

# PROCEEDINGS UNDER SECTION 54 OF THE HUMAN FERTILISATION AND EMBRYOLOGY ACT 2008

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### 13.1 Interpretation and application

- (1) A reference in this Part to the 2002 Act is a reference to that Act as applied with modifications by the Human Fertilisation and Embryology (Parental Order) Regulations 2010.
- (2) In this Part –
  - ‘the other parent’ means any person who is a parent of the child but is not one of the applicants or the woman who carried the child (including any man who is the father by virtue of section 35 or 36 of the 2008 Act or any woman who is a parent by virtue of section 42 or 43 of that Act);
  - ‘parental order’ means an order under section 54 of the 2008 Act;
  - ‘parental order proceedings’ means proceedings for the making of a parental order under the 2008 Act or an order under any provision of the 2002 Act;

‘parental order reporter’ means an officer of the service or a Welsh family proceedings officer appointed to act on behalf of a child who is the subject of parental order proceedings;  
‘provision for contact’ means a contact order under section 8 or 34 of the 1989 Act<sup>1</sup>.

- (3) Except where the contrary intention appears, the rules in this Part apply to parental order proceedings.

### **13.2 Application of Part 12**

Rules 12.9 to 12.11, 12.19 and 12.21 apply as appropriate, with any necessary modifications, to parental order proceedings.

### **13.3 Who the parties are**

- (1) An application for a parental order may be made by such of the following who satisfy the conditions set out in section 54(1) of the 2008 Act –
- (a) a husband and wife;
  - (b) civil partners of each other; or
  - (c) two persons who are living as partners in an enduring family relationship and are not within the prohibited degrees of relationship in relation to each other.
- (2) The respondents to an application for a parental order are –
- (a) the woman who carried the child;
  - (b) the other parent (if any);
  - (c) any person in whose favour there is provision for contact; and
  - (d) any other person or body with parental responsibility for the child at the date of the application.
- (3) The court will direct that a person with parental responsibility for the child be made a party to proceedings where that person requests to be one.
- (4) The court may at any time direct that –
- (a) any other person or body be made a respondent to the proceedings; or
  - (b) a respondent be removed from the proceedings.
- (5) If the court makes a direction for the addition or removal of a party, it may give consequential directions about –
- (a) serving a copy of the application form on any new respondent;
  - (b) serving relevant documents on the new party; and
  - (c) the management of the proceedings.

### **13.4 Notice of proceedings to person with foreign parental responsibility**

- (1) This rule applies where a child is subject to proceedings to which this Part applies and at the date of the application –
- (a) a person holds or is believed to hold parental responsibility for the child under the law of another State which subsists in accordance with Article 16 of the 1996 Hague Convention following the child becoming habitually resident in a territorial unit of the United Kingdom; and
  - (b) that person is not otherwise required to be joined as a respondent under rule 13.3.

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<sup>1</sup> Section 34 was amended by section 139(1) of and paragraphs 54, 64(a) and (b) of Schedule 3 to the Adoption and Children Act 2002.

- (2) The applicant shall give notice of the proceedings to any person to whom the applicant believes paragraph (1) applies.
- (3) The applicant and every respondent to the proceedings shall provide such details as they possess as to the identity and whereabouts of any person they believe to hold parental responsibility for the child in accordance with paragraph (1) to the court officer, upon making, or responding to the application as appropriate.
- (4) Where the existence of such a person only becomes apparent to a party at a later date during the proceedings, that party must notify the court officer of those details at the earliest opportunity.
- (5) Where a person to whom paragraph (1) applies receives notice of proceedings, that person may apply to the court to be joined as a party using the Part 18 procedure.

### **13.5 What the court or a court officer will do when the application has been issued**

- (1) As soon as practicable after the issue of proceedings –
  - (a) the court will –
    - (i) if section 48(1) of the 2002 Act applies (restrictions on making parental orders), consider whether it is proper to hear the application;
    - (ii) subject to paragraph (2), set a date for the first directions hearing;
    - (iii) appoint a parental order reporter; and
    - (iv) set a date for the hearing of the application; and
  - (b) a court officer will –
    - (i) return to the applicants the copies of the application together with any other documents the applicant is required to serve; and
    - (ii) send a certified copy of the entry in the register of live births to the parental order reporter.
- (2) Where it considers it appropriate the court may, instead of setting a date for a first directions appointment, give the directions provided for in rule 13.9.

