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STATUTORY INSTRUMENTS

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**2010 No. 2955**

**The Family Procedure Rules 2010**

**PART 12**

**PROCEEDINGS RELATING TO CHILDREN EXCEPT PARENTAL  
ORDER PROCEEDINGS AND PROCEEDINGS FOR APPLICATIONS  
IN ADOPTION, PLACEMENT AND RELATED PROCEEDINGS**

**CHAPTER 6**

**PROCEEDINGS UNDER THE 1980 HAGUE CONVENTION, THE EUROPEAN  
CONVENTION, THE COUNCIL REGULATION, AND THE 1996 HAGUE CONVENTION**

*SECTION 1*

*Proceedings under the 1980 Hague Convention or the European Convention*

**Interpretation**

**12.44.** In this section—

“the 1985 Act” means the Child Abduction and Custody Act 1985;

“Central Authority” means, in relation to England and Wales, the Lord Chancellor;

“Contracting State” has the meaning given in—

(a) section 2 of the 1985 Act in relation to the 1980 Hague Convention; and

(b) section 13 of the 1985 Act in relation to the European Convention; and

“decision relating to custody” has the same meaning as in the European Convention.

(“the 1980 Hague Convention” and the “the European Convention” are defined in rule 2.3)

**Where to start proceedings**

**12.45.** Every application under the 1980 Hague Convention or the European Convention must be—

(a) made in the High Court and issued in the principal registry; and

(b) heard by a Judge of the High Court unless the application is;

(i) to join a respondent; or

(ii) to dispense with service or extend the time for acknowledging service.

**Evidence in support of application**

**12.46.** Where the party making an application under this section does not produce the documents referred to in Practice Direction 12F, the court may—

- (a) fix a time within which the documents are to be produced;
- (b) accept equivalent documents; or
- (c) dispense with production of the documents if the court considers it has sufficient information.

### **Without-notice applications**

**12.47.**—(1) This rule applies to applications—

- (a) commencing or in proceedings under this section;
- (b) for interim directions under section 5 or 19 of the 1985 Act<sup>(1)</sup>;
- (c) for the disclosure of information about the child and for safeguarding the child's welfare, under rule 12.57;
- (d) for the disclosure of relevant information as to where the child is, under section 24A of the 1985 Act<sup>(2)</sup>; or
- (e) for a collection order, location order or passport order.

(2) Applications under this rule may be made without notice, in which case the applicant must 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.

(3) Where an order is made without notice, the applicant must serve a copy of the order on the other parties as soon as practicable after the making of the order, unless the court otherwise directs.

(4) Where the court refuses to make an order on an application without notice, it may direct that the application is made on notice.

(5) Where any hearing takes place outside the hours during which the court office is usually open—

- (a) if the hearing takes place by telephone, the applicant's solicitors will, if practicable, arrange for the hearing to be recorded; and
- (b) in all other cases, the court or court officer will take a note of the proceedings.

(Practice Direction 12E (Urgent Business) provides further details of the procedure for out of hours applications. See also Practice Direction 12D (Inherent Jurisdiction (including Wardship Proceedings)).)

### **Directions**

**12.48.**—(1) As soon as practicable after an application to which this section applies has been made, the court may give directions as to the following matters, among others—

- (a) whether service of the application may be dispensed with;
- (b) whether the proceedings should be transferred to another court under rule 12.54;
- (c) expedition of the proceedings or any part of the proceedings (and any direction for expedition may specify a date by which the court must issue its final judgment in the proceedings or a specified part of the proceedings);
- (d) the steps to be taken in the proceedings and the time by which each step is to be taken;

(1) Section 5 was amended by section 115(2), (4)(a) (i), (4)(b) and 4(c) of the Adoption and Children Act 2002.

(2) Section 24A was inserted by section 67(4) of the Family Law Act 1986.

- (e) whether the child or any other person should be made a party to the proceedings;
- (f) if the child is not made a party to the proceedings, the manner in which the child's wishes and feelings are to be ascertained, having regard to the child's age and maturity and in particular whether an officer of the Service or a Welsh family proceedings officer should report to the court for that purpose;
- (g) where the child is made a party to the proceedings, the appointment of a children's guardian for that child unless a children's guardian has already been appointed;
- (h) the attendance of the child or any other person before the court;
- (i) the appointment of a litigation friend for a child or for any protected party, unless a litigation friend has already been appointed;
- (j) the service of documents;
- (k) the filing of evidence including expert evidence; and
- (l) whether the parties and their representatives should meet at any stage of the proceedings and the purpose of such a meeting.

(Rule 16.2 provides for when the court may make the child a party to the proceedings and rule 16.4 for the appointment of a children's guardian for the child who is made a party. Rule 16.5 (without prejudice to rule 16.6) requires a child who is a party to the proceedings but not the subject of those proceedings to have a litigation friend.)

(2) Directions of a court which are in force immediately prior to the transfer of proceedings to another court under rule 12.54 will 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 directions.

(3) The court or court officer will—

- (a) take a note of the giving, variation or revocation of directions under this rule; and
- (b) as soon as practicable serve a copy of the directions order on every party.

## **Answer**

**12.49.**—(1) Subject to paragraph (2) and to any directions given under rule 12.48, a respondent must file and serve on the parties an answer to the application within 7 days beginning with the date on which the application is served.

(2) The court may direct a longer period for service where the respondent has been made a party solely on one of the following grounds—

- (a) a decision relating to custody has been made in the respondent's favour; or
- (b) the respondent appears to the court to have sufficient interest in the welfare of the child.

