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STATUTORY RULES OF NORTHERN IRELAND

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**1996 No. 323**

**Magistrates' Courts (Children (Northern Ireland)  
Order 1995) Rules (Northern Ireland) 1996**

**Citation, commencement and interpretation**

1.—(1) These Rules may be cited as the Magistrates' Courts (Children (Northern Ireland) Order 1995) Rules (Northern Ireland) 1996 and shall come into operation on 4th November 1996.

(2) Nothing in these rules shall affect any proceedings pending (within the meaning of paragraph 1 of Schedule 8 to the Children (Northern Ireland) Order 1995) immediately before these rules come into operation.

(3) In these rules unless the context otherwise requires—

“the Allocation Order” means the Children (Allocation of Proceedings) Order (Northern Ireland) 1996<sup>(1)</sup>;

“application” means an application under or by virtue of the Order or under these Rules and “applicant” shall be construed accordingly;

“an Article 8 order” has the same meaning as in Article 8(2);

“Board” means a Health and Social Services Board;

“business day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday which is, or is to be observed as, a bank holiday in Northern Ireland under the Banking and Financial Dealings Act 1971<sup>(2)</sup>;

“child” means—

(a) subject to 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;

“court” includes a family proceedings court to which proceedings are brought in accordance with the Allocation Order and a resident magistrate or member of a juvenile court panel in respect of the proceedings prescribed in rule 2(5)(a) and a resident magistrate in respect of the proceedings prescribed in rule 2(5)(b);

“directions appointment” means a hearing for directions under rule 15;

“document exchange” means any document exchange for the time being approved by the Lord Chancellor;

“file” means deposit with the clerk of petty sessions;

“guardian ad litem” means a guardian ad litem appointed under Article 60, of the child with respect to whom the proceedings are brought;

“leave” includes permission and approval;

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(1) S.R. 1996 No. 300

(2) 1971 c. 80

“parental responsibility” has the same meaning as in Article 6;

“parties” in relation to any relevant proceedings means the respondents specified in column (iii) of Schedule 2 and the applicant;

“relevant proceedings” has the same meaning as in Article 165(3);

“specified proceedings” has the same meaning as in Article 60(6) and rule 2(2);

“the Order” means the Children (Northern Ireland) Order 1995 and an Article or Schedule referred to by number means the Article or Schedule so numbered in the Order;

“Trust” means a Health and Social Services Trust by whom functions are exercisable by virtue of an authorisation for the time being in operation under the Health and Personal Social Services (Northern Ireland) Order 1994(3);

“welfare officer” means a person who has been asked to prepare a welfare report under Article 4.

(4) Any reference to a form is a reference to a form in Schedule 1 to these rules and includes a reference to a form to the same effect with such variations as the circumstances might require.

(5) The Magistrates' Courts Rules (Northern Ireland) 1984(4) shall have effect subject to the provisions of these Rules.

### **Matters prescribed for the purposes of the Order**

2.—(1) The parties to proceedings in which directions are given under Article 57(6) and any person named in such a direction, form the prescribed class for the purposes of Article 57(8)(b) (application to vary directions made with interim care or interim supervision order).

(2) The following proceedings are specified for the purposes of Article 60 in accordance with paragraph 6(i) thereof—

- (a) proceedings under Article 33(1);
- (b) proceedings under Article 44;
- (c) applications under Article 52(7);
- (d) proceedings under paragraph 6(3) of Schedule 3.

(3) The applicant for an order that has been made under Article 62(1) and the persons referred to in Article 62(11) may, in any circumstances, apply under Article 62(12) for a child assessment order to be varied or discharged.

(4) The following persons form the prescribed class for the purposes of Article 63(9)(b) (application to vary directions)—

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

(5) Where, in accordance with the Allocation Order an application is required to be commenced in a family proceedings court the following proceedings are prescribed for the purposes of Article 165(2)(i)—

- (a) proceedings on an ex parte application under Article 63; 67 and 69; and under rule 5 are proceedings with respect to which a resident magistrate or member of a juvenile court panel may discharge the functions of a court of summary jurisdiction; and

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(3) S.I.1994/429 (N.I. 2)

(4) S.R. 1984 No. 225

- (b) proceedings in accordance with rule 3, 6, 7, 11, 15, 16, 17, 18, 19 and 20 are proceedings with respect to which a resident magistrate may discharge the functions of a court of summary jurisdiction.

