

## SCHEDULE 1

### PART IVA

#### FREERING FOR ADOPTION AND ADOPTION ORDERS

##### *Introductory*

##### **Interpretation**

- 4A.1.—(1) In this Part and Parts IVB and IVC, unless the context otherwise requires –
- “the 1976 Act” means the Adoption Act 1976(1);
  - “the 1978 Act” means the Adoption (Scotland) Act 1978(2);
  - “the Order of 1987” means the Adoption (Northern Ireland) Order 1987(3), and –
    - (a) a reference to an Article by number is a reference to that Article as numbered in that Order; and
    - (b) expressions which are defined in the Order of 1987 have the same meaning as in that Order;
  - “adoption agency” means a Board or a registered adoption society which is an accredited body for the purposes of the Convention(4);
  - “parental responsibility” has the same meaning as in the Order of 1995;
  - “application” means an application made under or by virtue of the Order of 1987 or under these Rules and “applicant” shall be construed accordingly;
  - “Board” means a Health and Social Services Board or, as the case may be, a Trust;
  - “CA of the receiving State” means, in relation to a Convention country(5) other than the United Kingdom, the Central Authority of the receiving State;
  - “CA of the State of origin” means, in relation to a Convention country other than the United Kingdom, the Central Authority of the State of origin;
  - “Central Authority” means the Department of Health, Social Services and Public Safety;
  - “the child” means the person whom the applicant for an adoption order or an order authorising a proposed foreign adoption proposes to adopt, or, as the case may be, the person the adoption agency proposes should be freed for adoption;
  - “Convention” means the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29th May 1993;
  - “Convention country” means any country or territory in which the Convention is in force;

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(1) 1976 c. 36

(2) 1978 c. 28

(3) S.I.1987/2203 (N.I. 22) as amended by S.I.1994/429 (N.I. 2), S.I.1995/755 (N.I. 2) and 2001 c. 11 (N.I.)

(4) Section 2(3) of the Adoption (Intercountry Aspects) Act (Northern Ireland) 2001 c. 11 (N.I.) provides that a registered adoption society is an accredited body for the purposes of the Convention if its registration extends to the provision of facilities in respect of Convention adoptions and adoptions effected by Convention adoption orders

(5) The term “Convention country” is defined in Article 2(2) of the Order of 1987, as amended by section 6 of the Adoption (Intercountry Aspects) Act (Northern Ireland) 2001

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“Convention proceedings” means proceedings in the High Court or a county court for a Convention adoption order or in connection with a Convention adoption order or a Convention adoption(6);

“Hague Convention Regulations” means the Intercountry Adoption (Hague Convention) Regulations (Northern Ireland) 2003(7);

“interim order” means an order under Article 26;

“the Master” means the Master (Care and Protection) or, as the case may be, the chief clerk;

“medical practitioner” has the meaning assigned by Article 2(2) of the Health and Personal Social Services (Northern Ireland) Order 1972(8);

“the Office” means the Office of Care and Protection or, where appropriate, the office of the chief clerk for the county court division in which proceedings are pending;

“order authorising a proposed foreign adoption” means an order under Article 57;

“receiving State” means the State in which it is proposed that the child will become habitually resident;

“regular armed forces of the Crown” means the Royal Navy, the Regular Armed Forces as defined by section 225 of the Army Act 1955(9), the Regular Air Force as defined by section 223 of the Air Force Act 1955(10), the Queen Alexandra’s Royal Naval Nursing Service and the Women’s Royal Naval Service;

“State of origin” means the State in which the child is habitually resident.

## **Proceedings**

4A.2. Any hearing of an application shall be dealt with in chambers unless the court otherwise directs.

### ***Freeing for Adoption***

#### **Commencement of proceedings under Article 17**

4A.3.—(1) An application under Article 17 (freeing child for adoption with parental agreement) for an order freeing a child for adoption shall be made in Form A1 issued out of the Office.

(2) The applicants shall be the adoption agency and each parent or guardian of the child and the respondents shall be –

- (a) any Board or voluntary organisation that has parental responsibility for, is looking after, or is caring for the child;
- (b) any person (not being an applicant) liable by virtue of any order or agreement to contribute to the maintenance of the child; and
- (c) the child.

