

PART 3

MISCELLANEOUS

**15. Applications for removal, return etc., of child**

- (1) An application —
  - (a) under section 17(1), 18(1) or 18(2) of the Act to remove a child from the custody of the person with whom the child has his home; or
  - (b) under section 19(1) of the Act for an order for the return of a child who has been removed, in breach of section 17 or 18 of the Act, from the custody of such a person, or
  - (c) under section 19(2) of the Act for an order directing a person not to remove the child from the custody of such a person, or
  - (d) under section 20(2) of the Act for leave to give notice under section 20(1)(b) of the Act,

shall be made in accordance with paragraph (2).

- (2) The application under paragraph (1) shall be made —
  - (a) if an application for an adoption order is pending, by application on notice to the Chief Registrar in those proceedings;
  - (b) in any other case, by filing an originating application in the General Registry.

(3) Any respondent to an originating application made in accordance with paragraph (2)(b) who wishes to claim relief shall do so by means of an answer to the application which shall be made within 7 days of the service of a copy of the application on the respondent.

(4) Subject to paragraph (5), the Chief Registrar shall serve a copy of the application, and of any answer to the application, and a notice of the time of the hearing —

- (a) in a case where proceedings for an adoption order are pending (or where such proceedings have subsequently been commenced), on all the parties to those proceedings and on the guardian ad litem;
- (b) in any other case, on any person against whom an order is sought in the application and on the Department; and
- (c) in any case, on such other person or body, not being the child, as the Court thinks fit.

(5) If in the case of any application under this rule, a serial number has been assigned to any person who has applied or who proposes to apply for an adoption order, or such a person applies to the Chief Registrar in that behalf before filing the originating application and a serial number is assigned to him accordingly —

- (a) the Chief Registrar shall ensure that the documents to be served under paragraph (4) do not disclose the identity of that person to any other

party to the application who is not already aware of that person's identity, and

- (b) the proceedings on the application shall be conducted with a view to securing that that person is not seen by or made known to any other party to the application who is not already aware of his identity, except with his consent.

(6) Unless otherwise directed, any prospective adopter who is served with a copy of an application under this rule, and who wishes to oppose the application, shall file his application for an adoption order within 14 days or before or at the time when he is heard on the application under this rule, whichever is the sooner.

(7) The Court may at any time give directions, and if giving directions under paragraph (6) shall give further directions, as to the conduct of any application under this rule and in particular as to the appointment of a guardian ad litem of the child.

(8) Where an application under paragraph (1)(a) or (d) is granted or an application under paragraph (1)(b) or (c) is refused, the Court may thereupon, if an application for an adoption order has been filed, treat the hearing of the application as the hearing of the application for an adoption order and refuse an adoption order accordingly.

(9) Where an application under this rule is determined the Chief Registrar shall serve notice of the effect of the determination on all parties.

(10) Paragraphs (5) to (9) apply to an answer made under this rule as they apply to an originating application under this rule as if the answer were the originating application.

## **16. Proposed foreign adoption proceedings**

(1) An application for an order authorising a proposed foreign adoption shall be made by filing in the General Registry an originating application in Form 1.

(2) Subject to paragraph (3), Part 2 (except rule 5(1)) and this Part apply to an application for an order authorising a proposed foreign adoption as they apply to an application for an adoption order as if such an order were an adoption order.

(3) An applicant for an order authorising a proposed foreign adoption shall provide evidence of the law of adoption in the country in which he is domiciled, and an affidavit as to that law sworn by such a person as is mentioned in section 4(1) of the Evidence Act 1983<sup>10</sup> (that is to say a person who is suitably qualified on account of his knowledge or experience to give evidence as to that law) shall be admissible in evidence without notice.

## **17. Requirements applying to prospective adopters of child from abroad**

(1) The requirements which a prospective adopter must satisfy before bringing a child into the Island are that —

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<sup>10</sup> 1983 c.7

- (a) the prospective adopter has applied to an adoption agency for assessment of his suitability to be an adoptive parent and has followed such procedure and provided such information to the agency as it may request in order to enable it to undertake such an assessment;
  - (b) an adoption agency has notified the prospective adopter in writing of a decision to approve him as suitable to be an adoptive parent; and
  - (c) the Department has notified the prospective adopter in writing that it is prepared to issue a certificate confirming to the relevant overseas authority that —
    - (i) the prospective adopter has been assessed and approved as suitable to be an adoptive parent and
    - (ii) the child will be authorised to reside permanently within the British Islands, if entry clearance is granted and an adoption order is made.
- (2) A prospective adopter must also within the period of 14 days beginning with the date on which he brings the child into the Island give notice to the Department of —
- (a) his intention to apply for an adoption order, in accordance with section 7 of the Act; or
  - (b) his intention not to give the child a home.
- (3) In this rule —

"the relevant overseas authority" means a person or body performing functions in the country in which the child is habitually resident which correspond to the functions of an adoption agency;

"entry clearance" has the same meaning as in the Immigration Act 1971 (an Act of Parliament)<sup>11</sup>, as it has effect in the Island<sup>12</sup>.

