

PART 5

GENERAL

**85. Application**

This Part applies to all proceedings in the High Court under the Act, but has effect subject to —

- (a) the provisions of any other Part, and
- (b) where the proceedings relate to any matter under Part 1 or 2 of the Children and Young Persons Act 2001, the provisions of Order 44 of the Rules of Court.

*Service*

**86. Service on advocate**

(1) Where a document is required by these rules to be sent to any person who is acting by an advocate, service shall, subject to any other direction or order, be effected—

- (a) by sending the document by post to the advocate's address for service;  
or
- (b) by sending a legible copy of the document by facsimile transmission or electronic mail to the advocate's office.

(2) Where no other mode of service is prescribed, directed or ordered, service may additionally be effected by leaving the document at the advocate's address.

**87. Service on litigant in person**

(1) Subject to paragraph (3) and to any other direction or order, where a document is required by these rules to be sent to any person who is acting in person, service shall be effected by sending the document by post to the address given by him or, if he has not given an address for service, to his last known address.

(2) Subject to paragraph (3), where no other mode of service is prescribed, directed or ordered, service may additionally be effected by delivering the document to him or by leaving it at the address mentioned in paragraph (1).

(3) Where it appears to a Deemster that it is impracticable to deliver the document to the person to be served and that, if the document were left at, or sent by post to, the address specified in paragraph (1) it would be unlikely to reach him, the Deemster may dispense with service of the document.

**88. Service out of the Island**

(1) Any document in proceedings to which these Rules apply may be served out of the Island without leave either in the manner prescribed by these Rules or in accordance with Order 6 of the Rules of Court.

(2) Where an application is to be served on a person out of the Island, the time within which that person must give notice of intention to defend shall be

determined by the Chief Registrar, and the notice in Form 5 shall be amended accordingly.

*Disability*

**89. Person under disability must sue by next friend etc.**

(1) In this rule and rule 90 —

"patient" means a person who, by reason of mental disorder within the meaning of the Mental Health Act 1998, is incapable of managing and administering his property and affairs;

"person under disability" means a person who is a minor or a patient;

"Part 7" means Part 7 of the Mental Health Act 1998.

(2) A person under disability may begin and prosecute any proceedings to which these Rules apply by his next friend and may defend any such proceedings by his guardian ad litem and, except as otherwise provided by this rule, it shall not be necessary for a guardian ad litem to be appointed by the court.

(3) No person's name shall be used in any proceedings as next friend of a person under disability unless he is the Attorney General or the documents mentioned in paragraph (8) have been filed.

(4) Where a person is authorised under Part 7 to conduct legal proceedings in the name of a patient or on his behalf, that person shall, subject to paragraph (5), be entitled to be next friend or guardian ad litem of the patient in any proceedings to which these Rules apply and to which his authority extends.

(5) Where a person entitled to defend any proceedings to which these Rules apply is a patient and there is no person authorised under Part 7 to defend the proceedings in his name or on his behalf, then —

(a) the Attorney General shall, if he consents, be the patient's guardian ad litem, but at any stage of the proceedings an application may be made on not less than 4 days' notice to the Attorney General for the appointment of some other person as guardian;

(b) in any other case, an application may be made on behalf of the patient for the appointment of a guardian ad litem;

and there shall be filed in support of any application under this paragraph the documents mentioned in paragraph (8).

(6) Where an application or answer has been served on a person whom there is reasonable ground for believing to be a person under disability and no notice of intention to defend has been given, or answer or affidavit in answer filed, on his behalf, the party at whose instance the document was served shall, before taking any further steps in the proceedings, apply to a Deemster for directions as to whether a guardian ad litem should be appointed to act for that person in the proceedings, and on any such application the Deemster may, if he considers it necessary in order to protect the interests of the person served, order that some proper person be appointed his guardian ad litem.

(7) No notice of intention to defend shall be given, or answer or affidavit in answer filed, by or on behalf of a person under disability unless the person giving the notice or filing the answer or affidavit —

- (a) is the Attorney General or, in a case to which paragraph (5) applies, is the Attorney General or has been appointed by the court to be guardian ad litem; or
  - (b) in any other case, has filed the documents mentioned in paragraph (8).
- (8) The documents referred to in paragraphs (3), (5) and (7) are —
- (a) a written consent to act by the proposed next friend or guardian ad litem;
  - (b) where the person under disability is a patient and the proposed next friend or guardian ad litem is authorised under Part 7 to conduct the proceedings in his name or on his behalf, an office copy of the order or other authorisation made or given under Part 7; and
  - (c) except where the proposed next friend or guardian ad litem is authorised as mentioned in sub-paragraph (b), a certificate by the advocate acting for the person under disability —
    - (i) that he knows or believes that the person to whom the certificate relates is a minor or patient, stating (in the case of a patient) the grounds of his knowledge or belief and, where the person under disability is a patient, that there is no person authorised as aforesaid, and
    - (ii) that the person named in the certificate as next friend or guardian ad litem has no interest in the case or matter in question adverse to that of the person under disability and that he is a proper person to be next friend or guardian.

