

---

STATUTORY INSTRUMENTS

---

**2005 No. 2795**

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

**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(1)”.
- (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(2);
  - “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;

---

(1) 1980 c. 43. Section 145A was inserted by section 112 of the Courts and Legal Services Act 1990 (c. 41).  
(2) 1989 c. 41.

“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<sup>(3)</sup>, 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;

“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>(4)</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>(5)</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>(6)</sup>;

“patient” means a party to proceedings who, by reason of mental disorder within the meaning of the Mental Health Act 1983<sup>(7)</sup>, is incapable of managing and administering his property and affairs;

---

(3) 1971 c. 80.  
(4) S.I.1998/3132.  
(5) 1990 c. 41.  
(6) 2000 c. 43.  
(7) 1983 c. 20.

“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;
- (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(8).

(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(9), 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;

---

(8) 2004 c. 31.

(9) 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.

- (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<sup>(10)</sup>; 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<sup>(11)</sup>; 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<sup>(12)</sup> make provision for a justices' clerk or assistant clerk to carry out certain functions of a single justice of the peace.)

(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>(13)</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>(14)</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.

---

<sup>(10)</sup> 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.

<sup>(11)</sup> 1980 c. 43. Section 67 was substituted by section 49 of the Courts Act 2003 (c. 39).

<sup>(12)</sup> S.I. 2005/545 (L.10), amended by S.I. 2005/2796 (L. 23).

<sup>(13)</sup> 1998 c. 42.

<sup>(14)</sup> A seal is a mark which the court puts on a document to indicate that the document has been issued by 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.

#### **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.