



Statutory Document No. 353/09

HIGH COURT ACT 1991

RULES OF THE HIGH COURT (FAMILY PROCEEDINGS) 2009

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HIGH COURT ACT 1991

RULES OF THE HIGH COURT (FAMILY PROCEEDINGS) 2009

Laid before Tynwald

16th June 2009

Coming into operation

1st September 2009

The Deemsters make these Rules under section 25 of the High Court Act 1991¹.

PART 1

GENERAL

1. Title and commencement

- (1) The title of these Rules is the Rules of the High Court (Family Proceedings) 2009.
- (2) These Rules shall come into operation on the 1st September 2009.

2. Interpretation

- (1) In these Rules —
 - "the Court" means the High Court;
 - "the principal Rules" means the Rules of the High Court of Justice 2009².
- (2) Except where otherwise provided, expressions in these Rules have the same meanings as in the principal Rules.

3. Forms

- (1) References in these Rules to an application or other document being made in the appropriate form are to its being made —
 - (a) in any circumstances where a form is prepared or approved under section 27B of the High Court Act 1991 for use in those circumstances, in that form;
 - (b) subject to sub-paragraph (a), in any circumstances where a form is prescribed by rules made under section 40(1) of the Matrimonial and Family Proceedings Act 1984 (an Act of Parliament)³ or section 75 of the Courts Act 2003 (an Act of Parliament)⁴ for use in corresponding circumstances in a court in England and Wales, in that form with any necessary modifications;
 - (c) otherwise, in writing.

¹ 1991 c.12

² SD 352/09

³ 1984 c.42

⁴ 2003 c.39

- (2) Every document prepared by a party for use in the Court must bear the title of the proceedings as follows:
- (a) a heading —
In the High Court of Justice of the Isle of Man
Civil Division
Family Business;
 - (b) in the case of proceedings under a statutory provision, a description of the proceedings —
Application under Children and Young Persons Act 2001 (or as the case may be);
 - (c) the parties to the proceedings (described in accordance with Part 3 of the principal Rules).

4. Application of principal Rules

- (1) Subject to the provisions of these Rules and of any enactment, the principal Rules shall apply with any necessary modifications to the commencement of, and to the practice and procedure in, any proceedings to which these Rules apply.
- (2) Without prejudice to paragraph (1) —
- (a) the principal Rules apply to an application under these Rules (other than an application made in the course of pending proceedings) as they apply to a claim or claim form;
 - (b) in relation to proceedings to which these Rules apply, references in the principal Rules to a claimant or defendant shall be construed as references to an applicant or respondent respectively.

5. Revocation

The Rules specified in the Schedule are revoked to the extent specified in column 3 of the Schedule.

PART 2

ORDERS WITH RESPECT TO CHILDREN

6. Application of Part 2

This Part applies to family proceedings in the Court so far as they relate to any matter under Part 1 or 2 of the 2001 Act with respect to a child.

7. Interpretation

In this Part —

"the 2001 Act" means the Children and Young Persons Act 2001⁵;

"application" means an application made under or by virtue of Part 1 or Part 2 of the 2001 Act or under this Part, and "applicant" shall be construed accordingly;

"the Department" means the Department of Health and Social Security;

"directions appointment" means a hearing for directions under rule 15;

⁵ 2001 c.20

"family proceedings" means —

- (a) any proceedings under any inherent jurisdiction of the Court in relation to wardship, maintenance or the upbringing of children;
- (b) any proceedings under Part 1, Part 2, Part 4 or Part 5 of the 2001 Act;

"child" means a person under 18 years of age but, in relation to proceedings in which an application is made under paragraph 2 or 6 of Schedule 1 to the 2001 Act, includes a person who has reached the age of 18;

"welfare officer" means a person who has been asked to prepare a report under section 30 of the 2001 Act.

8. Application for permission to commence proceedings

- (1) Where the permission of the Court is required to bring any proceedings under Part 1 or 2 of the 2001 Act, the person seeking permission must file —
 - (a) a written request for permission setting out the reasons for the application; and
 - (b) a draft of the application for the making of which permission is sought, together with sufficient copies for one to be served on each respondent.
- (2) On considering a request for permission filed under paragraph (1) the Court shall —
 - (a) grant the request, whereupon the Chief Registrar shall inform the person making the request of the decision; or
 - (b) direct that a date be fixed for the hearing of the request, whereupon the Chief Registrar shall fix such a date and give such notice as the Court directs to the person making the request and to such other persons as the Court requires to be notified of the date fixed.
- (3) In the case of a request for permission to bring proceedings under Schedule 1 to the 2001 Act, the draft application under paragraph (1) must be accompanied by a statement setting out the financial details which the person seeking permission believes to be relevant to the request and containing a declaration that it is true to the best of the maker's knowledge and belief, together with sufficient copies for one to be served on each respondent.

