

PART 2

ORDERS WITH RESPECT TO CHILDREN

6. Application of Part 2

This Part applies to family proceedings in the Court so far as they relate to any matter under Part 1 or 2 of the 2001 Act with respect to a child.

7. Interpretation

In this Part —

"the 2001 Act" means the Children and Young Persons Act 2001⁵;

"application" means an application made under or by virtue of Part 1 or Part 2 of the 2001 Act or under this Part, and "applicant" shall be construed accordingly;

"the Department" means the Department of Health and Social Security;

"directions appointment" means a hearing for directions under rule 15;

"family proceedings" means —

(a) any proceedings under any inherent jurisdiction of the Court in relation to wardship, maintenance or the upbringing of children;

(b) any proceedings under Part 1, Part 2, Part 4 or Part 5 of the 2001 Act;

"child" means a person under 18 years of age but, in relation to proceedings in which an application is made under paragraph 2 or 6 of Schedule 1 to the 2001 Act, includes a person who has reached the age of 18;

"welfare officer" means a person who has been asked to prepare a report under section 30 of the 2001 Act.

8. Application for permission to commence proceedings

(1) Where the permission of the Court is required to bring any proceedings under Part 1 or 2 of the 2001 Act, the person seeking permission must file —

(a) a written request for permission setting out the reasons for the application; and

(b) a draft of the application for the making of which permission is sought, together with sufficient copies for one to be served on each respondent.

(2) On considering a request for permission filed under paragraph (1) the Court shall —

(a) grant the request, whereupon the Chief Registrar shall inform the person making the request of the decision; or

(b) direct that a date be fixed for the hearing of the request, whereupon the Chief Registrar shall fix such a date and give such notice as the Court directs to the person making the request and to such other persons as the Court requires to be notified of the date fixed.

(3) In the case of a request for permission to bring proceedings under Schedule 1 to the 2001 Act, the draft application under paragraph (1) must be accompanied by a statement setting out the financial details which the person seeking permission

⁵ 2001 c.20

believes to be relevant to the request and containing a declaration that it is true to the best of the maker's knowledge and belief, together with sufficient copies for one to be served on each respondent.

9. Respondents

- (1) Subject to paragraphs (2) to (5), the following must be respondents to any application under Part 1 or 2 of the 2001 Act relating to a child —
 - (a) in every case —
 - (i) every person whom the applicant believes to have parental responsibility for the child;
 - (ii) the Department, where the child is in the care of the Department;
 - (iii) where the application is to extend, vary or revoke an order, the parties to the proceedings leading to that order;
 - (b) in the case of an application for an order under Schedule 1 to the 2001 Act, those persons whom the applicant believes to be interested in or affected by the proceedings.
- (2) In any such proceedings a person may file a request in writing that he or another person —
 - (a) be joined as a party, or
 - (b) cease to be a party.
- (3) Subject to paragraph (4), the Court shall deal with a request under paragraph (2) as follows —
 - (a) in the case of a request to be joined as a party, it may grant it without a hearing or representations, whereupon the Chief Registrar shall inform the parties and the person making the request of the decision;
 - (b) direct that a date be fixed for the hearing of the request, whereupon the Chief Registrar shall fix such a date and give notice of the date and a copy of the request —
 - (i) to the applicant, in the case of a request to be joined as a party;
 - (ii) to the parties, in the case of a request that a party cease to be a party;or
 - (c) invite the parties or any of them to make written representations, within a specified period, as to whether the request should be granted, and upon the expiry of that period act in accordance with sub-paragraph (a) or (b).
- (4) Where a person with parental responsibility requests that he be joined under paragraph (2)(a), the Court shall grant the request.
- (5) In such proceedings the Court may direct —
 - (a) that a person who would not otherwise be a respondent under these rules be joined as a party to the proceedings; or
 - (b) that a party to the proceedings cease to be a party.

