

Statutory Document No. 214/11

HIGH COURT ACT 1991
CIVIL PARTNERSHIP ACT 2011

RULES OF THE HIGH COURT (CIVIL PARTNERSHIP) 2011

PART 1

INTRODUCTORY

1. Title
2. Commencement
3. Interpretation
4. Application of Rules of Court

PART 2

FORMATION OF CIVIL PARTNERSHIP

5. Consent to civil partnership of minor
6. Appeal against refusal to issue civil partnership schedule

PART 3

TERMINATION OF CIVIL PARTNERSHIP

7. Application of Part 3
- Commencement etc of termination proceedings*
8. Termination proceedings to be begun by application
 9. Applicant relying on Civil Evidence Act 1973 s.11 or 12
 10. Signing of initial application
 11. Making of initial application
 12. Intervention by person named
 13. Discontinuance of proceedings before service of application

Service of application etc.

14. Service of initial application
15. Consent to making of order

Statements of case and amendment

16. Supplemental application and amendment of application
17. Filing of answer to application
18. Filing of reply and subsequent statements of case
19. Filing and amendment of statements of case after directions for trial
20. Contents of answer and subsequent statements of case
21. Allegation against third person in statement of case
22. Service of statements of case
23. Supplemental answer and amendment of statement of case
24. Particulars

Preparations for trial

25. Directions for trial
26. Determination of place of trial
27. Directions as to allegations under section 42(5)(a) of Act
28. Stay where proceedings continuing in another jurisdiction

Evidence

29. Evidence at trial

Trial etc.

30. Mode and place of trial
31. Trial of issue
32. Date of trial
33. Disposal of cases in special procedure list
34. Right to be heard on question of costs
35. Respondent's statement as to arrangements for children
36. Procedure for complying with section 61
37. Applications relating to children of the family
38. Restoration of matters adjourned at the hearing
39. Application for re-hearing

Orders

40. Orders
41. Application for revocation of dissolution order
42. Application under section 46(2)
43. Intervention to show cause by Attorney General
44. Intervention to show cause by person other than Attorney General
45. Revocation of provisional order by consent
46. Final order on application
47. Final order on notice
48. Evidence to be filed in gender recognition cases
49. Final order

Documents: gender recognition

50. Documents in proceedings concerning gender recognition

PART 4

APPLICATIONS FOR FINANCIAL PROVISION ETC.

51. Financial provision: general
52. Right to be heard on financial questions
53. Application by applicant or respondent for financial provision
54. Application by parent, guardian etc for financial provision in respect of children
55. Service of application
56. Application for financial provision after order of court of summary jurisdiction
57. Children to be separately represented on certain applications
58. General provisions as to evidence etc on application for financial provision
59. Evidence on application for property adjustment or avoidance of disposition order
60. Service of affidavit in answer or reply
61. Information on application for consent order for financial relief
62. Investigation of application for financial provision
63. Open proposals

64. Request for further information etc.
65. Order on application for financial provision
66. Request for periodical payments order at same rate as interim order
67. Application for order under Schedule 5 paragraph 65(2)(a)
68. Pensions

PART 5

OTHER CIVIL PARTNERSHIP PROCEEDINGS

Failure to provide reasonable maintenance

69. Application in case of failure to provide reasonable maintenance

Alteration of maintenance agreement

70. Application for alteration of maintenance agreement during lifetime of parties
71. Application for alteration of maintenance agreement after death of one party
72. Further proceedings on application under rule 71
73. Application of other rules

Summary determination of property disputes

74. Applications under section 64

Family homes and domestic violence

75. Applications under Part 5 of MPA 2003
76. Hearing of applications under Part 5 of MPA 2003
77. Enforcement of orders made on applications under Part 5 of MPA 2003
78. Bail application

Application for declaration as to status

79. Application under section 56 for declaration as to status
80. General provisions as to proceedings under rule 79

Financial relief after foreign dissolution

81. Application for permission under Schedule 7 Part 1
82. Application for order for financial relief or avoidance of transaction order under Schedule 7 Part 1

83. Application for order under Schedule 7 paragraph 16 preventing transaction

PART 6

GENERAL

84. Application

Service

85. Service on advocate
86. Service on litigant in person
87. Service out of the Island

Disability

88. Person under disability must sue by litigation friend etc.
89. Service on person under disability
90. Application for nullity order on ground of mental disorder
91. Guardian ad litem

Evidence

92. Evidence by affidavit
93. Evidence of civil partnership outside the Island

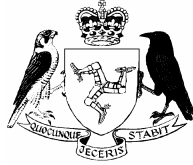
Miscellaneous

94. Notice of intention to defend
95. Orders for transfer of proceedings
96. Orders: general
97. No striking out of dormant claim
98. Appeals from Chief Registrar
99. Inspection etc of documents retained in court
100. Disclosure of addresses

Schedule 1 Contents of application

Schedule 2 Statement of arrangements for children

Schedule 3 Staying of termination proceedings



Statutory Document No. 214/11

HIGH COURT ACT 1991
CIVIL PARTNERSHIP ACT 2011

RULES OF THE HIGH COURT (CIVIL PARTNERSHIP) 2011

Laid before Tynwald 2011
Coming into operation 6th April 2011

The Deemsters make these Rules under section 25 of the High Court Act 1991¹ and sections 36(2), 41(2), 43(4), 59(2), 62, 64(5) and 90 of, and paragraph 15 of Schedule 2, paragraphs 37, 54 and 57 of Schedule 5 and paragraphs 2, 4 and 12 of Schedule 7 to, the Civil Partnership Act 2011².

PART 1

INTRODUCTORY

1. Title

The title of these Rules is the Rules of the High Court (Civil Partnership) 2011.

2. Commencement

These Rules come into operation on the 6th April 2011.

3. Interpretation

(1) In these Rules —

"the Act" means the Civil Partnership Act 2011;

"avoidance of disposition order" means an order under paragraph 65(3) or (4) of Schedule 5 to the Act;

"business day" means any day other than —

(a) a Saturday, Sunday, Christmas Day or Good Friday; or

¹ 1991 c.12

² 2011 c.2

(b) a bank holiday within the meaning of the Bank Holidays Act 1989³;

"the court" means the High Court;

"defended proceedings" means termination proceedings which are not undefended proceedings;

"file" means file in the General Registry;

"financial provision" means—

(a) an avoidance of disposition order,

(b) a financial provision order,

(c) an interim maintenance order,

(d) a property adjustment order,

(e) a variation order, or

(f) a pension sharing order;

"financial relief" has the same meaning as in paragraph 65(1) of Schedule 5 to the Act;

"initial application" means an application by which termination proceedings are begun;

"interim maintenance order" means an order under Part 7 of Schedule 5 to the Act;

"institution" has the same meaning as in the Custody Act 1995⁴;

"consent order" means an order under paragraph 57 of Schedule 5 to the Act;

"MPA 2003" means the Matrimonial Proceedings Act 2003⁵;

"notice of intention to defend" has the meaning given by rule 94;

"party cited" means a person named in a statement of case who has intervened under rule 12,

"person named" includes a person described as "passing under the name of A.B.";

"prescribed form" means a form prepared or approved under section 27B of the High Court Act 1991, and in relation to any

³ 1989 c.5

⁴ 1995 c.1

⁵ 2003 c.7

matter means a form so prepared or approved with respect to that matter;

"the Rules of Court" means the Rules of the High Court of Justice 2009⁶;

"special procedure list" has the meaning given by rule 25(3);

"statement of case" means an initial application, answer or reply or any subsequent document in the nature of an answer or reply;

"undefended proceedings" means termination proceedings —

- (a) in which no answer has been filed or any answer filed has been struck out, or
- (b) which is proceeding only on the respondent's answer and in which no reply or answer to the respondent's answer has been filed or any such reply or answer has been struck out, or
- (c) to which rule 17(4) applies and in which no notice has been given under that rule or any notice so given has been withdrawn, or
- (d) in which an answer has been filed claiming relief but in which no statement of case has been filed opposing the making of an order on the initial application or answer or any statement of case or part of a statement of case opposing the making of such order has been struck out;

"termination proceedings" means proceedings for a dissolution order, a nullity order, a presumption of death order or a separation order;

"variation order" means an order under paragraph 31 of Schedule 6 to the Act.

- (2) Proceedings begun on an initial application shall be treated as pending for the purposes of these rules even though a final order has been made on the application.
- (3) A reference in these Rules to a provision of the Pension Schemes Act 1993 (an Act of Parliament)⁷ or the Welfare Reform and Pensions Act 1999 (an Act of Parliament)⁸, or to an instrument made under an Act of Parliament, is to that provision or instrument as it has effect in the Island.

⁶ SD 352/09

⁷ 1993 c.48

⁸ 1999 c.30

4. Application of Rules of Court

- (1) Subject to the provisions of these Rules and of any enactment, the Rules of Court shall apply with any necessary modifications to the commencement of, and to the practice and procedure in, any proceedings to which these Rules apply.
- (2) Without prejudice to paragraph (1) —
 - (a) the Rules of Court apply to an application under these Rules (other than an application made in the course of pending proceedings) as they apply to a claim or claim form;
 - (b) in relation to proceedings to which these Rules apply, references in the Rules of Court to a claimant or defendant shall be construed as references to an applicant or respondent respectively.

PART 2

FORMATION OF CIVIL PARTNERSHIP

5. Consent to civil partnership of minor

- (1) This rule applies to —
 - (a) an application under paragraph 3(3)(b), 4(2) or 10(5) of Schedule 2 to the Act for the consent of the court to the civil partnership of a minor; and
 - (b) application under paragraph 10(2) of Schedule 2 to the Act for an order dispensing with the consent of any person to the civil partnership of a minor.
- (2) An application to which this rule applies shall be dealt with in private unless the court otherwise directs.
- (3) The application may be brought without the intervention of the applicant's litigation friend, unless the court otherwise directs.
- (4) Where the application follows a refusal to give consent to a civil partnership, every person who has refused consent shall be made a respondent to the application.
- (5) The application shall, unless the court orders otherwise, be served not less than 7 days before the date upon which the application is to be heard.

6. Appeal against refusal to issue civil partnership schedule

- (1) An appeal under section 16 of the Act against a refusal by a registrar to issue a civil partnership schedule shall be made by filing a notice of

appeal, to which shall be annexed a copy of any notice of objection under section 14 of the Act.

- (2) Any person who has objected to the issue of the schedule shall be a respondent to the appeal.
- (3) A copy of the notice of appeal shall, unless the court orders otherwise, be served not less than 7 days before the date upon which the appeal is to be heard on —
 - (a) any respondent to the appeal;
 - (b) the other proposed civil partner; and
 - (c) any person whose consent is required to the proposed civil partnership.
- (4) Any person specified in paragraph (3), in addition to the appellant, may appear and be heard at the hearing of the appeal.

PART 3

TERMINATION OF CIVIL PARTNERSHIP

7. Application of Part 3

This Part applies —

- (a) to termination proceedings, and
- (b) for specifying the procedure for complying with the requirements of section 61 of the Act (restriction on orders affecting children).

Commencement etc of termination proceedings

8. Termination proceedings to be begun by application

- (1) All termination proceedings shall be begun by an application (an "initial application") in the prescribed form.
- (2) Unless otherwise directed, every initial application shall contain the information required by Schedule 1.
- (3) Where an application for a dissolution order, nullity order or separation order discloses that there is a minor child of the family who is —
 - (a) under 16 or
 - (b) over that age and receiving instruction at an educational establishment or undergoing training for a trade or profession,

the initial application shall be accompanied by a statement, signed by the applicant personally and if possible agreed with the respondent, containing the information specified in Schedule 2, to which shall be attached a copy of any medical report or order of a court mentioned in it.

9. Applicant relying on Civil Evidence Act 1973 s.11 or 12

A applicant who, in reliance on section 11 or 12 of the Civil Evidence Act 1973⁹, intends to adduce evidence that a person was convicted of an offence by or before a court in the British Islands or by a court-martial there or elsewhere, must include in his initial application a statement of his intention with particulars of —

- (a) the conviction and the date of it,
- (b) the court or court-martial which made the conviction, and
- (c) the issue in the proceedings to which the conviction is relevant.

10. Signing of initial application

Every initial application shall be signed by the applicant's advocate in his own name or the name of his firm, or by the applicant if he sues in person.

11. Making of initial application

- (1) Unless otherwise directed on an application made without notice, a certified copy of the register entry of the civil partnership to which the proceedings relate shall be filed with the initial application.
- (2) Where an initial application for an annulment order is made under section 48(1)(d) of the Act, the applicant must file with his application a copy of an interim gender recognition certificate issued to him or to the respondent (as the case may be), unless otherwise directed on an application made without notice.
- (3) Where an initial application for an annulment order is made under section 48(1)(e) of the Act and a full gender recognition certificate has been issued to the respondent, the applicant must file a copy of that full certificate with his application, unless otherwise directed on an application made without notice.
- (4) Where there is before the court an initial application which has not been dismissed or otherwise disposed of by a final order, another application by the same applicant in respect of the same civil

⁹ 1973 c.18

partnership shall not be made without the permission of the court granted on an application made in the pending proceedings:

Provided that no such permission shall be required where it is proposed, after the expiration of the period of one year from the date of the civil partnership, to make an application for a dissolution order alleging such of the facts mentioned in section 42(5) of the Act as were alleged in an application for a separation order made before the expiration of that period.

- (5) The initial application shall be made by filing it, together with any statement and report required by rule 8(3), with as many copies of the application as there are persons to be served and a copy of the statement and report required by rule 8(3) for service on the respondent.
- (6) There shall be annexed to every copy of the application for service a notice in the prescribed form, and there shall also be annexed to the copy application for service on a respondent the copy of any statement and report filed pursuant to paragraph (5).