(3) The court may at any time direct that any other person or body be made a respondent to the application.

(4) On filing the application the applicant shall pay the appropriate fee and supply three copies of: –

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(6) The terms “Convention adoption order” and “Convention adoption” are defined in Article 2(2) of the 1987 Order, as amended by section 6 of the Adoption (Intercountry Aspects) Act (Northern Ireland) 2001

(7) S.R. 2003 No. 16

(8) S.I. 1972/1265 (N.I. 14)

(9) 1955 c. 18

(10) 1955 c. 19

- (a) the application, together with any other documents required to be supplied under this Part, and
- (b) a report, in writing, covering all the relevant matters specified in Part I of Appendix 4.

### **Commencement of proceedings under Article 18**

4A.4.—(1) An application under Article 18 (Freeing child for adoption without parental agreement) for an order freeing a child for adoption shall be made in Form A2 issued out of the Office.

(2) The applicant shall be the adoption agency and the respondents shall be each parent or guardian of the child and those persons prescribed by rule 4A.3(2).

(3) The court may at any time direct that any other person or body be made a respondent to the application.

(4) There shall be attached to the application a statement of the facts upon which the applicant intends to rely for the purpose of satisfying the court that the agreement of each parent or guardian of the child to the making of an adoption order ought to be dispensed with on a ground specified in Article 16(2).

(5) Where the applicant has been informed by a person with whom the child has been placed for adoption that he wishes his identity to remain confidential, the statement of facts supplied under paragraph (4) shall be framed in such a way as not to disclose the identity of that person.

(6) Except where the request for dispensation is based on the ground that the parent or guardian cannot be found, the Master shall, as soon as practicable, inform the parent or guardian of the request to dispense with his agreement and shall send him a copy of the statement supplied under paragraph (4).

(7) On filing the application the applicant shall pay the appropriate fee and supply three copies of: –

- (a) the application, together with any other documents required to be supplied under this Part;
- (b) a report in writing covering all the relevant matters specified in Part I of Appendix 4.
- (c) the statement of facts.

### **Appointment of guardian ad litem**

4A.5.—(1) As soon as practicable after the application has been filed, the Master shall appoint a guardian ad litem of the child, and shall send to him a copy of the application and any documents attached thereto and of the report supplied by the applicant and that report shall be confidential.

(2) The guardian ad litem shall not be a member or employee of the applicant or any respondent body nor have been involved in the making of any arrangements for the adoption of the child.

### **Duties of the guardian ad litem**

4A.6.—(1) The guardian ad litem shall: –

- (a) ensure, so far as is reasonably practicable, that any agreement to the making of an adoption order is given freely and unconditionally and with full understanding of what is involved;
- (b) confirm that the parent or guardian has been given an opportunity of making a declaration under Article 17(5), that he prefers not to be involved in future questions concerning the adoption of the child;
- (c) investigate all the circumstances relevant to any such agreement or declaration;

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- (d) where it is proposed to free for adoption a child whose parents were not married to each other at the time of his birth and whose father is not his guardian, take all reasonable steps to identify any person claiming to be the father in order to be able to advise the court –
    - (i) of that person's views;
    - (ii) of whether that person intends to apply for an order under Article 7(1) or 10 of the Order of 1995;
    - (iii) of any matter relevant to the determination of an application under the Order of 1995.
  - (e) on completing his investigations make a report in writing to the court, drawing attention to any matters which, in his opinion, may be of assistance to the court in considering the application, and shall notify the applicant that he has done so.
- (2) With a view to safeguarding the interests of the child before the court, the guardian ad litem shall, so far as is reasonably practicable –
- (a) investigate –
    - (i) the matters alleged in the application, the report supplied by the applicant and, where appropriate, the statement of facts supplied under rule 4A.4; and
    - (ii) any other matters which appear to him to be relevant to the making of an order freeing the child for adoption;
  - (b) advise whether, in his opinion, the child should be present at the hearing of the application; and
  - (c) perform such other duties as appear to him to be necessary or as the court may direct.
- (3) With a view to obtaining the directions of the court on any matter, the guardian ad litem may at any time make such interim report to the court as appears to him to be necessary and in such a case the Master shall notify the applicant.
- (4) The court may, at any time before the final determination of the application, require the guardian ad litem to perform such further duties as the court considers necessary.
- (5) The guardian ad litem shall attend any hearing of the application if so required by the court.
- (6) Any report made to the court under this rule shall be confidential.