### **Application for leave to commence proceedings**

**3.—(1)** Where the leave of the court is required to bring any relevant proceedings, the person seeking leave shall file—

- (a) an application for leave in Form C2; and
  - (b) a draft of the application in respect of which leave is sought in the appropriate form in Schedule 1 or where there is no such form, in writing, together with sufficient copies for one to be served on each respondent; and
  - (c) A draft summons in Form C1A.
- (2) On considering a request for leave filed under paragraph (1), the court shall—
- (a) grant the request whereupon the clerk of petty sessions shall issue a summons in Form C1A; or
  - (b) fix a date for a hearing of the request whereupon the clerk of petty sessions shall 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.

### **Application**

**4.—(1)** An application by way of complaint to a justice of the peace or clerk of petty sessions for an order under the Order shall be made in writing in Form C1 together with such of Forms C6 to C17 as is appropriate.

(2) Subject to paragraph (3) any summons issued in consequence of such an application shall be prepared by the applicant in Form C1A and shall be served on each respondent to the application along with a copy of the written application the minimum number of days prior to the date fixed for hearing as is specified in relation to that application in column (iii) of Schedule 2 to these rules.

(3) Where an applicant is also making an application for an order under the Domestic Proceedings (Northern Ireland) Order 1980<sup>(5)</sup> then any summons issued shall be in the appropriate form in the Magistrates' Courts (Domestic Proceedings) Rules 1996<sup>(6)</sup> and shall be prepared and served in accordance with those rules together with a copy of the written application referred to in paragraph (1).

(4) At the same time as complying with paragraph (2) or (3) notice of the proceedings in Form C2A shall also be given by the applicant to those persons set out in relation to the relevant class of proceedings in column (iv) of Schedule 2 to these rules.

### **Ex parte application**

**5.—(1)** An application for—

- (a) an Article 8 order;
- (b) an emergency protection order under Article 63;
- (c) an order or warrant under Article 67;
- (d) a recovery order under Article 69; or
- (e) a warrant under Article 178(2)

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(5) S.I. 1980/563 (N.I. 5)

(6) S.R. 1996 No.

may with the leave of the court be made ex parte and in which case Article 77(2) of the Magistrates' Courts (Northern Ireland) Order 1981 (civil proceedings to be upon complaint) and rule 4 shall not apply.

(2) Where under paragraph (1) the leave of the court is granted the application may be made orally and the applicant shall within 48 hours of the making of the application—

- (a) file a written copy of the application in Form C1 together with such of Forms C6 to C17 as is appropriate; and
- (b) serve a copy of the application and any order on—
  - (i) the parties;
  - (ii) any person who has actual care of the child or had such care immediately prior to the making of the order; and
  - (iii) in the case of an order or warrant referred to in paragraph (1)(b) or (c) on the Board or Trust in whose area the child lives or was found.

(3) Where the court refuses to make an order on an ex parte application it may direct that the application be made inter partes.

### **Withdrawal of application**

6.—(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 in Form C2 setting out the reasons for the request.

(3) The request under paragraph (2) may be made orally to the court if the parties and, if appointed, 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) any guardian ad litem has had an opportunity to make representations, and
  - (iii) the court thinks fit,
 grant the request; in which case the clerk of petty sessions shall notify the parties, and any guardian ad litem or welfare officer; or
- (b) the court shall fix a date for the hearing of the request and the clerk of petty sessions shall give at least 7 days' notice to the parties, and any guardian ad litem or the welfare officer of the date so fixed.

### **Transfer of proceedings**

7.—(1) Where in any relevant proceedings the court receives a request in writing from a party that the proceedings be transferred to a county court or the High Court in accordance with the Allocation Order the court shall issue an order or certificate in the appropriate form in Schedule 1 to these Rules granting or refusing the request.

(2) A copy of the order or certificate issued under paragraph (1) shall be sent by the clerk of petty sessions—

- (a) to the parties,
- (b) to any guardian ad litem, and
- (c) to the chief clerk of the county court or the Master (Probate and Matrimonial) or the Master (Care and Protection) of the High Court as the case may be.

## Parties

8.—(1) The respondents to relevant proceedings shall be those persons set out in the relevant entry in column (iii) of Schedule 2 to these rules.

- (2) In any relevant proceedings a person may file a request in Form C2 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 clerk of petty sessions shall inform in writing 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 clerk of petty sessions shall give notice in writing 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 the person to be joined if he is not also 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 any relevant 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.

## Service

9.—(1) Rule 11 of the Magistrates' Courts Rules (Northern Ireland) 1984 shall apply to the service of a summons under these Rules.

- (2) Service of any other document under these Rules 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.

(3) 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.

