
STATUTORY INSTRUMENTS

1991 No. 1247

The Family Proceedings Rules 1991

PART IV

PROCEEDINGS UNDER THE CHILDREN ACT 1989

Interpretation and application

- 4.1.**—(1) In this Part of these rules, unless a contrary intention appears—
- a section or schedule referred to means the section or schedule so numbered in the Act of 1989;
 - “a section 8 order” has the meaning assigned to it by section 8(2);
 - “application” means an application made under or by virtue of the Act of 1989 or under these rules, and “applicant” shall be construed accordingly;
 - “child”, in relation to proceedings to which this Part applies—
 - (a) means, subject to sub-paragraph (b), a person under the age of 18 with respect to whom the proceedings are brought, and
 - (b) where the proceedings are under Schedule 1, also includes a person who has reached the age of 18;
 - “directions appointment” means a hearing for directions under rule 4.14(2);
 - “emergency protection order” means an order under section 44;
 - “guardian ad litem” means a guardian ad litem, appointed under section 41, of the child with respect to whom the proceedings are brought;
 - “leave” includes permission and approval;
 - “note” includes a record made by mechanical means;
 - “parental responsibility” has the meaning assigned to it by section 3;
 - “recovery order” means an order under section 50;
 - “specified proceedings” has the meaning assigned to it by section 41(6) and rule 4.2(2); and
 - “welfare officer” means a person who has been asked to prepare a welfare report under section 7.

(2) Except where the contrary intention appears, the provisions of this Part apply to proceedings in the High Court and the county courts—

- (a) on an application for a section 8 order;
- (b) on an application for a care order or a supervision order;
- (c) on an application under section 4(1)(a), 4(3), 5(1), 6(7), 13(1), 16(6), 33(7), 34(2), 34(3), 34(4), 34(9), 36(1), 38(8)(b), 39(1), 39(2), 39(3), 39(4), 43(1), 43(12), 44, 45, 46(7), 48(9), or 50(1);
- (d) under Schedule 1, except where financial relief is also sought by or on behalf of an adult,
- (e) on an application under paragraph 19(1) of Schedule 2;

- (f) on an application under paragraph 6(3), 15(2) or 17(1) of Schedule 3;
- (g) on an application under paragraph 11(3) or 16(5) of Schedule 14; or
- (h) under section 25.

Matters prescribed for the purposes of the Act of 1989

4.2.—(1) The parties to proceedings in which directions are given under section 38(6), and any person named in such a direction, form the prescribed class for the purposes of section 38(8) (application to vary directions made with interim care or interim supervision order).

(2) The following proceedings are specified for the purposes of section 41 in accordance with subsection (6)(i) thereof—

- (a) proceedings under section 25;
- (b) applications under section 33(7);
- (c) proceedings under paragraph 19(1) of Schedule 2;
- (d) applications under paragraph 6(3) of Schedule 3.

(3) The applicant for an order that has been made under section 43(1) and the persons referred to in section 43(11) may, in any circumstances, apply under section 43(12) for a child assessment order to be varied or discharged.

(4) The following persons form the prescribed class for the purposes of section 44(9) (application to vary directions)—

- (a) the parties to the application for the order in respect of which it is sought to vary the directions;
- (b) the guardian ad litem;
- (c) the local authority in whose area the child concerned is ordinarily resident;
- (d) any person who is named in the directions.

Application for leave to commence proceedings

4.3.—(1) Where the leave of the court is required to bring any proceedings to which this Part applies, the person seeking leave shall file—

- (a) a written request for leave setting out the reasons for the application; and
- (b) a draft of the application for the making of which leave is sought in the appropriate form in Appendix 1 to these rules or, where there is no such form, in writing, together with sufficient copies for one to be served on each respondent.

(2) On considering a request for leave filed under paragraph (1), the court shall—

- (a) grant the request, whereupon the proper officer 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 proper officer 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 so fixed.

(3) Where leave is granted to bring proceedings to which this Part applies the application shall proceed in accordance with rule 4.4; but paragraph (1)(a) of that rule shall not apply.