### **Agreement**

4A.7.—(1) Any document signifying the agreement of a person to the making of an adoption order shall be in Form A3, and, shall, if executed in Northern Ireland, be witnessed by a Justice of the Peace.

(2) If the document is executed in Scotland it shall be witnessed by a Justice of the Peace or a Sheriff.

(3) If the document is executed in England and Wales it shall be witnessed by a Justice of the Peace.

(4) If the document is executed outside the United Kingdom it shall be witnessed by one of the following persons –

- (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.

(5) If the document is executed by a person outside Northern Ireland before the commencement of the proceedings it shall be filed with the application.

### **Notice of hearing**

4A.8.—(1) Within 14 days of being notified by the guardian ad litem that he has made his report to the court, the applicant shall apply to the Master to fix a date for the hearing of the application.

(2) On an application under paragraph (1) the Master shall fix a date and time for the hearing and shall take account of any directions given under paragraph (5) and rule 4A.10(3).

(3) The Master shall inform the applicant and the guardian ad litem of the date and time fixed for the hearing and the applicant shall serve notice of the hearing on all the parties in Form A4.

(4) Any one who wishes to object to the making of an order freeing the child for adoption shall, within 14 days of the date of service on him of the notice of hearing, give the Master written notice of his intention to object in Form A5.

(5) If at any stage before the hearing of the application it appears to the court that directions for the hearing are required the court may give such directions as it considers necessary.

### **Objections**

4A.9.—(1) Where the Master receives notice of objection under rule 4A.8 he shall notify the judge, the applicant or his solicitor and the guardian ad litem and the judge shall give such directions as appear appropriate.

(2) The judge may direct that the person who served such notice of objection shall appear before him in his chambers on a date fixed by him and, upon hearing the nature or grounds for objection made by him or his legal representative on his behalf, may give such directions or make such orders as appear just.

### **The hearing**

4A.10.—(1) Subject to any directions given under rule 4A.9(2), on the hearing of the application, any person upon whom notice is required to be served under rule 4A.8 may attend and be heard on the question whether an order freeing the child for adoption should be made.

(2) Any member or employee of a Board, adoption agency or other body which is a party to the proceedings may address the court if he is duly authorised in that behalf.

(3) Where the court has been informed by the applicant that the child has been placed with a person (whether alone or jointly with another) for adoption and that person wishes his identity to remain confidential, the proceedings shall be conducted with a view to securing that any such person is not seen by or made known to any respondent who is not already aware of his identity, except with his consent.

(4) Evidence may be given orally or by affidavit, but where the evidence of any person is on affidavit, the judge may require such person to give oral evidence.

(5) Subject to paragraph (6), the judge shall not make an order freeing the child for adoption except after the personal attendance before him of the child and of a representative of the applicant duly authorised in that behalf.

(6) If there are special circumstances which, having regard to the report of the guardian ad litem, appear to the court to make the attendance of the child unnecessary, the court may direct that the child need not attend.

(7) If there are special circumstances which appear to the court to make the attendance of any other party desirable, the court may direct that that party shall attend.

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### **Proof of identity of child, etc.**

4A.11.—(1) Where the child who is the subject of the proceedings is identified in the application by reference to a birth certificate which is the same, or relates to the same entry in the Register of Births, as a birth certificate exhibited to a form of agreement, the child so identified shall be deemed, unless the contrary appears, to be the child to whom the form of agreement refers.

(2) Where the child has previously been adopted, paragraph (1) shall have effect as if for the references to a birth certificate and to the Register of Births there were substituted respectively references to a certified copy of an entry in the Adopted Children Register and to that Register.