9. Respondents

- (1) Subject to paragraphs (2) to (5), the following must be respondents to any application under Part 1 or 2 of the 2001 Act relating to a child —
 - (a) in every case —
 - (i) every person whom the applicant believes to have parental responsibility for the child;
 - (ii) the Department, where the child is in the care of the Department;
 - (iii) where the application is to extend, vary or revoke an order, the parties to the proceedings leading to that order;
 - (b) in the case of an application for an order under Schedule 1 to the 2001 Act, those persons whom the applicant believes to be interested in or affected by the proceedings.
- (2) In any such proceedings a person may file a request in writing that he or another person —
 - (a) be joined as a party, or

- (b) cease to be a party.
- (3) Subject to paragraph (4), the Court shall deal with a request under paragraph (2) as follows —
 - (a) in the case of a request to be joined as a party, it may grant it without a hearing or representations, whereupon the Chief Registrar shall inform the parties and the person making the request of the decision;
 - (b) direct that a date be fixed for the hearing of the request, whereupon the Chief Registrar shall fix such a date and give notice of the date and a copy of the request —
 - (i) to the applicant, in the case of a request to be joined as a party;
 - (ii) to the parties, in the case of a request that a party cease to be a party; or
 - (c) invite the parties or any of them to make written representations, within a specified period, as to whether the request should be granted, and upon the expiry of that period act in accordance with sub-paragraph (a) or (b).
- (4) Where a person with parental responsibility requests that he be joined under paragraph (2)(a), the Court shall grant the request.
- (5) In such proceedings the Court may direct —
 - (a) that a person who would not otherwise be a respondent under these rules be joined as a party to the proceedings; or
 - (b) that a party to the proceedings cease to be a party.

10. Applications

- (1) Subject to paragraph (4) any person making any application under Part 1 or 2 of the 2001 Act must —
 - (a) file the application in respect of each child in the appropriate form, together with sufficient copies for one to be served on each respondent; and
 - (b) serve a copy of the application, endorsed in accordance with paragraph (2)(b), on each respondent 14 days before the date fixed under paragraph (2)(a).
- (2) On receipt of the documents filed under paragraph (1)(a) the Chief Registrar shall —
 - (a) fix the date for a hearing or an appointment for directions, allowing sufficient time for the applicant to comply with paragraph (1)(b);
 - (b) endorse the date so fixed on the copies filed by the applicant, and
 - (c) return the copies to the applicant forthwith.
- (3) The applicant must, when complying with paragraph (1)(b), give written notice of the proceedings, and of the date and place fixed for the appointment or hearing, to the following persons —
 - (a) in every case —
 - (i) the Department or any voluntary body, where it is providing accommodation for the child;
 - (ii) any person who is caring for the child at the time when the proceedings are commenced;

- (b) in the case of an application under section 6(1) of the 2001 Act (appointment of guardian), the father of the child if he does not have parental responsibility;
- (c) in the case of an application for an order specified in section 11(1) of the 2001 Act, every person whom the applicant believes —
 - (i) to be named in a court order with respect to the child which has not ceased to have effect;
 - (ii) to be a party to pending proceedings in respect of the child; or
 - (iii) to be a person with whom the child has lived for at least 3 years before the application;unless (where (i) or (ii) applies) the applicant believes that the court order or pending proceedings are not relevant to the application.
- (4) An application for an order under section 11(1)(c) or (d) of the 2001 Act may be made without notice, in which case the applicant must —
 - (a) file the application in respect of each child in the appropriate form —
 - (i) where the application is made by telephone, within 24 hours after the making of the application; or
 - (ii) in any other case, at the time when the application is made; and
 - (b) serve a copy of the application on each respondent within 48 hours after the making of the order.
- (5) Where the Court refuses to make an order on an application without notice, it may direct that the application be made with notice to such parties as the Court may direct.
- (6) An application under Schedule 1 to the 2001 Act must be accompanied by a statement setting out the financial details which the person seeking permission believes to be relevant to the request and containing a declaration that it is true to the best of the maker's knowledge and belief, together with sufficient copies for one to be served on each respondent.

11. Withdrawal of application

- (1) An application may be withdrawn only with permission of the Court.
- (2) Subject to paragraph (3), a person seeking permission to withdraw an application must file and serve on the parties 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 the welfare officer (if any) are present.
- (4) On receipt of a written request under paragraph (2) the Court shall —
 - (a) grant the request if the parties consent in writing and the Court thinks fit in which case the Chief Registrar shall notify the parties and the welfare officer of the granting of the request; or
 - (b) direct that a date be fixed for the hearing of the request, whereupon the Chief Registrar shall fix such a date and give at least 7 days' notice to the parties and the welfare officer of the date fixed.

12. Service

- (1) Where service of a document is required under this Part it may be effected —

- (a) if the person to be served is not known by the person serving to be acting by an advocate —
 - (i) by delivering it to him personally, or
 - (ii) by delivering it at, or by sending it by post to, his residence or his last-known residence;
- (b) if the person to be served is known by the person serving to be acting by an advocate —
 - (i) by delivering the document at, or sending it by post to, the advocate's address for service, or
 - (ii) by sending a legible copy of it by facsimile transmission to the advocate's office.
- (2) Where a child who is party to proceedings to which this Part applies is required by these rules or other rules of court to serve a document, service must be effected by —
 - (a) the advocate acting for the child;
 - (b) where there is no such advocate, the Court.
- (3) Service of any document on a child must, subject to any direction of the Court, be effected by service on —
 - (a) the advocate acting for the child;
 - (b) where there is no such advocate, with permission of the Court, the child.
- (4) Where the Court refuses permission under paragraph (3)(b) it shall give a direction under paragraph (7).
- (5) A document served by post shall, unless the contrary is proved, be deemed to have been served on the second business day after posting.
- (6) At or before the first directions appointment in, or hearing of, proceedings to which this Part applies, the applicant must file a statement that service of a copy of the proceedings has been effected under rule 10(1)(b) and notice of the proceedings has been given under rule 10(3), and the statement must indicate —
 - (a) the manner, date, time and place of service, or
 - (b) where service has been effected by post, the date, time and place of posting.
- (7) In proceedings to which this Part applies the Court may direct that a requirement of these Rules or other rules of court to serve a document shall not apply or shall be effected in such manner as the Court directs.