(4) In the case of a request for leave to bring proceedings under Schedule 1, the draft application under paragraph (1) shall be accompanied by a statement setting out the financial details which the person seeking leave believes to be relevant to the request and containing a declaration that it is true

to the maker's best knowledge and belief, together with sufficient copies for one to be served on each respondent.

Application

4.4.—(1) Subject to paragraph (4), an applicant shall—

- (a) file the application in respect of each child in the appropriate form in Appendix 1 to these rules or, where there is no such form, in writing, 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 such number of days prior to the date fixed under paragraph (2)(a) as is specified for that application in column (ii) of Appendix 3 to these rules.

(2) On receipt of the documents filed under paragraph (1)(a) the proper officer shall—

- (a) fix the date for a hearing or a directions appointment, allowing sufficient time for the applicant to comply with paragraph (1)(b),
- (b) endorse the date so fixed upon the copies of the application filed by the applicant, and
- (c) return the copies to the applicant forthwith.

(3) The applicant shall, at the same time as complying with paragraph (1)(b), give written notice of the proceedings, and of the date and place of the hearing or appointment fixed under paragraph (2) (a), to the persons set out for the relevant class of proceedings in column (iii) of Appendix 3 to these rules.

(4) An application for—

- (a) a prohibited steps order, or a specific issue order, under section 8,
- (b) an emergency protection order,
- (c) a warrant under section 48(9), or
- (d) a recovery order,

may be made *ex parte* in which case the applicant shall—

(i) file the application in respect of each child in the appropriate form in Appendix 1 to these rules—

- (a) where the application is made by telephone, within 24 hours after the making of the application, or
- (b) in any other case, at the time when the application is made, and

(ii) in the case of an application for a prohibited steps order, or a specific issue order, under section 8 or an emergency protection order, 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 *ex parte* application it may direct that the application be made *inter partes*.

(6) In the case of proceedings under Schedule 1, the application under paragraph (1) shall be accompanied by a statement setting out the financial details which the applicant believes to be relevant to the application and containing a declaration that it is true to the maker's best knowledge and belief, together with sufficient copies for one to be served on each respondent.

Withdrawal of application

4.5.—(1) An application may be withdrawn only with leave of the court.

(2) Subject to paragraph (3), a person seeking leave to withdraw an application shall file and serve on the parties a written request for leave setting out the reasons for the request.

(3) The request under paragraph (2) may be made orally to the court if the parties and either the guardian ad litem or the welfare officer are present.

(4) Upon receipt of a written request under paragraph (2) the court shall—

(a) if—

(i) the parties consent in writing,

(ii) the guardian ad litem has had an opportunity to make representations, and

(iii) the court thinks fit,

grant the request, in which case the proper officer shall notify the parties, the guardian ad litem and the welfare officer of the granting of the request, or

(b) direct that a date be fixed for the hearing of the request in which case the proper officer shall give at least 7 days' notice to the parties, the guardian ad litem and the welfare officer, of the date fixed.

Transfer from magistrates' court to county court and from county court to High Court

4.6.—(1) Where an application is made, in accordance with the provisions of any Order made under Part I of Schedule 11 to the Act of 1989, to a county court for an order transferring proceedings from a magistrates' court following the refusal of the magistrates' court to order such a transfer, the applicant shall—

(a) file the application in Form CHA58, together with a copy of the certificate issued by the magistrates' court, and

(b) serve a copy of the documents mentioned in sub-paragraph (a) personally on all parties to the proceedings which it is sought to have transferred,

within 2 days after receipt by the applicant of the certificate.

(2) Within 2 days after receipt of the documents served under paragraph (1)(b), any party other than the applicant may file written representations.

(3) The court shall, not before the fourth day after the filing of the application under paragraph (1), unless the parties consent to earlier consideration, consider the application and either—

(a) grant the application, whereupon the proper officer shall inform the parties of that decision, or

(b) direct that a date be fixed for the hearing of the application, whereupon the proper officer shall fix such a date and give not less than 1 day's notice to the parties of the date so fixed.