(3) Where the precise date of the child's birth is not proved to the satisfaction of the court, the court shall determine the probable date of his birth and the date so determined may be specified in the order freeing the child for adoption as the date of his birth.

(4) Where the place of birth of the child cannot be proved to the satisfaction of the court but it appears probable that the child was born in the United Kingdom, the Channel Islands or the Isle of Man, he may be treated as having been born in the registration district in which the court sits, and in any other case (where the country of birth is not proved) the particulars of the country of birth may be omitted from the order freeing the child for adoption.

### **Application for revocation of order freeing a child for adoption**

4A.12.—(1) An application under Article 20(1) for an order revoking an order freeing the child for adoption shall be made in Form A6.

(2) Notice of proceedings in Form A7 shall be served by the applicant on all parties and on any adoption agency which has parental responsibility for the child by virtue of Articles 17, 18 or 21, sections 18 or 21 of the 1976 Act or sections 18 or 21 of the 1978 Act save that notice shall not be served on a party to the proceedings who was joined as a party by virtue of rule 4A.3(2)(a).

(3) As soon as practicable after receipt of the application, the Master shall list the case for hearing by a judge and shall appoint a guardian ad litem of the child in accordance with rule 4A.5 and shall send to him a copy of the application and any documents attached thereto.

(4) The guardian ad litem shall have the same duties as if he had been appointed under rule 4A.5 but as if in that rule: –

- (a) the reference to an order freeing the child for adoption was a reference to the revocation of an order freeing the child for adoption; and
- (b) each reference to the report supplied by the applicant was omitted.

### **Substitution of one adoption agency for another**

4A.13.—(1) An application under Article 21 shall be made in Form A8.

(2) Notice of any order made under Article 21 shall be sent by the court to the court which made the order under Articles 17, 18 or 21 (if a different court), or under section 18 or 21 of the 1976 Act or under sections 18 or 21 of the 1978 Act and to any former parent of the child.

## ***Adoption Orders***

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

4A.14. Any person proposing to apply to the court for an adoption order who wishes his identity to be kept confidential, may, before commencing proceedings, apply to the Master for a serial number to be assigned to him for the purpose of identifying him in the proposed proceedings and a number shall be assigned to him accordingly.

### **Commencement of proceedings**

4A.15.—(1) An application for an adoption order shall be made in Form A9 issued out of the Office.

(2) The respondents shall be –

- (a) each parent or guardian (not being an applicant) of the child, unless the child is free for adoption;
- (b) any adoption agency having parental responsibility for the child by virtue of Articles 17, 18 or 21, or under sections 18 or 21 of the 1976 Act or sections 18 or 21 of the 1978 Act;
- (c) any adoption agency named in the application or in any form of agreement to the making of the adoption order as having taken part in the arrangements for the adoption of the child;
- (d) any Board to whom the applicant has given notice under Article 22 of his intention to apply for an adoption order;
- (e) any Board or voluntary organisation that has parental responsibility for, is looking after, or is caring for, the child;
- (f) any person (not being an applicant) liable by virtue of any order or agreement to contribute to the maintenance of the child;
- (g) where the applicant proposes to rely on Article 15(1)(b)(ii), the spouse of the applicant; and
- (h) the child.

(3) The court may at any time direct that any other person or body be made a respondent to the application.

(4) Notice to the Board for the purposes of Article 22(1) may be given in Form A10.

(5) On filing the application the applicant shall pay the appropriate fee and supply three copies of –

- (a) the application, together with any other documents required to be supplied under this Part, and
- (b) where the child was not placed for adoption with the applicant by an adoption agency, save where the applicant or one of the applicants is a parent of the child, reports by a medical practitioner made not more than three months earlier on the health of the child and of each applicant, covering the matters specified in Part II of Appendix 4.

### **Statement of facts in dispensation cases**

4A.16.—(1) Where the child is not free for adoption and the applicant intends to request the court to dispense with the agreement of a parent or guardian of the child on any of the grounds specified in Article 16(2), the request shall be included in the application and there shall be attached to the application three copies of a statement of facts on which the applicant intends to rely.