13. Answer to application

- (1) Within 14 days of service of an application for an order under section 11 of or Schedule 1 to the 2001 Act, each respondent must file and serve on the parties an answer to the application in the appropriate form.
- (2) Following service of an application to which this Part applies, other than an application under rule 8 or an application to which paragraph (1) applies, a respondent may file a written answer, which must be served on the other parties not less than 2 days before the date fixed for the hearing of the application.

14. Welfare officer

- (1) The welfare officer must, unless excused by the Court, attend a hearing if the Chief Registrar gives him notice that his report will be given or considered at that hearing, and any party may question the welfare officer about his report at the hearing.
- (2) A welfare officer must file a copy of any written report at or by such time as the Court directs or, in the absence of a direction, at least 5 days before a hearing of which he is given notice under paragraph (1); and the Chief Registrar shall, as soon as practicable, serve a copy of the report on the parties.

15. Directions

- (1) In this rule "party" includes a welfare officer where the direction concerns a report under section 30 of the 2001 Act.
- (2) In proceedings to which this Part applies the Court may, subject to paragraph (3), give, vary or revoke directions for the conduct of the proceedings, including —
 - (a) the timetable for the proceedings;
 - (b) varying the time within which or by which an act is required, by these Rules or by other rules of court, to be done;
 - (c) the attendance of the child;
 - (d) the service of documents;
 - (e) the submission of evidence including experts' reports;
 - (f) the preparation of welfare reports under section 30 of the 2001 Act;
 - (g) consolidation with other proceedings.
- (3) Directions under paragraph (2) may be given, varied or revoked either —
 - (a) on the Court's own initiative, having given the parties notice of its intention to do so and an opportunity to attend and be heard or to make written representations;
 - (b) on the written request of a party specifying the direction which is sought, filed and served on the other parties; or
 - (c) on the written request of a party specifying the direction which is sought, to which the other parties consent and which they or their representatives have signed.
- (4) In an urgent case a request under paragraph (3)(b) may, with the permission of the Court, be made —
 - (a) orally, or
 - (b) without notice to the parties, or
 - (c) both orally and without notice to the parties.
- (5) On receipt of a written request under paragraph (3)(b) the Chief Registrar shall fix a date for the hearing of the request and give not less than 2 days' notice to the parties of the date so fixed.
- (6) On considering a request under paragraph (3)(c) the Court shall either —
 - (a) grant the request, whereupon the Chief Registrar shall inform the parties of the decision, or

- (b) direct that a date be fixed for the hearing of the request, whereupon the Chief Registrar shall fix such a date and give not less than 2 days' notice to the parties of the date so fixed.
- (7) A party may apply for an order to be made under section 12(5) (interim orders) of the 2001 Act in accordance with paragraph (3)(b) or (c).
- (8) The power to give directions under paragraph (2) applies where the Court is considering making an order under section 11 of the 2001 Act on its own initiative.
- (9) The clerk of the Court shall take a note of the giving, variation or revocation of a direction under this rule and the Chief Registrar shall serve as soon as practicable a copy of the note on any party who was not present at the giving, variation or revocation.

16. Timing of proceedings

- (1) Where this Part or other rules of court provide a period of time within which or by which a certain act is to be performed in the course of proceedings to which this Part applies, that period may not be extended otherwise than by a direction under rule 15.
- (2) At —
 - (a) the postponement or adjournment of any hearing or directions appointment in the course of proceedings to which this Part applies, or
 - (b) the conclusion of any such hearing or directions appointment other than one at which the proceedings are determined, or as soon as practicable thereafter,the Court or the Chief Registrar shall fix a date upon which the proceedings shall come before the Court again for such purposes as the Court directs, and give notice to the parties and the welfare officer of the date so fixed.

17. Attendance of parties

- (1) Subject to paragraph (2), a party must attend a directions appointment of which he has been given notice under rule 15(5) unless the Court otherwise directs.
- (2) Proceedings or any part of them shall take place in the absence of any party, including the child, if —
 - (a) the Court considers it in the interests of the child, having regard to the matters to be discussed or the evidence likely to be given, and
 - (b) the party is represented by an advocate;and when considering the interests of the child under sub-paragraph (a) the Court shall give the advocate for the child (if any) and, if he is of sufficient understanding, the child an opportunity to make representations.
- (3) Subject to paragraph (4), where at the time and place appointed for a hearing or directions appointment the applicant appears but one or more of the respondents do not, the Court may proceed with the hearing or appointment.
- (4) The Court shall not begin to hear an application in the absence of a respondent unless —
 - (a) it is proved to the satisfaction of the Court that he received reasonable notice of the date of the hearing, or
 - (b) the Court is satisfied that the circumstances of the case justify proceeding with the hearing.

- (5) Where at the time and place appointed for a hearing or directions appointment one or more of the respondents appear but the applicant does not, the Court may refuse the application or, if sufficient evidence has previously been received, proceed in the absence of the applicant.
- (6) Where at the time and place appointed for a hearing or directions appointment neither the applicant nor any of the respondents appears, the Court may refuse the application.
- (7) Unless the Court otherwise directs, a hearing of, or directions appointment in, proceedings to which this Part applies shall be in private.