(4) Where proceedings are transferred from a magistrates' court to a county court in accordance with the provisions of any Order under Part I of Schedule 11 to the Act of 1989, the county court shall consider whether to transfer those proceedings to the High Court in accordance with that Order and either—

(a) determine that such an order need not be made,

(b) make such an order,

(c) order that a date be fixed for the hearing of the question whether such an order should be made, whereupon the proper officer shall give such notice to the parties as the court directs of the date so fixed, or

(d) invite the parties to make written representations, within a specified period, as to whether such an order should be made; and upon receipt of the representations the court shall act in accordance with sub-paragraph (a), (b) or (c).

(5) The proper officer shall notify the parties of an order transferring the proceedings from a county court or from the High Court made in accordance with the provisions of any Order under Part I of Schedule 11 to the Act of 1989.

Parties

4.7.—(1) The respondents to proceedings to which this Part applies shall be those persons set out in the relevant entry in column (iv) of Appendix 3 to these rules.

(2) In proceedings to which this Part applies, 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) On considering a request under paragraph (2) the court shall, subject to paragraph (4)—

- (a) grant it without a hearing or representations, save that this shall be done only in the case of a request under paragraph (2)(a), whereupon the proper officer shall inform the parties and the person making the request of that decision, or
- (b) order that a date be fixed for the consideration of the request, whereupon the proper officer shall give notice of the date so fixed, together with a copy of the request—
 - (i) in the case of a request under paragraph (2)(a), to the applicant, and
 - (ii) in the case of a request under paragraph (2)(b), to the parties, 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 the period the court shall 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 his request.

(5) In proceedings to which this Part applies 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.

Service

4.8.—(1) Subject to the requirement in rule 4.6(1)(b) of personal service, where service of a document is required under this Part (and not by a provision to which section 105(8) (Service of notice or other document under the Act) applies) it may be effected—

- (a) if the person to be served is not known by the person serving to be acting by solicitor—
 - (i) by delivering it to him personally, or
 - (ii) by delivering it at, or by sending it by first-class post to, his residence or his last known residence, or
- (b) if the person to be served is known by the person serving to be acting by solicitor—
 - (i) by delivering the document at, or sending it by first-class post to, the solicitor's address for service,
 - (ii) where the solicitor's address for service includes a numbered box at a document exchange, by leaving the document at that document exchange or at a document exchange which transmits documents on every business day to that document exchange, or

(iii) by sending a legible copy of the document by facsimile transmission to the solicitor's office.

(2) In this rule "first-class post" means first-class post which has been pre-paid or in respect of which pre-payment is not required.

(3) Where a child who is a party to proceedings to which this Part applies is required by these rules or other rules of court to serve a document, service shall be effected by—

- (a) the solicitor acting for the child, or
- (b) where there is no such solicitor, the guardian ad litem, or
- (c) where there is neither such a solicitor nor a guardian ad litem, the court.

(4) Service of any document on a child shall, subject to any direction of the court, be effected by service on—

- (a) the solicitor acting for the child, or
- (b) where there is no such solicitor, the guardian ad litem, or
- (c) where there is neither such a solicitor nor a guardian ad litem, with leave of the court, the child.

(5) Where the court refuses leave under paragraph (4)(c) it shall give a direction under paragraph (8).

(6) A document shall, unless the contrary is proved, be deemed to have been served—

- (a) in the case of service by first-class post, on the second business day after posting, and
- (b) in the case of service in accordance with paragraph (1)(b)(ii), on the second business day after the day on which it is left at the document exchange.

(7) At or before the first directions appointment in, or hearing of, proceedings to which this Part applies the applicant shall file a statement that service of—

- (a) a copy of the application has been effected on each respondent, and
- (b) notice of the proceedings has been effected under rule 4.4(3);

and the statement shall indicate—

- (i) the manner, date, time and place of service, or
- (ii) where service was effected by post, the date, time and place of posting.

(8) 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.

