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STATUTORY INSTRUMENTS

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**2010 No. 1064**

**The Family Proceedings (Amendment) (No.2) Rules 2010**

**Amendments to the Family Proceedings Rules 1991**

7. For Part IVA, substitute—

**“PART IVA**

**PROCEEDINGS UNDER SECTION 54 OF THE HUMAN  
FERTILISATION AND EMBRYOLOGY ACT 2008**

**Interpretation**

**4A.1.** In this Part of these Rules—

“the Act of 2002” means the Adoption and Children Act 2002 as applied with modifications by the Human Fertilisation and Embryology (Parental Orders) Regulations 2010;

“the Act of 2008” means the Human Fertilisation and Embryology Act 2008;

“the other parent” means any person who is a parent of the child but is not one of the applicants or the woman who carried the child (including any man who is the father by virtue of section 35 or 36 of the Act of 2008 or any woman who is a parent by virtue of section 42 or 43 of that Act);

“parental order” means an order under section 54 of the Act of 2008;

“parental order proceedings” means proceedings for the making of a parental order under the Act of 2008 or an order under any provision of the Act of 2002;

“parental order reporter” means an officer of the service or a Welsh family proceedings officer appointed to act on behalf of a child who is the subject of parental order proceedings;

“provision for contact” means a contact order under section 8 or 34 of the Act of 1989.

**Application of this Part**

**4A.2.** Except where the contrary intention appears, the Rules in this Part apply to parental order proceedings.

**Application of Part IV**

**4A.3.** Subject to the other provisions of this Part, rules 4.1(1), 4.5, 4.6, 4.8, 4.10(2) to (10), 4.11, 4.11A(4) to (10), 4.11B, 4.14(3)(b) and (c), (4) and (6), 4.16(7), 4.17, 4.19, 4.20, and 4.21 apply as appropriate with any necessary modifications to parental order proceedings.

### **Application for a parental order**

**4A.4.**—(1) The application for a parental order shall be made in Form C51.

(2) The applicants shall file Form C51 and any documents referred to in it with the court together with sufficient copies for one to be served on each respondent.

### **How to start parental order proceedings**

**4A.5.**—(1) Parental order proceedings are started when a proper officer issues an application in Form C51 at the request of the applicant.

(2) An application is issued on the date entered in Form C51 by the proper officer.

### **Personal details**

**4A.6.**—(1) The court may direct that a party is not required to reveal—

- (a) the address or telephone number of their private residence;
- (b) the address of the child; or
- (c) the name of a person with whom the child is living, if that person is not the applicant.

(2) Where the court directs that a party is not required to reveal any of the particulars in paragraph (1), that party shall give notice of those particulars to the court in Form C8 and the particulars shall not be revealed to any person unless the court directs otherwise.

(3) Where a party changes his home address during the course of proceedings, that party shall give notice of the change to the court.

### **Who the parties are**

**4A.7.**—(1) In parental order proceedings—

(a) the applicants may be such of the following who satisfy the conditions in section 54(1) of the Act of 2008—

- (i) a husband and wife;
- (ii) civil partners of each other; or
- (iii) two persons who are living as partners in an enduring family relationship who are not within the prohibited degrees of relationship in relation to each other; and

(b) the respondents shall be—

- (i) the woman who carried the child;
- (ii) the other parent (if any);
- (iii) any person in whose favour there is provision for contact; and
- (iv) any other person or body with parental responsibility for the child at the date of the application.

(2) The court shall direct that a person with parental responsibility for the child be made a party to proceedings where that person requests to be one.

(3) The court may at any time direct that—

- (a) any other person or body be made a respondent to the proceedings; or
- (b) a respondent be removed from the proceedings.

(4) If the court makes a direction for the addition or removal of a party, it may give consequential directions about—

- (a) serving a copy of the application form on any new respondent;
- (b) serving relevant documents on the new party; and
- (c) the management of the proceedings.

#### **What the court shall do when the application has been issued**

**4A.8.**—(1) As soon as practicable after the application has been issued the court shall—

- (a) if section 48(1) of the Act of 2002 applies (restrictions on making adoption orders), consider whether it is proper to hear the application;
- (b) subject to paragraph (2), set a date for the first directions hearing;
- (c) appoint a parental order reporter; and
- (d) set a date for the hearing of the application.

(2) Where it considers it appropriate the court may, instead of setting a date for a first directions appointment, give the directions provided for in rule 4A.13.