18. Documentary evidence

- (1) Subject to paragraphs (4) and (5), in proceedings to which this Part applies a party must file and serve on the parties and the welfare officer —
 - (a) written statements of the substance of the oral evidence which the party intends to adduce at a hearing of, or directions appointment in, those proceedings, which must be dated and signed by the person making the statement and must contain a declaration that the maker of the statement believes it to be true and understands that it may be placed before the Court; and
 - (b) copies of any documents, including experts' reports, upon which the party intends to rely at a hearing of, or directions appointment in, those proceedings,at or by such time as the Court directs or, in the absence of a direction, before the hearing or appointment.
- (2) A party may, subject to any direction of the Court about the timing of statements under this Part, file and serve on the parties a statement which is supplementary to a statement served under paragraph (1).
- (3) At a hearing or directions appointment a party may not, without the permission of the Court, adduce evidence or seek to rely on a document with respect to which he has failed to comply with the requirements of paragraph (1).
- (4) In proceedings for an order under section 11 of the 2001 Act a party must —
 - (a) neither file nor serve any document other than as required or authorised by this Part, and
 - (b) in completing a form, neither give information nor make a statement which is not required or authorised by that form,without the permission of the Court.
- (5) In proceedings for an order under section 11 of the 2001 Act no statement or copy may be filed under paragraph (1) until such time as the Court directs.

19. Expert evidence — examination of child

- (1) No person may, without the permission of the Court, cause the child to be medically or psychiatrically examined, or otherwise assessed, for the purpose of the preparation of expert evidence for use in the proceedings.
- (2) An application for permission under paragraph (1) must, unless the Court otherwise directs, be served on all parties to the proceedings.

- (3) Where the permission of the Court has not been given under paragraph (1), no evidence arising out of an examination or assessment to which that paragraph applies may be adduced without the permission of the Court.

20. Amendment

- (1) Subject to rule 18(2), a document which has been filed or served in proceedings to which this Part applies may not be amended without the permission of the Court which must, unless the Court otherwise directs, be requested in writing.
- (2) On considering a request for permission to amend a document the Court shall either —
 - (a) grant the request, whereupon the Chief Registrar shall inform the person making the request of the decision; or
 - (b) invite the parties or any of them to make representations, within a specified period, as to whether such an order should be made.
- (3) A person amending a document must file it and serve it on those persons on whom it was served before amendment, and the amendments must be identified.

21. Hearing

- (1) The Court may give directions as to the order of speeches and evidence at a hearing or directions appointment in the course of proceedings to which this Part applies.
- (2) Subject to directions under paragraph (1) at such a hearing or directions appointment the parties must adduce their evidence in the following order —
 - (a) the applicant;
 - (b) any party with parental responsibility for the child;
 - (c) other respondents;
 - (d) the child, if he is a party to the proceedings.
- (3) After the final hearing of proceedings to which this Part applies, the Court shall deliver its judgment as soon as practicable.
- (4) When making an order or refusing an application, the Court shall state any findings of fact and the reasons for the Court's decision.
- (5) An order shall be recorded by the Court or the Chief Registrar in the appropriate form.
- (6) Subject to paragraph (7), a copy of an order made in accordance with paragraph (5) shall, as soon as practicable after it is made, be served by the Chief Registrar on the parties to the proceedings in which it made and on any person with whom the child is living.
- (7) Within 48 hours after the making, without notice of the application, of an order under section 11(1)(c) or (d) of the 2001 Act the applicant must serve a copy of the order in the appropriate form on —
 - (a) each party, and
 - (b) any person who has actual care of the child or who had such care immediately before the making of the order.

22. Confidentiality of documents

Notwithstanding any rule of court to the contrary, no document, other than a record of an order, held by the Court and relating to the proceedings to which this Part applies shall be disclosed, other than to —

- (a) a party;
- (b) the advocate for a party;
- (c) the certifying officer or the Legal Aid Committee; or
- (d) a welfare officer,

without the permission of the Court.

23. Expiration of wardship

The period of 42 days after the making of an application for a child to be made a ward of court is prescribed for the purpose of section 20(2) of the 2001 Act (period on expiration of which child ceases to be a ward of court unless wardship order is made).

PART 3

PROCEEDINGS FOR PARENTAL ORDERS

24. Interpretation of Part 3

In this Part —

"the 2001 Act" means the Children and Young Persons Act 2001;

"the birth father" means the father of the child, including a person who is treated as being the father of the child by section 87 of the 2001 Act where he is not the husband within the meaning of section 89 of the 2001 Act;

"the birth mother" means the woman who carried the child;

"the birth parents" means the birth mother and the birth father;

"the husband and wife" means the persons who may apply for a parental order where the conditions set out in section 89(1) of the 2001 Act are met;

"parental order" means an order under section 89 of the 2001 Act (parental orders in favour of gamete donors) providing for a child to be treated in law as a child of the parties to a marriage.

25. Parties

- (1) The applicants shall be the husband and wife.
- (2) The respondents shall be —
 - (a) the birth parents (except where the applicants seek to dispense with their agreement under section 89(6) of the 2001 Act), and
 - (b) any other persons or body with parental responsibility for the child at the date of the application.

26. Answer

Within 14 days of the service of an application for a parental order, each respondent must file and serve on all the other parties an answer in the appropriate form.

27. Personal attendance of applicants

The Court shall not make a parental order except upon the personal attendance before it of the applicants.

28. Amendment and revocation of orders

- (1) Any application made under paragraph 4 of Schedule 2 to the Adoption Act 1984⁶ (as modified by the Parental Orders Regulations 2001⁷) for the amendment of a parental order or for the revocation of a direction to the Chief Registrar shall be made by delivering it to or sending it by post to the Chief Registrar.
- (2) Notice of the application shall be given by the Chief Registrar to such persons (if any) as the Court thinks fit.