Answer to application

4.9.—(1) Within 14 days of service of an application for a section 8 order, each respondent shall file, and serve on the parties, an answer to the application in Form CHA10A.

(2) Within 14 days after service of an application under Schedule 1, each respondent shall file, and serve on the parties, an answer to the application in Form CHA13A.

(3) Following service of an application to which this Part applies, other than an application under rule 4.3 or for a section 8 order, a respondent may, subject to paragraph (4), file a written answer, which shall be served on the other parties.

(4) An answer under paragraph (3) shall, except in the case of an application under section 25, 31, 34, 38, 43, 44, 45, 46, 48 or 50, be filed, and served, not less than 2 days before the date fixed for the hearing of the application.

Appointment of guardian ad litem

4.10.—(1) As soon as practicable after the commencement of specified proceedings, or the transfer of such proceedings to the court, the court shall appoint a guardian ad litem, unless—

- (a) such an appointment has already been made by the court which made the transfer and is subsisting, or
- (b) the court considers that such an appointment is not necessary to safeguard the interests of the child.

(2) At any stage in specified proceedings a party may apply, without notice to the other parties unless the court directs otherwise, for the appointment of a guardian ad litem.

(3) The court shall grant an application under paragraph (2) unless it considers such an appointment not to be necessary to safeguard the interests of the child, in which case it shall give its reasons; and a note of such reasons shall be taken by the proper officer.

(4) At any stage in specified proceedings the court may, of its own motion, appoint a guardian ad litem.

(5) The proper officer shall, as soon as practicable, notify the parties and any welfare officer of an appointment under this rule or, as the case may be, of a decision not to make such an appointment.

(6) Upon the appointment of a guardian ad litem the proper officer shall, as soon as practicable, notify him of the appointment and serve on him copies of the application and of documents filed under rule 4.17(1).

(7) A guardian ad litem appointed from a panel established by regulations made under section 41(7) shall not—

- (a) be a member, officer or servant of a local authority which, or an authorised person (within the meaning of section 31(9)) who, is a party to the proceedings, unless he is employed by such an authority solely as a member of a panel of guardians ad litem and reporting officers;
- (b) be, or have been, a member, officer or servant of a local authority or voluntary organisation (within the meaning of section 105(1)) who has been directly concerned in that capacity in arrangements relating to the care, accommodation or welfare of the child during the five years prior to the commencement of the proceedings;
- (c) be a serving probation officer (except that a probation officer who has not in that capacity been previously concerned with the child or his family and who is employed part-time may, when not engaged in his duties as a probation officer, act as a guardian ad litem).

(8) When appointing a guardian ad litem the court shall consider the appointment of anyone who has previously acted as guardian ad litem of the same child.

(9) The appointment of a guardian ad litem under this rule shall continue for such time as is specified in the appointment or until terminated by the court.

(10) When terminating an appointment in accordance with paragraph (9), the court shall give its reasons in writing for so doing.

(11) Where the court appoints a guardian ad litem in accordance with this rule or refuses to make such an appointment, the court or the proper officer shall record the appointment or refusal in Form CHA30.

Powers and duties of guardian ad litem

4.11.—(1) In carrying out his duty under section 41(2), the guardian ad litem shall have regard to the principle set out in section 1(2) and the matters set out in section 1(3)(a) to (f) as if for the word “court” in that section there were substituted the words “guardian ad litem”.