12. Intervention by person named

- (1) Where an initial application alleges that the respondent has been guilty of an improper association with a person named, the court may direct that the person named be entitled to intervene in the proceedings.
- (2) For that purpose the court may give notice to the person named, the applicant and any other party who has given notice of intention to defend of a date, time and place at which the court will consider giving such a direction.
- (3) Where a direction is given under paragraph (1), the judge may at that time or at any subsequent stage of the proceedings give directions as to the filing and service of statements of case and as to the further conduct of the proceedings.
- (4) Paragraphs (1) to (3) do not apply where the person named has died before the filing of the application.

13. Discontinuance of proceedings before service of application

Before an initial application is served on any person, the applicant may file a notice of discontinuance and the proceedings shall thereupon stand dismissed.

Service of application etc.

14. Service of initial application

- (1) Subject to the provisions of this rule and rules 87 and 89, a copy of every initial application shall be served personally or by post on every respondent.
- (2) Service may be effected —
 - (a) where the party to be served is a person under disability within the meaning of rule 88, through the applicant, and
 - (b) in any other case, through the court or, if the applicant so requests, through the applicant.
- (3) Personal service shall in no case be effected by the applicant himself.
- (4) For the purposes of paragraphs (1) to (3), a copy of an initial application shall be deemed to be duly served if —
 - (a) an acknowledgement of service in the prescribed form is signed by the party to be served or by an advocate on his behalf and is returned to the General Registry, and
 - (b) where the form purports to be signed by the respondent, his signature is proved at the hearing or, where the proceedings are undefended, in the affidavit filed by the applicant under rule 25(3).
- (5) Where an initial application for an annulment order is made under section 48(1)(d) of the Act and an interim gender recognition certificate has been issued to the respondent, he must, when returning an acknowledgement of service in the prescribed form to the General Registry, file with it a copy of that certificate, unless otherwise directed on an application made without notice.
- (6) Where an initial application for an annulment order is made under section 48(1)(e) of the Act and a full gender recognition certificate has been issued to the respondent, he must, when returning an acknowledgement of service in the prescribed form to the General Registry, file with it a copy of that certificate, unless otherwise directed on an application made without notice.
- (7) Where a copy of an initial application has been sent to a party and no acknowledgement of service has been returned to the General Registry, a judge, if satisfied by affidavit or otherwise that the party has nevertheless received the document, may direct that the document shall be deemed to have been duly served on him.

- (8) Where a copy of an initial application has been served on a party personally and no acknowledgement of service has been returned to the General Registry, service shall be proved by filing an affidavit of service showing, in the case of a respondent, the server's means of knowledge of the identity of the party served.
- (9) Paragraph (8) does not apply in cases where —
- (a) the application alleges 2 years' separation coupled with the respondent's consent to an order being made, and
 - (b) none of the other facts mentioned in section 42(3) of the Act is alleged,
- unless the applicant produces to the court a written statement containing the respondent's consent to the making of an order.
- (10) Where an acknowledgement of service is returned to the General Registry, the Chief Registrar shall send a photocopy of it to the applicant.
- (11) An application for permission to substitute some other mode of service for the modes of service prescribed by paragraph (1), or to substitute notice of the proceedings by advertisement or otherwise, shall be made without notice by filing an affidavit setting out the grounds on which the application is made; and the form of any advertisement shall be settled by the Chief Registrar:
- Provided that no order giving permission to substitute notice of the proceedings by advertisement shall be made unless it appears to the court that there is a reasonable probability that the advertisement will come to the knowledge of the person concerned.
- (12) Where in the opinion of the court it is impracticable to serve a party in accordance with any of the foregoing paragraphs or it is otherwise necessary or expedient to dispense with service of a copy of an initial application on the respondent or on any other person, the court may make an order dispensing with such service.
- An application for an order under this paragraph shall be made in the first instance without notice by filing an affidavit setting out the grounds of the application, but the court may, if it thinks fit, require the attendance of the applicant on the application.

15. Consent to making of order

- (1) Where, before the hearing of an application alleging 2 years' separation coupled with the respondent's consent to an order being made, the respondent wishes to indicate to the court that he consents to the

making of an order, he shall do so by filing a notice to that effect signed by the respondent personally.

For the purposes of this paragraph an acknowledgement of service containing a statement that the respondent consents to the making of an order shall be treated as such a notice if the acknowledgement is signed —

- (a) in the case of a respondent acting in person, by the respondent, or
 - (b) in the case of a respondent represented by an advocate, by the respondent as well as by the advocate.
- (2) A respondent to an application which alleges any such fact as is mentioned in paragraph (1) may give notice to the court either that he does not consent to an order being made or that he withdraws any consent which he has already given. Where any such notice is given and none of the other facts mentioned in section 42(5) of the Act is alleged, the proceedings on the application shall be stayed and the Chief Registrar shall thereupon give notice of the stay to all parties.

Statements of case and amendment

16. Supplemental application and amendment of application

- (1) Subject to rule 19 —
 - (a) a supplemental application may be made without the permission of the court at any time before an answer is filed but thereafter only with such permission; and
 - (b) an initial application may be amended without the permission of the court at any time before an answer is filed but thereafter only with such permission.
- (2) Subject to paragraph (3) an application for permission under this rule —
 - (a) may, if every opposite party consents in writing to the supplemental application being made or the initial application being amended, be made by filing the supplemental application or a copy of the initial application as proposed to be amended; and
 - (b) shall, in any other case, be made on notice to be served, unless otherwise directed, on every opposite party.
- (3) The Court may, if it thinks fit, require an application for permission to be supported by an affidavit.
- (4) An order granting permission shall —

- (a) where any party has given notice of intention to defend, fix the time within which his answer must be filed or amended;
 - (b) where the order is made after directions for trial have been given, provide for a stay of the hearing until after the directions have been renewed.
- (5) An amendment authorised to be made under this rule shall be made by filing a copy of the amended application.
 - (6) Rules 10 and 12 apply to a supplemental or amended application as they apply to the initial application.
 - (7) Unless otherwise directed, a copy of a supplemental or amended application, together with a copy of the order (if any) made under this rule shall be served on every respondent and on any party cited.
 - (8) The applicant shall file the documents required by paragraph (7) to be served on any person and thereupon, unless otherwise directed, rules 11(5) and 14 shall apply in relation to that person as they apply in relation to a person required to be served with an initial application.

17. Filing of answer to application

- (1) Subject to paragraph (2) and to rules 15, 19 and 34, a respondent or person named who —
 - (a) wishes to defend the initial application or to dispute any of the facts alleged in it,
 - (b) being the respondent wishes to make in the proceedings any charge against the applicant in respect of which the respondent applies for relief, or
 - (c) being the respondent to an application to which section 45(1) of the Act applies, wishes to oppose the making of an order on the ground mentioned in that subsection,shall, within 21 days after the expiration of the time limited for giving notice of intention to defend, file an answer to the application.
- (2) An answer may be filed even though the person filing the answer has not given notice of intention to defend.
- (3) Any reference in these rules to a person who has given notice of intention to defend shall be construed as including a reference to a person who has filed an answer without giving notice of intention to defend.
- (4) Where in proceedings in which relief is sought under section 48(1)(b) of the Act the respondent files an answer containing no more than a

simple denial of the facts stated in the application, he shall, if he intends to rebut the charges in the application, give the court notice to that effect when filing his answer.

- (5) Where an answer under paragraph (1) applies for an annulment order under section 48(1)(d) of the Act, the respondent must file with the answer a copy of an interim gender recognition certificate issued to him or to the applicant (as the case may be), unless otherwise directed on an application made without notice.
- (6) Where an answer under paragraph (1) applies for an annulment order under section 48(1)(e) of the Act and a full gender recognition certificate has been issued to the respondent, he must file a copy of that certificate with his answer, unless otherwise directed on an application made without notice.

18. Filing of reply and subsequent statements of case

- (1) A applicant may file a reply to an answer within 14 days after he has received a copy of the answer pursuant to rule 22.
- (2) If the applicant does not file a reply to an answer, he shall, unless the answer applies for a dissolution order, nullity order or separation order, be deemed, on making a request for directions for trial, to have denied every material allegation of fact made in the answer.
- (3) No statement of case subsequent to a reply shall be filed without the permission of the court.
- (4) Where an answer filed under rule 17(1) applies for an annulment order under section 48(1)(d) of the Act and an interim gender recognition certificate has been issued to the applicant, he must, when filing a reply to the answer, file with it a copy of that certificate, unless otherwise directed on an application made without notice.
- (5) Where an answer filed under rule 17(1) applies for an annulment order under section 48(1)(e) of the Act and a full gender recognition certificate has been issued to the applicant, he must, when filing a reply to the answer, file with it a copy of that certificate, unless otherwise directed on an application made without notice.

19. Filing and amendment of statements of case after directions for trial

- (1) No statement of case shall be filed or amended without the permission of the court after directions for trial have been given.
- (2) Rules 2.9(2) (time not to run in long vacation) and 2.62 (dormant claims) of the Rules of Court do not apply to proceedings to which this Part applies.

20. Contents of answer and subsequent statements of case

- (1) Where an answer, reply or subsequent statement of case contains more than a simple denial of the facts stated in the initial application, answer or reply, as the case may be, the statement of case shall set out with sufficient particularity the facts relied on but not the evidence by which they are to be proved and, if the statement of case is filed by a civil partner, it shall, in relation to those facts, contain the information required in the case of an initial application by paragraph 1(k) of Schedule 1.
- (2) Unless otherwise directed, an answer by a civil partner who disputes any statement required by paragraphs 1(f), (g) and (h) of Schedule 1 to be included in the initial application shall contain full particulars of the facts relied on.
- (3) Paragraph 4(a) of Schedule 1, where appropriate, applies with any necessary modifications to a respondent's answer as it applies to an initial application:
Provided that it shall not be necessary to include in the answer any claim for costs against the applicant.
- (4) Where an answer to an initial application contains an application for relief, it shall contain the information required by paragraph 1(j) of Schedule 1 in the case of the initial application in so far as it has not been given by the applicant.
- (5) Where a party's statement of case includes such a statement as is mentioned in rule 9, then if the opposite party —
 - (a) denies the conviction to which the statement relates, or
 - (b) alleges that the conviction was erroneous, or
 - (c) denies that the conviction is relevant to any issue in the proceedings,he must make the denial or allegation in his statement of case.
- (6) Rules 10 and 11 apply, with any necessary modifications, to a statement of case other than an initial application as they apply to an initial application.

21. Allegation against third person in statement of case

Rules 12 and 14 apply, with any necessary modifications, to a statement of case other than an application as they apply to an application.

22. Service of statements of case

A party who files an answer, reply or subsequent statement of case shall at the same time file a copy for service on every opposite party, and thereupon the Chief Registrar shall annex to every copy for service on a party cited in the statement of case a notice in the prescribed form and shall send a copy to every other opposite party and to any party cited.

23. Supplemental answer and amendment of statement of case

Rule 16 applies, with any necessary modifications, to the filing of a supplemental answer, and the amendment of a statement of case or other document not being an application, as it applies to the filing of a supplemental application and the amendment of an application.

24. Particulars

- (1) A party on whom a statement of case has been served may in writing request the party whose statement of case it is to give particulars of any allegation or other matter pleaded and, if that party fails to give the particulars within a reasonable time, the party requiring them may apply for an order that the particulars be given.
- (2) The request or order in pursuance of which particulars are given shall be incorporated with the particulars, each item of the particulars following immediately after the corresponding item of the request or order.
- (3) A party giving particulars, whether in pursuance of an order or otherwise, shall at the same time file a copy of them.

Preparations for trial

25. Directions for trial

- (1) On the written request of the applicant or of any party who is defending proceedings begun by an initial application, the court shall give directions for the trial of the proceedings if it is satisfied—
 - (a) that a copy of the application (including any supplemental or amended application) and any subsequent statement of case has been duly served on every party required to be served and, where that party is a person under disability, that any affidavit required by rule 89(2) has been filed;
 - (b) if no notice of intention to defend has been given by any party entitled to give it, that the time limited for giving such notice has expired;

- (c) if notice of intention to defend has been given by any party, that the time allowed him for filing an answer has expired;
 - (d) if an answer has been filed, that the time allowed for filing any subsequent statement of case has expired.
- (3) Where the proceedings are undefended proceedings for a dissolution order or a separation order and, in a case to which section 42(5)(b) of the Act applies, the respondent has filed a notice under rule 15(1) that he consents to the making of an order, then, unless otherwise directed there shall be filed with the request for directions for trial an affidavit by the applicant—
- (a) containing the information required by the prescribed form, together with any corroborative evidence on which the applicant intends to rely, and
 - (b) verifying, with such amendments as the circumstances may require, the contents of any statement of arrangements filed by the applicant under rule 8(3),
- and the Chief Registrar shall give directions for trial by entering the proceedings in a list to be known as "the special procedure list".
- (4) In the case of defended proceedings a judge may treat the request for directions for trial as an application for directions so as to enable him to give such directions with regard to—
- (a) the future course of the proceedings,
 - (b) any application made therein for financial provision or for an order relating to a child, and
 - (c) the provision of evidence relating to the arrangements or proposed arrangements for the children of the family,
- as appear to be necessary or desirable for securing the just, expeditious and economical disposal of the proceedings; and the Chief Registrar shall give the parties notice of a date, time and place at which the request will be considered.
- (5) In any other case the Chief Registrar shall give directions for trial by setting the proceedings down for trial and giving notice that he has done so to every party to the proceedings.
- (6) Except where evidence has been provided under paragraph (3)(b), directions for trial under this rule shall, unless the Chief Registrar orders otherwise, include a direction to the applicant to file an affidavit verifying, with such amendments as the circumstances may require,

the contents of any statement of arrangements filed by the applicant under rule 8(3).

- (7) In the case of undefended proceedings on the respondent's answer, paragraphs (3) and (6) shall have effect as if for the references to the applicant and respondent there were substituted references to the respondent and the applicant respectively.

26. Determination of place of trial

- (1) Directions for trial shall determine the place of trial.
- (2) Directions determining the place of trial of any proceedings may be varied by the Chief Registrar of his own motion or on the application of any party to the proceedings.

