application for permission to appeal may be made to the appeal court.

(4) Where the appeal court, without a hearing, refuses permission to appeal, the person seeking permission may request the decision to be reconsidered at a hearing.

(5) A request under paragraph (4) must be filed within 7 days beginning with the date on which the notice that permission has been refused was served.

(6) Permission to appeal will only be given where—

- (a) the court considers that the appeal would have a real prospect of success; or
- (b) there is some other compelling reason why the appeal should be heard.

(7) An order giving permission may—

- (a) limit the issues to be heard; and
- (b) be made subject to conditions.

(8) In this rule “costs judge” means a taxing master of the Supreme Court.

### **Appellant’s notice**

**174.**—(1) Where the appellant seeks permission from the appeal court it must be requested in the appellant’s notice.

(2) The appellant must file the appellant’s notice at the appeal court within—

- (a) such period as may be directed by the lower court, if that court is a county court or the High Court; or
- (b) (i) where the lower court makes no such direction; or  
(ii) the lower court is a magistrates' court,  
14 days beginning with the date on which the decision of the lower court that the appellant wishes to appeal was made.

(3) Unless the appeal court directs otherwise, an appeal notice must be served on the persons referred to in paragraph (4)—

- (a) as soon as practicable; and
- (b) in any event not later than 7 days,

after it is filed.

(4) The persons referred to in paragraph (3) are—

- (a) each respondent;
- (b) any children’s guardian, reporting officer or children and family reporter; and
- (c) where the appeal is from a magistrates' court, the court officer.

(5) Unless the appeal court directs otherwise, a court officer will serve the appeal notice.

### **Respondent’s notice**

**175.**—(1) A respondent may file a respondent’s notice.

(2) A respondent who—

- (a) is seeking permission to appeal from the appeal court; or
- (b) wishes to ask the appeal court to uphold the order of the lower court for reasons different from or additional to those given by the lower court,

must file a respondent’s notice.

(3) Where the respondent seeks permission from the appeal court it must be requested in the respondent’s notice.

- (4) A respondent's notice must be filed within—
- (a) such period as may be directed by the lower court, if that court is a county court or the High Court; or
  - (b) (i) where the lower court makes no such direction; or
    - (ii) the lower court is a magistrates' court,
 14 days beginning with the date referred to in paragraph (5).
- (5) The date referred to in paragraph (4) is—
- (a) the date on which the respondent is served with the appellant's notice where—
    - (i) permission to appeal was given by the lower court; or
    - (ii) permission to appeal is not required;
  - (b) the date on which the respondent is served with notification that the appeal court has given the appellant permission to appeal; or
  - (c) the date on which the respondent is served with notification that the application for permission to appeal and the appeal itself are to be heard together.
- (6) Unless the appeal court directs otherwise, a respondent's notice must be served on the appellant and any other respondent—
- (a) as soon as practicable; and
  - (b) in any event not later than 7 days,
- after it is filed.
- (7) Unless the appeal court directs otherwise, a court officer will serve a respondent's notice.

### **Variation of time**

**176.**—(1) An application to vary the time limit for filing an appeal notice must be made to the appeal court.

- (2) The parties may not agree to extend any date or time limit set by—
- (a) these Rules;
  - (b) the relevant practice direction; or
  - (c) an order of the appeal court or the lower court.

(Rule 12(2)(a) provides that the court may extend or shorten the time for compliance with any rule, practice direction or court order (even if an application for extension is made after the time for compliance has expired).)

(Rule 12(2)(b) provides that the court may adjourn or bring forward a hearing.)

### **Stay**

**177.** Unless the appeal court or the lower court, other than a magistrates' court, orders otherwise an appeal shall not operate as a stay of any order or decision of the lower court.

### **Amendment of appeal notice**

**178.** An appeal notice may not be amended without the permission of the appeal court.

### **Striking out appeal notices and setting aside or imposing conditions on permission to appeal**

**179.**—(1) The appeal court may—

- (a) strike out the whole or part of an appeal notice;
  - (b) set aside permission to appeal in whole or in part; or
  - (c) impose or vary conditions upon which an appeal may be brought.
- (2) The court will only exercise its powers under paragraph (1) where there is a compelling reason for doing so.
- (3) Where a party was present at the hearing at which permission was given he may not subsequently apply for an order that the court exercise its powers under paragraphs (1)(b) or (c).

### **Appeal court's powers**

- 180.**—(1) In relation to an appeal the appeal court has all the powers of the lower court.  
(Rule 171(4) provides that this Part is subject to any enactment that sets out special provisions with regard to any particular category of appeal.)
- (2) The appeal court has power to—
- (a) affirm, set aside or vary any order or judgment made or given by the lower court;
  - (b) refer any application or issue for determination by the lower court;
  - (c) order a new hearing;
  - (d) make orders for the payment of interest; and
  - (e) make a costs order.
- (3) The appeal court may exercise its powers in relation to the whole or part of an order of the lower court.  
(Rule 12 contains general rules about the court's case management powers.)
- (4) If the appeal court—
- (a) refuses an application for permission to appeal;
  - (b) strikes out an appellant's notice; or
  - (c) dismisses an appeal,
- and it considers that the application, the appellant's notice or the appeal is totally without merit, the provisions of paragraph (5) must be complied with.
- (5) Where paragraph (4) applies—
- (a) the court's order must record the fact that it considers the application, the appellant's notice or the appeal to be totally without merit; and
  - (b) the court must at the same time consider whether it is appropriate to make a civil restraint order.