## **Filing and serving written evidence**

**12.50.**—(1) The respondent to an application to which this section applies may file and serve with the answer a statement verified by a statement of truth, together with any further evidence on which the respondent intends to rely.

(2) The applicant may, within 7 days beginning with the date on which the respondent's evidence was served under paragraph (1), file and serve a statement in reply verified by a statement of truth, together with any further evidence on which the applicant intends to rely.

**Adjournment**

**12.51.** The court will not adjourn the hearing of an application to which this section applies for more than 21 days at any one time.

**Stay of proceedings upon notification of wrongful removal etc.**

**12.52.—**(1) In this rule and in rule 12.53—

- (a) “relevant authority” means —
  - (i) the High Court;
  - (ii) a county court;
  - (iii) a magistrates’ court;
  - (iv) the Court of Session;
  - (v) a sheriff court;
  - (vi) a children’s hearing within the meaning of section 93 of the Children (Scotland) Act 1995;
  - (vii) the High Court in Northern Ireland;
  - (viii) a county court in Northern Ireland;
  - (ix) a court of summary jurisdiction in Northern Ireland;
  - (x) the Royal Court of Jersey;
  - (xi) a court of summary jurisdiction in Jersey;
  - (xii) the High Court of Justice of the Isle of Man;
  - (xiii) a court of summary jurisdiction in the Isle of Man; or
  - (xiv) the Secretary of State; and
- (b) “rights of custody” has the same meaning as in the 1980 Hague Convention.

(2) Where a party to proceedings under the 1980 Hague Convention knows that an application relating to the merits of rights of custody is pending in or before a relevant authority, that party must file within the proceedings under the 1980 Hague Convention a concise statement of the nature of that application, including the relevant authority in or before which it is pending.

(3) On receipt of a statement filed in accordance with paragraph (2) above, a court officer will notify the relevant authority in or before which the application is pending and will subsequently notify the relevant authority of the result of the proceedings.

(4) On receipt by the relevant authority of a notification under paragraph (3) from the High Court or equivalent notification from the Court of Session, the High Court in Northern Ireland or the High Court of Justice of the Isle of Man—

- (a) all further proceedings in the action will be stayed<sup>(GL)</sup> unless and until the proceedings under the 1980 Hague Convention in the High Court, Court of Session, the High Court in Northern Ireland or the High Court of Justice of the Isle of Man are dismissed; and
- (b) the parties to the action will be notified by the court officer of the stay<sup>(GL)</sup> and dismissal.

**Stay of proceedings where application made under s.16 of the 1985 Act (registration of decisions under the European Convention)**

**12.53.—**(1) A person who—

- (a) is a party to—
  - (i) proceedings under section 16 of the 1985 Act; or

- (ii) proceedings as a result of which a decision relating to custody has been registered under section 16 of the 1985 Act; and
- (b) knows that an application is pending under—
  - (i) section 20(2) of the 1985 Act;
  - (ii) Article 21(2) of the Child Abduction and Custody (Jersey) Law 2005; or
  - (iii) section 42(2) of the Child Custody Act 1987 (an Act of Tynwald),

must file within the proceedings under section 16 of the 1985 Act a concise statement of the nature of the pending application.

(2) On receipt of a statement filed in accordance with paragraph (1) above, a court officer will notify the relevant authority in or before which the application is pending and will subsequently notify the relevant authority of the result of the proceedings.

(3) On receipt by the relevant authority of a notification under paragraph (2) from the High Court or equivalent notification from the Court of Session, the High Court in Northern Ireland or the High Court of Justice of the Isle of Man, the court officer will notify the parties to the action.

### **Transfer of proceedings**

- 12.54.**—(1) At any stage in proceedings under the 1985 Act the court may—
- (a) of its own initiative; or
  - (b) on the application of a party with a minimum of two days' notice;
- order that the proceedings be transferred to a court listed in paragraph (4).
- (2) Where the court makes an order for transfer under paragraph (1)—
- (a) the court will state its reasons on the face of the order;
  - (b) a court officer will send a copy of the order, the application and the accompanying documents (if any) and any evidence to the court to which the proceedings are transferred; and
  - (c) the costs of the proceedings both before and after the transfer will be at the discretion of the court to which the proceedings are transferred.
- (3) Where proceedings are transferred to the High Court from a court listed in paragraph (4), a court officer will notify the parties of the transfer and the proceedings will continue as if they had been commenced in the High Court.
- (4) The listed courts are the Court of Session, the High Court in Northern Ireland, the Royal Court of Jersey or the High Court of Justice of the Isle of Man.

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

- 12.55.**—(1) This rule applies to decisions which—
- (a) have been registered under section 16 of the 1985 Act; and
  - (b) are subsequently varied or revoked by an authority in the Contracting State in which they were made.
- (2) The court will, 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) any other party to the application.
- (3) The court will, on being informed of the variation of a decision, notify—

- (a) the party appearing to the court to have care of the child; and
  - (b) any party to the application for registration of the decision;
- and any such person may apply to make representations to the court before the registration is varied.
- (4) Any person appearing to the court to have an interest in the proceedings may apply for the registration of a decision for the cancellation or variation of the decision referred to in paragraph (1).

#### **The central index of decisions registered under the 1985 Act**

**12.56.** A central index of decisions registered under section 16 of the 1985 Act, together with any variation of those decisions made under section 17 of that Act, will be kept by the principal registry.

#### **Disclosure of information in proceedings under the European Convention**

**12.57.** 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<sup>(GL)</sup> evidence.