## **18. Power of court to limit cross-examination**

The Court may limit the issues on which a guardian ad litem may be cross-examined.

## **19. Application for declaration as to an adoption effected overseas**

(1) An application for a declaration as to an adoption effected overseas under section 49A of the Act shall be made by petition, supported by an affidavit by the petitioner or, in the case of a petitioner under the age of 18, by his next friend, verifying the petition and giving particulars of every person whose interest may be affected by the proceedings and his relationship to the petitioner.

(2) Unless otherwise directed, the petition shall state —

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<sup>11</sup> 1971 c.77

<sup>12</sup> SI 1991/2630

- (a) the names of those persons who are to be respondents pursuant to paragraph (5) and the residential address of each of them as at the date of the presentation of the petition;
- (b) the date and place of the petitioner's birth;
- (c) the date and place of the adoption order and the court or other tribunal or authority which made it;
- (d) all other material facts alleged by the petitioner to justify the making of the declaration and the grounds on which the application is made;
- (e) either that the petitioner is domiciled in the Island on the date of the presentation of the petition or that he has been habitually resident in the Island throughout the period of one year ending with that date.

(3) There shall be annexed to the petition a copy of the petitioner's birth certificate (which, if it is available, shall be the one made after the adoption referred to in the petition) and, unless otherwise directed, a certified copy of the adoption order effected under the law of any country outside the British Islands.

(4) Where a document produced under paragraph (3) is not in English it shall, unless otherwise directed, be accompanied by a translation certified by a notary public or authenticated by affidavit.

(5) The following, if alive, shall be respondents to the application —

- (a) those whom the petitioner claims are his adoptive parents for the purpose of section 29 of the Act; or
- (b) those whom the petitioner claims are not his adoptive parents for the purpose of that section.

(6) Without prejudice to rule 2(2), Order 51F of the Rules of the High Court shall apply with any necessary modifications to the application as it applies to an application for a declaration under section 10A of the Legitimacy Act 1985<sup>13</sup>.

(7) A declaration as to an adoption effected overseas under section 49A of the Act shall be in Form 4.

## **20. Costs**

On the determination of any proceedings to which these rules apply or on the making of an interim order, the Court may make such order as to costs as it thinks just and, in particular, may order the applicant to pay —

- (a) the expenses incurred by the guardian ad litem;
- (b) the expenses incurred by any respondent in attending the hearing,

or such part of those expenses as the Court thinks proper.

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<sup>13</sup> 1985 c.10

**21. Notice and copies of orders etc.**

(1) In proceedings to which these rules apply orders shall be made in the form indicated below —

Interim order	Form 5
Adoption order	Form 6
Convention adoption order	Form 6 (with the word "Convention" inserted where appropriate)
Order authorising a proposed foreign adoption	Form 6 (with the words "order authorising a proposed foreign adoption substituted for the words "adoption order" wherever they appear).

(2) Within 7 days after the making of an order in proceedings to which these rules apply the Chief Registrar shall send a copy of the order to the applicant.

(3) Where an adoption order or an order authorising a proposed foreign adoption is made or refused or an interim order is made, the Chief Registrar shall serve notice to that effect on every respondent.

(4) A copy of any order may be supplied to the applicant and, with the leave of the Court, to any other person.

(5) Within 7 days of the making of an order to annul a Convention adoption order or a Convention adoption, the Chief Registrar shall send a copy of the order to the applicant, every respondent and the Department

**22. Custody, inspection and disclosure of documents and information**

(1) All documents relating to proceedings under the Act (or under any previous enactment relating to adoption) shall, while they are in the custody of the Court, be kept in a place of special security.

(2) A party who is an individual and is referred to in a confidential report supplied to the Court by an adoption agency, the Department or a guardian ad litem may inspect, for the purposes of the hearing, that part of any such report which refers to him, subject to any direction by the Court that —

- (a) no part of one or any of the reports shall be revealed to that party, or
- (b) the part of one or any of the reports referring to that party shall be revealed only to that party's legal advisers, or
- (c) the whole or any other part of one or any of the reports shall be revealed to that party.

(3) Any person who obtains any information in the course of, or relating to, any proceedings mentioned in paragraph (1) shall treat that information as confidential and shall only disclose it if —

- (a) the disclosure is necessary for the proper exercise of his duties, or
- (b) the information is requested —

- (i) by a court or public authority (whether in the Island or not) having power to determine adoptions and related matters, for the purpose of the discharge of its duties in that behalf, or
- (ii) by a person who is authorised in writing by the Clerk of the Rolls to obtain the information sought for the purposes of research.

(4) Save as required or authorised by a provision of any enactment or of these rules or with the leave of the Court, no document or order held by or lodged with the Court in proceedings under the Act (or under any previous enactment relating to adoption) shall be open to inspection by any person, and no copy of any such document or order, or of an extract from any such document or order, shall be taken by or issued to any person.