### **Hearing of appeals**

- 181.**—(1) Every appeal will be limited to a review of the decision of the lower court unless—
- (a) a practice direction makes different provision for a particular category of appeal; or
  - (b) the court considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing.
- (2) Unless it orders otherwise, the appeal court will not receive—
- (a) oral evidence; or
  - (b) evidence which was not before the lower court.
- (3) The appeal court will allow an appeal where the decision of the lower court was—

- (a) wrong; or
  - (b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court.
- (4) The appeal court may draw any inference of fact which it considers justified on the evidence.
- (5) At the hearing of the appeal a party may not rely on a matter not contained in his appeal notice unless the appeal court gives permission.

### **Assignment of appeals to the Court of Appeal**

**182.**—(1) Where the court from or to which an appeal is made or from which permission to appeal is sought (“the relevant court”) considers that—

- (a) an appeal which is to be heard by a county court or the High Court would raise an important point of principle or practice; or
  - (b) there is some other compelling reason for the Court of Appeal to hear it,
- the relevant court may order the appeal to be transferred to the Court of Appeal.
- (2) This rule does not apply to proceedings in a magistrates' court.

### **Reopening of final appeals**

- 183.**—(1) The High Court will not reopen a final determination of any appeal unless—
- (a) it is necessary to do so in order to avoid real injustice;
  - (b) the circumstances are exceptional and make it appropriate to reopen the appeal; and
  - (c) there is no alternative effective remedy.
- (2) In paragraphs (1), (3), (4) and (6), “appeal” includes an application for permission to appeal.
- (3) This rule does not apply to appeals to a county court.
- (4) Permission is needed to make an application under this rule to reopen a final determination of an appeal.
- (5) There is no right to an oral hearing of an application for permission unless, exceptionally, the judge so directs.
- (6) The judge will not grant permission without directing the application to be served on the other party to the original appeal and giving him an opportunity to make representations.
- (7) There is no right of appeal or review from the decision of the judge on the application for permission, which is final.
- (8) The procedure for making an application for permission is set out in the practice direction.

*Sir Mark Potter, President  
Nicholas Wall, LJ  
Susan Jones  
Clive Redley  
Martyn Cook  
John Baker  
William Charles, J  
David Salter  
Philip Waller  
Bruce Edgington*

I allow these Rules, which shall come into force on 30th December 2005

10th October 2005

*Falconer of Thoroton, C.*

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

*(This note is not part of these Rules)*

These Rules govern the practice and procedure to be followed in proceedings under the Adoption and Children Act 2002 (c. 38) in the High Court, county courts and magistrates' courts. They are the first Family Procedure Rules to be made by the Family Procedure Rule Committee.

Part 1 sets out the overriding objective of the Rules. Part 2 contains provisions for interpreting and applying the Rules. Part 3 contains the court's general case management powers. Part 4 sets out how to start proceedings including provisions on how to apply for a serial number or to keep personal details confidential.

Part 5 contains rules about the general procedure to be followed in relation to proceedings for—

- (a) the making of an adoption order;
- (b) the making, varying or revoking of a placement order;
- (c) the making, varying or revoking of a contact order under sections 26 and 27 of the 2002 Act;
- (d) an order giving permission to change a child's surname or remove a child from the United Kingdom under section 28(2) and (3) of that Act; or
- (e) an order under section 84 or 89, or a direction under section 88, of that Act.

Part 6 contains rules about the service of documents including those required to be served out of the jurisdiction. Part 7 contains rules about the appointment of a litigation friend and officers of the Service and their powers and duties. Part 8 contains rules about documents particularly in relation to the custody, inspection and disclosure of documents and information obtained during the course of proceedings.

Part 9 contains rules about the procedure to be followed if an application is made—

- (a) in the course of existing proceedings;
- (b) to commence proceedings other than those to which Part 5 applies; or
- (c) in connection with proceedings which have concluded.

Part 10 contains rules about the procedure to be followed in proceedings—

- (a) under section 60(3) (order to prevent disclosure of information to an adopted person);
- (b) under section 79(4) (order for Registrar General to give information referred to in section 79(3));
- (c) in accordance with rule 108 (directions from the High Court regarding fathers without parental responsibility); and
- (d) where—
  - (i) Part 9 of the Rules does not apply;
  - (ii) there is no prescribed form to use in relation to the application; and
  - (iii) there is unlikely to be a substantial dispute of fact.

Part 11 contains miscellaneous provisions such as applications for recovery orders and seeking directions from the High Court regarding fathers without parental responsibility. Part 12 sets out the procedure for disputing the court's jurisdiction. Part 13 contains provisions about human rights.



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Part 14 makes provision for applications for interim injunctions. Parts 15 and 16 contain rules about evidence. Part 17 deals with experts, Part 18 with change of solicitor and Part 19 with appeals.

These Rules come into force on 30 December 2005.