#### **What a proper officer shall do**

**4A.9.** As soon as practicable after the issue of proceedings a proper officer shall—

- (a) return to the applicants the copies of Form C51 together with Forms C6, C6A and C52 as are appropriate; and
- (b) send a copy of the certified copy of the entry in the register of live births to the parental order reporter.

#### **Service of the application and other documents**

**4A.10.** The applicants shall serve—

- (a) Form C51 and any documents referred to in it, Form C6 and Form C52 on the respondents within 14 days before the hearing or first directions hearing; and
- (b) Form C6A on any local authority or voluntary organisation that has at any time provided accommodation for the child.

#### **Acknowledgement**

**4A.11.** Within 7 days of the service of an application for a parental order, each respondent shall file and serve on all other parties an acknowledgement in Form C52.

#### **Date for first directions hearing**

**4A.12.** Unless the court directs otherwise, the first directions hearing shall be within 4 weeks beginning with the date on which the application is issued.

#### **The first directions hearing**

**4A.13.**—(1) At the first directions hearing in the proceedings the court shall—

- (a) fix a timetable for the filing of—
  - (i) any report from a parental order reporter;
  - (ii) if a statement of facts has been filed, any amended statement of facts; and

- (iii) any other evidence;
  - (b) give directions relating to the report of the parental order reporter and other evidence;
  - (c) consider whether any other person should be a party to the proceedings and, if so, give directions in accordance with rule 4A.7(2) or (3) joining that person as a party;
  - (d) give directions relating to the appointment of a guardian ad litem or next friend for any protected person unless a guardian ad litem or next friend has already been appointed;
  - (e) consider whether the case needs to be transferred to another court and, if so, give directions to transfer the proceedings to another court in accordance with the Allocation Order;
  - (f) give directions about—
    - (i) tracing the other parent or the woman who carried the child;
    - (ii) service of documents;
    - (iii) subject to paragraph (2), disclosure, as soon as possible, of information and evidence to the parties; and
    - (iv) the final hearing.
- (2) Rule 4A.17 (reports of the parental order reporter and disclosure to parties) applies to any direction given under paragraph (1)(f)(iii) as it applies to a direction given under rule 4A.17(1).
- (3) The parties or their legal representatives shall attend the first directions hearing unless the court directs otherwise.
- (4) Directions may also be given at any stage in the proceedings—
- (a) of the court’s own motion; or
  - (b) on the application in Form C2 of a party or the parental order reporter.
- (5) Where the court proposes to exercise the powers in paragraph (1) of its own motion, the court shall first give the parties —
- (a) notice of its intention to do so; and
  - (b) an opportunity to attend and be heard or to make written representations.
- (6) Where there is an application for directions to be made under paragraph (1), rule 4.14(3)(b) and (c),(4) and (6) as applied by rule 4A.3 shall apply.
- (7) For the purposes of giving directions or for such purposes as the court directs—
- (a) the court may set a date for a further directions hearing or other hearing; and
  - (b) the proper officer shall give notice of any date so fixed to the parties and to the parental order reporter.
- (8) Directions of a court which are still in force immediately prior to the transfer of proceedings to another court shall continue to apply following the transfer subject to—
- (a) any changes of terminology which are required to apply those directions to the court to which the proceedings are transferred; and
  - (b) any variation or revocation of the direction.
- (9) The court or proper officer shall—
- (a) take a note of the giving, variation or revocation of a direction under this rule; and

(b) as soon as practicable serve a copy of the note on every party.

(10) After the first directions hearing the court shall monitor compliance by the parties with the court's timetable and directions.

**Where the agreement of the other parent or the woman who carried the child is not required**

**4A.14.**—(1) The following paragraphs apply where the agreement of the other parent or the woman who carried the child to the making of the parental order is not required as the person in question cannot be found or is incapable of giving agreement.

(2) The applicants shall —

- (a) state that the agreement is not required in Form C51 or at a later stage in a written note to be filed with the court;
- (b) file a statement of facts setting out a summary of the history of the case and any other facts to satisfy the court that the other parent or the woman who carried the child cannot be found or is incapable of giving agreement.