(4) Where a child who is a party to any relevant proceedings is required by these rules to serve a document, service shall be effected by—

- (a) the solicitor acting for the child,
- (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 clerk of petty sessions.

(5) 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,
- (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.

(6) Where the court refuses leave under paragraph (5)(c), a direction shall be given under paragraph (8).

(7) 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.

(8) In any relevant proceedings, where these rules require a document to be served, the court may, without prejudice to any power under rule 15, direct that—

- (a) the requirement shall not apply;
- (b) the time specified by the rules for complying with the requirement shall be abridged to such extent as may be specified in the direction;
- (c) service shall be effected in such manner as may be specified in the direction.

### **Acknowledgement of application**

**10.** Within 14 days of the service of a summons on an application for an Article 8 order or an application under Schedule 1 each respondent shall file and serve on the parties an acknowledgement in Form C4.

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

**11.—(1)** As soon as practicable after the commencement of specified proceedings the court shall appoint a guardian ad litem unless 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 otherwise directs, for the appointment of a guardian ad litem.

(3) The court shall grant an application under paragraph (2) unless it is considered that such an appointment is not necessary to safeguard the interests of the child, in which case reasons shall be given; and a note of such reasons shall be taken by the clerk of petty sessions.

(4) At any stage in specified proceedings the court may appoint a guardian ad litem even though no application is made for such an appointment.

(5) The clerk of petty sessions shall, as soon as practicable, notify the parties and any welfare officer in Form C41 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 clerk of petty sessions shall, as soon as practicable, notify him of the appointment in Form C41 and serve on him copies of the application and of documents filed under rule 18(1).

(7) A guardian ad litem appointed from a panel established by regulations made under Article 60(7) shall not—

- (a) be a member, officer or servant of a Board or Trust which, or an authorised person (within the meaning of Article 49(2)) who, is a party to the proceedings;
- (b) be, or have been, a member, officer or servant of a Board or Trust voluntary organisation (within the meaning of Article 74(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 may give consideration to appointing 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 reasons in writing for so doing, and the clerk of petty sessions shall notify the parties, any welfare officer and the guardian ad litem of the termination in Form C41.

### **Powers and duties of guardian ad litem**

**12.**—(1) In carrying out his duty under Article 60(2) the guardian at litem shall have regard to the principle set out in Article 3(2) and the matters set out in Article 3(3)(a) to (f) as if for the word 'court' in that Article 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 13(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 a 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.
- (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 (8)(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 clerk of petty sessions 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 9(4)(b) and (5)(b) and, where the child has not himself been served, and has sufficient understanding, advise the child of the contents of any documents 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 Article 61, 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 may be required.
- (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**

**13.—(1)** A solicitor appointed under Article 60(3) or in accordance with rule 12(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 12(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 Article 60(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 Article 60(3) or in accordance with rule 12(2)(a) shall serve and accept service of documents on behalf of the child in accordance with rule 9(4)(a) and (5)(a) and, where the child has not himself been served and has sufficient understanding, advise the child of the contents of any documents so served.

(3) Where the child wishes an appointment of a solicitor under Article 60(3) or in accordance with rule 12(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 Article 60(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 reasons in writing for so doing and the clerk of petty sessions shall notify the solicitor, the parties, the guardian ad litem and any welfare officer of the termination in Form C42.

### **Welfare Officer**

**14.**—(1) Where the court has directed that a written report be made by a welfare officer, the report shall be filed at or by such time as the court directs or, in the absence of such a direction, at least 14 days before a relevant hearing; and the clerk of petty sessions shall, as soon as practicable, serve a copy of the report on the parties and any guardian ad litem.

(2) In paragraph (1), a hearing is relevant if the clerk of petty sessions has given the welfare officer notice that his report is to be considered at it.

(3) After the filing of a written report by a welfare officer, the court may direct that the welfare officer attend any hearing at which the report is to be considered; and

- (a) except where such a direction is given at a hearing attended by the welfare officer, the clerk of petty sessions shall inform the welfare officer of the direction; and
- (b) at the hearing at which the report is considered any party may question the welfare officer about his report.

(4) This rule is without prejudice to the court's power to give directions under rule 15.

### **Directions**

**15.**—(1) In this rule 'party' includes the guardian ad litem and where a request or direction concerns a report under Article 4, the welfare officer.