29. Custody, inspection and disclosure of documents and information

- (1) All documents relating to proceedings for a parental order shall, while they are in the custody of the Court, be kept in a place of special security.
- (2) Any person who obtains information in the course of, or relating to proceedings for a parental order, must treat that information as confidential and shall only disclose it if—
 - (a) the disclosure is necessary for the proper exercise of his duties, or
 - (b) the information is requested—
 - (i) by a Court or public authority (whether in the Island or not) having the power to determine proceedings for a parental order (or an order corresponding to a parental order) and related matters, for the purpose of the discharge of its duties in that behalf, or
 - (ii) by a person who is authorised in writing by the Department of Health and Social Security to obtain the information for the purposes of research.

30. Application for removal, return etc. of child

- (1) An application under sections 17(1), 19(1) or 19(2) of the Adoption Act 1984 (as applied with modifications by the Parental Orders Regulations 2001) must be made in the proceedings for the order.
- (2) The respondents must be all the parties to the proceedings under section 89 and such other person or body, not being the child, as the Court thinks fit.
- (4) The Court may at any time give directions as to the conduct of the application under this rule.
- (5) Where an application under this rule is determined, the Chief Registrar shall serve notice of the determination on all the parties.

⁶ 1984 c.14

⁷ SD 737/01

PART 4

PROCEEDINGS UNDER PART I OF THE CHILD CUSTODY ACT 1987

31. Interpretation of Part 4

In this Part-

"the 1987 Act" means the Child Custody Act 1987;

"the appropriate court" means-

- (a) in relation to England and Wales, the High Court of Justice in England and Wales;
- (b) in relation to Scotland, the Court of Session;
- (c) in relation to Northern Ireland, Her Majesty's High Court of Justice in Northern Ireland;

"the appropriate officer" means-

- (a) in relation to England and Wales, the secretary of the principal registry of the Family Division of the High Court of Justice in England and Wales;
- (b) in relation to Scotland, the Deputy Principal Clerk of Session;
- (c) in relation to Northern Ireland, the Master (Care and Protection) of Her Majesty's High Court of Justice in Northern Ireland;

"British jurisdiction" means England and Wales, Scotland or Northern Ireland;

"custody order" means a custody order within the meaning of section 20 of the 1987 Act;

"the register" means the register kept for the purposes of Part I of the 1987 Act;

"registration" means registration under Part I of the 1987 Act or, in relation to a custody order made by the Court, under Part I of the Family Law Act 1986 (an Act of Parliament)⁸.

32. Application to register Manx custody order

- (1) An application under section 12 of the 1987 Act for the registration of a custody order made by the Court must be made by lodging in the General Registry a certified copy of the order, together with a copy of any order which has varied any of the terms of the original order and an affidavit by the applicant, with a copy thereof, which must state —
 - (a) the name and address of the applicant and his interest under the order;
 - (b) the name and date of birth of the child in respect of whom the order was made, his whereabouts or suspected whereabouts and the name of any person with whom he is alleged to be;
 - (c) the name and address of any other person who is known to the applicant to have an interest under the order and whether it has been served on him;
 - (d) in which jurisdiction or jurisdictions the order is to be registered;

⁸ 1986 c.55

- (e) that, to the best of the applicant's information and belief, the order is in force;
- (f) whether, and if so where, the order is already registered; and
- (g) details of any order known to the applicant which affects the child and is in force in the jurisdiction in which the custody order is to be registered.

Where the order is to be registered in more than one jurisdiction, there must be lodged, for each additional jurisdiction, one additional copy each of the order, any varying order and the affidavit.

- (2) There must be exhibited to the affidavit any document relevant to the application.
- (3) Where the documents referred to in paragraphs (1) and (2) are to be sent to the appropriate court the Chief Registrar shall —
 - (a) retain the affidavit and send the copy thereof and the other documents to the appropriate officer, indicating, where the order relates to more than one child, with respect to which child or children it is to be registered; and
 - (b) record the fact of transmission in the General Registry.
- (4) On receipt of notice of the registration of a custody order in the appropriate court the Chief Registrar shall record the fact of registration in the court file.
- (5) If it appears to the Chief Registrar that the custody order is no longer in force with respect to the child or more than one child, or that a child or more than one child has attained the age of 16, he shall refuse to send the documents referred to in paragraphs (1) and (2) to the appropriate court, or shall indicate thereon with respect to which child or children the order is not to be registered, and he shall within 14 days give notice to the applicant of his refusal or indication and the reason for it.
- (6) If the Chief Registrar refuses to send the documents to the appropriate court, the applicant may apply for an order that the documents be sent to the appropriate court or that they be sent with respect to a particular child or children.

33. Registration of UK custody orders

On receipt of a certified copy of a custody order made in a British jurisdiction for registration, the Chief Registrar shall —

- (a) register the order in the register by entering particulars of —
 - (i) the name and address of the applicant and his interest under the order;
 - (ii) the name and whereabouts or suspected whereabouts of the child, his date of birth and the date on which he will attain the age of 16; and
 - (iii) the terms of the order, its date and the court which made it;
- (b) file the certified copy and accompanying documents in the General Registry; and
- (c) give notice to the court which sent the certified copy and to the applicant for registration that the order has been registered.

34. Revocation and variation of Manx order

- (1) Where a custody order which is registered in the appropriate court is revoked or varied by the Court, the Chief Registrar shall —
 - (a) send a copy of the subsequent order to the appropriate officer and, if the custody order was made by a court of summary jurisdiction, to that court;

- (b) record the fact of transmission in the General Registry; and
 - (c) retain the subsequent order.
- (2) On receipt from the appropriate court of any amendment of its register, the Chief Registrar shall record the fact of amendment in the General Registry.