(3) On receipt of Form C51 or written note—

(a) a proper officer shall—

- (i) unless the other parent or woman who carried the child cannot be found, inform the other parent or woman who carried the child that their agreement is not required;
- (ii) send a copy of the statement of facts filed in accordance with paragraph (2) (b) to—
  - (aa) the other parent unless the other parent cannot be found;
  - (bb) the woman who carried the child unless the woman cannot be found; and
  - (cc) the parental order reporter; and

(b) if the applicants consider that the other parent or the woman who carried the child is incapable of giving agreement, the court shall consider whether to—

- (i) appoint a guardian ad litem for the other parent or the woman who carried the child; or
- (ii) give directions for an application to be made under rule 9.2(5),

unless a guardian ad litem has already been appointed for the other parent or the woman who carried the child.

**Agreement**

**4A.15.**—(1) Unless the court directs otherwise, agreement of the other parent or the woman who carried the child to the making of the parental order may be given in Form A101A or a form to like effect.

(2) Any form of agreement executed in Scotland shall be witnessed by a Justice of the Peace or a Sheriff.

(3) Any form of agreement executed in Northern Ireland shall be witnessed by a Justice of the Peace.

(4) Any form of agreement executed outside the United Kingdom shall be witnessed by—

- (a) any person for the time being authorised by law in the place where the document is executed to administer an oath for any judicial or other legal purpose;
- (b) a British Consular officer;
- (c) a notary public; or
- (d) if the person executing the document is serving in any of the regular armed forces of the Crown, an officer holding a commission in any of those forces.

### **Parental order reporter**

**4A.16.**—(1) A parental order reporter is appointed to act on behalf of a child who is the subject of parental order proceedings and has a duty to safeguard the interests of that child.

(2) In addition to such of the matters set out in rules 4.11 and 4.11A as applied by rule 4A.3 as are appropriate to parental order proceedings, the parental order reporter shall—

- (a) investigate the matters set out in section 54(1) to (8) of the Act of 2008;
- (b) so far as the parental order reporter considers necessary, investigate any matter contained in the application form or other matter which appears relevant to the making of the parental order;
- (c) advise the court on whether there is any reason under section 1 of the Act of 2002 to refuse the parental order.

### **Reports of the parental order reporter and disclosure to the parties**

**4A.17.**—(1) The court shall consider whether to give a direction that a confidential report of the parental order reporter be disclosed to each party to the proceedings.

(2) Before giving such a direction the court shall consider whether any information should be deleted including information which discloses the particulars referred to in rule 4A.6(1) where a party has given notice under rule 4A.6(2) (disclosure of personal details).

(3) The court may direct that the report shall not be disclosed to a party.

### **Notice of final hearing**

**4A.18.** A proper officer shall give notice in Form C6 to the parties and the parental order reporter—

- (a) of the date and place where the application shall be heard; and
- (b) of the fact that, unless the person wishes or the court requires, the person need not attend.

### **The final hearing**

**4A.19.**—(1) Any person who has been given notice in accordance with rule 4A.18 may attend the final hearing and be heard on the question of whether an order should be made.

(2) The court may direct that any person shall attend a final hearing.

### **Proof of identity of the child**

**4A.20.**—(1) Unless the contrary is shown, the child referred to in the application shall be deemed to be the child referred to in the form of agreement to the making of the parental order where the conditions in paragraph (2) apply.

(2) The conditions are—

- (a) the application identifies the child by reference to a full certified copy of an entry in the registers of live-births;
  - (b) the form of agreement identifies the child by reference to a full certified copy of an entry in the registers of live-births attached to the form; and
  - (c) the copy of the entry in the registers of live-births referred to in sub-paragraph (a) is the same or relates to the same entry in the registers of live-births as the copy of the entry in the registers of live-births attached to the form of agreement.
- (3) Where the precise date of the child's birth is not proved to the satisfaction of the court, the court shall determine the probable date of birth.
- (4) The probable date of the child's birth may be specified in the parental order as the date of the child's birth.
- (5) Where the child's place of birth cannot be proved to the satisfaction of the court—
- (a) the child may be treated as having been born in the registration district of the court where it is probable that the child may have been born in—
    - (i) the United Kingdom;
    - (ii) the Channel Islands; or
    - (iii) the Isle of Man; or
  - (b) in any other case, the particulars of the country of birth may be omitted from the parental order.

#### **Disclosing information to an adult who was subject to a parental order**

**4A.21.**—(1) Subject to paragraph (2) the person who was subject to the parental order has the right, on request in Form A64A, to receive from the court which made the parental order a copy of the following—

- (a) the application form for a parental order (but not the documents attached to that form);
- (b) the parental order and any other orders relating to the parental order proceedings;
- (c) any transcript of the court's decision; and
- (d) a report made to the court by the parental order reporter.