10. Applications

- (1) Subject to paragraph (4) any person making any application under Part 1 or 2 of the 2001 Act must —

- (a) file the application in respect of each child in the appropriate form, together with sufficient copies for one to be served on each respondent; and
 - (b) serve a copy of the application, endorsed in accordance with paragraph (2)(b), on each respondent 14 days before the date fixed under paragraph (2)(a).
- (2) On receipt of the documents filed under paragraph (1)(a) the Chief Registrar shall —
- (a) fix the date for a hearing or an appointment for directions, allowing sufficient time for the applicant to comply with paragraph (1)(b);
 - (b) endorse the date so fixed on the copies filed by the applicant, and
 - (c) return the copies to the applicant forthwith.
- (3) The applicant must, when complying with paragraph (1)(b), give written notice of the proceedings, and of the date and place fixed for the appointment or hearing, to the following persons —
- (a) in every case —
 - (i) the Department or any voluntary body, where it is providing accommodation for the child;
 - (ii) any person who is caring for the child at the time when the proceedings are commenced;
 - (b) in the case of an application under section 6(1) of the 2001 Act (appointment of guardian), the father of the child if he does not have parental responsibility;
 - (c) in the case of an application for an order specified in section 11(1) of the 2001 Act, every person whom the applicant believes —
 - (i) to be named in a court order with respect to the child which has not ceased to have effect;
 - (ii) to be a party to pending proceedings in respect of the child; or
 - (iii) to be a person with whom the child has lived for at least 3 years before the application;unless (where (i) or (ii) applies) the applicant believes that the court order or pending proceedings are not relevant to the application.
- (4) An application for an order under section 11(1)(c) or (d) of the 2001 Act may be made without notice, in which case the applicant must —
- (a) file the application in respect of each child in the appropriate form —
 - (i) where the application is made by telephone, within 24 hours after the making of the application; or
 - (ii) in any other case, at the time when the application is made; and
 - (b) serve a copy of the application on each respondent within 48 hours after the making of the order.
- (5) Where the Court refuses to make an order on an application without notice, it may direct that the application be made with notice to such parties as the Court may direct.
- (6) An application under Schedule 1 to the 2001 Act must be accompanied by a statement setting out the financial details which the person seeking permission believes to be relevant to the request and containing a declaration that it is true to the

best of the maker's knowledge and belief, together with sufficient copies for one to be served on each respondent.

11. Withdrawal of application

- (1) An application may be withdrawn only with permission of the Court.
- (2) Subject to paragraph (3), a person seeking permission to withdraw an application must file and serve on the parties a written request for permission setting out the reasons for the request.
- (3) The request under paragraph (2) may be made orally to the Court if the parties and the welfare officer (if any) are present.
- (4) On receipt of a written request under paragraph (2) the Court shall —
 - (a) grant the request if the parties consent in writing and the Court thinks fit in which case the Chief Registrar shall notify the parties and the welfare officer of the granting of the request; or
 - (b) direct that a date be fixed for the hearing of the request, whereupon the Chief Registrar shall fix such a date and give at least 7 days' notice to the parties and the welfare officer of the date fixed.

12. Service

- (1) Where service of a document is required under this Part it may be effected —
 - (a) if the person to be served is not known by the person serving to be acting by an advocate —
 - (i) by delivering it to him personally, or
 - (ii) by delivering it at, or by sending it by post to, his residence or his last-known residence;
 - (b) if the person to be served is known by the person serving to be acting by an advocate —
 - (i) by delivering the document at, or sending it by post to, the advocate's address for service, or
 - (ii) by sending a legible copy of it by facsimile transmission to the advocate's office.
- (2) Where a child who is party to proceedings to which this Part applies is required by these rules or other rules of court to serve a document, service must be effected by —
 - (a) the advocate acting for the child;
 - (b) where there is no such advocate, the Court.
- (3) Service of any document on a child must, subject to any direction of the Court, be effected by service on —
 - (a) the advocate acting for the child;
 - (b) where there is no such advocate, with permission of the Court, the child.
- (4) Where the Court refuses permission under paragraph (3)(b) it shall give a direction under paragraph (7).
- (5) A document served by post shall, unless the contrary is proved, be deemed to have been served on the second business day after posting.

- (6) At or before the first directions appointment in, or hearing of, proceedings to which this Part applies, the applicant must file a statement that service of a copy of the proceedings has been effected under rule 10(1)(b) and notice of the proceedings has been given under rule 10(3), and the statement must indicate —
 - (a) the manner, date, time and place of service, or
 - (b) where service has been effected by post, the date, time and place of posting.
- (7) In proceedings to which this Part applies the Court may direct that a requirement of these Rules or other rules of court to serve a document shall not apply or shall be effected in such manner as the Court directs.

13. Answer to application

- (1) Within 14 days of service of an application for an order under section 11 of or Schedule 1 to the 2001 Act, each respondent must file and serve on the parties an answer to the application in the appropriate form.
- (2) Following service of an application to which this Part applies, other than an application under rule 8 or an application to which paragraph (1) applies, a respondent may file a written answer, which must be served on the other parties not less than 2 days before the date fixed for the hearing of the application.