35. Registration of revoked, recalled or varied UK order

- (1) On receipt of a certified copy of an order made in a British jurisdiction which revokes, recalls or varies a registered custody order, the Chief Registrar shall enter particulars of the revocation, recall or variation, as the case may be, in the register, and give notice of the entry to —
 - (a) the court which sent the certified copy;
 - (b) if different, the court which made the custody order;
 - (c) the applicant for registration; and
 - (d) if different, the applicant for the revocation, recall or variation of the order.
- (2) An application under section 8(2) of the 1987 Act (cancellation of registration) shall be made by application.
- (3) If the applicant for the custody order is not the applicant under section 8(2) of the 1987 Act, he shall be made a respondent to the application.
- (4) Where the Court cancels a registration on its own initiative or on an application under paragraph (2), the Chief Registrar shall amend the register accordingly and shall give notice of the amendment to the court which made the custody order.

36. Interim directions

- (1) This rule applies to an application for interim directions under section 9(2) of the 1987 Act.
- (2) The parties to the proceedings for enforcement and, if he is not a party thereto, the applicant for the custody order, shall be made parties to the application.

37. Staying and dismissal of enforcement proceedings

- (1) This rule applies to an application under section 10 or 11 of the 1987 Act.
- (2) The parties to the proceedings for enforcement which are sought to be stayed and, if he is not a party thereto, the applicant for the custody order, shall be made parties to the application.
- (3) Where the Court makes an order under section 10(2) or (3) or section 11(2), the Chief Registrar shall amend the register accordingly and shall give notice of the amendment to the court which made the custody order and to the applicants for registration, for enforcement and for the stay or dismissal of the proceedings for enforcement.

38. Particulars of other proceedings

A party to proceedings for or relating to a custody order who knows of other proceedings (including proceedings out of the jurisdiction and concluded proceedings) which relate to the child concerned shall file an affidavit which shall state-

- (a) in which jurisdiction and court the other proceedings were instituted;
- (b) the nature and current state of such proceedings and the relief claimed or sought;

- (c) the names of the parties to the proceedings and their relationship to the child;
- (d) if applicable, and if known, the reasons why the relief claimed in the proceedings for or relating to the custody order was not claimed in the other proceedings.

39. Inspection of register

Any of the following persons-

- (a) the applicant for registration of a registered custody order;
- (b) any person who satisfies the Chief Registrar that he has an interest under the custody order, and
- (c) any person who obtains the leave of the Chief Registrar,

may inspect any entry in the register relating to the order and may bespeak copies of the order and of any document relating thereto.

PART 5

PROCEEDINGS UNDER PARTS II AND III OF THE CHILD CUSTODY ACT 1987

40. Interpretation of Part 5

In this Part —

"the 1987 Act" means the Child Custody Act 1987;

"the appropriate court" and "British jurisdiction" have the same meanings as in Part 4; and

other expressions have the same meanings as in Parts II, III and IV of the 1987 Act.

41. Contents of application

- (1) An application under the Hague Convention or the Custody Convention must state —
 - (a) the name and date of birth of the child in respect of whom the application is made;
 - (b) the names of the child's parents or guardians;
 - (c) the whereabouts or suspected whereabouts of the child;
 - (d) the interest of the applicant in the matter and the grounds of the application; and
 - (e) particulars of any proceedings (including proceedings outside the Island) relating to the child,

and must be accompanied by all relevant documents including (but not limited to) the documents specified in Article 8 of the Hague Convention or, as the case may be, Article 13 of the Custody Convention.

- (2) In applications under the Hague Convention, in addition to the matters specified in paragraph (1) —
 - (a) an application for the purposes of Article 8 for the return of a child must state the identity of the person alleged to have removed or retained the child and, if different, the identity of the person with whom the child is presumed to be;

- (b) an application for the purposes of Article 15 shall identify the proceedings in which the request that such a declaration be obtained was made.
- (3) In applications under the Custody Convention, in addition to the matters specified in paragraph (1) the application must identify the decision relating to custody or rights of access which is sought to be registered or enforced or in relation to which a declaration that it is not to be recognised is sought.

42. Respondents

The respondents to an application under the Hague Convention or the Custody Convention must be —

- (a) the person alleged to have brought into the Island the child in respect of whom an application under the Hague Convention is made;
- (b) the person with whom the child is alleged to be;
- (c) any parent or guardian of the child who is within the Island and is not otherwise a party;
- (d) the person in whose favour a decision relating to custody has been made if he is not otherwise a party; and
- (e) any other person who appears to the Court to have a sufficient interest in the welfare of the child.

43. Acknowledgment of service

The time limited for acknowledging service of an application by which an application is made under the Hague Convention or the Custody Convention shall be 7 days after service of the application (including the day of service) or, in the case of a respondent referred to in rule 42(d) or (e), such further time as the Court may direct.

44. Evidence

- (1) The applicant, on filing an application under the Hague Convention or the Custody Convention, may file affidavit evidence in support of his application and must serve a copy of it on the respondent with the application.
- (2) A respondent to an application under the Hague Convention or the Custody Convention may file affidavit evidence in support of his application and must serve a copy of it on the applicant within 7 days after service of the application on him.
- (3) The applicant under the Hague Convention or the Custody Convention may within 7 days thereafter file a statement in reply and must serve a copy of it on the respondent.

45. Hearing

Any application under the Hague Convention or the Custody Convention shall be dealt with in private unless the Court otherwise directs.

46. Dispensing with service

The Court may dispense with service of any application or notice in any proceedings under Part II or III of the 1987 Act.

47. Adjournment of application

The hearing of an application under the Hague Convention or the Custody Convention may be adjourned for a period not exceeding 21 days at any one time.