27. Directions as to allegations under section 42(5)(a) of Act

- (1) Where in defended proceedings the applicant alleges that the respondent has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent, a judge may, of his own motion on giving directions for trial or on the application of any party made at any time before the trial, order or authorise the party who has made the request for or obtained such directions to file a schedule of the allegations and counter-allegations made in the statements of case or particulars.
- (2) Where such an order is made or authority given, the allegations and counter-allegations shall, unless otherwise directed, be listed concisely in chronological order, each counter-allegation being set out against the allegation to which it relates, and the party filing the schedule shall serve a copy of it on any other party to the proceedings who has filed a statement of case.

28. Stay where proceedings continuing in another jurisdiction

- (1) Schedule 3 has effect for making provision in relation to civil partnerships corresponding to that made in relation to marriages by Schedule 1 to MPA 2003 (staying of proceedings).
- (2) An application to the court by the applicant or respondent in proceedings for divorce for an order under paragraph 3 (obligatory stay) or paragraph 4 (discretionary stay) of Schedule 3 shall be made to the Chief Registrar.
- (3) Where, on giving directions for trial —
 - (a) it appears to the Chief Registrar from any information given pursuant to paragraph 1(j) of Schedule 1 or rule 20(4) or paragraph

2(3)(b) of Schedule 3 that any proceedings which are in respect of the civil partnership in question or which are capable of affecting its validity or subsistence are continuing in another jurisdiction, and

- (b) he considers that the question whether the proceedings on the application should be stayed under paragraph 3 of Schedule 3 ought to be determined by the court,

he shall fix a date, time and place for the consideration of that question by a judge and give notice of it to all parties.

- (3) Any party who makes a request for directions for trial in termination proceedings shall, if there has been a change in the information given pursuant to paragraph 1(j) of Schedule 1, rule 20(4) or paragraph 2(3)(b) of Schedule 3, file a statement giving particulars of the change.
- (4) An application by a party to the proceedings for an order under paragraph 5 (revocation of stay) of Schedule 3 shall be made to the Chief Registrar.

Evidence

29. Evidence at trial

- (1) Subject to the provisions of this rule and rules 33 and 93 and of Part 2 of the Administration of Justice Act 2008¹⁰ and any other enactment, any fact required to be proved by the evidence of witnesses at the trial of termination proceedings shall be proved by the examination of the witnesses orally and in open court.
- (2) Nothing in this rule and rule 93 affects the power of the judge at the trial to refuse to admit any evidence if in the interest of justice he thinks fit to do so.
- (3) The Court may order —
 - (a) that the affidavit of any witness may be read at the trial on such conditions as the court thinks reasonable;
 - (b) that the evidence of any particular fact shall be given at the trial in such manner as may be specified in the order and in particular —
 - (i) by statement on oath of information or belief, or
 - (ii) by the production of documents or entries in books, or
 - (iii) by copies of documents or entries in books, or

¹⁰ 2008 c.14

- (iv) in the case of a fact which is or was a matter of common knowledge, by the production of a specified newspaper containing a statement of that fact; and
 - (c) that not more than a specified number of expert witnesses may be called.
- (4) An application for an order under paragraph (3) shall —
- (a) if no notice of intention to defend has been given, or
 - (b) if the applicant and every party who has given notice of intention to defend consents to the order sought, or
 - (c) if the proceedings are undefended and directions for trial have been given,
- be made without notice by filing an affidavit stating the grounds on which the application is made.
- (5) Where an application is made before the trial for an order that the affidavit of a witness may be read at the trial or that evidence of a particular fact may be given at the trial by affidavit, the proposed affidavit or a draft of it shall be submitted with the application; and where the affidavit is sworn before the hearing of the application and sufficiently states the ground on which the application is made, no other affidavit shall be required under paragraph (4).

Trial etc.

30. Mode and place of trial

- (1) Unless otherwise directed and subject to rule 33 all termination proceedings and any issue arising in them shall be tried by a judge without a jury.
- (2) As soon as practicable after termination proceedings have been set down for trial, the Chief Registrar shall fix the date, place and, as nearly as may be, the time of the trial and give notice of it to every party to the proceedings.

31. Trial of issue

Where directions are given for the separate trial of any issue and those directions have been complied with, the Chief Registrar shall —

- (a) if the issue arises on an application for financial provision or an application with respect to any child or alleged child of the family, proceed as if the issue were a question referred to a judge on an application for financial provision;

- (b) in any other case, set the issue down for trial and thereupon rule 30(2) shall apply as if the issue were termination proceedings.

32. Date of trial

- (1) Except with the consent of the parties or the permission of a judge, no termination proceedings, whether defended or undefended, shall be tried until after the expiration of 10 days from the date on which directions for trial were given.
- (2) Paragraph (1) does not apply to a proceedings entered in the special procedure list.

33. Disposal of cases in special procedure list

- (1) As soon as practicable after termination proceedings have been entered in the special procedure list, a judge shall consider the evidence filed by the applicant and –
 - (a) if he is satisfied that the applicant has sufficiently proved the contents of the initial application and is entitled to an order, he shall so certify;
 - (b) if he is not so satisfied he may either give the applicant an opportunity of filing further evidence or remove the proceeding from the special procedure list, whereupon rule 25(3) shall cease to apply.
- (2) On the giving of a certificate under paragraph (1) a date shall be fixed for the making of an order by a judge in open court, and the Chief Registrar shall send to each party notice of the date and place so fixed and a copy of the certificate, but subject to paragraph (3) it shall not be necessary for any party to appear on that occasion.
- (3) Where a judge gives a certificate under paragraph (1) and the application contains a request for costs, the judge may –
 - (a) if satisfied that the applicant is entitled to such costs, include in his certificate a statement to that effect;
 - (b) if not so satisfied, give to any party who objects to paying such costs notice that, if he wishes to proceed with his objection, he must attend before the court on the date fixed under paragraph (2).
- (4) Within 14 days after the making of an order in accordance with a certificate under paragraph (1) any person may inspect the certificate and the evidence filed under rule 25(3) (except the statement of arrangements) and may bespeak copies on payment of the prescribed fee.

34. Right to be heard on question of costs

- (1) A respondent or party cited may, without filing an answer, be heard on any question as to costs, but the court may at any time order any party objecting to a claim for costs to file and serve on the party making the claim a written statement setting out the reasons for his objection.
- (2) A party shall be entitled to be heard on any question pursuant to paragraph (1) whether or not he has returned to the General Registry an acknowledgement of service stating his wish to be heard on that question.
- (3) In proceedings after a provisional dissolution order or a separation order, no order the effect of which would be to make a party cited liable for costs which are not directly referable to the dissolution order or separation order shall be made unless the party cited is a party to such proceedings or has been given notice of the intention to apply for such an order.

35. Respondent's statement as to arrangements for children

- (1) A respondent on whom there is served a statement in accordance with rule 8(3) may, whether or not he agreed that statement, file a written statement of his views on the present and proposed arrangements for the children, and on receipt of such a statement from the respondent the Chief Registrar shall send a copy to the applicant.
- (2) Any such statement of the respondent's views shall, if practicable, be filed within the time limited for giving notice of intention to defend, and in any event before the judge considers the arrangements or proposed arrangements for the upbringing and welfare of the children of the family under section 61(1) of the Act.

36. Procedure for complying with section 61

- (1) Where no such application as is referred to in rule 37 is pending the judge shall, after giving his certificate under rule 33(1)(a) or after the provision of evidence pursuant to a direction under rule 25(4), as the case may be, proceed to consider the matters specified in section 61(1) of the Act in accordance with the following provisions of this rule.
- (2) Where, on consideration of the relevant evidence, including any further evidence or report provided pursuant to this rule and any statement filed by the respondent under rule 35, the judge is satisfied that —
 - (a) there are no children of the family to whom section 61 of the Act applies, or

- (b) there are such children but the court need not exercise its powers under the Children and Young Persons Act 2001 with respect to any of them or give any direction under section 61(2) of the Act, the judge shall certify accordingly and, in a case to which subparagraph (b) applies, the Chief Registrar shall send the applicant and the respondent a copy of the certificate.
- (3) Where the judge is not satisfied as mentioned in paragraph (2) he may, without prejudice to his powers under the Children and Young Persons Act 2001 or section 61 (2) of the Act, give one or more of the following directions —
- (a) that the parties, or any of them, shall file further evidence relating to the arrangements for the children (and the direction shall specify the matters to be dealt with in the further evidence);
 - (b) that a welfare report on the children, or any of them, be prepared;
 - (c) that the parties, or any of them, shall attend before him at the date, time and place specified in the direction; and the parties shall be notified accordingly.
- (4) Where the court gives a direction under section 61(2) of the Act, notice of the direction shall be given to the parties.
- (5) In this rule "parties" means the applicant, the respondent and any person who appears to the court to have the care of the child.

37. Applications relating to children of the family

- (1) Where termination proceedings are pending, an application by a party to the proceedings or by any other person for an order under any provision of Part 1 or Part 2 of the Children and Young Persons Act 2001 in relation to a child of the family shall be made in the proceedings; and where the applicant is not a party and has obtained such permission as is required under that Act to make the application, no permission to intervene in the proceedings shall be necessary.
- (2) If, while termination proceedings are pending, proceedings relating to any child of the family are begun in any other Court, a concise statement of the nature of the proceedings shall forthwith be filed by the person beginning the proceedings or, if he is not a party to the termination proceedings, by the applicant.

38. Restoration of matters adjourned at the hearing

Where at the trial of termination proceedings any application is adjourned by the court for hearing in private, it may be restored —

- (a) by notice by any party, or
- (b) by notice given by a judge when in his opinion the matter ought to be further considered;

and the notice shall state the date, time and place for the hearing of the restored application and be served on every party concerned.

39. Application for re-hearing

- (1) An application for re-hearing of proceedings tried by a judge alone, where no error of the court at the hearing is alleged, shall be made to a judge.
- (2) Unless otherwise directed, the application shall be made to the judge by whom the proceedings were tried and shall be heard in open court.
- (3) The application shall state the grounds on which it is made.
- (4) Unless otherwise directed, the application must be issued within 6 weeks after the judgment and served on every other party to the proceedings not less than 14 days before the day fixed for the hearing of the application.
- (5) The applicant shall file a certificate that a copy of the application, with a notice of the time and place of the hearing, has been duly served on each person required to be served with it.
- (6) The application shall be supported by an affidavit setting out the allegations on which the applicant relies or exhibiting a copy of any statement of case which he proposes to file if the application is granted, and a copy of the affidavit shall be served on every other party to the proceedings.
- (7) Not less than 7 days before the application is heard the applicant shall file a copy of a transcript of so much as is relevant of any official record of the proceedings at the trial.
- (8) Where a party wishes to appeal against a final dissolution order or final nullity order, the question whether he has had the time and opportunity to appeal from the provisional order on which the final order was founded shall be determined on an application for a re-hearing under this rule.
- (9) Any other application for re-hearing shall be made by way of appeal to the Staff of Government Division.
- (10) This rule applies, with any necessary modifications, to proceedings disposed of under rule 33 as it applies to proceedings tried by a judge alone.

Orders

40. Orders

Except in a case to which rule 61 (consent orders) applies —

- (a) every dissolution order, nullity order and separation order,
- (b) every order made in open court, and
- (c) every other order which is required to be drawn up,

shall be drawn up by the Chief Registrar unless the court otherwise directs.

41. Application for revocation of dissolution order

- (1) An application by a respondent under section 46(1) of the Act for the revocation of a dissolution order shall be made to a judge and shall be heard in open court.
- (2) Paragraphs (3) and (5) of rule 39 apply to an application under this rule as they apply to an application under that rule.
- (3) The application shall state the grounds on which it is made, and a copy of the application shall be served on the applicant not less than 14 days before the day fixed for the hearing of the application.
- (4) The application shall be supported by an affidavit setting out the allegations on which the applicant relies and a copy of the affidavit shall be served on the applicant.

42. Application under section 46(2)

- (1) An application by a respondent to an application for a dissolution order for the court to consider the financial position of the respondent after the divorce shall be made in the prescribed form.
- (2) The respondent shall file a certificate that a copy of the application, with a notice of the time and place of the hearing, has been duly served on each person required to be served with it.
- (3) Where the applicant has relied on the fact of 2 or 5 years' separation and the court has made a provisional order without making any finding as to any other fact mentioned in section 42(5) of the Act, rules 51 to 68 apply as if the application were for financial provision.
- (4) A statement of any of the matters mentioned in section 46(3) of the Act with respect to which the court is satisfied, or, where the court has proceeded under section 46(5), a statement that the conditions for which that subsection provides have been fulfilled, shall be entered in the records of the court.

43. Intervention to show cause by Attorney General

- (1) If the Attorney General wishes to show cause against a provisional order being made final, he shall file a notice to that effect and send a copy to the party in whose favour it was pronounced.
- (2) Within 21 days after giving notice under paragraph (1) the Attorney General shall file his plea setting out the grounds on which he desires to show cause, together with a copy for service on the party in whose favour the order was made and every other party affected by the order.
- (3) The Attorney General shall serve a copy of the plea on each of the persons mentioned in paragraph (2).
- (4) Subject to the following provisions of this rule, these rules shall apply to all subsequent statements of case and proceedings in respect of the plea as if it were an initial application.
- (5) If no answer to the plea is filed within the time limited or, if an answer is filed and struck out or not proceeded with, the Attorney General may apply forthwith for an order revoking the provisional order and dismissing the application.
- (6) Rule 25 applies to proceedings in respect of a plea by the Attorney General as it applies to the trial of termination proceedings, except that —
 - (a) if all the charges in the plea are denied in the answer the application for directions shall be made by the Attorney General, and
 - (b) in any other case it shall be made by the party in whose favour the provisional order was made.

