
STATUTORY INSTRUMENTS

1994 No. 2166

The Family Proceedings Courts (Children Act 1989) (Amendment) Rules 1994

1. These Rules may be cited as the Family Proceedings Courts (Children Act 1989) (Amendment) Rules 1994 and shall come into force on 1st November 1994.
2. The Family Proceedings Courts (Children Act 1989) Rules 1991(1) shall be amended in accordance with the following provisions of these Rules and, in those provisions, any reference to a rule, Part or Schedule by number alone shall be construed as a reference to the rule, Part or Schedule so numbered in the said Rules of 1991.
3. In the Arrangement of Rules there shall be inserted the following after Part II:—

“PART IIA

Proceedings under section 30 of the Human Fertilisation and Embryology Act 1990(2)

- 21A.** Interpretation
 - 21B.** Application of the remaining provisions of these Rules
 - 21C.** Parties
 - 21D.** Answer
 - 21E.** Appointment and duties of the guardian ad litem
 - 21F.** Personal attendance of applicants
 - 21G.** Copies of orders
 - 21H.** Amendment and revocation of orders
 - 21I.** Keeping of registers, custody, inspection and disclosure of documents and information
 - 21J.** Application for removal, return etc. of child”.
4. After Part II there shall be inserted the following:—

(1) S.I.1991/1395, amended by S.I. 1991/1991, 1992/2068, 1993/627 and 1994/809.
(2) 1990 c. 37.

“PART IIA

PROCEEDINGS UNDER SECTION 30 OF THE HUMAN FERTILISATION AND EMBRYOLOGY ACT 1990.

Interpretation

21A.—(1) In this Part of these Rules—

“the 1990 Act” means the Human Fertilisation and Embryology Act 1990;

“the birth father” means the father of the child, including a person who is treated as being the father of the child by section 28 of the 1990 Act where he is not the husband within the meaning of section 30 of the 1990 Act;

“the birth mother” means the woman who carried the child;

“the birth parents” means the birth mother and the birth father;

“the guardian ad litem” means the guardian appointed in accordance with rule 21E;

“the husband and wife” means the persons who may apply for a parental order where the conditions set out in section 30(1) of the 1990 Act are met;

“parental order” means an order under section 30 of the 1990 Act (parental orders in favour of gamete donors) providing for a child to be treated in law as a child of the parties to a marriage.

(2) Applications under section 30 of the 1990 Act are specified proceedings for the purposes of section 41 of the Children Act 1989⁽³⁾ in accordance with section 41(6)(i) of that Act.

Application of the remaining provisions of these Rules

21B. Subject to the provisions of this Part, the remaining provisions of these Rules shall apply as appropriate with any necessary modifications to proceedings under this Part except that rules 7(1), 9, 10(1)(b), 10(11), 11(2), 11(3) and 12 shall not apply.

Parties

21C. The applicants shall be the husband and wife and the respondents shall be the persons set out in the relevant entry in column (iii) of Schedule 2.

Answer

21D. Within 14 days of the service of an application for a parental order, each respondent shall file and serve on all the other parties an answer in Form CHA75.

Appointment and duties of the guardian ad litem

21E.—(1) As soon as practicable after the application has been filed, the justices' clerk shall consider the appointment of a guardian ad litem in accordance with section 41(1) of the Children Act 1989.

(2) The guardian ad litem shall be appointed from a panel established in accordance with the Guardians ad Litem and Reporting Officers (Panels) Regulations 1991⁽⁴⁾.

(3) 1989 c. 41.

(4) S.I. 1991/2051.

(3) In addition to such of the matters set out in rule 11 as are appropriate, the guardian ad litem shall—

- (i) investigate the matters set out in section 30(1) to (7) of the 1990 Act;
- (ii) so far as he considers necessary, investigate any matter contained in the application form or other matter which appears relevant to the making of a parental order;
- (iii) advise the court on whether there is any reason under section 6 of the Adoption Act 1976⁽⁵⁾, as applied with modifications by the Parental Orders (Human Fertilisation and Embryology) Regulations 1994⁽⁶⁾, to refuse the parental order.

Personal attendance of applicants

21F. The court shall not make a parental order except upon the personal attendance before it of the applicants.

Copies of orders

21G.—(1) Where a parental order is made by a court sitting in Wales in respect of a child who was born in Wales and the applicants so request before the order is drawn up, the justices' clerk shall obtain a translation into Welsh of the particulars set out in the order.

(2) Within 7 days after the making of a parental order, the justices' clerk shall send a copy of the order to the Registrar General⁽⁷⁾.