**90. Service on person under disability**

(1) Where a document to which rule 12 applies is required to be served on a person under disability, it shall be served—

- (a) in the case of a minor who is not also a patient, on his parent or guardian or, if he has no parent or guardian, on the person with whom he resides or in whose care he is;
- (b) in the case of a patient—
  - (i) on the person (if any) who is authorised under Part 7 to conduct in the name of the patient or on his behalf the proceedings in connection with which the document is to be served, or
  - (ii) if there is no person so authorised, on the Attorney General if he has consented under rule 89 to be the guardian ad litem of the patient, or
  - (iii) in any other case, on the person with whom the patient resides or in whose care he is:

Provided that the court may order that a document which has been, or is to be, served on the person under disability or on a person other than one mentioned in subparagraph (a) or (b) shall be deemed to be duly served on the person under disability.

(2) Where a document is served in accordance with paragraph (1) it shall be endorsed with a notice in Form 34; and after service has been effected the person at whose instance the document was served shall, unless the Attorney General is the guardian ad litem of the person under disability or the court otherwise directs, file an affidavit by the person on whom the document was served stating whether the contents of the document were, or its purport was, communicated to the person under disability and, if not, the reasons for not doing so.

**91. Application for annulment order on ground of mental disorder**

(1) Where an application for an annulment order has been made on the ground that at the time of the marriage the respondent was suffering from mental disorder within the meaning of the Mental Health Act 1998 of such a kind or to such an extent as to be unfitted for marriage, then, whether or not the respondent gives notice of intention to defend, the applicant shall not proceed with the case without the leave of the court.

(2) The court may make it a condition of granting leave under paragraph (1) that some proper person be appointed to act as guardian ad litem of the respondent.

**92. Guardian ad litem**

(1) Without prejudice to rule 56, if in any proceedings to which these Rules apply it appears to the court that any child ought to be separately represented, the court may appoint—

- (a) the Attorney General, or
- (b) some other proper person,

(provided, in either case, that he consents) to be the guardian ad litem of the child, with authority to take part in the proceedings on the child's behalf.

(2) An order under paragraph (1) may be made by the court of its own motion or on the application of a party to the proceedings or of the proposed guardian ad litem.

(3) The court may at any time direct that an application be made by a party for an order under paragraph (1) and may stay the proceedings until the application has been made.

(4) Unless otherwise directed, on making an application for an order under paragraph (1) the applicant shall —

- (a) unless he is the proposed guardian ad litem, file a written consent by the proposed guardian to act as such;
- (b) unless the proposed guardian ad litem is the Attorney General, file a certificate by an advocate that the proposed guardian has no interest in the proceedings adverse to that of the child and that he is a proper person to be a guardian.

(5) Unless otherwise directed, a person appointed under this rule to be the guardian ad litem of a child in proceedings to which these Rules apply shall be treated as a party for the purpose of any provision of these rules requiring a document to be served on or notice to be given to a party to the proceedings.

*Evidence*

**93. Evidence by affidavit**

(1) On any application evidence may be given by affidavit unless these Rules otherwise provide or the court otherwise directs, but the court may, on the application of any party, order the attendance for cross-examination of the person making any such affidavit; and where, after such an order has been made, that person does not attend, his affidavit shall not be used as evidence without the leave of the court.

(2) Paragraph (1) does not apply to matrimonial proceedings, except proceedings on an application to which Part 3 applies.

**94. Evidence of marriage outside the Island**

(1) The celebration of a marriage outside the Island and its validity under the law of the country where it was celebrated may, in any proceedings in which the existence and validity of the marriage is not disputed, be proved by the evidence of one of the parties to the marriage and the production of a document purporting to be—

- (a) a marriage certificate or similar document issued under the law in force in that country; or
- (b) a certified copy of an entry in a register of marriages kept under the law in force in that country.

(2) Where a document produced by virtue of paragraph (1) is not in English it shall, unless otherwise directed, be accompanied by a translation certified by a notary public or authenticated by affidavit.

