
STATUTORY INSTRUMENTS

1994 No. 2166 (L.14)

MAGISTRATES' COURTS

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

<i>Made</i>	- - - -	<i>11th August 1994</i>
<i>Laid before Parliament</i>		<i>24th August 1994</i>
<i>Coming into force</i>	- -	<i>1st November 1994</i>

The Lord Chancellor, in exercise of the powers conferred on him by section 144 of the Magistrates' Courts Act 1980(1), after consultation with the Rule Committee appointed under that section, hereby makes the following Rules:—

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(2) 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(3)

21A. Interpretation

21B. Application of the remaining provisions of these Rules

21C. Parties

(1) 1980 c. 43; as extended by sections 74 and 145 of that Act; by section 28 of the Justices of the Peace Act 1979 (c. 55), as amended by section 117 of the Courts and Legal Services Act 1990 (c. 41); by sections 41(2), (10) and 93 of the Children Act 1989 (c. 41), as amended by paragraph 22 of Schedule 16 to the Courts and Legal Services Act 1990; and by section 10 of the Courts and Legal Services Act 1990, as amended by paragraph 11 of Schedule 2 to the Maintenance Enforcement Act 1991 (c. 17).

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

(3) 1990 c. 37.

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:—

“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(4) 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⁽⁵⁾.

(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⁽⁶⁾, as applied with modifications by the Parental Orders (Human Fertilisation and Embryology) Regulations 1994⁽⁷⁾, 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⁽⁸⁾.

(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⁽⁹⁾ shall be made to a family proceedings court for the same petty

(5) S.I. 1991/2051.

(6) 1976 c. 36.

(7) S.I. 1994/.

(8) 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.

(9) 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.

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.

(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(10), there shall be inserted forms CHA74, CHA75, CHA76 and CHA77 as set out in the Schedule to these Rules.

6. In Schedule 2—

- (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.

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SCHEDULE

Rule 4

Rule 4

SCHEDULE

Application for a Parental Order
Section 30 Human Fertilisation and Embryology Act 1990

1 Please use black ink. Please answer every part. If a part does not apply or you do not know what to say please say so. If there is not enough room continue on another sheet (put the child's name and the number of the part on the sheet). If you have any concerns about giving your address or that of the child or any other address requested in this form, you may give an alternative address where papers can be served. However, you must fill in a separate form for each child. court of the actual address on a separate form for each child.

Apply to The **Family Proceedings Court** for a Parental Order

1 About the child

(a) The birth name of the child

(b) The child is a Boy Girl

(c) The child was born on Age now

(d) The address where the child was born

(e) The address where the child lives now

(f) The person(s) who have parental responsibility

(g) The name(s) of the child if a Parental Order is made

2 About the applicants

1st Applicant

(a) Your full name

(b) Are you over 18? Yes No

(c) Your occupation

(d) Are you a genetic parent of the child? Yes No

(e) Are you domiciled in the United Kingdom, Channel Islands or Isle of Man? Yes No

2 About the applicants (continued)

2nd Applicant

(a) Your full name

(b) Are you over 18? Yes No

(c) Your occupation

(d) Are you a genetic parent of the child? Yes No

(e) Are you domiciled in the United Kingdom, Channel Islands or the Isle of Man? Yes No

Both Applicants

Your address is

3 About the birth parents See the notes on the last page.

The birth mother

(a) Her full name

(b) Her full address

The birth father (if any)

(c) His full name

(d) His full address

4 Parental agreement

(a) Does the birth mother agree to a Parental Order being made? Yes No

(b) Does the birth father (if applicable) agree to a Parental Order being made? Yes No

• The agreement of the birth mother and birth father (where appropriate) is required, or must be dispensed with under one of the grounds at 4(d) on page 3. Before an order can be made.

• The child must be at least 6 weeks old when the agreement is given

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5 General Information (continued)

(d) Is there a licensed treatment centre?
 Yes No
 If Yes, give the name, address and any reference of the treatment centre.

6 The respondents

The respondent(s) will be

- all those with parental responsibility (see the notes on page 8)
- If the child is the subject of a care order, all those who had parental responsibility for the child immediately before the care order was made
- other persons allowed by the Rules of Court

The name of the respondent	The respondent's address

- You need not give details of the birth parent(s)
- Please put the address where the respondent usually lives, or can be served with papers
- You will have to serve a copy of this application on the respondent parent(s) (including the birth parent(s))

7 Declaration

We declare that

- we are married to each other and our marriage certificate is attached
- that no money or other benefit (other than for expenses reasonably incurred) has been received or given or is expected to be received or given in consideration of the matters set out in section 30(7) of the Human Fertilisation and Embology Act 1990
- a copy of the child's birth certificate is attached
- the information we have given is correct and complete to the best of our knowledge.