14. Welfare officer

- (1) The welfare officer must, unless excused by the Court, attend a hearing if the Chief Registrar gives him notice that his report will be given or considered at that hearing, and any party may question the welfare officer about his report at the hearing.
- (2) A welfare officer must file a copy of any written report at or by such time as the Court directs or, in the absence of a direction, at least 5 days before a hearing of which he is given notice under paragraph (1); and the Chief Registrar shall, as soon as practicable, serve a copy of the report on the parties.

15. Directions

- (1) In this rule "party" includes a welfare officer where the direction concerns a report under section 30 of the 2001 Act.
- (2) In proceedings to which this Part applies the Court may, subject to paragraph (3), give, vary or revoke directions for the conduct of the proceedings, including —
 - (a) the timetable for the proceedings;
 - (b) varying the time within which or by which an act is required, by these Rules or by other rules of court, to be done;
 - (c) the attendance of the child;
 - (d) the service of documents;
 - (e) the submission of evidence including experts' reports;
 - (f) the preparation of welfare reports under section 30 of the 2001 Act;
 - (g) consolidation with other proceedings.
- (3) Directions under paragraph (2) may be given, varied or revoked either —
 - (a) on the Court's own initiative, having given the parties notice of its intention to do so and an opportunity to attend and be heard or to make written representations;

- (b) on the written request of a party specifying the direction which is sought, filed and served on the other parties; or
 - (c) on the written request of a party specifying the direction which is sought, to which the other parties consent and which they or their representatives have signed.
- (4) In an urgent case a request under paragraph (3)(b) may, with the permission of the Court, be made —
 - (a) orally, or
 - (b) without notice to the parties, or
 - (c) both orally and without notice to the parties.
- (5) On receipt of a written request under paragraph (3)(b) the Chief Registrar shall fix a date for the hearing of the request and give not less than 2 days' notice to the parties of the date so fixed.
- (6) On considering a request under paragraph (3)(c) the Court shall either —
 - (a) grant the request, whereupon the Chief Registrar shall inform the parties of the decision, or
 - (b) direct that a date be fixed for the hearing of the request, whereupon the Chief Registrar shall fix such a date and give not less than 2 days' notice to the parties of the date so fixed.
- (7) A party may apply for an order to be made under section 12(5) (interim orders) of the 2001 Act in accordance with paragraph (3)(b) or (c).
- (8) The power to give directions under paragraph (2) applies where the Court is considering making an order under section 11 of the 2001 Act on its own initiative.
- (9) The clerk of the Court shall take a note of the giving, variation or revocation of a direction under this rule and the Chief Registrar shall serve as soon as practicable a copy of the note on any party who was not present at the giving, variation or revocation.

16. Timing of proceedings

- (1) Where this Part or other rules of court provide a period of time within which or by which a certain act is to be performed in the course of proceedings to which this Part applies, that period may not be extended otherwise than by a direction under rule 15.
- (2) At —
 - (a) the postponement or adjournment of any hearing or directions appointment in the course of proceedings to which this Part applies, or
 - (b) the conclusion of any such hearing or directions appointment other than one at which the proceedings are determined, or as soon as practicable thereafter,the Court or the Chief Registrar shall fix a date upon which the proceedings shall come before the Court again for such purposes as the Court directs, and give notice to the parties and the welfare officer of the date so fixed.

17. Attendance of parties

- (1) Subject to paragraph (2), a party must attend a directions appointment of which he has been given notice under rule 15(5) unless the Court otherwise directs.
- (2) Proceedings or any part of them shall take place in the absence of any party, including the child, if —

- (a) the Court considers it in the interests of the child, having regard to the matters to be discussed or the evidence likely to be given, and
- (b) the party is represented by an advocate;

and when considering the interests of the child under sub-paragraph (a) the Court shall give the advocate for the child (if any) and, if he is of sufficient understanding, the child an opportunity to make representations.

- (3) Subject to paragraph (4), where at the time and place appointed for a hearing or directions appointment the applicant appears but one or more of the respondents do not, the Court may proceed with the hearing or appointment.
- (4) The Court shall not begin to hear an application in the absence of a respondent unless —
 - (a) it is proved to the satisfaction of the Court that he received reasonable notice of the date of the hearing, or
 - (b) the Court is satisfied that the circumstances of the case justify proceeding with the hearing.
- (5) Where at the time and place appointed for a hearing or directions appointment one or more of the respondents appear but the applicant does not, the Court may refuse the application or, if sufficient evidence has previously been received, proceed in the absence of the applicant.
- (6) Where at the time and place appointed for a hearing or directions appointment neither the applicant nor any of the respondents appears, the Court may refuse the application.
- (7) Unless the Court otherwise directs, a hearing of, or directions appointment in, proceedings to which this Part applies shall be in private.