48. Stay of proceedings

- (1) A party to proceedings under the Hague Convention must, where he knows that an application relating to the merits of rights of custody is pending in or before a relevant authority, file a concise statement of the nature of the application which is pending, including the authority before which it is pending.
- (2) A party to —
 - (a) pending proceedings under section 38 of the 1987 Act, or under section 16 of the U.K. Act, or
 - (b) proceedings as a result of which a decision relating to custody has been registered under the said section 38 or section 16,

must, where he knows that such an application as is specified in section 42(2) of the 1987 Act, or section 20(2) of the U.K. Act, is pending in or before a relevant authority, file a concise statement of the nature of the application which is pending.

- (3) The Chief Registrar shall on receipt of such a statement as is mentioned in paragraph (1) or (2) notify the relevant authority in which or before whom the application is pending and shall subsequently notify it or him of the result of the proceedings.
- (4) On the Court receiving notification equivalent to that mentioned in paragraph (3) from the appropriate court in any British jurisdiction —
 - (a) where the application relates to the merits of rights of custody, all further proceedings in the action shall be stayed unless and until the proceedings under the Hague Convention in the court in the British jurisdiction are dismissed, and the Chief Registrar shall notify the parties to the action of the stay and of any such dismissal accordingly; and
 - (b) where the application is such a one as is specified in section 42(2) of the 1987 Act, or section 20(2) of the U.K. Act, the Chief Registrar shall notify the parties to the action.
- (5) In this rule "relevant authority" includes —
 - (a) the Court and a court of summary jurisdiction in the Island,
 - (b) the High Court, a county court and a magistrates' court in England and Wales,
 - (c) the Court of Session, a sheriff court and a children's hearing in Scotland,
 - (d) the High Court, a county court and a court of summary jurisdiction in Northern Ireland, and
 - (e) the Secretary of State.

49. Transfer of proceedings

- (1) At any stage in any proceedings under Part II or III of the 1987 Act the Court may, on its own initiative or on the application by notice of any party to the proceedings issued on 2 days' notice, order that the proceedings be transferred to the appropriate court in any British jurisdiction.
- (2) Where an order is made under paragraph (1) the Chief Registrar shall send a copy of the order, which shall state the grounds for it, together with the application, the documents accompanying it and any evidence, to the appropriate court in the relevant British jurisdiction.

- (3) Where proceedings are transferred to the appropriate court in any British jurisdiction, the costs of the whole proceedings both before and after the transfer shall be in the discretion of the court to which the proceedings are transferred.
- (4) Where proceedings are transferred to the Court from the appropriate court in any British jurisdiction, the Chief Registrar shall notify the parties of the transfer and the proceedings shall continue as if they had been begun by application under rule 41.

50. Interim directions

An application for interim directions under section 27 or section 41 of the 1987 Act may, where the case is one of urgency, be made without notice and supported by evidence on affidavit, but shall otherwise be made with notice to the other parties to the action.

51. Obtaining authenticated copies of decisions

Any person who intends to make an application under the Hague Convention in a Contracting State other than the United Kingdom shall on satisfying the Chief Registrar as to that intention be entitled to obtain an office copy sealed with the official seal of the Court of any order made in the Court relating to the child in respect of whom the application is made.

52. Revocation and variation of registered decisions

- (1) This rule applies to decisions which have been registered under section 38 of the 1987 Act and are subsequently varied or revoked by an authority in the Contracting State in which they were made.
- (2) Where the Court cancels the registration of a decision which has been revoked, the Chief Registrar shall notify the following of the cancellation —
 - (a) the person appearing to the Court to have actual custody of the child;
 - (b) the person on whose behalf the application for registration of the decision was made; and
 - (c) any other party to that application.
- (3) Where the Court is notified of the variation of a decision, the Chief Registrar shall notify the following of the variation —
 - (a) the person appearing to the Court to have actual custody of the child; and
 - (b) any party to the application for registration of the decision;and any such person may apply by notice in the proceedings for the registration of the decision, for the purpose of making representations to the Court before the registration is varied.
- (4) Any person appearing to the Court to have an interest in the matter may apply by notice in the proceedings for the registration of a decision for the cancellation or variation of the registration.

53. Orders for disclosure of information

At any stage in proceedings under the Custody Convention the Court may, if it has reason to believe that any person may have relevant information about the child who is the subject of those proceedings, order that person to disclose such information and may for that purpose order that the person attend before it or file affidavit evidence.

PART 6

DECLARATIONS AS TO PARENTAGE OR LEGITIMACY

54. Application under section 10A of the Legitimacy Act 1985

- (1) An application for a declaration under section 10A(1) or (2) of the Legitimacy Act 1985 must be supported by an affidavit by the applicant or, in the case of an applicant under the age of 18, by his litigation friend, verifying the application and giving particulars of every person whose interest may be affected by the proceedings and his relationship to the applicant.
- (2) Where the jurisdiction of the Court to entertain an application is based on habitual residence, the application must include a statement of the addresses of the places of residence of the person so resident and the length of residence at each place either —
 - (a) during the period of one year ending with the date of presentation of the application, or
 - (b) if that person is dead, throughout the period of one year ending with the date of death.
- (3) An affidavit for the purposes of paragraph (1) may contain statements of information or belief with the sources and grounds thereof.
- (4) A copy of the application and every document accompanying it must be sent by the applicant to the Attorney General at least one month before the application is filed and it shall not be necessary thereafter to serve those documents on him.
- (5) A copy of every application, together with a copy of every affidavit in support and a form of acknowledgement of service, must be served personally or by post on every respondent.
- (6) A copy of an application shall be deemed to be duly served if an acknowledgement of service is signed by the party to be served or by an advocate on his behalf and is filed.
- (7) Where a copy of an application has been sent to a party and no acknowledgement of service has been filed, the Chief Registrar, if satisfied by affidavit or otherwise that the party has nevertheless received the document, may direct that the document shall be deemed to have been duly served on him.
- (8) Where a copy of an application has been served on a party and no acknowledgement of service has been filed, service shall be proved by filing a certificate of service.
- (9) Where an acknowledgement of service has been filed, the Chief Registrar shall send a certified copy of it to the applicant.