44. Intervention to show cause by person other than Attorney General

- (1) If any person other than the Attorney General wishes to show cause under section 38(1) or (2) of the Act against a provisional order being made final, he shall file an affidavit stating the facts on which he relies and serve a copy on the party in whose favour the order was made.
- (2) A party on whom a copy of the affidavit has been served under paragraph (1) may, within 14 days after service, file an affidavit in answer and, if he does so, shall serve a copy of it on the person showing cause.
- (3) The person showing cause may file an affidavit in reply within 14 days after service of the affidavit in answer and, if he does so, shall serve a copy on each party who was served with a copy of his original affidavit.

- (4) No affidavit after an affidavit in reply shall be served without the permission of the court.
- (5) A person showing cause shall apply to a judge for directions within 14 days after expiry of the time allowed for filing an affidavit in reply or, where an affidavit in answer has been filed, within 14 days after the expiry of the time allowed for filing such an affidavit.
- (6) If the person showing cause does not apply under paragraph (5) within the time allowed, the person in whose favour the provisional order was made may do so.

45. Revocation of provisional order by consent

- (1) Where a reconciliation has been effected between the applicant and the respondent —
 - (a) after a provisional order has been made but before it has been made final, or
 - (b) after a separation order has been made,either party may apply for an order revoking the order by consent.
- (2) The application shall be made with notice to the other civil partner and to any other party against whom costs have been awarded or who is otherwise affected by the provisional order or separation order, and a copy of the application shall be served on every such person.
- (3) The application may be heard in private.

46. Final order on application

- (1) Subject to rule 47(1) an application by a civil partner to make final a provisional order made in his favour may be made in the prescribed form.
- (2) On the making of such an application, the Chief Registrar shall search the records of the court and, subject to paragraph (3) and rule 48, if he is satisfied —
 - (a) that no application for revocation of the order or for re-hearing of the proceedings and no appeal against the order or the dismissal of an application for re-hearing of the proceedings is pending;
 - (b) that no order has been made by the court extending the time for making an application for re-hearing of the proceedings or by the Staff of Government Division extending the time for appealing against the order or the dismissal of an application for re-hearing of the proceedings or, if any such order has been made, that the time so extended has expired;

- (c) that no application for such an order as is mentioned in subparagraph (b) is pending;
- (d) that no intervention under rule 43 or 44 is pending;
- (e) that the court has complied with section 61(1) of the Act and has not given any direction under section 61(2);
- (f) that the provisions of section 46(2) to (5) of the Act do not apply or have been complied with, and
- (g) where the provisional order was made on the ground in section 48(1)(d) of the Act —
 - (i) that there is not pending a reference under section 8(5) of the Gender Recognition Act 2004 (an Act of Parliament)¹¹ in respect of the application on which the interim gender recognition certificate to which the application relates was granted;
 - (ii) that that interim certificate has not been revoked under section 8(6)(b) of that Act; and
 - (iii) that no appeal is pending against an order under section 8(6)(a) of that Act;

the court shall make the order final.

- (3) If the application under paragraph (1) is filed more than 12 months after the provisional order was made, there shall be filed with the notice an explanation in writing —
 - (a) giving reasons for the delay;
 - (b) stating whether the parties have lived with each other since the making of the provisional order and, if so, between what dates; and
 - (c) stating whether either party has given birth to any child since the making of the provisional order and, if so, stating the relevant facts and whether or not it is alleged that the child is or may be a child of the family;

and the Chief Registrar shall refer the application to a judge, who may require the applicant to file an affidavit verifying the said explanation and may make such order on the application as he thinks fit.

¹¹ 2004 c.7

47. Final order on notice

- (1) In the following cases an application for a provisional order to be made final shall be made to a judge —
 - (a) where the Attorney General gives to the court and to the party in whose favour the order was made a notice that he requires more time to decide whether to show cause against the order being made final, and the notice has not been withdrawn, or
 - (b) where there are other circumstances which ought to be brought to the attention of the court before the order is made final.

Unless otherwise directed, the application shall be served on every party to the proceedings (other than the applicant) and, in a case to which sub-paragraph (a) applies, on the Attorney General.

- (2) An application by a civil partner for a provisional order made against him to be made final shall be made to a judge, and the application shall be served on the other civil partner not less than 4 clear days before the day on which the application is heard.
- (3) A final order made under this rule shall not take effect until the Chief Registrar has searched the records of the court and is satisfied as to the matters mentioned in rule 46(2).

48. Evidence to be filed in gender recognition cases

- (1) This rule applies where a provisional order of nullity was made on the ground in section 48(1)(d) of the Act and an application is made under rule 47 or 48.
- (2) The civil partner by whom the application is made must file with it an affidavit certifying that —
 - (a) the deponent has made or caused to be made due enquiries (specifying them) to ascertain whether —
 - (i) a reference under section 8(5) of the Gender Recognition Act 2004 (an Act of Parliament) is pending in respect of the application on which the relevant interim gender recognition certificate was granted;
 - (ii) any appeal is pending against an order under section 8(6)(a) of that Act; and
 - (iii) the relevant certificate has been revoked under section 8(6)(b) of that Act; and
 - (b) as a result of those enquiries the deponent is satisfied that —
 - (i) no such reference or appeal is pending, and

(ii) the relevant certificate has not been revoked.

49. Final order

- (1) Where a provisional order is made final, the Chief Registrar shall issue the final order, which shall include a statement of the precise time at which it was made.
- (2) Where a provisional order is made final, the Chief Registrar shall send to the applicant and the respondent a certificate in the prescribed form, authenticated by the seal of the court.
- (3) A copy of the certificate that a provisional order has been made final shall be issued to any person requiring it on payment of the prescribed fee.
- (4) An index of final orders shall be kept in the General Registry, and any person shall be entitled to require a search to be made therein, and to be furnished with a certificate of the result of the search, on payment of the prescribed fee.

Documents: gender recognition

50. Documents in proceedings concerning gender recognition

- (1) This rule applies to all documents in termination proceedings brought under section 48(1)(d) or (e) of the Act.
- (2) Documents to which this rule applies must, while they are in the custody of the court, be kept in a place of special security.

PART 4

APPLICATIONS FOR FINANCIAL PROVISION ETC.

51. Financial provision: general

This Part applies to any application for financial provision and to any application under section 41(2) of the Act (consideration of certain agreements).

52. Right to be heard on financial questions

A respondent may be heard on any question of financial provision without filing an answer and whether or not he has returned to the General Registry an acknowledgement of service stating his wish to be heard on that question.

53. Application by applicant or respondent for financial provision

- (1) Subject to paragraph (2), any application by an applicant for a dissolution order, nullity order or separation order, or by a respondent who files an answer claiming financial provision, for —
 - (a) an interim maintenance order;
 - (b) a financial provision order,
 - (c) a property adjustment order, or
 - (d) a pension sharing order,shall be made in the initial application or answer, as the case may be.
- (2) An application for financial provision which should have been made in the initial application or answer may be made subsequently —
 - (a) by permission of the court, either in the prescribed form or at the trial, or
 - (b) where the parties are agreed upon the terms of the proposed order, without permission in the prescribed form.
- (3) An application for financial provision, not being an application which is required to be made in the initial application or answer, shall be made in the prescribed form.

54. Application by parent, guardian etc for financial provision in respect of children

Any of the following persons —

- (a) a parent or guardian of any child of the family,
- (b) any person in whose favour a residence order has been made with respect to a child of the family, and any applicant for such an order,
- (c) any other person who is entitled to apply for a residence order with respect to a child,
- (d) the Department of Social Care, where a child is in its care by virtue of an order made by any Court; and
- (e) a child of the family who has been given permission to intervene in the proceedings for the purpose of applying for financial provision, may apply for an order for financial provision as respects that child in the prescribed form.

55. Service of application

Where an application for financial provision is made in the prescribed form, the applicant shall serve a copy on the respondent to the application.

56. Application for financial provision after order of court of summary jurisdiction

Where an application for financial provision is made while there is in force an order of a court of summary jurisdiction for maintenance of a civil partner or child, the applicant shall file a copy of the order on or before the hearing of the application.

57. Children to be separately represented on certain applications

- (1) Where an application is made to the court for an order for a variation of settlement, the court shall, unless it is satisfied that the proposed variation does not adversely affect the rights or interests of any children concerned, direct that the children be separately represented on the application, and may appoint the Attorney General or other fit person to be guardian ad litem of the children for the purpose of the application.
- (2) On any other application for financial provision the court may give such a direction or make such appointment as it is empowered to give or make by paragraph (1).
- (3) Before a person other than the Attorney General is appointed guardian ad litem under this rule there shall be filed a certificate by the Attorney General or the advocate acting for the children that the person proposed as guardian has no interest in the matter adverse to that of the children and that he is a proper person to be such guardian.

58. General provisions as to evidence etc on application for financial provision

- (1) An applicant or respondent who has applied for financial provision in his initial application or answer and who intends to proceed with the application shall, subject to rule 66, file a notice in the prescribed form in duplicate and serve a copy on the other party to the application.
- (2) Where an application is made for financial provision, not being an application to which rule 61 applies, the application in the prescribed form or notice in the prescribed form, as the case may be, shall unless otherwise directed be supported by an affidavit by the applicant containing full particulars of his property and income, and stating the facts relied on in support of the application.

- (3) Within 28 days after the service of an affidavit under paragraph (2) or within such other time as the court may fix, the respondent to the application, other than an application for a variation order, shall file an affidavit in answer containing full particulars of his property and income.

59. Evidence on application for property adjustment or avoidance of disposition order

- (1) Where an application is made for a property adjustment order or an avoidance of disposition order, the affidavit in support shall contain, so far as known to the applicant, full particulars —
 - (a) in the case of an application for a transfer or settlement of property —
 - (i) of the property in respect of which the application is made,
 - (ii) of the property to which the party against whom the application is made is entitled either in possession or reversion;
 - (b) in the case of an application for an order for a variation of settlement —
 - (i) of all settlements, whether made in anticipation of the formation of or during the subsistence of the civil partnership, made on the civil partners, and
 - (ii) of the funds brought into settlement by each civil partner;
 - (c) in the case of an application for an avoidance of disposition order —
 - (i) of the property to which the disposition relates,
 - (ii) of the person in whose favour the disposition is alleged to have been made and in the case of a disposition alleged to have been made by way of settlement, of the trustees and the beneficiaries of the settlement.
- (2) Where an application for a property adjustment order or an avoidance of disposition order relates to land, the application in the prescribed form or notice in the prescribed form, as the case may be, shall identify the land and —
 - (a) state whether the title to the land is registered or unregistered and, if registered, the Land Registry title number; and
 - (b) give particulars, so far as known to the applicant, of any mortgage of the land or any interest therein.

- (3) A copy of the prescribed form, together with a copy of the supporting affidavit, shall be served on the following persons as well as on the respondent to the application —
- (a) in the case of an application for an order for variation of a settlement, the trustees of the settlement and the settlor if living;
 - (b) in the case of an application for an avoidance of disposition order, the person in whose favour the disposition is alleged to have been made;
- and such other persons, if any, as the court may direct.
- (4) In the case of an application to which paragraph (2) refers, a copy of the prescribed form shall be served on any mortgagee of whom particulars are given pursuant to that paragraph; and any person so served may apply to the court in writing, within 14 days after service, for a copy of the applicant's affidavit.
- (5) Any person who —
- (a) is served with an affidavit pursuant to paragraph (3), or
 - (b) receives an affidavit following an application made in accordance with paragraph (4),
- may, within 14 days after service or receipt, as the case may be, file an affidavit in answer.

60. Service of affidavit in answer or reply

- (1) A person who files an affidavit for use on an application under rule 58 or 59 shall at the same time serve a copy on the opposite party and, where the affidavit contains an allegation of an improper association with a named person, then, if the court so directs, it shall be endorsed with a notice in the prescribed form and a copy of the affidavit or of such part of it as the court may direct, so endorsed, shall be served on that person by the person who files the affidavit, and the person against whom the allegation is made shall be entitled to intervene in the proceedings by applying for directions under rule 62(5) within 14 days of service of the affidavit on him.
- (2) Rule 34(3) shall apply to a person served with an affidavit under paragraph (1) as it applies to a party cited.

61. Information on application for consent order for financial relief

- (1) Subject to paragraphs (2) and (3), there shall be filed with every application for a consent order under any of Parts 1, 2 and 3 of Schedule 5 to the Act —

- (a) 2 copies of a draft of the order in the terms sought, one of which shall be endorsed with a statement signed by the respondent to the application signifying his agreement, and
- (b) a statement of information (which may be made in more than one document) which shall include —
 - (i) the duration of the civil partnership, the age of each party and of any minor or dependent child of the family;
 - (ii) an estimate in summary form of the approximate amount or value of the capital resources and net income of each party and of any minor child of the family;
 - (iii) what arrangements are intended for the accommodation of each of the parties and any minor child of the family;
 - (iv) whether either party has remarried or has any present intention to form a civil partnership with or to cohabit with another person;
 - (v) where an order includes provision to be made under Part 4 (pension sharing) of Schedule 5 to the Act, a statement confirming that the person responsible for the pension arrangement in question has been served with the documents required by rule 68(11) and that no objection to such an order has been made by that person within 14 days from such service;
 - (vi) where the terms of the order provide for a transfer of property, a statement confirming that any mortgagee of that property has been served with notice of the application and that no objection to such a transfer has been made by the mortgagee within 14 days from such service; and
 - (vii) any other especially significant matters.
- (2) Where an application is made for a consent order varying an order for periodical payments paragraph (1) is sufficiently complied with if the statement of information required to be filed with the application includes only the information in respect of net income mentioned in paragraph (1)(b), and an application for a consent order for interim periodical payments pending the determination of an application for financial provision may be made in like manner.
- (3) Where all or any of the parties attend the hearing of an application for financial relief the court may dispense with the filing of a statement of information in accordance with paragraph (1) and give directions for

the information which would otherwise be required to be given in such a statement to be given in such a manner as it sees fit.