(2) Where a serial number has been assigned to the applicant under rule 4A.14 the statement of facts supplied under paragraph (1) shall be framed in such a way as not to disclose the identity of that person.

(3) Except where the request for dispensation is based on the ground that the parent or guardian cannot be found, the Master shall, as soon as practicable, inform the parent or guardian of the request to dispense with his agreement and shall send him a copy of the statement supplied under paragraph (1).

### **Appointment of guardian ad litem**

4A.17.—(1) As soon as practicable after the application has been filed, the Master shall appoint a guardian ad litem of the child and shall send to him a copy of the application, together with any documents attached thereto.

(2) The guardian ad litem shall not be a member or employee of the applicant or any respondent body nor have been involved in the making of any arrangements for the adoption of the child.

(3) Where the child is free for adoption, the guardian ad litem shall, where practicable, be the same person who was appointed under rule 4A.5.

### **Duties of guardian ad litem**

4A.18.—(1) With a view to safeguarding the interests of the child before the court the guardian ad litem shall –

- (a) ensure so far as is reasonably practicable that any agreement to the making of the adoption order is given freely and unconditionally and with full understanding of what is involved;
- (b) investigate all the circumstances relevant to any such agreement;
- (c) investigate so far as is reasonably practicable –
  - (i) the matters alleged in the application, any report supplied under rule 4A.15(5)(b) and, where appropriate, the statement of facts supplied under rule 4A.16;
  - (ii) any other matters which appear to him to be relevant to the making of an adoption order;
- (d) on completing his investigations make a report in writing to the court, drawing attention to any matters which, in his opinion, may be of assistance to the court in considering the application, and shall notify the applicant that he has done so;
- (e) advise whether, in his opinion, the child should be present at the hearing of the application; and
- (f) perform such other duties as appear to him to be necessary or as the court may direct.

(2) Paragraphs (3) to (6) of rule 4A.6 shall apply to a guardian ad litem appointed under this rule as they apply to a guardian ad litem appointed under that rule.

### **Agreement**

4A.19.—(1) Save with the leave of the court, any document signifying the agreement of a person to the making of the adoption order shall be in Form A11 and shall, if executed in Northern Ireland, be witnessed by a Justice of the Peace.

(2) If the document is executed outside Northern Ireland it shall be witnessed by one of the persons specified in rule 4A.7(2), (3) or (4), according to the country in which it is executed.

(3) If the document is executed outside Northern Ireland before the commencement of the proceedings it shall be filed with the application.

### **Notice of hearing**

4A.20.—(1) Within 14 days of being notified by the guardian ad litem that he has made his report to the court, the applicant shall apply to the Master to fix a date for the hearing of the application.

(2) On an application under paragraph (1) the Master shall fix a date and time for the hearing and shall take account of any directions given under paragraph (7).



(3) The Master shall inform the applicant and the guardian ad litem of the date and time fixed for hearing and the applicant shall, unless he desires his identity to be kept confidential, serve notice of the hearing on all the parties in Form A12.

(4) Where the applicant desires that his identity be kept confidential he shall, in lieu of serving a notice in Form A12, serve upon the parties a notice of presentation in Form A13.

(5) If the applicant has no solicitor acting for him the notice in Form A12 or Form A13 shall be signed by the Master.

(6) Anyone wishing to object to the making of an adoption order, shall within 14 days of the date of service on him, of the notice of hearing or as the case may be the notice of presentation give the Master written notice of his intention to object in Form A14 or Form A15 as the case may be, quoting the serial number of the application.

(7) If at any stage before the hearing of the application it appears to the court that directions for the hearing are required the court may give such directions as it considers necessary.

### **Objections**

4A.21.—(1) Where the Master receives notice of objection under rule 4A.20(6) he shall notify the judge, the applicant (or his solicitor) and the guardian ad litem, and the judge shall give such directions as appear appropriate.

(2) The judge may direct that the person who served such notice of objection shall appear before him in his chambers on a date fixed by him and, upon hearing the nature or grounds for objection made by him or by his legal representative on his behalf, give such directions or make such orders as appear just.