- (2) The guardian ad litem shall—
- (a) appoint a solicitor to represent the child unless such a solicitor has already been appointed, and
 - (b) give such advice to the child as is appropriate having regard to his understanding and, subject to rule 4.12(1)(a), instruct the solicitor representing the child on all matters relevant to the interests of the child, including possibilities for appeal, arising in the course of the proceedings.
- (3) Where it appears to the guardian ad litem that the child—
- (a) is instructing his solicitor direct, or
 - (b) intends to, and is capable of, conducting the proceedings on his own behalf,
- he shall so inform the court and thereafter—
- (i) shall perform all of his duties set out in this rule, other than duties under paragraph (2)(a) and such other duties as the court may direct,
 - (ii) shall take such part in the proceedings as the court may direct, and
 - (iii) may, with leave of the court, have legal representation in his conduct of those duties.
- (4) The guardian ad litem shall, unless excused by the court, attend all directions appointments in and hearings of the proceedings and shall advise the court on the following matters—
- (a) whether the child is of sufficient understanding for any purpose including the child's refusal to submit to a medical or psychiatric examination or other assessment that the court has power to require, direct or order;
 - (b) the wishes of the child in respect of any matter relevant to the proceedings, including his attendance at court;
 - (c) the appropriate forum for the proceedings;
 - (d) the appropriate timing of the proceedings or any part of them;
 - (e) the options available to it in respect of the child and the suitability of each such option including what order should be made in determining the application;
 - (f) any other matter concerning which the court seeks his advice or concerning which he considers that the court should be informed.
- (5) The advice given under paragraph (4) may, subject to any order of the court, be given orally or in writing; and if the advice be given orally, a note of it shall be taken by the court or the proper officer.
- (6) The guardian ad litem shall, where practicable, notify any person whose joinder as a party to those proceedings would be likely, in the guardian ad litem's opinion, to safeguard the interests of the child, of that person's right to apply to be joined under rule 4.7(2) and shall inform the court—
- (a) of any such notification given,
 - (b) of anyone whom he attempted to notify under this paragraph but was unable to contact, and
 - (c) of anyone whom he believes may wish to be joined to the proceedings.
- (7) The guardian ad litem shall, unless the court otherwise directs, not less than 7 days before the date fixed for the final hearing of the proceedings, file a written report advising on the interests of the child; and the proper officer shall, as soon as practicable, serve a copy of the report on the parties.
- (8) The guardian ad litem shall serve and accept service of documents on behalf of the child in accordance with rule 4.8(3)(b) and (4)(b) and, where the child has not himself been served, and has sufficient understanding, advise the child of the contents of any document so served.
- (9) The guardian ad litem shall make such investigations as may be necessary for him to carry out his duties and shall, in particular—

- (a) contact or seek to interview such persons as he thinks appropriate or as the court directs,
 - (b) if he inspects records of the kinds referred to in section 42, bring to the attention of the court and such other persons as the court may direct all such records and documents which may, in his opinion, assist in the proper determination of the proceedings, and
 - (c) obtain such professional assistance as is available to him which he thinks appropriate or which the court directs him to obtain.
- (10) In addition to his duties under other paragraphs of this rule, the guardian ad litem shall provide to the court such other assistance as it may require.
- (11) A party may question the guardian ad litem about oral or written advice tendered by him to the court under this rule.

Solicitor for child

4.12.—(1) A solicitor appointed under section 41(3) or in accordance with rule 4.11(2)(a) shall represent the child—

- (a) in accordance with instructions received from the guardian ad litem (unless the solicitor considers, having taken into account the views of the guardian ad litem and any direction of the court under rule 4.11(3), that the child wishes to give instructions which conflict with those of the guardian ad litem and that he is able, having regard to his understanding, to give such instructions on his own behalf in which case he shall conduct the proceedings in accordance with instructions received from the child), or
 - (b) where no guardian ad litem has been appointed for the child and the condition in section 41(4)(b) is satisfied, in accordance with instructions received from the child, or
 - (c) in default of instructions under (a) or (b), in furtherance of the best interests of the child.
- (2) A solicitor appointed under section 41(3) or in accordance with rule 4.11(2)(a) shall serve and accept service of documents on behalf of the child in accordance with rule 4.8(3)(a) and (4)(a) and, where the child has not himself been served and has sufficient understanding, advise the child of the contents of any document so served.
- (3) Where the child wishes an appointment of a solicitor under section 41(3) or in accordance with rule 4.11(2)(a) to be terminated, he may apply to the court for an order terminating the appointment; and the solicitor and the guardian ad litem shall be given an opportunity to make representations.
- (4) Where the guardian ad litem wishes an appointment of a solicitor under section 41(3) to be terminated, he may apply to the court for an order terminating the appointment; and the solicitor and, if he is of sufficient understanding, the child, shall be given an opportunity to make representations.
- (5) When terminating an appointment in accordance with paragraph (3) or (4), the court shall give its reasons for so doing, a note of which shall be taken by the court or the proper officer.
- (6) Where the court appoints a solicitor under section 41(3) or refuses to make such an appointment, the court or the proper officer shall record the appointment or refusal in Form CHA31.