62. Investigation of application for financial provision

- (1) On or after the filing of an application in the prescribed form or a notice in the prescribed form an appointment shall be fixed for the hearing of the application by a judge.
- (2) An application for an avoidance of disposition order shall, if practicable, be heard at the same time as any related application for financial relief.
- (3) Notice of the appointment, unless given in the prescribed form, shall be given by the applicant to every party to the application.
- (4) At the hearing of an application for financial provision the judge —
 - (a) shall, subject to rule 65, investigate the allegations made in support of and in answer to the application;
 - (b) may take evidence orally; and
 - (c) may at any stage of the proceedings, whether before or during the hearing, order the attendance of any person for the purpose of being examined or cross-examined and order the discovery and production of any document or require further affidavits.
- (5) The judge may at any stage of the proceedings give directions as to the filing and service of statements of case and as to the further conduct of the proceedings.
- (6) Where any party to such an application intends on the day appointed for the hearing to apply for directions, he shall file and serve on every other party a notice to that effect.
- (7) Any party may apply to the court for an order that any person attend an appointment (a "production appointment") before the court and produce any documents to be specified or described in the order, the production of which appears to the court to be necessary for disposing fairly of the application for financial provision or for saving costs.
- (8) No person shall be compelled by an order under paragraph (7) to produce any document at a production appointment which he could not be compelled to produce at the hearing of the application for financial provision.
- (9) The Court shall permit any person attending a production appointment pursuant to an order under paragraph (7) to be represented at the appointment.

- (10) The hearing shall, unless the court otherwise directs, take place in private.

63. Open proposals

- (1) Not less than 14 days before the date fixed for the final hearing of an application for financial provision, the applicant shall (unless the court otherwise directs) file and serve on the respondent an open statement which sets out concise details, including the amounts involved, of the orders which he proposes to ask the court to make.
- (2) Not more than 7 days after service of a statement under paragraph (1), the respondent shall file and serve on the applicant an open statement which sets out concise details, including the amounts involved, of the orders which he proposes to ask the court to make.

64. Request for further information etc.

Any party to an application for financial provision may by letter require any other party to give further information concerning any matter contained in any affidavit filed by or on behalf of that other party or any other relevant matter, or to furnish a list of relevant documents or to allow inspection of any such document, and may, in default of compliance by such other party, apply to the court for directions.

65. Order on application for financial provision

- (1) The judge shall, after completing his investigation under rule 62, make such order as he thinks just.
- (2) Pending the final determination of the application, a judge may make an interim order upon such terms as he thinks just.
- (3) Where the court considers it expedient to give effect to an order under Part 3 (orders for sale of property) of Schedule 5 to the Act or any other order for financial provision relating to any property, it may —
- (a) grant execution in respect of the property, or
- (b) make an order compelling any person in receipt of the rents and profits thereof to deliver them up to such person as the court may direct.

66. Request for periodical payments order at same rate as interim order

- (1) Where at or after the date of a final dissolution order or nullity order an interim maintenance order is in force, the party in whose favour the order was made may, if he has made an application for an order for

periodical payments for himself in his initial application or answer, request the court in writing to make such an order providing for payments at the same rate as those provided for by the interim maintenance order.

- (2) Where such a request is made, the applicant shall serve on the other civil partner a notice in the prescribed form requiring him, if he objects to the making of a corresponding order, to give notice to that effect to the court and to the applicant within 14 days after service of the notice in the prescribed form.
- (3) If the other civil partner does not give notice of objection within the time aforesaid, the court may make an order providing for payments at the same rate as those provided for by the interim maintenance order without further notice to that civil partner and without requiring the attendance of the applicant or his advocate, and shall in that case serve a copy of the order on the applicant as well as on the other civil partner.

67. Application for order under Schedule 5 paragraph 65(2)(a)

An application under paragraph 65(2)(a) of Schedule 5 to the Act for an order restraining any person from attempting to defeat a claim for financial provision or otherwise for protecting the claim may be made to a judge.

68. Pensions

- (1) This rule applies where —
 - (a) an application for financial provision has been made, and
 - (b) the applicant or respondent has or is likely to have any benefits under a pension arrangement.
- (2) Within 7 days of giving or receiving notice in the prescribed form, the party with pension rights shall request the person responsible for each pension arrangement under which he has or is likely to have benefits to furnish the information referred to in regulation 2(2) of the Pensions on Divorce etc. (Provision of Information) Regulations 2000¹².
- (3) Within 7 days of receiving information under paragraph (2) the party with pension rights shall send a copy of it to the other party, together with the name and address of the person responsible for each pension arrangement.

¹² SI 2000/1048

- (4) A request under paragraph (2) need not be made where the party with pension rights is in possession of, or has requested, a relevant valuation of the pension rights or benefits accrued under the pension arrangement in question.
- (5) In this rule a "relevant valuation" means a valuation of pension rights or benefits as at a date not more than 12 months earlier than the date of giving or receiving notice in the prescribed form, which has been furnished or requested pursuant to any of the following provisions —
 - (a) the Pensions on Divorce etc. (Provision of Information) Regulations 2000;
 - (b) regulation 5 of and Schedule 2 to the Occupational Pension Schemes (Disclosure of Information) Regulations 1996¹³;
 - (c) section 94(1)(a) of the Pension Schemes Act 1993;
 - (d) section 94(1)(b) of the Pension Schemes Act 1993 or paragraph 2(a) (or, where applicable, 2(b)) of Schedule 2 to the Personal Pension Schemes (Disclosure of Information) Regulations 1987¹⁴.
- (6) Upon making or giving notice of intention to proceed with an application for financial provision including provision to be made under Part 4 (pension sharing) of Schedule 5 to the Act, or upon adding a request for such provision to an existing application for financial provision, the applicant shall send to the person responsible for the pension arrangement concerned a copy of the prescribed form.
- (7) Upon making or giving notice of intention to proceed with an application for financial provision including provision to be made under Part 6 (pension earmarking) of Schedule 5 to the Act, or upon adding a request for such provision to an existing application for financial provision, the applicant shall send to the person responsible for the pension arrangement concerned —
 - (a) a copy of the prescribed form;
 - (b) an address to which any notice which the person responsible is required to serve on the applicant under regulations made under paragraph 27 of Schedule 5 to the Act is to be sent;
 - (c) an address to which any payment which the person responsible is required to make to the applicant is to be sent; and

¹³ SI 1996/1655

¹⁴ SI 1987/1110

- (d) where the address in sub-paragraph (c) is that of a bank, a building society or National Savings and Investments, sufficient details to enable payment to be made into the account of the applicant.
- (8) A person responsible for a pension arrangement on whom a copy of a notice under paragraph (7) is served may, within 21 days after service, require the applicant to provide him with a copy of the affidavit supporting his application.
- (9) A person responsible for a pension arrangement who receives a copy of an affidavit as required by paragraph (8) may within 21 days after receipt file an affidavit in answer.
- (10) A person responsible for a pension arrangement who files an affidavit in answer pursuant to paragraph (9) may file therewith a notice to the Chief Registrar requiring an appointment to be fixed; and where such a notice is filed —
- (a) the Chief Registrar shall fix the appointment for the hearing or further hearing of the application and give not less than 14 days' notice of that appointment to the applicant, the respondent and the person responsible for the pension arrangement; and
 - (b) the person responsible for the pension arrangement shall be entitled to be represented at any such hearing.
- (11) Where the parties have agreed on the terms of an order including provision under Part 6 of Schedule 5 to the Act, then unless service has already been effected under paragraph (7), they shall serve on the person responsible for the pension arrangement concerned —
- (a) the notice in the prescribed form under rule 53(2)(b);
 - (b) a draft of the proposed order, complying with paragraph (13); and
 - (c) the particulars set out in paragraph (7)(b), (c) and (d).
- (12) No consent order under paragraph (11) shall be made unless either —
- (a) the person responsible has not made any objection within 21 days after the service on him of such notice; or
 - (b) the court has considered any such objection;
- and for the purpose of considering any objection the court may make such direction as it sees fit for the person responsible to attend before it or to furnish written details of his objection.
- (13) An order for financial provision, whether by consent or not, including provision under Part 4 or Part 6 of Schedule 5 to the Act, shall —

- (a) in the body of the order, state that there is to be provision by way of pension sharing or pension attachment in accordance with the annex or annexes to the order; and
 - (b) be accompanied by an annex containing the information set out in paragraph (14) or paragraph (15) as the case may require; and if provision is made in relation to more than one pension arrangement there shall be one annex for each pension arrangement.
- (14) Where provision is made under Part 4 of Schedule 5 to the Act, the annex shall state —
- (a) the case number and the title of the proceedings;
 - (b) that it is a pension sharing order made under Schedule 5 to the Act;
 - (c) the names of the transferor and the transferee;
 - (d) the national insurance number of the transferor;
 - (e) sufficient details to identify the pension arrangement concerned and the transferor's rights or benefits from it (for example a policy reference number);
 - (f) the specified percentage, or where appropriate the specified amount, required in order to calculate the appropriate amount for the purposes of section 29(1) of the Welfare Reform and Pensions Act 1999 (an Act of Parliament) (creation of pension debits and credits);
 - (g) how the pension sharing charges are to be apportioned between the parties or alternatively that they are to be paid in full by the transferor;
 - (h) that the person responsible for the pension arrangement has furnished the information required by regulation 4 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 and that it appears from that information that there is power to make an order including provision under Part 4 (pension sharing) of Schedule 5 to the Act;
 - (i) the day on which the order or provision takes effect; and
 - (j) that the person responsible for the pension arrangement concerned must discharge his liability in respect of the pension credit within a period of 4 months beginning with the day on which the order or provision takes effect or, if later, with the first day on which the person responsible for the pension arrangement concerned is in receipt of —

- (i) the order for financial provision, including the annex;
- (ii) the dissolution order or nullity order; and
- (iii) the information prescribed by regulation 5 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000;

provided that if the court knows that the implementation period is different from that stated in sub-paragraph (j) by reason of regulations under section 34(4) or 41(2)(a) of the Welfare Reform and Pensions Act 1999 (an Act of Parliament), the annex shall contain details of the implementation period as determined by those regulations instead of the statement in sub-paragraph (j).

- (15) Where provision is made under Part 6 of Schedule 5 to the Act, the annex shall state —
- (a) the case number and the title of the proceedings;
 - (b) that it is an order making provision under paragraph 24 or 25, as the case may be, of Schedule 5 to the Act;
 - (c) the names of the party with pension rights and the other party;
 - (d) the national insurance number of the party with pension rights;
 - (e) sufficient details to identify the pension arrangement concerned and the rights or benefits from it to which the party with pension rights is or may become entitled (for example a policy reference number);
 - (f) in the case of an order including provision under paragraph 24(3) of Schedule 5 to the Act, what percentage of any payment due to the party with pension rights is to be paid for the benefit of the other party;
 - (g) in the case of an order including any other provision under paragraph 24 or 25 of Schedule 5 to the Act, what the person responsible for the pension arrangement is required to do;
 - (h) the address to which any notice which the person responsible for the pension arrangement is required to serve on the other party under regulations made under paragraph 27 of Schedule 5 to the Act is to be sent, if not notified under paragraph (7)(b);
 - (i) an address to which any payment which the person responsible for the pension arrangement is required to make to the other party is to be sent, if not notified under paragraph (7)(c);
 - (j) where the address in sub-paragraph (i) is that of a bank, a building society or National Savings and Investments, sufficient details to

enable payment to be made into the account of the other party, if not notified under paragraph (7)(d); and

- (k) where the order is made by consent, that no objection has been made by the person responsible for the pension arrangement, or that an objection has been received and considered by the court, as the case may be.
- (16) Where the court makes, varies or revokes an order including provision under Part 4 or Part 6 of Schedule 5 to the Act, the applicant for the order, variation or revocation (or, if it is made otherwise than on an application, the court) shall send to the person responsible for the pension arrangement concerned —
 - (a) a copy of the final dissolution order, final nullity order or separation order; and
 - (b) a copy of that order, or as the case may be of the order varying or discharging that order, including any annex to that order relating to that pension arrangement but no other annex to that order.
- (17) The documents referred to in paragraph (16) shall be sent within 7 days after the making of the relevant order, or within 7 days after the final dissolution order, final nullity order or separation order, whichever is the later.
- (18) In this rule —
 - (a) all words and phrases defined in Parts 4 and 6 of Schedule 5 to the Act have the meanings there given;
 - (b) all words and phrases defined in section 46 of the Welfare Reform and Pensions Act 1999 (an Act of Parliament) have the meanings given by that section.

PART 5

OTHER CIVIL PARTNERSHIP PROCEEDINGS

Failure to provide reasonable maintenance

69. Application in case of failure to provide reasonable maintenance

- (1) Every application under Part 8 of Schedule 5 to the Act shall be made in the prescribed form.
- (2) There shall be filed with the application an affidavit by the applicant and also a copy of the application and of the affidavit for service on the respondent.
- (3) The affidavit shall state —

- (a) the same particulars regarding the civil partnership, the court's jurisdiction, the children and the previous proceedings as are required in the case of an application for a dissolution order by paragraph 1(a), (c), (d), (f) and (i) of Schedule 1;
 - (b) particulars of the respondent's failure to provide reasonable maintenance for the applicant, or, as the case may be, of the respondent's failure to provide, or to make a proper contribution towards, reasonable maintenance for the children of the family; and
 - (c) full particulars of the applicant's property and income and of the respondent's property and income, so far as may be known to the applicant.
- (4) A copy of the application and of the affidavit referred to in paragraph (2) shall be served on the respondent, together with a notice in the prescribed form.
- (5) Subject to paragraph (6), the respondent shall, within 14 days after the time allowed for sending the acknowledgement of service, file an affidavit stating —
- (a) whether the alleged failure to provide, or to make proper contribution towards, reasonable maintenance is admitted or denied, and, if denied, the grounds on which he relies;
 - (b) any allegation which he wishes to make against the applicant; and
 - (c) full particulars of his property and income, unless otherwise directed.
- (6) Where the respondent challenges the jurisdiction of the court to hear the application he shall, within 14 days after the time allowed for sending the acknowledgement of service, file an affidavit setting out the grounds of the challenge; and the obligation to file an affidavit under paragraph (5) shall not arise until 14 days after the question of jurisdiction has been determined and the court has decided that the necessary jurisdiction exists.
- (7) Where the respondent's affidavit contains an allegation of an improper association with a person named, rule 60(1) shall apply.
- (8) If the respondent does not file an affidavit in accordance with paragraph (5), the court may order him to file an affidavit containing full particulars of his property and income, and in that case the respondent shall serve a copy of any such affidavit on the applicant.
- (9) Within 14 days after being served with a copy of any affidavit filed by the respondent, the applicant may file a further affidavit as to means

and as to any fact in the respondent's affidavit which is disputed, and in that case the applicant shall serve a copy on the respondent.