18. Documentary evidence

- (1) Subject to paragraphs (4) and (5), in proceedings to which this Part applies a party must file and serve on the parties and the welfare officer —
 - (a) written statements of the substance of the oral evidence which the party intends to adduce at a hearing of, or directions appointment in, those proceedings, which must be dated and signed by the person making the statement and must contain a declaration that the maker of the statement believes it to be true and understands that it may be placed before the Court; and
 - (b) copies of any documents, including experts' reports, upon which the party intends to rely at a hearing of, or directions appointment in, those proceedings,at or by such time as the Court directs or, in the absence of a direction, before the hearing or appointment.
- (2) A party may, subject to any direction of the Court about the timing of statements under this Part, file and serve on the parties a statement which is supplementary to a statement served under paragraph (1).
- (3) At a hearing or directions appointment a party may not, without the permission of the Court, adduce evidence or seek to rely on a document with respect to which he has failed to comply with the requirements of paragraph (1).
- (4) In proceedings for an order under section 11 of the 2001 Act a party must —

- (a) neither file nor serve any document other than as required or authorised by this Part, and
- (b) in completing a form, neither give information nor make a statement which is not required or authorised by that form,

without the permission of the Court.

- (5) In proceedings for an order under section 11 of the 2001 Act no statement or copy may be filed under paragraph (1) until such time as the Court directs.

19. Expert evidence — examination of child

- (1) No person may, without the permission of the Court, cause the child to be medically or psychiatrically examined, or otherwise assessed, for the purpose of the preparation of expert evidence for use in the proceedings.
- (2) An application for permission under paragraph (1) must, unless the Court otherwise directs, be served on all parties to the proceedings.
- (3) Where the permission of the Court has not been given under paragraph (1), no evidence arising out of an examination or assessment to which that paragraph applies may be adduced without the permission of the Court.

20. Amendment

- (1) Subject to rule 18(2), a document which has been filed or served in proceedings to which this Part applies may not be amended without the permission of the Court which must, unless the Court otherwise directs, be requested in writing.
- (2) On considering a request for permission to amend a document the Court shall either —
 - (a) grant the request, whereupon the Chief Registrar shall inform the person making the request of the decision; or
 - (b) invite the parties or any of them to make representations, within a specified period, as to whether such an order should be made.
- (3) A person amending a document must file it and serve it on those persons on whom it was served before amendment, and the amendments must be identified.

21. Hearing

- (1) The Court may give directions as to the order of speeches and evidence at a hearing or directions appointment in the course of proceedings to which this Part applies.
- (2) Subject to directions under paragraph (1) at such a hearing or directions appointment the parties must adduce their evidence in the following order —
 - (a) the applicant;
 - (b) any party with parental responsibility for the child;
 - (c) other respondents;
 - (d) the child, if he is a party to the proceedings.
- (3) After the final hearing of proceedings to which this Part applies, the Court shall deliver its judgment as soon as practicable.
- (4) When making an order or refusing an application, the Court shall state any findings of fact and the reasons for the Court's decision.

- (5) An order shall be recorded by the Court or the Chief Registrar in the appropriate form.
- (6) Subject to paragraph (7), a copy of an order made in accordance with paragraph (5) shall, as soon as practicable after it is made, be served by the Chief Registrar on the parties to the proceedings in which it made and on any person with whom the child is living.
- (7) Within 48 hours after the making, without notice of the application, of an order under section 11(1)(c) or (d) of the 2001 Act the applicant must serve a copy of the order in the appropriate form on —
 - (a) each party, and
 - (b) any person who has actual care of the child or who had such care immediately before the making of the order.

22. Confidentiality of documents

Notwithstanding any rule of court to the contrary, no document, other than a record of an order, held by the Court and relating to the proceedings to which this Part applies shall be disclosed, other than to —

- (a) a party;
- (b) the advocate for a party;
- (c) the certifying officer or the Legal Aid Committee; or
- (d) a welfare officer,

without the permission of the Court.

23. Expiration of wardship

The period of 42 days after the making of an application for a child to be made a ward of court is prescribed for the purpose of section 20(2) of the 2001 Act (period on expiration of which child ceases to be a ward of court unless wardship order is made).