Welfare officer

- 4.13.**—(1) The welfare officer shall, unless excused by the court, attend a hearing if the proper officer 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 such a hearing.
- (2) A welfare officer shall 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 proper officer shall, as soon as practicable, serve a copy of the report on the parties and the guardian ad litem.

Directions

4.14.—(1) In this rule, “party” includes the guardian ad litem and, where a request or a direction concerns a report under section 7, the welfare officer.

(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 or court, to be done;
- (c) the attendance of the child;
- (d) the appointment of a guardian ad litem, whether under section 41 or otherwise, or of a solicitor under section 41(3);
- (e) the service of documents;
- (f) the submission of evidence including experts' reports;
- (g) the preparation of welfare reports under section 7;
- (h) the transfer of the proceedings to another court;
- (i) consolidation with other proceedings.

(3) Directions under paragraph (2) may be given, varied or revoked either—

- (a) of the court's own motion 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 the request under paragraph (3)(b) may, with the leave of the court, be made—

- (a) orally, or
- (b) without notice to the parties, or
- (c) both as in sub-paragraph (a) and as in sub-paragraph (b).

(5) On receipt of a written request under paragraph (3)(b) the proper officer 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 proper officer shall inform the parties of the decision, or
- (b) direct that a date be fixed for the hearing of the request, whereupon the proper officer 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 11(3) or, if he is entitled to apply for such an order, under section 38(1) in accordance with paragraph (3)(b) or (c).

(8) Where a court is considering making, of its own motion, a section 8 order, or an order under section 31, 34 or 38, the power to give directions under paragraph (2) shall apply.

(9) Directions of a court which are still in force immediately prior to the transfer of proceedings to which this Part applies to another court shall continue to apply following the transfer, subject to any changes of terminology which are required to apply those directions to the court to which the proceedings are transferred, unless varied or discharged by directions under paragraph (2).

(10) The court or the proper officer shall take a note of the giving, variation or revocation of a direction under this rule and serve, as soon as practicable, a copy of the note on any party who was not present at the giving, variation or revocation.

Timing of proceedings

4.15.—(1) Where these rules 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 direction of the court under rule 4.14.

(2) At the—

- (a) transfer to a court of proceedings to which this Part applies,
- (b) postponement or adjournment of any hearing or directions appointment in the course of proceedings to which this Part applies, or
- (c) conclusion of any such hearing or directions appointment other than one at which the proceedings are determined, or so soon thereafter as is practicable,

the court or the proper officer shall—

- (i) fix a date upon which the proceedings shall come before the court again for such purposes as the court directs, which date shall, where paragraph (a) applies, be as soon as possible after the transfer, and
- (ii) give notice to the parties, the guardian ad litem or the welfare officer of the date so fixed.

Attendance at directions appointment and hearing

4.16.—(1) Subject to paragraph (2), a party shall attend a directions appointment of which he has been given notice in accordance with rule 4.14(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 a guardian ad litem or solicitor;

and when considering the interests of the child under sub-paragraph (a) the court shall give the guardian ad litem, the solicitor for the child 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 respondent 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 chambers.

Documentary evidence

4.17.—(1) Subject to paragraphs (4) and (5), in proceedings to which this Part applies a party shall file and serve on the parties, any welfare officer and any guardian ad litem of whose appointment he has been given notice under rule 4.10(5)—

- (a) written statements of the substance of the oral evidence which the party intends to adduce at a hearing of, or a directions appointment in, those proceedings, which shall—
 - (i) be dated,
 - (ii) be signed by the person making the statement, and
 - (iii) 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 a 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 rule, file and serve on the parties a statement which is supplementary to a statement served under paragraph (1).