No further affidavit shall be filed without the permission of the court.

- (10) Rule 62(4) shall apply, with any necessary modifications, to an application for an order under Part 8 of Schedule 5 to the Act as if the application were for financial provision.

Alteration of maintenance agreement

70. Application for alteration of maintenance agreement during lifetime of parties

- (1) An application under paragraph 60 of Schedule 5 to the Act for the alteration of a maintenance agreement shall, unless otherwise directed, be in the prescribed form.
- (2) There shall be filed with the application an affidavit by the applicant exhibiting a copy of the agreement and verifying the statements in the application and also a copy of the application and of the affidavit for service on the respondent.
- (3) A copy of the application and of the affidavit referred to in paragraph (2) shall be served on the respondent, together with a notice in the prescribed form.
- (4) The respondent shall, within 14 days after the time limited for giving notice of intention to defend, file an affidavit in answer to the application containing full particulars of his property and income and, if he does not do so, the court may order him to file an affidavit containing such particulars.
- (5) A respondent who files an affidavit under paragraph (4) shall at the same time serve a copy on the applicant.

71. Application for alteration of maintenance agreement after death of one party

- (1) An application under paragraph 64 of Schedule 5 to the Act for the alteration of a maintenance agreement after the death of one of the parties shall be made in the prescribed form.
- (2) There shall be filed in support of the application an affidavit by the applicant exhibiting a copy of the agreement and an official copy of the grant of representation to the deceased's estate and of every testamentary document admitted to proof and stating—
 - (a) whether the deceased died domiciled in the Island;

- (b) the place and date of the formation of the civil partnership between the parties to the agreement;
 - (c) the name of every child of the family and of any other child for whom the agreement makes financial arrangements, and —
 - (i) the date of birth of each such child who is still living (or, if it be the case, that he has attained 18) and the place where and the person with whom any such minor child is residing,
 - (ii) the date of death of any such child who has died since the agreement was made;
 - (d) whether there have been in any court any, and if so what, previous proceedings with reference to the agreement or to the civil partnership or to the children of the family or any other children for whom the agreement makes financial arrangements, and the date and effect of any order or decree made in such proceedings;
 - (e) whether there have been any proceedings by the applicant against the deceased's estate under the Inheritance (Provision for Family and Dependants) Act 1982¹⁵ and the date and effect of any order made in such proceedings;
 - (f) in the case of an application by the surviving party, the applicant's means;
 - (g) in the case of an application by the personal representatives of the deceased, the surviving party's means, so far as they are known to the applicant, and the information mentioned in rule 72(3)(a), (b) and (c);
 - (h) the facts alleged by the applicant as justifying an alteration in the agreement and the nature of the alteration sought;
 - (i) if the application is made after the end of the period of 6 months from the date on which representation in regard to the deceased's estate was first taken out, the grounds on which the court's permission to entertain the application is sought.
- (3) In this rule and rule 72 "the deceased" means the deceased party to the agreement to which the application relates.

72. Further proceedings on application under rule 71

- (1) The Court may at any stage of the proceedings direct that any person be added as a respondent to an application under rule 71.

¹⁵ 1982 c.8

- (2) Rule 3.29 of the Rules of Court (representation orders) applies to the proceedings as if they were mentioned in that rule.
- (3) A respondent who is a personal representative of the deceased shall, within 14 days after the time limited for giving notice of intention to defend, file an affidavit in answer to the application stating —
 - (a) full particulars of the value of the deceased's estate for probate, after providing for the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable out of it, including the amount of any tax or duty payable thereon and interest on such tax or duty;
 - (b) the person or classes of persons beneficially interested in the estate (giving the names and addresses of all living beneficiaries) and the value of their interests so far as ascertained, and
 - (c) if such be the case, that any living beneficiary (naming him) is a minor or a patient within the meaning of rule 88.
- (4) If a respondent who is a personal representative of the deceased does not file an affidavit stating the matters mentioned in paragraph (4) the court may order him to do so.
- (5) A respondent who is not a personal representative of the deceased may, within 14 days after the time limited for giving notice of intention to defend, file an affidavit in answer to the application.
- (6) Every respondent who files an affidavit in answer to the application shall at the same time serve a copy on the applicant.

73. Application of other rules

- (1) Rules 60, 62(4) and 65(2) and (3) apply, with any necessary modifications, to an application under paragraph 60 or 64 of Schedule 5 to the Act as they apply to an application for financial provision.
- (2) Subject to paragraph (1) and to rules 49 to 50, these rules shall, so far as applicable, apply with any necessary modifications to an application under paragraph 60 or 64 of Schedule 5 to the Act as if the application were an initial application in termination proceedings.

Summary determination of property disputes

74. Applications under section 64

- (1) Subject to paragraph (2), an application under section 64 of the Act shall be made in the prescribed form and shall be supported by affidavit.

- (2) An order under section 64 of the Act may be made in any financial provision proceedings upon the application of any party to those proceedings in the prescribed form.
- (3) Where the application concerns the title to or possession of land, the application shall —
 - (a) state whether the title to the land is registered or unregistered and, if registered, the title number; and
 - (b) give particulars, so far as known to the applicant, of any mortgage of the land or any interest therein.
- (4) The application shall be served on the respondent, together with a copy of the affidavit in support and an acknowledgement of service in the prescribed form.
- (5) Where particulars of a mortgage are given pursuant to paragraph (3), the applicant shall serve a copy of the application on the mortgagee; and any person so served may apply to the court in writing, within 14 days after service, for a copy of the affidavit in support; and within 14 days of receiving such affidavit may file an affidavit in answer and shall be entitled to be heard on the application.
- (6) If the respondent intends to contest the application, he shall, within 14 days after the time allowed for sending the acknowledgement of service, file an affidavit in answer to the application setting out the grounds on which he relies, and serve a copy of the affidavit on the applicant.
- (7) If the respondent fails to comply with paragraph (6), the applicant may apply for directions; and the court may give such directions as it thinks fit, including a direction that the respondent shall be debarred from defending the application unless an affidavit is filed within such time as the court may specify.
- (8) The court may grant an injunction in proceedings under section 64 of the Act if, but only so far as, the injunction is ancillary or incidental to any relief sought in those proceedings.
- (9) Rules 60, 62(4) and 65(2) and (3) apply, with any necessary modifications, to an application under section 64 of the Act as they apply to an application for financial provision.
- (10) Subject to the provisions of this rule, these rules shall apply, with any necessary modifications, to proceedings on an application under section 64 of the Act as if they were termination proceedings,

Family homes and domestic violence

75. Applications under Part 5 of MPA 2003

- (1) An application for an occupation order or a non-molestation order under Part 5 of MPA 2003 shall be made in the prescribed form.
- (2) An application for an occupation order or a non-molestation order made by a child under the age of 16 shall be made in the prescribed form but shall be treated, in the first instance, as an application to the court for permission.
- (3) An application for an occupation order or a non-molestation order which is made in other proceedings which are pending shall be made in the prescribed form.
- (4) An application in the prescribed form shall be supported by an affidavit by the applicant.
- (5) Where an application is made without notice, the affidavit shall state the reasons why notice was not given.
- (6) An application made on notice (together with the affidavit and a notice of the time and place of the hearing) shall be served on the respondent personally not less than 2 days before the date on which the application will be heard.
- (7) The court may shorten the period specified in paragraph (6).
- (8) Where the applicant is acting in person, service of the application shall be effected by the coroner if the applicant so requests.
This does not affect the court's power to order substituted service.
- (9) Where an application for an occupation order or a non-molestation order is pending, the court shall consider (on the application of either party or of its own motion) whether to exercise its power under section 91(3) of MPA 2003 to transfer the hearing of that application to a court of summary jurisdiction, and shall make an order for transfer in the prescribed form if it seems necessary or expedient to do so.
- (10) A copy of an application for an occupation order under section 95, 97 or 98 of MPA 2003 shall be served by the applicant by post on the mortgagee or, as the case may be, the landlord of the dwelling-house in question, with a notice in the prescribed form informing him of his right to make representations in writing or at any hearing.
- (11) Rules 62(4) and 64 apply, with any necessary modifications, to an application for an occupation order under section 95, 97 or 98 of MPA 2003 as they apply to an application for financial provision.

- (12) The applicant shall file a statement in the prescribed form after he has served the application.

76. Hearing of applications under Part 5 of MPA 2003

- (1) An application for an occupation order or a non-molestation order under Part 5 of MPA 2003 shall be dealt with in private unless the court otherwise directs.
- (2) Where an order is made on an application made without notice, a copy of the order together with a copy of the application and of the affidavit in support shall be served on the respondent personally.
- (3) Where the application is for an occupation order under section 95, 97 or 98 of MPA 2003, a copy of any order made on the application shall be served by the applicant by post on the mortgagee or, as the case may be, the landlord of the dwelling-house in question.
- (4) A copy of an order made on an application heard with notice shall be served on the respondent personally.
- (5) Where the applicant is acting in person, service of a copy of any order made on the hearing of the application shall be effected by the coroner if the applicant so requests.
- (6) Any order made on the hearing of an application under Part 5 of MPA 2003 shall be issued in the prescribed form.
- (7) The Court may direct that a further hearing be held in order to consider any representations made by a mortgagee.
- (8) An application to vary, extend or revoke an order made under Part 5 of MPA 2003 shall be made in the prescribed form and this rule shall apply to the hearing of such an application.

77. Enforcement of orders made on applications under Part 5 of MPA 2003

- (1) Where a power of arrest is attached to one or more of the provisions ("the relevant provisions") of an order made under Part 5 of MPA 2003 —
 - (a) the relevant provisions shall be set out in an abridged copy of the order in the prescribed form, which shall not include any provisions of the order to which the power of arrest was not attached; and
 - (b) the abridged copy shall be delivered to the Chief Constable, accompanied by a statement showing that the respondent has been

- served with the order or informed of its terms (whether by being present when the order was made or by telephone or otherwise).
- (2) Where an order is made varying or revoking the relevant provisions, the Chief Registrar shall —
 - (a) immediately inform the Chief Constable; and
 - (b) deliver a copy of the order to him.
 - (3) An application for the issue of a warrant for the arrest of the respondent shall be made in the prescribed form.
 - (4) The court before whom a person is brought following his arrest may —
 - (a) determine whether the facts, and the circumstances which led to the arrest, amounted to disobedience of the order, or
 - (b) adjourn the proceedings and, where such an order is made, the arrested person may be released and —
 - (i) be dealt with within 14 days of the day on which he was arrested; and
 - (ii) be given not less than 2 days' notice of the adjourned hearing.
 - (5) The court may adjourn consideration of the penalty to be imposed for contempts found proved and such consideration may be restored if the respondent does not comply with any conditions specified by the court.
 - (6) Where the court makes a hospital order or a guardianship order under section 111 of MPA 2003, the Chief Registrar shall —
 - (a) send to the hospital any information which will be of assistance in dealing with the patient;
 - (b) inform the applicant when the respondent is being transferred to hospital.
 - (7) Where a transfer direction given by the Department of Home Affairs under section 54 of the Mental Health Act 1998¹⁶ is in force in respect of a person remanded in custody by the court under Schedule 3 to MPA 2003, the Chief Registrar shall notify —
 - (a) the chief officer of the institution where that person was detained; and
 - (b) the hospital where he is detained,

¹⁶ 1998 c.3

of any committal hearing which that person is required to attend, and the Chief Registrar shall give notice in writing to the hospital where that person is detained of any further remand under paragraph 3 of Schedule 3 to MPA 2003.

- (8) In paragraph (4) "arrest" means arrest under a power of arrest attached to an order or under a warrant of arrest.

78. Bail application

- (1) An application for bail made by a person arrested under a power of arrest or a warrant of arrest may be made either orally or in writing.
- (2) Where an application is made in writing, it shall contain the following particulars —
- (a) the full name of the person making the application;
 - (b) the address of the place where the person making the application is detained at the time when the application is made;
 - (c) the address where the person making the application would reside if he were to be granted bail;
 - (d) the amount of the recognizance in which he would agree to be bound; and
 - (e) the grounds on which the application is made and, where a previous application has been refused, full particulars of any change in circumstances which has occurred since that refusal.
- (3) An application made in writing shall be signed by the person making the application or by a person duly authorised by him in that behalf or, where the person making the application is a minor or is for any reason incapable of acting, by a litigation friend acting on his behalf, and a copy shall be served by the person making the application on the applicant for the Part 5 order.