55. Application for declaration of parentage

- (1) Unless otherwise directed, an application under section 10A(1)(a) of the Legitimacy Act 1985 for a declaration of parentage must state —
 - (a) the name (including forenames and surname) of the applicant and, if the applicant is known by a name other than that which appears in the certificate of his birth, that other name shall be stated in the application and in any declaration made thereon;
 - (b) the sex of the applicant;
 - (c) the date and place of birth of the applicant;

- (d) if they are known, the name (including forenames and surname) of the father of the applicant, his place and date of birth, residential address and his occupation;
 - (e) if they are known, the place and date of birth, the residential address and occupation of the mother of the applicant and her names (including forenames and surname) at the following times —
 - (i) at the date of her birth;
 - (ii) if it is different, at the date of her first marriage;
 - (iii) if it is different, at the date of the birth of the applicant;
 - (iv) if it is different, at the date of her most recent marriage;
 - (v) if it is different, at the time of the presentation of the application;
 - (f) the grounds on which the applicant relies and all other material facts alleged by him to justify the making of the declaration;
 - (g) whether there are or have been any other proceedings in any court, tribunal or authority in the Island or elsewhere relating to the parentage of the applicant, and if so—
 - (i) particulars of the proceedings, including the court, tribunal or authority before which they were begun, and their nature, outcome or present state;
 - (ii) the date when they were begun;
 - (iii) the names of the parties;
 - (iv) the date or expected date of any trial in the proceedings;
 - (h) either that the applicant is domiciled in the Island on the date of the presentation of the application or that he has been habitually resident in the Island throughout the period of one year ending with that date; and
 - (i) the nationality, citizenship or immigration status of the applicant and any person named in the application as his parent, and the effect which the granting of a declaration of parentage would have on the applicant's status as regards his nationality, citizenship or right to be in the Island.
- (2) Unless otherwise directed there must be annexed to the application a copy of the applicant's birth certificate.
 - (3) The applicant's parents shall both, if alive, be respondents to the application.

56. Application for declaration of legitimacy or legitimation

- (1) Unless otherwise directed, an application under section 10A(1)(b) or (2) of the Legitimacy Act 1985 for a declaration of legitimacy or legitimation must state —
 - (a) the name of the applicant and, if the applicant is known by a name other than that which appears in the certificate of his birth, that other name shall be stated in the application and in any declaration made on it;
 - (b) the date and place of birth of the applicant;
 - (c) if they are known, the name of the father of the applicant and the maiden name of the applicant's mother and, if it is different, her current name, and the residential address of each of them at the time of the presentation of the application;

- (d) the grounds on which the applicant relies and all other material facts alleged by him to justify the making of the declaration;
 - (e) either that the applicant is domiciled in the Island on the date of the presentation of the application or that he has been habitually resident in the Island throughout the period of one year ending with that date.
- (2) Unless otherwise directed there must be annexed to the application a copy of the applicant's birth certificate.
 - (3) The applicant's father and mother, or the survivor of them, shall be respondents to the application.

57. Proceedings on an application for a declaration

- (1) The Chief Registrar shall send a copy of every answer to the Attorney General if he has notified the Chief Registrar that he wishes to intervene in the proceedings.
- (2) When all answers to the application have been filed the applicant shall apply to a judge for directions as to any other persons who should be made respondents to the application or given notice of the proceedings.
- (3) When giving directions under paragraph (2) the judge shall consider whether it is necessary that the Attorney General should argue before him any question relating to the proceedings and, if he does so consider, the Attorney General need not file an answer and the judge shall give directions requiring him to serve on all parties to the proceedings a summary of his argument.
- (4) Persons given notice of proceedings pursuant to directions under paragraph (2) shall within 21 days of service of the notice upon them be entitled to apply to the Chief Registrar to be joined as parties.
- (5) The Attorney General may file an answer to an application within 21 days after directions have been given under paragraph (2) and no directions for trial shall be given until that period and the period referred to in paragraph (4) have expired.
- (6) The Attorney General, in deciding whether it is necessary or expedient to intervene in the proceedings, may have a search made for, and may inspect and bespeak a copy of, any document filed or lodged in the General Registry which relates to any other proceedings referred to in the proceedings.

Rule 5.

SCHEDULE

RULES REVOKED

<i>Reference</i>	<i>Title</i>	<i>Extent of revocation</i>
—	Rules of the High Court of Justice 1952	Orders 44, 44A, 51D, 51E, 51F and 55
GC 232/91	Rules of the High Court of Justice (Child Custody) 1991	The whole Rules
GC 4/92	Rules of the High Court of Justice (Amendment) 1992	Rules 4 and 5 Schedule 2
SD 732/02	Rules of the High Court of Justice (Amendment) 2002	The whole Rules

MADE 14th May 2009

J. M. Kerruish

Her Majesty's First Deemster and Clerk of the Rolls

D. C. Doyle

Second Deemster

EXPLANATORY NOTE

(This note is not part of the Rules.)

These Rules replace the provisions of the Rules of the High Court of Justice 1952 which deal with family proceedings, with amendments consequential on the Administration of Justice Act 2008 and the Rules of the High Court of Justice 2009.