(3) At a hearing or a directions appointment a party may not, without the leave of the court—

- (a) adduce evidence, or
- (b) seek to rely on a document,

in respect of which he has failed to comply with the requirements of paragraph (1).

(4) In proceedings for a section 8 order a party shall—

- (a) neither file nor serve any document other than as required or authorised by these rules, and
- (b) in completing a form prescribed by these rules, neither give information, nor make a statement, which is not required or authorised by that form,

without the leave of the court.

(5) In proceedings for a section 8 order no statement or copy may be filed under paragraph (1) until such time as the court directs.

Expert evidence—examination of child

4.18.—(1) No person may, without the leave 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 leave under paragraph (1) shall, unless the court otherwise directs, be served on all parties to the proceedings and on the guardian ad litem.

(3) Where the leave 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 leave of the court.

Amendment

4.19.—(1) Subject to rule 4.17(2), a document which has been filed or served in proceedings to which this Part applies, may not be amended without the leave of the court which shall, unless the court otherwise directs, be requested in writing.

(2) On considering a request for leave to amend a document the court shall either—

- (a) grant the request, whereupon the proper officer shall inform the person making the request of that 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 shall file it and serve it on those persons on whom it was served prior to amendment; and the amendments shall be identified.

Oral evidence

4.20 The court or the proper officer shall keep a note of the substance of the oral evidence given at a hearing of, or directions appointment in, proceedings to which this Part applies.

Hearing

4.21.—(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 a hearing of, or directions appointment in, proceedings to which this Part applies, the parties and the guardian ad litem shall adduce their evidence in the following order—

- (a) the applicant,
- (b) any party with parental responsibility for the child,
- (c) other respondents,
- (d) the guardian ad litem,
- (e) the child, if he is a party to the proceedings and there is no guardian ad litem.

(3) After the final hearing of proceedings to which this Part applies, the court shall deliver its judgment as soon as is practicable.

(4) When making an order or when refusing an application, the court shall state any findings of fact and the reasons for the court's decision.

(5) An order made in proceedings to which this Part applies shall be recorded, by the court or the proper officer, either in the appropriate form in Appendix 1 to these rules or, where there is no such form, in writing.

(6) Subject to paragraph (7), a copy of an order made in accordance with paragraph (5) shall, as soon as practicable after it has been made, be served by the proper officer on the parties to the proceedings in which it was made on any person with whom the child is living.

(7) Within 48 hours after the making ex parte of—

- (a) a prohibited steps order or specific issue order under section 8, or
- (b) an order under section 44, 48(4), 48(9) or 50,

the applicant shall serve a copy of the order in the appropriate form in Appendix 1 to these Rules on—

- (i) each party,
- (ii) any person who has actual care of the child or who had such care immediately prior to the making of the order, and
- (iii) in the case of an order referred to in sub-paragraph (b), the local authority in whose area the child lives or is found.

(8) At a hearing of, or directions appointment in, an application which takes place outside the hours during which the court office is normally open, the court or the proper officer shall take a note of the substance of the proceedings.

Appeals

4.22.—(1) Where an appeal lies—

- (a) to the High Court under section 94, or
- (b) from any decision of a district judge to the judge of the court in which the decision was made,

it shall be made in accordance with the following provisions; and references to “the court below” are references to the court from which, or person from whom, the appeal lies.

(2) The appellant shall file and serve on the parties to the proceedings in the court below, and on any guardian ad litem,

- (a) notice of the appeal in writing, setting out the grounds upon which he relies;
- (b) a certified copy of the summons or application and of the order appealed against, and of any order staying its execution;
- (c) a copy of any notes of the evidence;
- (d) a copy of any reasons given for the decision.