Application for declaration as to status

79. Application under section 56 for declaration as to status

- (1) Unless otherwise directed, an initial application under section 56 of the Act for a declaration shall state —
- (a) the names of the parties to the civil partnership to which the application relates and the residential address of each of them at the date of the application;
 - (b) the place and date of any ceremony of civil partnership to which the application relates;

- (c) the grounds on which the application is made and all other material facts alleged by the applicant to justify the making of the declaration;
- (d) whether there have been or are continuing any proceedings in any court, tribunal or authority in the Island or elsewhere between the parties which relate to, or are capable of affecting, the validity or subsistence of the civil partnership, dissolution, annulment or separation to which the application relates, or which relate to the civil partnership status of either of the parties, and, if so —
 - (i) the nature, and either the outcome or present state of those proceedings,
 - (ii) the court, tribunal or authority before which they were begun,
 - (iii) the date when they were begun,
 - (iv) the names of the parties to them,
 - (v) the date or expected date of the trial,
 - (vi) any other facts relevant to the question whether the application should be stayed under Schedule 3;

and any such proceedings shall include any which are instituted otherwise than in a court of law in any country outside the Island, if they are instituted before a tribunal or other authority having power under the law having effect there to determine questions of status, and shall be treated as continuing if they have begun and have not been finally disposed of,

- (e) where it is alleged that the court has jurisdiction based on domicile, which of the parties to the civil partnership to which the application relates is domiciled in the Island on the date of the application, or died before that date and was at death domiciled in the Island;
 - (f) where it is alleged that the court has jurisdiction based on habitual residence, which of the parties to the civil partnership to which the application relates has been habitually resident in the Island, or died before that date and had been habitually resident in the Island throughout the period of one year ending with the date of death;
 - (g) where the applicant was not a party to the civil partnership to which the application relates, particulars of his interest in the determination of the application.
- (2) Where the proceedings are for a declaration that the validity of a dissolution, annulment or separation obtained in any country outside

the Island in respect of the civil partnership either is or is not entitled to recognition in the Island, the application shall in addition state the date and place of the dissolution, annulment or legal separation.

- (3) There shall be annexed to the application a copy of the certificate of any civil partnership to which the application relates, or, as the case may be, a certified copy of any order or decree of dissolution or annulment or for separation to which the application relates.
- (4) Where a document produced by virtue of 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 parties to the civil partnership in respect of which a declaration is sought shall be applicant and respondent respectively to the application, unless a third party is applying for a declaration, in which case he shall be the applicant and the parties to the civil partnership shall be respondents to the application.

80. General provisions as to proceedings under rule 79

- (1) An application under rule 79 shall be supported by an affidavit by the applicant verifying the application and giving particulars of every person whose interest may be affected by the proceedings and his relationship to the applicant.

Provided that if the applicant is under the age of 18, the affidavit shall, unless otherwise directed, be made by his litigation friend.

- (2) Where the jurisdiction of the court to entertain an application is based on habitual residence the application shall include a statement of the addresses of the places of residence of the person so resident and the length of residence at each place either during the period of one year ending with the date of the application or, if that person is dead, throughout the period of one year ending with the date of death.
- (3) An affidavit for the purposes of paragraph (1) may contain statements of information or belief with the sources and grounds of them.
- (4) A copy of the application and every document accompanying it shall be sent by the applicant to the Attorney General at least one month before the application is filed, and it shall not be necessary thereafter to serve these documents upon him.
- (5) The Chief Registrar shall send a copy of any answer to the Attorney General if he has notified the court that he wishes to intervene in the proceedings.

- (6) When all answers to the application have been filed the applicant shall issue and serve on all respondents to the application a request for directions as to any other persons who should be made respondents to the application or given notice of the proceedings.
- (7) When giving directions in accordance with paragraph (6) the court shall consider whether it is necessary that the Attorney General should argue before it any question relating to the proceedings, and if it does so consider, the Attorney General need not file an answer and the court shall give directions requiring him to serve on all parties to the proceedings a summary of his argument.
- (8) Persons given notice of proceedings pursuant to directions given in accordance with paragraph (6) shall within 21 days after service of the notice upon them be entitled to apply to the court to be joined as parties.
- (9) The Attorney General may file an answer to the application within 21 days after directions have been given under paragraph (7) and no directions for trial shall be given until that period and the period referred to in paragraph (8) have expired.
- (10) The Attorney General, in deciding whether it is necessary or expedient to intervene in the proceedings, may have a search made for, and may inspect and bespeak a copy of, any document filed which relates to any other family proceedings referred to in the proceedings.
- (11) Subject to rule 79 and this rule, these rules, so far as applicable, apply with the necessary modifications to the proceedings as if they were termination proceedings.

Financial relief after foreign dissolution

81. Application for permission under Schedule 7 Part 1

- (1) An application for permission to apply for an order for financial relief under Part 1 of Schedule 7 to the Act shall be made without notice in the prescribed form, and shall be supported by an affidavit by the applicant stating the facts relied on in support of the application with particular reference to the matters set out in paragraph 8(3) of Schedule 7 to the Act.
- (2) The affidavit in support shall give particulars of the judicial or other proceedings by means of which the civil partnership to which the application relates was dissolved or annulled or by which the civil partners were legally separated and shall state, so far as is known to the applicant —

- (a) the names of the civil partners and the date and place of the civil partnership;
 - (b) the occupation and residence of each of the civil partners;
 - (c) whether there are any living children of the family and, if so, the number of such children and the full names (including surname) of each and his date of birth or, if it be the case, that he is over 18;
 - (d) whether either of the civil partners has married or entered into another civil partnership;
 - (e) an estimate in summary form of the appropriate amount or value of the capital resources and net income of each party and of any minor child of the family;
 - (f) the grounds on which it is alleged that the court has jurisdiction to entertain an application for an order for financial relief under Part 1 of Schedule 7 to the Act.
- (3) The Chief Registrar shall fix a date, time and place for the hearing of the application by a judge in private and give notice of it to the applicant.

82. Application for order for financial relief or avoidance of transaction order under Schedule 7 Part 1

- (1) An application for an order for financial relief under Part 1 of Schedule 7 to the Act shall be made in the prescribed form, and at the same time the applicant, unless otherwise directed, shall file an affidavit in support of the application giving full particulars of his property and income.
- (2) The applicant shall serve a copy of the application on the respondent and shall annex to it a copy of the affidavit in support, if one has been filed, and a notice of proceedings and acknowledgement of service in the prescribed form, and rule 94 shall apply to such an acknowledgement of service as if the reference in paragraph (2) of that rule to 7 days were to 31 days.
- (3) Rules 57, 59 and 61 apply, with any necessary modifications, to an application for an order for financial relief under this rule as they apply to an application for financial provision; and the court may order the attendance of any person for the purpose of being examined or cross-examined and the disclosure and inspection of any document.
- (4) An application for an interim order for maintenance under paragraph 5 of Schedule 7 to the Act or an avoidance of transaction order under paragraph 14 of that Schedule may be made, unless the court otherwise

directs, in the application under paragraph (1), and an application for an order under paragraph 14 of that Schedule shall be supported by an affidavit, which may be the affidavit filed under paragraph (1), stating the facts relied on.

- (5) If the respondent intends to contest the application he shall, within 28 days after the time limited for giving notice to defend, file an affidavit in answer to the application setting out the grounds on which he relies and shall serve a copy on the applicant.
- (6) In respect of any application for an avoidance of transaction order the court may give such a direction or make such appointment as it is empowered to give or make by paragraph (3), and rule 59 shall apply, with any necessary modifications, to an application for an avoidance of transaction order as it applies to an application for an avoidance of disposition order.

83. Application for order under Schedule 7 paragraph 16 preventing transaction

- (1) An application under paragraph 16 of Schedule 7 to the Act for an order preventing a transaction shall be made in the prescribed form and shall be supported by an affidavit by the applicant stating the facts relied on in support of the application.
- (2) The applicant shall serve a copy of the application on the respondent and shall annex thereto a copy of the affidavit in support and a notice of proceedings and acknowledgement of service in the prescribed form, and rule 94 shall apply to such an acknowledgement of service as if the reference in paragraph (2) of that rule to 7 days were to 31 days.
- (3) If the respondent intends to contest the application he shall, within 28 days after the time limited for giving notice of intention to defend, file an affidavit in answer to the application setting out the grounds on which he relies and shall serve a copy on the applicant.

PART 6

GENERAL

84. 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 Part 2 of the Rules of the High Court (Family Proceedings) 2009¹⁷.

Service

85. 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.

86. 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 judge 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 judge may dispense with service of the document.

87. Service out of the Island

- (1) Any document in proceedings to which these Rules apply may be served out of the Island without the permission of the court either in the manner prescribed by these Rules or in accordance with Chapter 9 of Part 2 of the Rules of Court.

¹⁷ SD 353/09

- (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.

Disability

88. Person under disability must sue by litigation friend etc.

- (1) In this rule and rule 89 —

"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 litigation friend and may defend any such proceedings by his litigation friend and, except as otherwise provided by this rule, it shall not be necessary for a litigation friend to be appointed by the court.
- (3) No person's name shall be used in any proceedings as litigation 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 litigation friend 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 litigation friend, 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 litigation friend;
 - (b) in any other case, an application may be made on behalf of the patient for the appointment of a litigation friend;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 judge for directions as to whether a litigation friend should be appointed to act for that person in the proceedings, and on any such application the judge may, if he considers it necessary in order to protect the interests of the person served, order that some proper person be appointed his litigation friend.
- (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 litigation friend; 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 litigation friend;
 - (b) where the person under disability is a patient and the proposed litigation friend 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 litigation friend 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 litigation friend 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 litigation friend.

89. Service on person under disability

- (1) Where a document to which rule 14 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 88 to be the litigation friend 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 sub-paragraph (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 the prescribed form; and after service has been effected the person at whose instance the document was served shall, unless the Attorney General is the litigation friend 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.

90. Application for nullity order on ground of mental disorder

- (1) Where an application for an nullity order has been made on the ground that at the time of the civil partnership 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 civil partnership, then, whether or not the respondent gives notice of intention to defend, the applicant shall not proceed with the case without the permission of the court.

- (2) The court may make it a condition of granting permission under paragraph (1) that some proper person be appointed to act as litigation friend of the respondent.

91. Guardian ad litem

- (1) Without prejudice to rule 57, 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

92. 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 permission of the court.

- (2) Paragraph (1) does not apply to termination proceedings, except proceedings on an application to which Part 4 applies.

93. Evidence of civil partnership outside the Island

- (1) The formation of a civil partnership 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 civil partnership is not disputed, be proved by the evidence of one of the parties to the civil partnership and the production of a document purporting to be—
- (a) a certificate of civil partnership or similar document issued under the law in force in that country; or
 - (b) a certified copy of an entry in a register of civil partnerships 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

94. 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 the prescribed form 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.

95. Orders for transfer of proceedings

- (1) In this rule "order for transfer" means —
 - (a) an order under paragraph 35(5) of Schedule 5 to the Act that an application be heard and determined by a court of summary jurisdiction;
 - (b) an order under paragraph 2(2) of Schedule 6 to the Act that a matter be reheard 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.

96. Orders: general

- (1) A copy of every dissolution order, nullity order, separation order or order of presumption of death and dissolution of civil partnership 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.

97. No striking out of dormant claim

Rule 2.62 of the Rules of Court (striking out of dormant claim) shall not apply to any proceedings to which these Rules apply.

98. Appeals from Chief Registrar

- (1) Any party may appeal to a judge 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 judge 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 private unless the judge 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.

99. Inspection etc of documents retained in court

- (1) Subject to rule 100 —
 - (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 91 to be the guardian ad litem 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 1987¹⁸.

- (3) Except as provided by rules 33(4) and 80(10) and paragraphs (1) and (2), no document filed other than an order made in open court shall be

¹⁸ 1987 c.11

open to inspection by any person without the permission 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 permission.

- (4) All documents in proceedings brought under section 48(1)(d) or (e) of the Act must, while they are in the custody of the Court, be kept in a place of special security.
- (5) This rule is without prejudice to section 12 (prohibitions on disclosure) of the Gender Recognition Act 2009¹⁹

100. 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 the prescribed form and that address shall not be revealed to any person save by order of the court.

¹⁹ 2009 c.11

Rule 8(2).

SCHEDULE 1

CONTENTS OF APPLICATION

(Unless otherwise directed under rule 8)

1. Every initial application, other than an application under rule 79, shall state—
 - (a) the names of the parties to the civil partnership and the date and place of the civil partnership;
 - (b) the last address at which the parties to the civil partnership have lived together as civil partners;
 - (c) where it is alleged that the court has jurisdiction based on domicile—
 - (i) the country in which the applicant is domiciled, and
 - (ii) if that country is not the Island, the country in which the respondent is domiciled;
 - (d) where it is alleged that the court has jurisdiction based on habitual residence—
 - (i) the country in which the applicant has been habitually resident throughout the period of one year ending with the date of the application, or
 - (ii) if the applicant has not been habitually resident in the Island, the country in which the respondent has been habitually resident during that period, with details in either case, including the addresses of the places of residence and the length of residence at each place;
 - (e) the occupation and residence of the applicant and the respondent;
 - (f) whether there are any living children of the family and, if so—
 - (i) the number of such children and the full names (including surname) of each and his date of birth or (if it be the case) that he is over 18, and
 - (ii) in the case of each minor child over the age of 16, whether he is receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation;
 - (g) whether to the knowledge of the applicant, any other child now living has been born to the other party during the civil partnership and, if so, the full names (including surname) of the child and his date of birth or, if it be the case, that he is over 18;
 - (h) if it be the case, that there is a dispute whether a living child is a child of the family;
 - (i) whether or not there are or have been any other proceedings in any court in the Island or elsewhere with reference to the civil partnership or to any child of the family or between the applicant and the respondent with reference to any property of either or both of them and, if so—
 - (i) the nature of the proceedings,
 - (ii) the date and effect of any order or decree, and

- (iii) in the case of proceedings with reference to the civil partnership, whether there has been any resumption of cohabitation since the making of the order or decree;
- (j) whether there are any proceedings continuing in any country outside the Island which relate to the civil partnership or are capable of affecting its validity or subsistence and, if so—
 - (i) particulars of the proceedings, including the court in or tribunal or authority before which they were begun,
 - (ii) the date when they were begun,
 - (iii) the names of the parties,
 - (iv) the date or expected date of any trial in the proceedings, and
 - (v) such other facts as may be relevant to the question whether the proceedings on the application should be stayed under Schedule 1 to the Act;

and such proceedings shall include any which are not instituted in a court of law in that country, if they are instituted before a tribunal or other authority having power under the law having effect there to determine questions of status, and shall be treated as continuing if they have been begun and have not been finally disposed of,

- (k) where the fact on which the application is based is 5 years' separation, whether any, and if so what, agreement or arrangement has been made or is proposed to be made between the parties for the support of the respondent or, as the case may be, the applicant or any child of the family;
 - (l) in the case of an application for a dissolution order, that the civil partnership has broken down irretrievably;
 - (m) the fact alleged by the applicant for the purposes of section 2(2) of the Act or, where the application is not for a dissolution order or a separation order, the ground on which relief is sought, together in any case with brief particulars of the individual facts relied on but not the evidence by which they are to be proved;
 - (n) any further or other information required by such of the following paragraphs as may be applicable.
2. An application for an nullity order under section 48(1)(c) or (e) of the Act shall state whether the applicant was at the time of the civil partnership ignorant of the facts alleged.
3. An application for an order of presumption of death and dissolution of civil partnership shall state:—
- (a) the last place at which the parties to the civil partnership cohabited;
 - (b) the circumstances in which the parties ceased to cohabit;
 - (c) the date when and the place where the respondent was last seen or heard of; and
 - (d) the steps which have been taken to trace the respondent.
4. Every application shall conclude with —

- (a) a request setting out particulars of the relief claimed, including any application for an order under any provision of Part 1 or Part 2 of the Children and Young Persons Act 2001 with respect to a child of the family, any claim for costs and any application for financial provision which it is intended to claim;
- (b) the names and addresses of the persons who are to be served with the application, indicating if any of them is a person under disability;
- (c) the applicant's address for service, which, where the applicant sues by an advocate, shall be the advocate's name or firm and address. Where the applicant, although suing in person, is receiving legal advice from an advocate, the advocate's name or firm and address may be given as the address for service if he agrees. In any other case, the applicant's address for service shall be the address of any place in the Island to which documents for the applicant may be delivered or sent.