*Miscellaneous*

**95. Notice of intention to defend**

(1) In these rules any reference to a notice of intention to defend is a reference to an acknowledgment of service in Form 6 containing a statement to the effect that the person by whom or on whose behalf it is signed intends to defend the proceedings to which the acknowledgment relates, and any reference to giving notice of intention to defend is a reference to returning such a notice to the General Registry.

(2) In relation to any person on whom there is served a document requiring or authorising an acknowledgment of service to be returned to the General Registry, references in these rules to the time limited for giving notice of intention to defend are references—

- (a) to 7 days after service of the document, in the case of notice of intention to defend an application under Part 2, and
- (b) in any other case, to 14 days or such other time as may be fixed.

- (3) Subject to paragraph (2) a person may give notice of intention to defend even though he has already returned to the General Registry an acknowledgment of service not constituting such a notice.

**96. Orders for transfer of proceedings**

- (1) In this rule "order for transfer" means —
  - (a) an order under section 58(2) of the Act that a matter be reheard and determined by a court of summary jurisdiction;
  - (b) an order under section 91(3) of the Act that an application be heard and determined by a court of summary jurisdiction.
- (2) The court shall not, either of its own motion or on the application of any party, make an order for transfer unless the parties have either—
  - (a) had an opportunity of being heard on the question, or
  - (b) consented to such an order.
- (3) Where the parties, or any of them, desire to be heard on the question of an order for transfer, the Chief Registrar shall give the parties notice of a date, time and place at which the question will be considered.
- (4) Where an order for transfer is made, the Chief Registrar shall, unless otherwise directed, give notice of the transfer to the parties.

**97. Orders: general**

- (1) A copy of every divorce order, annulment order, separation order or order of presumption of death and dissolution of marriage shall be sent by the Chief Registrar to every party to the proceedings.
- (2) Where any other order made in proceedings to which these Rules apply has been drawn up, the Chief Registrar shall, unless otherwise directed, send a copy of the order to every party affected by it.
- (3) Where a party against whom the order is made is acting by an advocate, a copy may, if the Chief Registrar thinks fit, be sent to that party as if he were acting in person, as well as to his advocate.
- (4) It shall not be necessary for the person in whose favour the order was made to prove that a copy of the order has reached any other party to whom it is required to be sent.
- (5) A sealed or other copy of an order made in open court shall be issued to any person requiring it on payment of the prescribed fee.
- (6) This rule is without prejudice to rule 49.

**98. No notice of intention to proceed after year's delay**

Order 47 rule 11 of the Rules of Court (notice of intention to proceed after a year's delay) shall not apply to any proceedings to which these Rules apply.

**99. Appeals from Chief Registrar**

- (1) Any party may appeal to a Deemster from an order or decision made or given by the Chief Registrar in proceedings to which these Rules apply.

(2) On hearing an appeal under this rule the Deemster may exercise his own discretion in substitution for that of the Chief Registrar.

(3) Unless the court otherwise orders, any notice under this rule must be issued within 7 days of the order or decision appealed against and served not less than 14 days before the day fixed for the hearing of the appeal.

(4) Appeals under this rule shall be heard in chambers unless the Deemster otherwise directs.

(5) Unless the court otherwise orders, an appeal under this rule shall not operate as a stay of proceedings on the order or decision appealed against.

#### **100. Inspection etc of documents retained in court**

(1) Subject to rule 101 —

(a) a party to any proceedings to which these Rules apply or his advocate, or

(b) the Attorney General, or

(c) a person appointed under rule 92 to be the guardian ad item of a child in any proceedings,

may have a search made for, and may inspect and bespeak a copy of, any document filed in those proceedings.

(2) Any person not entitled to a copy of a document under paragraph (1) who intends to make an application under the Hague Convention in a Contracting State other than the United Kingdom shall, if he satisfies the Chief Registrar that he intends to make such an application, be entitled to obtain a copy bearing the seal of the court of any order relating to the custody of the child in respect of whom the application is to be made.

In this paragraph "the Hague Convention" and "Contracting State" have the meanings given by sections 23 and 24 respectively of the Child Custody Act 1987<sup>20</sup>.

(3) Except as provided by rules 34(4) and 80(10) and paragraphs (1) and (2), no document filed other than an order made in open court shall be open to inspection by any person without the leave of the Chief Registrar, and no copy of any such document, or of an extract from any such document, shall be taken by, or issued to, any person without such leave.

#### **101. Disclosure of addresses**

(1) Nothing in these rules shall be construed as requiring any party to reveal the address of his private residence (or that of any child) save by order of the court.

(2) Where a party declines to reveal an address in reliance upon paragraph (1), he shall give notice of that address to the court in Form 35 and that address shall not be revealed to any person save by order of the court.

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<sup>20</sup> 1987 c.11