### **13.6 Service of the application and other documents**

- (1) The applicants must, within 14 days before the hearing or first directions hearing, serve on the respondents –
  - (a) the application;
  - (b) a form for acknowledging service; and
  - (c) a notice of proceedings.
- (2) The applicants must serve a notice of proceedings on any local authority or voluntary organisation that has at any time provided accommodation for the child.

### **13.7 Acknowledgement**

Within 7 days of the service of an application for a parental order, each respondent must file an acknowledgment of service and serve it on all the other parties.

### **13.8 Date for first directions hearing**

Unless the court directs otherwise, the first directions hearing must be within 4 weeks beginning with the date on which the application is issued.

### **13.9 The first directions hearing**

- (1)** At the first directions hearing in the proceedings the court will –
  - (a) fix a timetable for the filing of –
    - (i) any report from a parental order reporter;
    - (ii) if a statement of facts has been filed, any amended statement of facts; and
    - (iii) any other evidence;
  - (b) give directions relating to the report of the parental order reporter and other evidence;
  - (c) consider whether any other person should be a party to the proceedings and, if so, give directions in accordance with rule 13.3(3) or (4) joining that person as a party;
  - (d) give directions relating to the appointment of a litigation friend for any protected party unless a litigation friend has already been appointed;
  - (e) consider whether the case needs to be transferred to another court and, if so, give directions to transfer the proceedings to another court in accordance with the Allocation Order;
  - (f) give directions about –
    - (i) tracing the other parent or the woman who carried the child;
    - (ii) service of documents;
    - (iii) subject to paragraph (2), disclosure as soon as possible of information and evidence to the parties; and
    - (iv) the final hearing.
- (2)** Rule 13.12 (reports of the parental order reporter and disclosure to parties) applies to any direction given under paragraph (1)(f)(iii) as it applies to a direction given under rule 13.12(1).
- (3)** The parties or their legal representatives must attend the first directions hearing unless the court directs otherwise.
- (4)** Directions may also be given at any stage in the proceedings –
  - (a) of the court's own initiative; or
  - (b) on the application of a party or the parental order reporter.
- (5)** Where the court proposes to exercise its powers in paragraph (1) of its own initiative the procedure set out in rule 4.3(2) to (7) applies.
- (6)** For the purposes of giving directions or for such purposes as the court directs –
  - (a) the court may set a date for a further directions hearing or other hearing; and
  - (b) the court officer will give notice of any date so fixed to the parties and to the parental order reporter.
- (7)** Directions of a court which are still in force immediately prior to the transfer of proceedings to another court shall continue to apply following the transfer subject to –
  - (a) any changes of terminology which are required to apply those directions to the court to which the proceedings are transferred; and
  - (b) any variation or revocation of the direction.
- (8)** The court or court officer will –
  - (a) take a note of the giving, variation or revocation of a direction under this rule; and
  - (b) as soon as practicable serve a copy of the note on every party.
- (9)** After the first directions hearing the court will monitor compliance by the parties with the court's timetable and directions.

### **13.10 Where the agreement of the other parent or the woman who carried the child is not required**

- (1)** This rule applies where the agreement of the other parent or the woman who carried the child to the making of the parental order is not required as the person in question cannot be found or is incapable of giving agreement.
- (2)** The applicants must –
  - (a) state that the agreement is not required in the application form, or at any later stage by filing a written note with the court;
  - (b) file a statement of facts setting out a summary of the history of the case and any other facts to satisfy the court that the other parent or the woman who carried the child cannot be found or is incapable of giving agreement.
- (3)** On receipt of the application form or written note –
  - (a) a court officer will –
    - (i) unless the other parent or the woman who carried the child cannot be found, inform the other parent or the woman who carried the child that their agreement is not required;
    - (ii) send a copy of the statement of facts filed in accordance with paragraph (2)(b) to –
      - (aa) the other parent unless the other parent cannot be found;
      - (bb) the woman who carried the child unless the woman cannot be found; and
      - (cc) the parental order reporter; and
  - (b) if the applicants consider that the other parent or the woman who carried the child is incapable of giving agreement the court will consider whether to –
    - (i) appoint a litigation friend for the other parent or the woman who carried the child under rule 15.6(1) or
    - (ii) give directions for an application to be made under rule 15.6(3), unless a litigation friend is already appointed for the other parent or the woman who carried the child.