(2) In any relevant proceedings the court may, subject to paragraph (4), 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, to be done;
- (c) the attendance of the child;
- (d) the appointment of a guardian ad litem whether under Article 60 or otherwise, or of a solicitor under Article 60(3);
- (e) the service of documents;

- (f) the submission of evidence including experts' reports;
- (g) the preparation of welfare reports under Article 4;
- (h) the transfer of the proceedings to another court in accordance with the Allocation Order;
  - (i) consolidation with other proceedings;
 and the clerk of petty sessions shall, on receipt of an application, or where proceedings have been transferred to his court, refer the application to the court to consider whether such directions need to be given.
- (3) Where a direction is given under paragraph (2)(h), an order or certificate shall be issued in the appropriate form in Schedule 1 to these rules and the clerk of petty sessions shall follow the procedure set out in rule 7(2).
- (4) Directions under paragraph (2) may be given, varied or revoked either—
  - (a) of the court's own motion and having given the parties notice in Form C3 of the intention to do so and an opportunity to attend and be heard or to make written representations,
  - (b) on the written request in Form C2 of a party specifying the direction which is sought, filed and served on the other parties, or
  - (c) on the written request in Form C2 of a party specifying the direction which is sought, to which the other parties consent and which they or their representatives have signed.
- (5) In an urgent case, the request under paragraph (4)(b) may, with the leave of the court, be made—
  - (a) orally,
  - (b) without notice to the parties, or
  - (c) both as in sub-paragraph (a) and as in sub-paragraph (b).
- (6) On receipt of a request under paragraph (4)(b) the clerk of petty sessions shall fix a date for the hearing of the request and give not less than 2 days' notice in Form C3 to the parties of the date so fixed.
- (7) On considering a request under paragraph (4)(c) the court shall either—
  - (a) grant the request, whereupon the clerk of petty sessions shall inform the parties of the decision, or
  - (b) fix a date for the hearing of the request, whereupon the clerk of petty sessions shall give not less than 2 days' notice in Form C3 to the parties of the date so fixed.
- (8) A party may request, in accordance with paragraph 4(b) or (c), that an order be made under Article 11(3) or, if he is entitled to apply for such an order, under Article 57(1), and paragraphs (5), (6) and (7) shall apply accordingly.
- (9) Where, in any relevant proceedings, the court has power to make an order of its own motion, the power to give directions under paragraph (2) shall apply.
- (10) Directions of a court which are still in force immediately prior to the transfer of relevant proceedings 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).
- (11) The court shall record the giving, variation or revocation of a direction under this rule in Form C18 and the clerk of petty sessions shall serve, as soon as practicable, a copy of the form on any party who was not present at the giving, variation or revocation.

### **Timing of proceedings**

- 16. At the—

- (a) transfer of relevant proceedings to a family proceedings court in accordance with Article 10 or 11 of the Allocation Order, or
  - (b) postponement or adjournment of any hearing or directions appointment,
- the court shall—
- (i) fix a date upon which the proceedings shall next come before the court, which date shall where paragraph (a) applies, be as soon as possible after the transfer; and
  - (ii) give notice to the parties and any guardian ad litem or welfare officer of the date so fixed.

### **Attendance at directions appointment and hearing**

17.—(1) Subject to paragraph (2), a party shall attend a directions appointment of which he has been given notice in accordance with rule 15(4) unless the court otherwise directs.

- (2) Relevant proceedings 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, solicitor for the child and, if he is of sufficient understanding, the child, an opportunity to make representations.

(3) Subject to paragraph (4) below, 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 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) If the court considers it expedient in the interests of the child, it shall hear any relevant proceedings in private when only the officers of the court, the parties, their legal representatives and such other persons as specified by the court may attend.

### **Evidence**

18.—(1) Subject to paragraphs (4) and (5) in any relevant proceedings a party shall file and serve on the other parties, any welfare officer and any guardian ad litem of whose appointment he has been given notice under rule 11(5)—

- (a) written statements in Form C46 of the substance of the oral evidence which the party intends to adduce at a hearing of, or a directions appointment in, those proceedings,
- (b) copies of any documents, including, subject to rule 19(3), 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 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 an Article 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 an Article 8 order, no statement or copy may be filed under paragraph (1) unless the court otherwise directs.

#### **Expert evidence: examination of child**

**19.**—(1) No person may, without the leave of the court, cause a 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 be made in Form C2 and shall, unless the court otherwise directs, be served on all the parties to the proceedings and on any 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**

**20.**—(1) Subject to rule 18(2), a document which has been filed or served in any relevant proceedings 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 clerk of petty sessions 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 with the clerk of petty sessions and serve it on those persons on whom it was served prior to amendment; and the amendments shall be identified.

#### **Hearing**

**21.**—(1) Before the hearing the resident magistrate and any members of the juvenile court panel who will be dealing with the case shall read any documents which have been filed under rule 18.