(2) The court shall not provide a copy of a document or order referred to in paragraph (1) unless the person making the request has completed the certificate relating to counselling in Form A64A.

(3) This rule does not apply to a person under the age of 18 years.

#### **Application for recovery orders**

**4A.22.**—(1) An application for any of the orders referred to in section 41(2) of the Act of 2002 (recovery orders) may be made without notice in which case the applicant shall file the application—

- (a) where the application is made by telephone, the next business day after the making of the application; or
- (b) in any other case, at the time when the application is made.

(2) Where the court refuses to make an order on an application without notice it may direct that the application is made on notice in which case the application shall proceed in accordance with rules 4A.1 to 4A.19.

(3) An application for any of the orders referred to in section 41(2) of the Act of 2002 shall be made in Form C2.

(4) The respondents to an application under this rule are—

- (a) in a case where parental order proceedings are pending, all parties to those proceedings;
- (b) any person having parental responsibility for the child;
- (c) any person in whose favour there is provision for contact;
- (d) any person who was caring for the child immediately prior to the making of the application; and
- (e) any person whom the applicant alleges to have effected, or to have been or to be responsible for, the taking or keeping of the child.

#### **Custody, inspection and disclosure of documents and information**

**4A.23.**—(1) All documents relating to parental order proceedings shall, while they are in the custody of the court, be kept in a place of special security.

(2) Any person who obtains any information in the course of, or relating to, parental order proceedings shall treat that information as confidential and shall only disclose it if—

- (a) the disclosure is necessary for the proper exercise of that person's duties; or
- (b) the information is requested by—
  - (i) a court or public authority (whether in Great Britain or not) having power to determine parental order proceedings and related matters, for the purpose of that court or authority discharging its duties relating to those proceedings and matters; or
  - (ii) a person who is authorised in writing by the Secretary of State to obtain the information for the purposes of research.

#### **Documents held by the court not to be inspected or copied without the court's leave**

**4A.24.** Subject to the provisions of these Rules or any direction given by the court—

- (a) no document or order held by the court in parental order proceedings and related proceedings under the Act of 2002 shall be open to inspection by any person; and
- (b) no copy of any such document or order, or of an extract from any such document or order, shall be taken by or given to any person.

#### **Orders**

**4A.25.**—(1) A parental order takes effect from the date when it is made, or such later date as the court may specify.

(2) In proceedings in Wales a party may request that an order be drawn up in Welsh as well as in English.

#### **Copies of orders**

**4A.26.**—(1) Within 7 days beginning with the date on which the final order was made in proceedings, or such shorter time as the court may direct, a proper officer shall send—

- (a) a copy of the order in Form C53 to the applicant;



- (b) a copy which is sealed, authenticated with the stamp of the court or certified as a true copy of a parental order, to the Registrar General;
  - (c) a notice of the making or refusal of—
    - (i) the final order; or
    - (ii) an order quashing or revoking a parental order or allowing an appeal against an order in proceedings,
- to every respondent and, with the leave of the court, any other person.
- (2) A notice of refusal of a parental order shall be in Form C54.
  - (3) The proper officer shall also send notice of the making of a parental order to—
    - (a) any court in Great Britain which appears to the proper officer to have made any such order as is referred to in section 46(2) of the Act of 2002 (order relating to parental responsibility for, and maintenance of, the child); and
    - (b) the principal registry, if it appears to the proper officer that a parental responsibility agreement has been recorded at the principal registry.
  - (4) A copy of any final order may be sent to any other person with the leave of the court.
  - (5) The proper officer shall send a copy of any order made during the course of the proceedings to all the parties to those proceedings unless the court directs otherwise.
  - (6) If an order has been drawn up in Welsh as well as in English in accordance with rule 4A.25(2), any reference in this rule to sending an order is to be taken as a reference to sending both the Welsh and English orders.

#### **Amendment and revocation of orders**

- 4A.27.**—(1) This rule applies to an application under paragraph 4 of Schedule 1 to the Act of 2002 (amendment of a parental order and revocation of direction).
- (2) The application shall be made in Form C2.
  - (3) Subject to paragraph (4), an application may be made without serving a copy of the application.
  - (4) The court may direct that an application be served on such persons as it thinks fit.
  - (5) Where the court makes an order granting the application, a proper officer shall send the Registrar General a notice—
    - (a) specifying the amendments; or
    - (b) informing the Registrar General of the revocation,
- giving sufficient particulars of the order to enable the Registrar General to identify the case.”.