### **13.11 Agreement**

- (1)** Unless the court directs otherwise, the agreement of the other parent or the woman who carried the child to the making of the parental order may be given in the form referred to in Practice Direction 5A or a form to the like effect.
- (2)** Any form of agreement executed in Scotland must be witnessed by a Justice of the Peace or a Sheriff.
- (3)** Any form of agreement executed in Northern Ireland must be witnessed by a Justice of the Peace.
- (4)** Any form of agreement executed outside the United Kingdom must be witnessed by –
  - (a) any person for the time being authorised by law in the place where the document is executed to administer an oath for any judicial or other legal purpose;
  - (b) a British Consular officer;
  - (c) a notary public; or
  - (d) if the person executing the document is serving in any of the regular armed forces of the Crown, an officer holding a commission in any of those forces.

### **13.12 Reports of the parental order reporter and disclosure to the parties**

- (1) The court will consider whether to give a direction that a confidential report of the parental order reporter be disclosed to each party to the proceedings.
- (2) Before giving such a direction the court will consider whether any information should be deleted including information which discloses the particulars referred to in rule 29.1(1) where a party has given notice under rule 29.1(2) (disclosure of personal details).
- (3) The court may direct that the report shall not be disclosed to a party.

### **13.13 Notice of final hearing**

A court officer will give notice to the parties and to the parental order reporter –

- (a) of the date and place where the application will be heard; and
- (b) of the fact that, unless the person wishes or the court requires, the person need not attend.

### **13.14 The final hearing**

- (1) Any person who has been given notice in accordance with rule 13.13 may attend the final hearing and be heard on the question of whether an order should be made.
- (2) The court may direct that any person must attend a final hearing.

### **13.15 Proof of identity of the child**

- (1) Unless the contrary is shown, the child referred to in the application will be deemed to be the child referred to in the form of agreement to the making of the parental order where the conditions in paragraph (2) apply.
- (2) The conditions are –
  - (a) the application identifies the child by reference to a full certified copy of an entry in the registers of live-births;
  - (b) the form of agreement identifies the child by reference to a full certified copy of an entry in the registers of live-births attached to the form; and
  - (c) the copy of the entry in the registers of live-births referred to in sub-paragraph (a) is the same or relates to the same entry in the registers of live-births as the copy of the entry in the registers of live-births attached to the form of agreement.
- (3) Where the precise date of the child's birth is not proved to the satisfaction of the court, the court will determine the probable date of birth.
- (4) The probable date of the child's birth may be specified in the parental order as the date of the child's birth.
- (5) Where the child's place of birth cannot be proved to the satisfaction of the court –
  - (a) the child may be treated as having been born in the registration district of the court where it is probable that the child may have been born in –
    - (i) the United Kingdom;
    - (ii) the Channel Islands; or
    - (iii) the Isle of Man; or
  - (b) in any other case, the particulars of the country of birth may be omitted from the parental order.

### **13.16 Disclosing information to an adult who was subject to a parental order**

- (1) Subject to paragraph (2), the person who is subject to the parental order has the right to receive from the court which made the parental order a copy of the following –
  - (a) the application form for a parental order (but not the documents attached to that form);
  - (b) the parental order and any other orders relating to the parental order proceedings;
  - (c) a transcript of the court's decision; and
  - (d) a report made to the court by the parental order reporter.
- (2) The court will not provide a copy of a document or order referred to in paragraph (1) unless the person making the request has completed the certificate relating to counselling in the form for that purpose referred to in Practice Direction 5A.
- (3) This rule does not apply to a person under the age of 18 years.

