
STATUTORY INSTRUMENTS

2005 No. 2795

The Family Procedure (Adoption) Rules 2005

PART 10

ALTERNATIVE PROCEDURE FOR APPLICATIONS

Types of application for which Part 10 procedure may be followed

- 97.**—(1) The Part 10 procedure is the procedure set out in this Part.
- (2) An applicant may use the Part 10 procedure where the procedure set out in Part 9 does not apply and—
- (a) there is no form prescribed by a rule or practice direction in which to make the application;
 - (b) he seeks the court’s decision on a question which is unlikely to involve a substantial dispute of fact; or
 - (c) paragraph (5) applies.
- (3) The court may at any stage direct that the application is to continue as if the applicant had not used the Part 10 procedure and, if it does so, the court may give any directions it considers appropriate.
- (4) Paragraph (2) does not apply—
- (a) to applications made in accordance with—
 - (i) rule 27 (request to dispense with consent);
 - (ii) rule 59(2) (appointment of children’s guardian);
 - (iii) rule 84 (disclosure of information to adopted adult);
 - (iv) rule 106 (withdrawal of application); or
 - (v) rule 107 (recovery orders); or
 - (b) if a practice direction provides that the Part 10 procedure may not be used in relation to the type of application in question.
- (5) A rule or practice direction may, in relation to a specified type of proceedings—
- (a) require or permit the use of the Part 10 procedure; and
 - (b) disapply or modify any of the rules set out in this Part as they apply to those proceedings.

Contents of the application

- 98.**—(1) In this Part “application” means an application made under this Part.
- (2) Where the applicant uses the Part 10 procedure the application must state—
- (a) that this Part applies;
 - (b) (i) the question which the applicant wants the court to decide; or

- (ii) the order which the applicant is seeking and the legal basis of the application for that order;
 - (c) if the application is being made under an enactment, what that enactment is;
 - (d) if the applicant is applying in a representative capacity, what that capacity is; and
 - (e) if the respondent appears or is to appear in a representative capacity, what that capacity is.
- (3) A court officer will serve a copy of the application on the respondent.

Issue of application without naming respondents

99.—(1) A practice direction may set out circumstances in which an application may be issued under this Part without naming a respondent.

(2) The practice direction may set out those cases in which an application for permission must be made before the application is issued.

(3) The application for permission—

- (a) need not be served on any other person; and
- (b) must be accompanied by a copy of the application that the applicant proposes to issue.

(4) Where the court gives permission it will give directions about the future management of the application.

Acknowledgement of service

100.—(1) Subject to paragraph (2), each respondent must file an acknowledgement of service within 14 days beginning with the date on which the application is served.

(2) If the application is to be served out of the jurisdiction the respondent must file an acknowledgement of service within the period set out in the practice direction supplementing Part 6, section 2.

(3) A court officer will serve the acknowledgement of service on the applicant and any other party.

(4) The acknowledgement of service must—

- (a) state whether the respondent contests the application;
- (b) state, if the respondent seeks a different order from that set out in the application, what that order is; and
- (c) be signed by the respondent or his legal representative.

Consequence of not filing an acknowledgement of service

101.—(1) This rule applies where—

- (a) the respondent has failed to file an acknowledgement of service; and
- (b) the time period for doing so has expired.

(2) The respondent must attend the hearing of the application but may not take part in the hearing unless the court gives permission.

Filing and serving written evidence

102.—(1) The applicant must file written evidence on which he intends to rely when he files his application.

(2) A court officer will serve the applicant's evidence on the respondent with the application.

(3) A respondent who wishes to rely on written evidence must file it when he files his acknowledgement of service.

(4) A court officer will serve the respondent's evidence, if any, on the other parties with the acknowledgement of service.

(5) The applicant may, within 14 days beginning with the date on which a respondent's evidence was served on him, file further written evidence in reply.

(6) If he does so, a court officer will serve a copy of that evidence on the other parties.

(7) The applicant may rely on the matters set out in his application as evidence under this rule if the application is verified by a statement of truth.

Evidence – general

103.—(1) No written evidence may be relied on at the hearing of the application unless—

- (a) it has been served in accordance with rule 102; or
- (b) the court gives permission.

(2) The court may require or permit a party to give oral evidence at the hearing.

(3) The court may give directions requiring the attendance for cross-examination of a witness who has given written evidence.

Procedure where respondent objects to use of the Part 10 procedure

104.—(1) Where a respondent contends that the Part 10 procedure should not be used because—

- (a) there is a substantial dispute of fact; and
- (b) the use of the Part 10 procedure is not required or permitted by a rule or practice direction,

he must state his reasons when he files his acknowledgement of service.

(2) When the court receives the acknowledgement of service and any written evidence it will give directions as to the future management of the case.

Applications under section 60(3) and 79(4) or rule 108

105.—(1) The Part 10 procedure must be used in an application made in accordance with—

- (a) section 60(3) (order to prevent disclosure of information to an adopted person);
- (b) section 79(4) (order for Registrar General to give any information referred to in section 79(3)); and
- (c) rule 108 (directions of High Court regarding fathers without parental responsibility).

(2) The respondent to an application made in accordance with paragraph (1)(b) is the Registrar General.