(3) The notice of appeal shall be filed and served in accordance with paragraph (2)(a)—

- (a) within 14 days after the determination against which the appeal is brought, or
- (b) in the case of an appeal against an order under section 38(1), within 7 days after the making of the order, or
- (c) with the leave of the court to which, or judge to whom, the appeal is to be brought, within such other time as that court or judge may direct.

(4) The documents mentioned in paragraph (2)(b) to (d) shall, subject to any direction of the court to which, or judge to whom, the appeal is to be brought, be filed and served as soon as practicable after the filing and service of the notice of appeal under paragraph (2)(a).

(5) Subject to paragraph (6), a respondent who wishes—

- (a) to contend on the appeal that the decision of the court below should be varied, either in any event or in the event of the appeal being allowed in whole or in part, or
- (b) to contend that the decision of the court below should be affirmed on grounds other than those relied upon by that court, or
- (c) to contend by way of cross-appeal that the decision of the court below was wrong in whole or in part,

shall, within 14 days of receipt of notice of the appeal, file and serve on all other parties to the appeal a notice in writing, setting out the grounds upon which he relies.

(6) No notice under paragraph (5) may be filed or served in an appeal against an order under section 38.

(7) In the case of an appeal mentioned in paragraph (1)(a), an application to—

- (a) withdraw the appeal,
- (b) have the appeal dismissed with the consent of all the parties, or
- (c) amend the grounds of appeal,

may be heard by a district judge.

(8) An appeal of the kind mentioned in paragraph (1)(a) shall, unless the President otherwise directs, be heard and determined by a single judge.

Confidentiality of documents

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

- (a) a party,
- (b) the legal representative of a party,
- (c) the guardian ad litem,
- (d) the Legal Aid Board, or
- (e) a welfare officer,

without leave of the judge or district Judge.

(2) Nothing in this rule shall prevent the notification by the court or the proper officer of a direction under section 37(1) to the authority concerned.

Notification of consent

4.24 Consent for the purposes of—

- (a) section 16(3),
- (b) section 33(7), or
- (c) paragraph 19(3)(c) or (d) of Schedule 2,

shall be given either—

- (i) orally in court, or
- (ii) in writing to the court signed by the person giving his consent.

Secure accommodation—evidence

4.25 In proceedings under section 25, the court shall, if practicable, arrange for copies of all written reports before it to be made available before the hearing to—

- (a) the applicant;
- (b) the parent or guardian of the child;
- (c) any legal representative of the child;
- (d) the guardian ad litem; and
- (e) the child, unless the court otherwise directs;

and copies of such reports may, if the court considers it desirable, be shown to any person who is entitled to notice of the proceedings in accordance with these rules.

Investigation under section 37

4.26.—(1) This rule applies where a direction is given to an appropriate authority by the High Court or a county court under section 37(1).

(2) On giving a direction the court shall adjourn the proceedings and the court or the proper officer shall record the direction in writing.

(3) A copy of the direction recorded under paragraph (2) shall, as soon as practicable after the direction is given, be served by the proper officer on the parties to the proceedings in which the direction is given and, where the appropriate authority is not a party, on that authority.

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

(4) When serving the copy of the direction on the appropriate authority the proper officer shall also serve copies of such of the documentary evidence which has been, or is to be, adduced in the proceedings as the court may direct.

(5) Where a local authority informs the court of any of the matters set out in section 37(3)(a) to (c) it shall do so in writing.

Direction to local education authority to apply for education supervision order

4.27.—(1) For the purposes of section 40(3) and (4) of the Education Act 1944⁽¹⁾ a direction by the High Court or a county court to a local education authority to apply for an education supervision order shall be given in writing.

(2) Where, following such a direction, a local education authority informs the court that they have decided not to apply for an education supervision order, they shall do so in writing.

Transitional provision

4.28 Nothing in any provision of this Part of these rules shall affect any proceedings which are pending (within the meaning of paragraph 1 of Schedule 14 to the Act of 1989) immediately before these rules come into force.

(1) 1944 c. 31 (7 & 8 Geo. 6); relevant amendments are made by paragraphs 8 to 10 of Schedule 13 to the Children Act 1989.