Rule 8(3)

SCHEDULE 2

STATEMENT OF ARRANGEMENTS FOR CHILDREN

1. Details of all children of the family

In relation to each child of the family —

- (a) forenames;
- (b) surname;
- (c) date of birth;
- (d) relationship (natural or adoptive), if any, to either party.

2. Arrangements for the children of the family

- (a) Home details
 - (i) Addresses at which the children now live
 - (ii) Details of the number of living rooms, bedrooms etc. at addresses in (i)
 - (iii) Whether house rented or owned and by whom
 - (iv) Whether rent or mortgage is being regularly paid
 - (v) Names and relationship to the children of all other persons living with the children
 - (vi) Whether any change in these arrangements is proposed, with details
- (b) Education and training details
 - (i) Name of school, college or place of training attended by each child.
 - (ii) Whether any child has special educational needs, with details
 - (iii) Whether school, college or place of training, fee-paying, with details, and whether fees are being regularly paid
 - (iv) Whether any change in these arrangements is proposed, with details
- (c) Childcare details
 - (i) Which civil partner or other person looks after the children from day to day (with details, If responsibility is shared)
 - (ii) Whether that person goes out to work, with details of hours of work)
 - (iii) Whether someone looks after the children when that person is not there, with details
 - (iv) Who looks after the children during school holidays
 - (v) Whether any change in these arrangements is proposed, with details
- (d) Maintenance
 - (i) Does the other civil partner pay towards the upkeep of the children?
 - (ii) Details and amount of any other source of maintenance
 - (iii) Whether payment is made under a court order, with details (including amount, name of the court and case number)

- (iv) Whether maintenance for the children been agreed
- (v) If not, whether application will be made for a maintenance order for the children, with details
- (e) Contact with the children
 - (i) Whether children see the civil partner with whom they are not living
 - (ii) Whether children stay with see the civil partner with whom they are not living
 - (iii) Whether any change in these arrangements is proposed, with details of proposed arrangements for contact and residence
- 3. Health**
 - (a) General state of health of children, with details of any serious disability or chronic illness (any medical report to be attached)
 - (b) Whether children have any special health needs, with details of the care needed and how it is to be provided
- 4. Details of care and other court proceedings**
 - (a) Whether the children are in the care of the Department of Social Care, or under the supervision of the Department or a probation officer, with details, including details of any court proceedings
 - (b) Whether there or have there been any proceedings in any court involving the children, eg. adoption, custody or residence, access or contact, wardship, care, supervision or maintenance, with details (a copy of any order must be attached)

Rule 28

SCHEDULE 3

STAYING OF TERMINATION PROCEEDINGS

1. Interpretation

(1) In this Schedule-

'another jurisdiction' means any country outside the Island;

'relevant proceedings' means any proceedings so far as they are one or more of the 5 following kinds, namely, proceedings for

- (a) dissolution of civil partnership,
- (b) separation of civil partners,
- (c) annulment of civil partnership,
- (d) a declaration as to the validity of a civil partnership of the applicant, and
- (e) a declaration as to the subsistence of such a civil partnership;

'related jurisdiction' means England and Wales, Scotland, Northern Ireland, Jersey or Guernsey (including Alderney and Sark).

- (2) References in this Schedule to the trial or first trial in any proceedings do not include references to the separate trial of an issue as to jurisdiction only.
- (3) For the purposes of this Schedule, proceedings in the High Court are continuing if they are pending and not stayed.

2. Duty to furnish particulars of concurrent proceedings in another jurisdiction

(1) While relevant proceedings are pending in the court in respect of a civil partnership and the trial or first trial in those proceedings has not begun, it is the duty of any person who is an applicant in the proceedings, or is a respondent and has in his answer included a prayer for relief, to furnish in accordance with this paragraph particulars of any proceedings which –

- (a) he knows to be continuing in another jurisdiction; and
- (b) are in respect of that civil partnership or capable of affecting its validity or subsistence.

(2) The particulars to be furnished under sub-paragraph (1) are those specified in paragraph 1(j) of Schedule 1.

(3) Those particulars are to be furnished either –

- (a) in a statement of case, or
- (b) in a separate statement filed and served on every opposite party and party cited.

3. Obligatory stays

(1) Where before the beginning of the trial or first trial in any proceedings for a dissolution order which are continuing in the court it appears to the court on the application of a party to the civil partnership –

- (a) that in respect of the same civil partnership proceedings for a dissolution or annulment of civil partnership are continuing in a related jurisdiction; and
- (b) that the civil partners have resided together after its celebration; and

- (c) that the place where they resided together when the proceedings in the court were begun or, if they did not then reside together, where they last resided together before those proceedings were begun, is in that jurisdiction; and
- (d) that either of the said parties was habitually resident in that jurisdiction throughout the year ending with the date on which they last resided together before the date on which the proceedings in the court were begun,

the court shall, subject to paragraph 5(2), order that the proceedings in the court be stayed.

- (2) References in sub-paragraph (1) to the proceedings in the court are, in the case of proceedings which are not only proceedings for a dissolution order, to the proceedings so far as they are proceedings for a dissolution order.

4. Discretionary stays

- (1) Where, before the beginning of the trial or first trial in any relevant proceedings which are continuing in the court, it appears to the court –
 - (a) that any proceedings in respect of the civil partnership in question, or capable of affecting its validity or subsistence, are continuing in another jurisdiction; and
 - (b) that the balance of fairness (including convenience) as between the civil partners is such that it is appropriate for the proceedings in that jurisdiction to be disposed of before further steps are taken in the proceedings in the court or in those proceedings so far as they consist of a particular kind of termination proceedings,

the court may then, if it thinks fit, order that the proceedings in the court be stayed or, as the case may be, that those proceedings be stayed so far as they consist of proceedings of that kind.

- (2) In considering the balance of fairness and convenience for the purposes of sub-paragraph (1)(b), the court shall have regard to all factors appearing to be relevant, including the convenience of witnesses and any delay or expense which may result from the proceedings being stayed, or not being stayed.
- (3) In the case of any proceedings so far as they are proceedings for a dissolution order, the court shall not exercise the power conferred on it by sub-paragraph (1) while an application under paragraph 3 in respect of the proceedings is pending.
- (4) If, at any time after the beginning of the trial or first trial in any relevant proceedings which are pending in the court, the court declares by order that it is satisfied that a person has failed to perform the duty imposed on him in respect of the proceedings by paragraph 2, sub-paragraph (1) shall have effect in relation to those proceedings, and to the other proceedings by reference to which the declaration is made, as if the words 'before the beginning of the trial or first trial' were omitted; but no action shall lie in respect of the failure of a person to perform such a duty.

5. Revocation of stay

- (1) Where an order staying any proceedings is in force in pursuance of paragraph 3 or 4, the court may, if it thinks fit, on the application of a party to the proceedings, revoke the order if it appears to the court that the other proceedings by reference to which the order was made are stayed or concluded, or that a party to those other proceedings has delayed unreasonably in prosecuting them.

- (2) If the court revokes an order staying any proceedings and made in pursuance of paragraph 3, the court shall not again stay those proceedings in pursuance of that paragraph.

6. Financial provision for children

- (1) This paragraph applies (subject to paragraph 8) where proceedings for dissolution order, nullity order or separation order are stayed by reference to proceedings in a related jurisdiction for dissolution or annulment of a civil partnership or separation of civil partners.

- (2) In this paragraph —

'lump sum order' means an order for payment of a lump sum made under paragraph 1(1) or (2)(a) of Schedule 5 to the Act in favour of a child of the family of the parties;

'the other proceedings', in relation to any stayed proceedings, means the proceedings in another jurisdiction by reference to which the stay was imposed;

'relevant order' means —

- (a) an interim maintenance order;
- (b) a periodical payments order or secured periodical payments order made under paragraph 1(1) or (2)(a) in favour of a child of the family of the parties;
- (c) an order under section 11 of the Children and Young Persons Act 2001 (residence, contact etc.), including (except for the purposes of sub-paragraphs (5) to (7)) an order restraining a person from removing a child out of the Island or out of the care of another person;

'stayed' means stayed in pursuance of this Schedule.

- (3) Where any proceedings are stayed, then, without prejudice to the effect of the stay apart from this paragraph —
- (a) the court shall not have power to make a relevant order or a lump sum order in connection with the stayed proceedings except in pursuance of sub-paragraph (4); and
 - (b) subject to sub-paragraph (4), any relevant order made in connection with the stayed proceedings shall, unless the stay is previously removed or the order previously revoked, cease to have effect on the expiration of the period of 3 months beginning with the date on which the stay was imposed.
- (4) If the court considers that, for the purpose of dealing with circumstances needing to be dealt with urgently, it is necessary during or after the period mentioned in sub-paragraph (3)(b) to make a relevant order or a lump sum order in connection with the stayed proceedings or to extend or further extend the duration of a relevant order made in connection with the stayed proceedings, the court may do so and the order shall not cease to have effect by virtue of sub-paragraph (3)(b).
- (5) Sub-paragraph (6) applies where —
- (a) any proceedings are stayed, and
 - (b) at the time when the stay is imposed an order is in force, or at a subsequent time an order comes into force, which-

- (i) was made in connection with the other proceedings, and
 - (ii) provides for periodical payments for a party to the civil partnership in question, periodical payments for a child or any matter in relation to which an order under section 11 of the Children and Young Persons Act 2001 may be made with respect to a child.
- (6) Where this sub-paragraph applies, on the imposition of the stay in a case where the order is in force when the stay is imposed, and on the coming into force of the order in any other case —
- (a) any relevant order made in connection with the stayed proceedings shall cease to have effect in so far as it makes for a civil partner or child any provision for any of those matters as respects which the same or different provision for that civil partner or child is made by the other order;
 - (b) the court shall not have power in connection with the stayed proceedings to make a relevant order containing for a civil partner or child provision for any of those matters as respects which any provision for that civil partner or child is made by the other order; and
 - (c) if the other order contains provision for periodical payments for a child, the court shall not have power in connection with the stayed proceedings to make a lump sum order for that child.
- (7) Where a secured periodical payments order (within the meaning of Schedule 5 to the Act) made under paragraph 1(1) or (2)(a) of that Schedule in favour of a child of the family of the parties ceases to have effect by virtue of sub-paragraph (3) or (6), any sale of property order made under paragraph 9 of that Schedule which requires the proceeds of sale of property to be used for securing periodical payments under the first-mentioned order shall also cease to have effect.

7. Restriction on stay in certain cases

- (1) If any proceedings are stayed so far as they consist of relevant proceedings of a particular kind but are not stayed so far as they consist of relevant proceedings of a different kind, paragraph 6(3) to (6) shall not apply to the proceedings but, without prejudice to the effect of the stay apart from this paragraph, the court shall not have power to make a relevant order or a lump sum order in connection with the proceedings so far as they are stayed.
- (2) In this paragraph references to relevant proceedings do not include proceedings for a declaration.

8. Savings

Nothing in paragraph 6 or 7 affects any power of the court —

- (a) to vary or revoke a relevant order so far as the order is for the time being in force; or
- (b) to enforce a relevant order as respects any period when it is or was in force; or
- (c) to make a relevant order or a lump sum order in connection with proceedings which were but are no longer stayed.

MADE 5th April 2011

D C Doyle

Her Majesty's First Deemster and Clerk of the Rolls

Andrew Corlett

Second Deemster

EXPLANATORY NOTE

(This note is not part of the Rules.)

These Rules make provision for the procedure in proceedings relating to civil partnerships in the High Court under the Civil Partnership Act 2011.

Part 1 (rules 1 – 4) is introductory. Part 2 (rules 5 and 6) deals with application before the registration of a civil partnership. Part 3 (rules 7 – 50) deals with proceedings for the termination of a civil partnership, ie. applications for a dissolution order, nullity order or separation order or an order for presumption of death. Part 4 (rules 51 – 68) deals with applications for financial provision in proceedings under Part 3. Part 5 (rules 69 – 83) deals with other civil partnership proceedings, including claims for maintenance, applications for alteration of maintenance agreements, property disputes and applications for occupation orders, non-molestation orders, declarations as to marital status and financial relief after a foreign divorce. Part 6 (rules 84 – 100) makes general provision as to procedure.