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STATUTORY INSTRUMENTS

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**1991 No. 1247**

**The Family Proceedings Rules 1991**

**PART VI**

**CHILD ABDUCTION AND CUSTODY ACT 1985**

**Interpretation**

**6.1** In this Part, unless the context otherwise requires—

- (a) “the Act” means the Child Abduction and Custody Act 1985<sup>(1)</sup> and words or expressions bear the same meaning as in that Act;
- (b) “the Hague Convention” means the convention defined in section 1(1) of the Act and “the European Convention” means the convention defined in section 12(1) of the Act.

**Mode of application**

**6.2.**—(1) Except as otherwise provided by this Part, every application under the Hague Convention and the European Convention shall be made by originating summons, which shall be in Form No. 10 in Appendix A to the Rules of the Supreme Court 1965<sup>(2)</sup>.

(2) An application in custody proceedings for a declaration under section 23(2) of the Act shall be made by summons in those proceedings.

**Contents of originating summons: general provisions**

**6.3.**—(1) The originating summons under which any application is made under the Hague Convention or the European Convention shall state—

- (a) the name and date of birth of the child in respect of whom the application is made;
- (b) the names of the child’s parents or guardians;
- (c) the whereabouts or suspected whereabouts of the child;
- (d) the interest of the plaintiff in the matter and the grounds of the application; and
- (e) particulars of any proceedings (including proceedings out of the jurisdiction and concluded proceedings) relating to the child, and shall be accompanied by all relevant documents including but not limited to the documents specified in Article 8 of the Hague Convention or, as the case may be, Article 13 of the European Convention.

**Contents of originating summons: particular provisions**

**6.4.**—(1) In applications under the Hague Convention, in addition to the matters specified in rule 6.3—

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(1) 1985 c. 60.  
(2) S.I.1965/1776.

- (a) the originating summons under which an application is made for the purposes of Article 8 for the return of a child shall state the identity of the person alleged to have removed or retained the child and, if different, the identity of the person with whom the child is presumed to be;
- (b) the originating summons under which an application is made for the purposes of Article 15 for a declaration shall identify the proceedings in which the request that such a declaration be obtained was made.

(2) In applications under the European Convention, in addition to the matters specified in rule 6.3 the originating summons shall identify the decision relating to custody or rights of access which is sought to be registered or enforced or in relation to which a declaration that it is not to be recognised is sought.

## **Defendants**

**6.5** The defendants to an application under the Act shall be—

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

## **Acknowledgement of service**

**6.6** The time limited for acknowledging service of an originating summons by which an application is made under the Hague Convention or the European Convention shall be seven days after service of the originating summons (including the day of service) or, in the case of a defendant referred to in rule 6.5(d) or (e), such further time as the Court may direct.

## **Evidence**

**6.7.—(1)** The plaintiff, on issuing an originating summons under the Hague Convention or the European Convention, may lodge affidavit evidence in the principal registry in support of his application and serve a copy of the same on the defendant with the originating summons.

(2) A defendant to an application under the Hague Convention or the European Convention may lodge affidavit evidence in the principal registry and serve a copy of the same on the plaintiff within seven days after service of the originating summons on him.

(3) The plaintiff in an application under the Hague Convention or the European Convention may within seven days thereafter lodge in the principal registry a statement in reply and serve a copy thereof on the defendant.

## **Hearing**

**6.8** Any application under the Act (other than an application (a) to join a defendant, (b) to dispense with service or extend the time for acknowledging service, or (c) for the transfer of proceedings) shall be heard and determined by a judge and shall be dealt with in chambers unless the court otherwise directs.

### Dispensing with service

**6.9** The court may dispense with service of any summons (whether originating or ordinary) in any proceedings under the Act.

### Adjournment of summons

**6.10** The hearing of the originating summons under which an application under the Hague Convention or the European Convention is made may be adjourned for a period not exceeding 21 days at any one time.

