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STATUTORY INSTRUMENTS

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**2005 No. 2795**

**The Family Procedure (Adoption) Rules 2005**

**PART 9**

**PROCEDURE FOR OTHER APPLICATIONS IN PROCEEDINGS**

**Types of application for which Part 9 procedure may be followed**

- 86.**—(1) The Part 9 procedure is the procedure set out in this Part.
- (2) An applicant may use the Part 9 procedure if the application is made—
- (a) in the course of existing proceedings;
  - (b) to commence proceedings other than those to which Part 5 applies; or
  - (c) in connection with proceedings which have been concluded.
- (Rule 22 lists the proceedings to which Part 5 applies.)
- (3) Paragraph (2) does not apply—
- (a) to applications made in accordance with—
    - (i) section 60(3) (order to prevent disclosure of information to an adopted person);
    - (ii) section 79(4) (order for Registrar General to give any information referred to in section 79(3));
    - (iii) rule 27 (request to dispense with consent);
    - (iv) rule 59(2) (appointment of children’s guardian);
    - (v) rule 84 (disclosure of information to adopted adult);
    - (vi) rule 106 (withdrawal of application); or
    - (vii) rule 107 (recovery orders); or
  - (b) if a practice direction provides that the Part 9 procedure may not be used in relation to the type of application in question.
- (4) The following persons are to be respondents to an application under this Part—
- (a) where there are existing proceedings or the proceedings have concluded, the parties to those proceedings;
  - (b) where there are no existing proceedings—
    - (i) if notice has been given under section 44 (notice of intention to adopt or apply for a section 84 order), the local authority to whom notice has been given; and
    - (ii) if an application is made in accordance with—
      - (aa) section 26(3)(f) (permission to apply for contact order); or
      - (bb) section 42(6) (permission to apply for adoption order),any person who, in accordance with rule 23, will be a party to the proceedings brought if permission is granted; and

- (c) any other person as the court may direct.

#### **Application notice to be filed**

- 87.**—(1) Subject to paragraph (2), the applicant must file an application notice.
- (2) An applicant may make an application without filing an application notice if—
- (a) this is permitted by a rule or practice direction; or
  - (b) the court dispenses with the requirement for an application notice.

#### **Notice of an application**

- 88.**—(1) Subject to paragraph (2), a copy of the application notice will be served on each respondent.
- (2) An application may be made without serving a copy of the application notice if this is permitted by—
- (a) a rule;
  - (b) a practice direction; or
  - (c) the court.
- (Rule 91 deals with service of a copy of the application notice.)

#### **Time when an application is made**

- 89.** Where an application must be made within a specified time, it is so made if the court receives the application notice within that time.

#### **What an application notice must include**

- 90.**—(1) An application notice must state—
- (a) what order the applicant is seeking; and
  - (b) briefly, why the applicant is seeking the order.
- (2) The applicant may rely on the matters set out in his application notice as evidence if the application is verified by a statement of truth.

#### **Service of a copy of an application notice**

- 91.**—(1) A court officer will serve a copy of the application notice—
- (a) as soon as practicable after it is filed; and
  - (b) in any event at least 7 days before the court is to deal with the application.
- (2) The applicant must, when he files the application notice, file a copy of any written evidence in support.
- (3) When a copy of an application notice is served by a court officer it will be accompanied by—
- (a) a notice of the date and place where the application will be heard;
  - (b) a copy of any witness statement in support; and
  - (c) a copy of any draft order which the applicant has attached to his application.
- (4) If—
- (a) an application notice is served; but
  - (b) the period of notice is shorter than the period required by these Rules or a practice direction,

the court may direct that, in the circumstances of the case, sufficient notice has been given and hear the application.

- (5) This rule does not require written evidence—
  - (a) to be filed if it has already been filed; or
  - (b) to be served on a party on whom it has already been served.

#### **Applications which may be dealt with without a hearing**

- 92.** The court may deal with an application without a hearing if—
- (a) the parties agree as to the terms of the order sought;
  - (b) the parties agree that the court should dispose of the application without a hearing; or
  - (c) the court does not consider that a hearing would be appropriate.

#### **Service of application where application made without notice**

**93.**—(1) This rule applies where the court has disposed of an application which it permitted to be made without service of a copy of the application notice.

(2) Where the court makes an order, whether granting or dismissing the application, a copy of the application notice and any evidence in support will, unless the court directs otherwise, be served with the order on all the parties in the proceedings.

(3) The order must contain a statement of the right to make an application to set aside or vary the order under rule 94.

#### **Application to set aside or vary order made without notice**

**94.**—(1) A person who was not served with a copy of the application notice before an order was made under rule 93 may apply to have the order set aside or varied.

(2) An application under this rule must be made within 7 days beginning with the date on which the order was served on the person making the application.

#### **Power of the court to proceed in the absence of a party**

**95.**—(1) Where the applicant or any respondent fails to attend the hearing of an application, the court may proceed in his absence.

- (2) Where—
  - (a) the applicant or any respondent fails to attend the hearing of an application; and
  - (b) the court makes an order at the hearing,

the court may, on application or of its own initiative, re-list the application.

#### **Dismissal of totally without merit applications**

**96.** If the High Court or a county court dismisses an application (including an application for permission to appeal) and it considers that the application is totally without merit—

- (a) the court's order must record that fact; and
- (b) the court must at the same time consider whether it is appropriate to make a civil restraint order.