### **Reports by adoption agency or Board**

4A.22.—(1) Where the child was placed for adoption with the applicant by an adoption agency, that agency shall supply, within six weeks of receipt of the notice of hearing under rule 4A.20, three copies of a report in writing covering the matters specified in Part I of Appendix 4.

(2) Where the child was not placed for adoption with the applicant by an adoption agency, the Board to whom the notice under Article 22 of the Order was given shall supply, within six weeks of receipt of the notice of hearing or notice of presentation under rule 4A.20, three copies of a report in writing covering the matters specified in Part I of Appendix 4.

(3) The court may request a further report under paragraph (1) or (2) and may indicate any particular matters it requires such a further report to cover.

(4) The Master shall send a copy of any report supplied under paragraph (1) or (2) to the guardian ad litem.

(5) No other person shall be supplied with a copy of any report supplied under paragraph (1) or (2) and any such report shall be confidential.

### **The hearing**

4A.23.—(1) Subject to any directions given under rule 4A.21(2) on the hearing of the application, any person served with a notice of hearing under rule 4A.20(3) may attend and be heard on the question whether an adoption order should be made.

(2) Any member or employee of a Board, adoption agency or other body which is a party to the proceedings may address the court if he is duly authorised in that behalf.

(3) If a serial number has been assigned to the applicant under rule 4A.14 the proceedings shall be conducted with a view to securing that he is not seen or made known to any respondent who is not already aware of his identity, except with his consent.

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(4) Subject to paragraphs (5) and (7), the judge shall not make an adoption order or an interim order except after the personal attendance before him of the applicant and the child.

(5) If there are special circumstances which, having regard to the report of the guardian ad litem, appear to the court to make the attendance of the child unnecessary, the court may direct that the child need not attend.

(6) If there are special circumstances which appear to the court to make the attendance of any other party desirable, the court may direct that that party shall attend.

(7) In the case of an application under Article 14, the judge may in special circumstances make an adoption order or an interim order after the personal attendance of one only of the applicants, if the application is verified by an affidavit sworn by the other applicant or, if he is outside the United Kingdom, by a declaration made by him and witnessed by any of the persons specified in rule 4A.7(4).

### **Proof of identity of child, etc**

4A.24.—(1) Where the child who is the subject of the proceedings is identified in the application by reference to a birth certificate which is the same, or relates to the same entry in the Register of Births, as a birth certificate exhibited to a form of agreement, the child so identified shall be deemed, unless the contrary appears, to be the child to whom the form of agreement refers.

(2) Where the child has previously been adopted, paragraph (1) shall have effect as if for the references to a birth certificate and to the Register of Births, there were substituted respectively references to a certified copy of an entry in the Adopted Children Register and to that Register.

(3) Subject to paragraph (5), where the precise date of the child's birth is not proved to the satisfaction of the court, the court shall determine the probable date of his birth and the date so determined may be specified in the adoption order as the date of his birth.

(4) Subject to paragraph (5), where the place of birth of the child cannot be proved to the satisfaction of the court but it appears probable that the child was born in the United Kingdom, the Channel Islands or the Isle of Man, he may be treated as having been born in the registration district in which the court sits, and in any other case (where the country of birth is not approved) the particulars of the country of birth may be omitted from the adoption order.

(5) Where the child is free for adoption, any order made identifying the probable date and place of birth of the child in the proceedings under Article 17 or 18 or under section 18 of the 1976 Act or section 18 of the 1978 Act shall be sufficient proof of the date and place of birth of the child in proceedings to which this rule applies.

### **Further proceedings after interim order**

4A.25.—(1) Where an interim order is made under Article 26 and the application is postponed without a date being fixed for a further hearing, the applicant shall, at least 2 months before the expiration of the period specified in the interim order, obtain a date for the further hearing of the application from the Master, and if he fails to do so, the guardian ad litem shall obtain such a date.

(2) When the date for a further hearing is fixed the applicant shall, unless the Master otherwise directs, serve a notice in Form A12 or Form A13 of the hearing on the parties and to the guardian ad litem not less than one month before that date.