(3) A copy of any parental order may be supplied to the Registrar General at his request.

Amendment and revocation of orders

21H.—(1) Any application made under paragraph 4 of Schedule 1 to the Adoption Act 1976 as modified by the Parental Orders (Human Fertilisation and Embryology) Regulations 1994 for the amendment of a parental order or for the revocation of a direction to the Registrar General⁽⁸⁾ shall be made to a family proceedings court for the same petty sessions area as the family proceedings court which made the parental order, by delivering it to or sending it by post to the clerk to the justices.

(2) Notice of the application shall be given by the justices' clerk to such persons (if any) as the court thinks fit.

(3) Where the application is granted, the justices' clerk shall send to the Registrar General a notice specifying the amendments or informing him of the revocation and shall give sufficient particulars of the order to enable the Registrar General to identify the case.

Keeping of registers, custody, inspection and disclosure of documents and information

21I.—(1) Such part of the register kept in pursuance of rules made under the Magistrates' Courts Act 1980 as relates to proceedings for parental orders shall be kept in a separate book and the book shall not contain particulars of any other proceedings.

(5) 1976 c. 36.

(6) S.I. 1994/.

(7) By the Registration Service Act 1953 (c. 37), section 1, the powers and duties conferred or imposed by or under any enactment on the Registrar General are to be exercised and performed by the Registrar General for England and Wales appointed under that section.

(8) By section 50 of the Adoption Act 1976 (c. 36) as applied by S.I. 1994/ , a parental order may contain a direction to the Registrar General to make an entry in the Register of Births or the Parental Order Register.

(2) The book kept in pursuance of paragraph (1) and all other documents relating to the proceedings for a parental order shall, while they are in the custody of the court, be kept in a place of special security.

(3) Any person who obtains information in the course of, or relating to proceedings for a parental order, shall treat that information as confidential and shall only disclose it if—

- (a) the disclosure is necessary for the proper exercise of his duties, or
- (b) the information is requested—
 - (i) by a court or public authority (whether in Great Britain or not) having the power to determine proceedings for a parental order and related matters, for the purpose of the discharge of its duties in that behalf, or
 - (ii) by a person who is authorised in writing by the Secretary of State to obtain the information for the purposes of research.

Application for removal, return etc. of child

21J.—(1) An application under sections 27(1), 29(1) or 29(2) of the Adoption Act 1976 as applied with modifications by the Parental Orders (Human Fertilisation and Embryology) Regulations 1994 shall be made by complaint to the family proceedings court in which the application under section 30 of the 1990 Act is pending.

(2) The respondents shall be all the parties to the proceedings under section 30 and such other person or body, not being the child, as the court thinks fit.

(3) The justices' clerk shall serve notice of the time fixed for the hearing, together with a copy of the complaint on the guardian ad litem who may attend on the hearing of the application and be heard on the question of whether the application should be granted.

(4) The court may at any time give directions as to the conduct of the application under this rule.

(5) Where an application under this rule is determined, the justices' clerk shall serve notice of the determination on all the parties.

(6) A search warrant issued by a justice of the peace under section 29(4) of the Adoption Act 1976 (applied as above) (which relates to premises specified in an information to which an order made under the said section 29(1) relates, authorising a constable to search the said premises and if he finds the child to return the child to the person on whose application the said order was made) shall be in a warrant form as if issued under section 102 of the Children Act 1989 (warrant to search for or remove a child) or a form to the like effect.”.

5. In Schedule 1—

- (a) the following shall be inserted at the end of the list of forms at the beginning of the Schedule

“74 Application for a Parental Order

75 Answer

76 Parental Order

77 Notice of Refusal of a Parental Order”;

- (b) after form CHA69⁽⁹⁾, there shall be inserted forms CHA74, CHA75, CHA76 and CHA77 as set out in the Schedule to these Rules.

6. In Schedule 2—

⁽⁹⁾ Form CHA69 was inserted by S.I. 1991/1991.

- (a) there shall be inserted at the end of column (i) “section 30 of the Human Fertilisation and Embryology Act 1990”;
- (b) in the corresponding entry in column (ii) there shall be inserted the words “14 days”;
- (c) in the corresponding entry in column (iii) there shall be inserted the words “the birth parents (except where the applicants seek to dispense with their agreement under section 30(6) of the Human Fertilisation and Embryology Act 1990) and any other persons or body with parental responsibility for the child at the date of the application”;
- (d) in the corresponding entry in column (iv) there shall be inserted the words “any local authority or voluntary organisation that has at any time provided accommodation for the child”.

Dated 11th August 1994

Mackay of Clashfern, C.