(2) Unless the court otherwise directs at a hearing of, or directions appointment in, relevant proceedings 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 relevant proceedings, the court shall make its decision as soon as is practicable.
- (4) Before the court makes an order or refuses an application the resident magistrate shall record in writing—
- (a) the names of any members of the juvenile court panel who heard the case with him;
  - (b) the reasons for the court's decision and any findings of fact.
- (5) When making an order or when refusing an application the resident magistrate shall—
- (a) where the court has made a finding of fact state such finding and complete Form C19; and
  - (b) state the reasons for the court's decision.
- (6) After the court announces its decision, the clerk of petty sessions shall, subject to rule 5(2)(b), as soon as practicable serve a copy of the order in the prescribed form in Schedule 1 to these rules on the parties to the proceedings and or any person with whom the child is living.

### **Costs**

- 22.**—(1) In any relevant proceedings, the court may, at any time during the proceedings in that court, make an order that a party pay the whole or any part of the costs of any other party.
- (2) A party against whom the court is considering making a costs order shall have an opportunity to make representations as to why the order should not be made.

### **Confidentiality of documents**

- 23.**—(1) Subject to paragraphs (2) and (3) no document, other than a record of an order, held by the court and relating to relevant proceedings 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 Department, or
  - (e) a welfare officer

without the leave of the court.

(2) Where the Department of Health and Social Services requires a person mentioned in regulation 2(2) or (3) of the Child Support (Information, Evidence and Disclosure) Regulations (Northern Ireland) 1992(7) to furnish information or evidence for a purpose mentioned in regulation 3(1) of those Regulations, nothing in paragraph (1) shall prevent that person from furnishing the information or evidence sought or to require him to seek the leave of the court before doing so.

(3) Nothing in paragraph (1) shall prevent the notification by the court of a direction under Article 56(1) to the authority concerned.

### **Disclosure of address**

**24.**—(1) Nothing in these rules shall be construed as requiring any party to reveal the address of their private residence or that of any child except by order of the court.

(2) Where a party declines to reveal an address in reliance upon paragraph (1) he shall give notice of that address to the court in Form C5 and that address shall not be revealed to any person except by order of the court.

### **Notification of consent**

**25.** Consent for the purposes of—

- (a) Article 16(3), or
- (b) Article 33(1)

may be given either orally in court or in writing signed by the person giving his consent.

### **Secure accommodation**

**26.** In proceedings under Article 44 the clerk of petty sessions shall, if practicable, arrange for copies of all written reports before the court 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 Article 56**

**27.**—(1) On giving a direction under Article 56 the court shall adjourn the proceedings and the clerk of petty sessions shall record the direction in Form C35.

(2) A copy of the direction recorded under paragraph (1) shall, as soon as practicable after the direction is given be served by the clerk of petty sessions on the parties to the proceedings in which the direction is given and, where the appropriate authority is not a party, on that authority.

(3) When serving the copy of the direction on the appropriate authority the clerk of petty sessions 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.

(4) Where an authority informs the court of any of the matters set out in Article 56(3)(a) to (c) it shall do so in writing.

### **Appeals to a family proceedings court**

**28.**—(1) An appeal to a family proceedings court under—

- (a) Article 113,
- (b) Article 131(6), or
- (c) Article 145

shall be brought by notice in Form C46 and shall be signed by the appellant or his legal representative.

(2) The notice of appeal shall be accompanied by any copy of the decision or determination appealed against.

(3) An appeal under Article 131(6) may only be brought within 21 days from the date of the step to which the appeal relates.

(4) The clerk of petty sessions shall fix a date for the hearing of the appeal and shall give at least seven days' notice of the date so fixed to the parties.

### **Contribution orders**

**29.**—(1) An application for a contribution order under Article 41(1) shall be accompanied by a copy of the contribution notice served in accordance with Article 40(1) and a copy of any notice served by the contributor under Article 40(8).

(2) Where an authority notifies the court of an agreement reached under Article 41(6) it shall do so in writing through the clerk of petty sessions.

(3) An application for the variation or revocation of a contribution order under Article 41(8) shall be accompanied by a copy of the contribution order which it is sought to vary or revoke.

### **Direction to an education and library board**

**30.**—(1) For the purpose of paragraph 6 of Schedule 13 to the Education and Libraries (Northern Ireland) Order 1986<sup>(8)</sup> a direction to an education and libraries board to apply for an education supervision order shall be in Form C35A.

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

Dated 25th July 1996.

*Mackay of Clashfern, C.*