Signed	1st Applicant	Date
Signed	2nd Applicant	Date

What you (the person applying) must do next

- Fill in Parts 1 and 2 of the Notice of Hearing.
- Take or send this form to the court with a copy for service on each of the respondent(s) and a copy for the court. The court will give you a copy for the court. The top copy will be kept by the court. The other copies will be given or sent back to you.
- You must leave the form of Answer (Form CHA 75), and a copy of this Application, the Notice of Hearing and the Notes, on each respondent and birth parent according to the Rules. You may also be required to send a copy of the Notice of Hearing and the Notes to other people.

4 Parental agreement (continued)

(c) Will you be asking the court to dispense with the agreement of a birth parent?
 Yes No

If Yes, give the name(s) of the person(s) whose agreement you wish to dispense with.

(d) The grounds for dispensing with the agreement are

- the person(s) cannot be found
- the person(s) are incapable of giving agreement

✓ one box

5 General Information

(a) Has the child ever been looked after by a local authority or voluntary organisation?
 Yes No

If Yes, give the period during which this organisation has looked after the child

- give details of the organisation

(b) Have there been, or are there, any other court proceedings pending or in progress which concern this child?
 Yes No

If Yes, give details of the proceedings

Give the name of the court and the number of the proceedings, if known

(c) Have there been, or are there, any court proceedings pending or in progress which concern the children of the applicants' family?
 Yes No

If Yes, give details of the proceedings

Give the name of the court and the number of the proceedings, if known

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In the [High Court of Justice] [County Court] [Family Proceedings Court] at [Case No.]

Notice of a Hearing concerning an application for a Parental Order Section 30 Human Fertilisation and Embryology Act 1990

Please read this notice now. * You are named as a respondent in the application. (To the applicant: *delete if not applicable)

1 About the child

(a) The birth name of the child is [] Put the surname first. (b) The child is a [] Boy [] Girl (c) The child was born on [] day [] month [] year [] Age now []

2 About the applicants

(a) Full names [] Put the surname first. 1st Applicant [] 2nd Applicant [] (b) Name and postal address of the person or persons who has been appointed for the child [] of [] panel []

CLA7: Application for a Parental Order (Notice of a Hearing)

The court will complete this page.

3 About the Hearing

The application will be heard before the [Judge] [Justice(s)] at [] on [] at [] o'clock

If you are not the applicant, you may attend the hearing if you would like to do so or the court modifies you that your attendance is necessary. If you would like to be heard on the question of whether a Parental Order should be made, you should write and tell the court on or before []

The court can then arrange a time for you to attend court.

4 Dispensing with the agreement

Note: This paragraph should be deleted unless the applicants are applying to dispense with the agreement of the birth parent(s). The court has been requested to dispense with the agreement of the birth parent(s) to the making of a Parental Order on the ground(s) that: [] (a) The person(s) cannot be found. [] (b) The person(s) [is] [are] incapable of giving agreement.

Signed [] Date [] An officer of the court.

CLA7: Application for a Parental Order (Notice of a Hearing)

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Notes about parental responsibility and birth parents

Parental Responsibility

Some people have "parental responsibility" for a child. The law says what "parental responsibility" is and which people have it. These people include:

- A the birth mother
- B the birth father
 - if he was married to the child's birth mother when the child was born
- C the birth father
 - if he was not married to the child's birth mother when the child was born but he now has a residence order
 - or he now has a court order which gives him parental responsibility
 - or he now has a formal "parental responsibility agreement" with the birth mother
 - or he has since married the birth mother
- D a guardian of the child
- E someone who holds a custody or residence order
- F a local authority which has a care order
- G someone who holds an emergency protection order
- H any man or woman who has adopted the child

Birth Parents

The birth mother is the woman who carried the child.

- The birth father is
 - ▶ the husband of a birth mother whether or not he is the genetic father of the child. This does not apply if it can be shown that the husband did not consent to her treatment.
 - ▶ the man (whether or not he is the genetic father of the child) with whom a birth mother received treatment at a licensed treatment centre if
 - (a) the birth mother is unmarried
 - or (b) the birth mother is married but her husband did not consent to the treatment.
 - ▶ There will be no birth father when a birth mother is unmarried and is treated alone.
- Notice**
If you are not sure who the birth father is, the licensed treatment centre will be able to advise you.