### **13.17 Application for recovery orders**

- (1) An application for any of the orders referred to in section 41(2) of the 2002 Act (recovery orders) may –
  - (a) in the High Court or a county court, be made without notice in which case the applicant must file the application –
    - (i) where the application is made by telephone, the next business day after the making of the application; or
    - (ii) in any other case, at the time when the application is made; and
  - (b) in a magistrates' court, be made, with the permission of the court, without notice in which case the applicant must file the application at the time when the application is made or as directed by the court.
- (2) Where the court refuses to make an order on an application without notice it may direct that the application is made on notice in which case the application shall proceed in accordance with rules 13.1 to 13.14.
- (3) The respondents to an application under this rule are –
  - (a) in a case where parental order proceedings are pending, all parties to those proceedings;
  - (b) any person having parental responsibility for the child;
  - (c) any person in whose favour there is provision for contact;
  - (d) any person who was caring for the child immediately prior to the making of the application; and
  - (e) any person whom the applicant alleges to have effected, or to have been or to be responsible for, the taking or keeping of the child.

### **13.18 Keeping of registers, custody, inspection and disclosure of documents and information**

- (1) Such part of the register kept in a family proceedings court in pursuance of rules made under the Magistrates' Courts Act 1980 as relates to parental order proceedings, must be kept in a separate book and the book must not contain particulars of any other proceedings.
- (2) All documents relating to parental order proceedings and related proceedings under the 2002 Act including, in a family proceedings court, the book kept in accordance with paragraph (1), must, while they are in the custody of the court, be kept in a place of special security.

- (3) Any person who obtains any information in the course of, or relating to, parental order proceedings must treat that information as confidential and must only disclose it if –
  - (a) the disclosure is necessary for the proper exercise of that person's duties; or
  - (b) the information is requested by –
    - (i) a court or public authority (whether in Great Britain or not) having power to determine parental order proceedings and related matters, for the purpose of that court or authority discharging its duties relating to those proceedings and matters; or
    - (ii) a person who is authorised in writing by the Secretary of State to obtain the information for the purposes of research.

### **13.19 Documents held by the court not to be inspected or copied without the court's permission**

Subject to the provisions of these rules, any practice direction or any direction given by the court –

- (a) no document or order held by the court in parental order proceedings and related proceedings under the 2002 Act will be open to inspection by any person; and
- (b) no copy of any such document or order, or of an extract from any such document or order, shall be taken by or given to any person.

### **13.20 Orders**

- (1) A parental order takes effect from the date when it is made, or such later date as the court may specify.
- (2) In proceedings in Wales a party may request that an order be drawn up in Welsh as well as English.

### **13.21 Copies of orders**

- (1) Within 7 days beginning with the date on which the final order was made in proceedings, or such shorter time as the court may direct, a court officer will send –
  - (a) a copy of the order to the applicant;
  - (b) a copy, which is sealed<sup>(GL)</sup>, authenticated with the stamp of the court or certified as a true copy of a parental order, to the Registrar General;
  - (c) a notice of the making or refusal of-
    - (i) the final order; or
    - (ii) an order quashing or revoking a parental order or allowing an appeal against an order in proceedings,to every respondent and, with the permission of the court, any other person.
- (2) The court officer will also send notice of the making of a parental order to –
  - (a) any court in Great Britain which appears to the court officer to have made any such order as is referred to in section 46(2) of the 2002 Act (order relating to parental responsibility for, and maintenance of, the child); and
  - (b) the principal registry, if it appears to the court officer that a parental responsibility agreement has been recorded at the principal registry.
- (3) A copy of any final order may be sent to any other person with the permission of the court.
- (4) The court officer will send a copy of any order made during the course of the proceedings to all the parties to those proceedings unless the court directs otherwise.

- (5) If an order has been drawn up in Welsh as well as in English in accordance with rule 13.20(2), any reference in this rule to sending an order is to be taken as a reference to sending both the Welsh and English orders.

### **13.22 Amendment and revocation of orders**

- (1) This rule applies to an application under paragraph 4 of Schedule 1 to the 2002 Act (amendment of a parental order and revocation of direction).
- (2) If the application is made in a family proceedings court it must be made to a family proceedings court for the same local justice area as the family proceedings court which made the parental order, by delivering it or sending it by post to the designated officer of the court.
- (3) Subject to paragraph (4), an application may be made without serving a copy of the application notice.
- (4) The court may direct that an application notice be served on such persons as it thinks fit.
- (5) Where the court makes an order granting the application, a proper officer shall send the Registrar General a notice –
- (a) specifying the amendments; or
  - (b) informing the Registrar General of the revocation, giving sufficient particulars of the order to enable the Registrar General to identify the case.