### Stay of proceedings

**6.11.—(1)** A party to proceedings under the Hague Convention shall, where he knows that an application relating to the merits of rights of custody is pending in or before a relevant authority, file in the principal registry a concise statement of the nature of the application which is pending, including the authority before which it is pending.

(2) A party—

- (a) to pending proceedings under section 16 of the Act, or
- (b) to proceedings as a result of which a decision relating to custody has been registered under section 16 of the Act,

shall, where he knows that such an application as is specified in section 20(2) of the Act<sup>(3)</sup> is pending in or before a relevant authority, file a concise statement of the nature of the application which is pending.

(3) The proper officer shall on receipt of such a statement as is mentioned in paragraph (1) or (2) notify the relevant authority in which or before whom the application is pending and shall subsequently notify it or him of the result of the proceedings.

(4) On the court receiving notification under paragraph (3) above or equivalent notification from the Court of Session or the High Court in Northern Ireland—

- (a) where the application relates to the merits of rights of custody, all further proceedings in the action shall be stayed unless and until the proceedings under the Hague Convention in the High Court, Court of Session or High Court in Northern Ireland, as the case may, are dismissed, and the parties to the action shall be notified by the proper officer of the stay and of any such dismissal accordingly, and
- (b) where the application is such a one as is specified in section 20(2) of the Act, the proper officer shall notify the parties to the action.

(5) In this rule “relevant authority” includes the High Court, a county court, a magistrates' court, the Court of Session, a sheriff court, a children's hearing within the meaning of Part III of the Social Work (Scotland) Act 1968<sup>(4)</sup> the High Court in Northern Ireland, a county court in Northern Ireland, a court of summary jurisdiction in Northern Ireland or the Secretary of State.

### Transfer of proceedings

**6.12.—(1)** At any stage in the proceedings under the Act the court may, of its own motion or on the application by summons of any party to the proceedings issued on two days' notice, order that the proceedings be transferred to the Court of Session or the High Court in Northern Ireland.

(2) Where an order is made under paragraph (1) the proper officer shall send a copy of the order, which shall state the grounds therefor, together with the originating summons, the documents

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<sup>(3)</sup> Section 20(2) was amended by paragraph 21 of Schedule 1 to the Family Law Act 1986 (c. 55).

<sup>(4)</sup> 1968 c. 49.

accompanying it and any evidence, to the Court of Session or the High Court in Northern Ireland, as the case may be.

(3) Where proceedings are transferred to the Court of Session or the High Court in Northern Ireland the costs of the whole proceedings both before and after the transfer shall be at the discretion of the Court to which the proceedings are transferred.

(4) Where proceedings are transferred to the High Court from the Court of Session or the High Court in Northern Ireland the proper officer shall notify the parties of the transfer and the proceedings shall continue as if they had begun by originating summons under rule 6.2.

### **Interim directions**

**6.13** An application for interim directions under section 5 or section 19 of the Act may where the case is one of urgency be made ex parte on affidavit but shall otherwise be made by summons.

### **Obtaining authenticated copies of decisions**

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

### **Revocation and variation of registered decisions**

**6.15.—(1)** This rule applies to decisions which have been registered under section 16 of the Act and are subsequently varied or revoked by an authority in the Contracting State in which they were made.

(2) The court shall, on cancelling the registration of a decision which has been revoked, notify—

- (a) the person appearing to the court to have care of the child,
- (b) the person on whose behalf the application for registration of the decision was made, and
- (c) and other party to that application,

of the cancellation.

(3) The court shall, on being notified of the variation of a decision, notify—

- (a) the person appearing to the court to have care of the child, and
- (b) any party to the application for registration of the decision

of the variation and any such person may apply by summons in the proceedings for the registration of the decision, for the purpose of making representations to the court before the registration is varied.

(4) Any person appearing to the court to have an interest in the matter may apply by summons in the proceedings for the registration of a decision for the cancellation or variation of the registration.

### **Orders for disclosure of information**

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