What you must do

- ▶ If there is a copy of the application with this Notice, read it now. You do not have to fill in any part.
- ▶ You must complete the form of Answer. If it is enclosed, and follow the instructions about service on the first page of that form.
- ▶ You should consider getting legal advice from a solicitor or from an advice agency. The Law Society administers a national panel of solicitors to represent children and other parties involved in proceedings relating to children. Addresses of solicitors (including panel members) and advice agencies can be obtained from the Yellow Pages and the Solicitors Regional Directory. These can be found at
 - Citizens Advice Bureaux
 - Law Centres
 - any local library.

If you write to the court please address your letters to "The Chief Clerk" and quote the No. of the matter at the top of this form.
The Court office is at

The office is open from am to pm on Monday to Friday.

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In the [High Court of Justice] [County Court] [Family Proceedings Court]

Case No. []

ANSWER

Section 30 Human Fertilisation and Embryology Act 1990

To the applicant: You will need a copy of this form for each respondent and birth parent. On each copy you must put in the boxes: the name and address of each respondent or birth parent, and the name of the child.

Respondent's name and address: []

To the respondent

The birth name of the child Put the surname last. []

You will get with this form a copy of

- a Notice of Hearing
an application that has been made to the court.

Please

- read the Notice first
then read the application
answer the questions on the other side of this form

You must

- return only the attached Answer to the court at the address below
serve a copy of the Answer on the applicant, birth parent(s) and each respondent (see parts 2, 3 and 6 of the application form) within 14 days from the date you were given the Notice of Hearing
of the post mark on the envelope, if the Notice was posted to you.

To the court: insert the name and address of your court

[]

The court office is open from am to pm on Monday to Friday.

CH1A75 Answer

Answer

Case No. []

1 (a) Your name Put your surname last []

(b) Your address []

(c) When did you receive this form? Put the full date []

2 Do you wish to oppose the application? Yes No

3 Do you wish to be heard on the question as to whether a Parental Order should be made? (see Part 3 of the Notice of Hearing) Yes No

4 If you have a solicitor

If you would like letters or other papers sent to your solicitor, put your solicitor's name and address in the box. []

5 I declare that the information I have given is true and correct to the best of my knowledge.

Signed []

Date []

CH1A75 Answer

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In the  [High Court of Justice]
[County Court]
[Family Proceedings Court]
at []

Parental Order
Section 30 Human Fertilisation and Embryology Act 1990

Case No. []

1 (a) The child is

Give the birth names and names by which the child is known (if different).

Sex []

Date of birth []

Address where born []

Full names of birth parent(s) []

(b) The applicants are

1st applicant

Name []

Occupation []

Place of birth []

2nd applicant

Name []

Occupation []

Place of birth []

(c) The address of the applicants []

CH1A 76 Parental Order

2 The court grants a Parental Order to the applicants
[The Court has ordered the costs as follows.]

3 The child is to be known by the following names:

4 The court has directed the Registrar General to enter the details set out in this order in the Parental Order Register in accordance with Regulations under paragraph 1 of Schedule 1 to the Adoption Act 1976 as modified by the Parental (Human Fertilisation and Embryology) Regulations 1994, and to insert the words "Re-registered by the Registrar General" against the entry in the Register of Births.

Ordered by [Mr] [Mrs] Justice
[His][Her] Honour Judge
A District Judge of the Family Division
Justice(s) of the Peace
Clerk of the Court


on

CH1A 76 Parental Order

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[High Court of Justice]
[County Court]
[Family Proceedings Court]

Case No. []

In the
 at

Notice of refusal of a Parental Order
Section 30 Human Fertilisation and Embryology Act 1990

Keep this Notice for future reference

1 About the child

(a) The birth name of the child
Put the surname first

[]

(b) The child is a Boy Girl

(c) The child was born on

day	month	year	Age now
[]	[]	[]	[]

2 About the applicants

(a) The full names *Put the surnames first*

1st applicant []

2nd applicant []

(b) The order was made on []

3 Take Notice that a Parental Order has been refused in respect of the child.

C11A77 Notice of refusal of a Parental Order

EXPLANATORY NOTE

(This note is not part of the Rules)

Section 30 of the Human Fertilisation and Embryology Act 1990 confers power upon the court to make a parental order in respect of a child in favour of a married couple, at least one of whom is the genetic parent and where the child has been born as a result of a surrogacy arrangement satisfying certain conditions. These Rules amend the Family Proceedings Courts (Children Act 1989) Rules 1991 and prescribe the procedure to be followed in connection with an application for a parental order in the magistrates' court. They also prescribe the procedure for making an application under sections 27(1) (leave to apply for removal of a child from the home of a person with whom he lives), 29(1) (order for the return of a child who has been removed from the home of a person with whom he lives) and 29(2) (order directing a person not to remove the child from the home of a person with whom he lives) of the Adoption Act 1976 as applied with modifications by the Parental Orders (Human Fertilisation and Embryology) Regulations 1994.