

PART 5

PROCEEDINGS UNDER PARTS II AND III OF THE CHILD CUSTODY ACT 1987

40. Interpretation of Part 5

In this Part —

"the 1987 Act" means the Child Custody Act 1987;

"the appropriate court" and "British jurisdiction" have the same meanings as in Part 4; and

other expressions have the same meanings as in Parts II, III and IV of the 1987 Act.

41. Contents of application

(1) An application under the Hague Convention or the Custody Convention must 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 applicant in the matter and the grounds of the application; and
- (e) particulars of any proceedings (including proceedings outside the Island) relating to the child,

and must 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 Custody Convention.

(2) In applications under the Hague Convention, in addition to the matters specified in paragraph (1) —

- (a) an application for the purposes of Article 8 for the return of a child must 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) an application for the purposes of Article 15 shall identify the proceedings in which the request that such a declaration be obtained was made.

(3) In applications under the Custody Convention, in addition to the matters specified in paragraph (1) the application must 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.

42. Respondents

The respondents to an application under the Hague Convention or the Custody Convention must be —

- (a) the person alleged to have brought into the Island 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 Island 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.

43. Acknowledgment of service

The time limited for acknowledging service of an application by which an application is made under the Hague Convention or the Custody Convention shall be 7 days after service of the application (including the day of service) or, in the case of a respondent referred to in rule 42(d) or (e), such further time as the Court may direct.

44. Evidence

- (1) The applicant, on filing an application under the Hague Convention or the Custody Convention, may file affidavit evidence in support of his application and must serve a copy of it on the respondent with the application.
- (2) A respondent to an application under the Hague Convention or the Custody Convention may file affidavit evidence in support of his application and must serve a copy of it on the applicant within 7 days after service of the application on him.
- (3) The applicant under the Hague Convention or the Custody Convention may within 7 days thereafter file a statement in reply and must serve a copy of it on the respondent.

45. Hearing

Any application under the Hague Convention or the Custody Convention shall be dealt with in private unless the Court otherwise directs.

46. Dispensing with service

The Court may dispense with service of any application or notice in any proceedings under Part II or III of the 1987 Act.

47. Adjournment of application

The hearing of an application under the Hague Convention or the Custody Convention may be adjourned for a period not exceeding 21 days at any one time.

48. Stay of proceedings

- (1) A party to proceedings under the Hague Convention must, where he knows that an application relating to the merits of rights of custody is pending in or before a relevant authority, file a concise statement of the nature of the application which is pending, including the authority before which it is pending.
- (2) A party to —
 - (a) pending proceedings under section 38 of the 1987 Act, or under section 16 of the U.K. Act, or
 - (b) proceedings as a result of which a decision relating to custody has been registered under the said section 38 or section 16,

must, where he knows that such an application as is specified in section 42(2) of the 1987 Act, or section 20(2) of the U.K. Act, is pending in or before a relevant authority, file a concise statement of the nature of the application which is pending.

- (3) The Chief Registrar 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 equivalent to that mentioned in paragraph (3) from the appropriate court in any British jurisdiction —
 - (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 court in the British jurisdiction are dismissed, and the Chief Registrar shall notify the parties to the action of the stay and of any such dismissal accordingly; and
 - (b) where the application is such a one as is specified in section 42(2) of the 1987 Act, or section 20(2) of the U.K. Act, the Chief Registrar shall notify the parties to the action.
- (5) In this rule "relevant authority" includes —
 - (a) the Court and a court of summary jurisdiction in the Island,
 - (b) the High Court, a county court and a magistrates' court in England and Wales,
 - (c) the Court of Session, a sheriff court and a children's hearing in Scotland,
 - (d) the High Court, a county court and a court of summary jurisdiction in Northern Ireland, and
 - (e) the Secretary of State.

49. Transfer of proceedings

- (1) At any stage in any proceedings under Part II or III of the 1987 Act the Court may, on its own initiative or on the application by notice of any party to the proceedings issued on 2 days' notice, order that the proceedings be transferred to the appropriate court in any British jurisdiction.
- (2) Where an order is made under paragraph (1) the Chief Registrar shall send a copy of the order, which shall state the grounds for it, together with the application, the documents accompanying it and any evidence, to the appropriate court in the relevant British jurisdiction.
- (3) Where proceedings are transferred to the appropriate court in any British jurisdiction, the costs of the whole proceedings both before and after the transfer shall be in the discretion of the court to which the proceedings are transferred.
- (4) Where proceedings are transferred to the Court from the appropriate court in any British jurisdiction, the Chief Registrar shall notify the parties of the transfer and the proceedings shall continue as if they had been begun by application under rule 41.

50. Interim directions

An application for interim directions under section 27 or section 41 of the 1987 Act may, where the case is one of urgency, be made without notice and supported by evidence on affidavit, but shall otherwise be made with notice to the other parties to the action.

51. Obtaining authenticated copies of decisions

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 Chief Registrar as to that intention be entitled to obtain an office copy sealed with the

official seal of the Court of any order made in the Court relating to the child in respect of whom the application is made.

52. Revocation and variation of registered decisions

- (1) This rule applies to decisions which have been registered under section 38 of the 1987 Act and are subsequently varied or revoked by an authority in the Contracting State in which they were made.
- (2) Where the Court cancels the registration of a decision which has been revoked, the Chief Registrar shall notify the following of the cancellation —
 - (a) the person appearing to the Court to have actual custody of the child;
 - (b) the person on whose behalf the application for registration of the decision was made; and
 - (c) any other party to that application.
- (3) Where the Court is notified of the variation of a decision, the Chief Registrar shall notify the following of the variation —
 - (a) the person appearing to the Court to have actual custody of the child; and
 - (b) any party to the application for registration of the decision;

and any such person may apply by notice 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 notice in the proceedings for the registration of a decision for the cancellation or variation of the registration.

53. Orders for disclosure of information

At any stage in proceedings under the Custody 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.