

# PROCEDURE FOR OTHER APPLICATIONS IN PROCEEDINGS

## Contents of this Part

- Rule 18.1 Types of application for which Part 18 procedure may be followed
- Rule 18.2 Applications for permission to start proceedings
- Rule 18.3 Respondents to applications under this Part
- Rule 18.4 Application notice to be filed
- Rule 18.5 Notice of an application
- Rule 18.6 Time when an application is made
- Rule 18.7 What an application notice must include
- Rule 18.8 Service of a copy of an application notice
- Rule 18.9 Applications which may be dealt with without a hearing
- Rule 18.10 Service of application notice following court order where application made without notice
- Rule 18.11 Application to set aside or vary order made without notice
- Rule 18.12 Power of the court to proceed in the absence of a party
- Rule 18.13 Dismissal of totally without merit applications

## 18.1 Types of application for which Part 18 procedure may be followed

- (1) The Part 18 procedure is the procedure set out in this Part.
- (2) An applicant may use the Part 18 procedure if the application is made –
  - (a) in the course of existing proceedings;
  - (b) to start proceedings except where some other Part of these rules prescribes the procedure to start proceedings; or
  - (c) in connection with proceedings which have been concluded.
- (3) Paragraph (2) does not apply –
  - (a) to applications where any other rule in any other Part of these rules sets out the procedure for that type of application;
  - (b) if a practice direction provides that the Part 18 procedure may not be used in relation to the type of application in question.

## 18.2 Applications for permission to start proceedings

An application for permission to start proceedings must be made to the court where the proceedings will be started if permission is granted.

## 18.3 Respondents to applications under this Part

- (1) The following persons are to be respondents to an application under this Part –
  - (a) where there are existing proceedings or the proceedings have been concluded –

- (i) the parties to those proceedings; and
- (ii) if the proceedings are proceedings under Part 11, the person who is the subject of those proceedings;
- (b) where there are no existing proceedings –
  - (i) if notice has been given under section 44 of the 2002 Act (notice of intention to adopt or apply for an order under section 84 of that Act), the local authority to whom notice has been given; and
  - (ii) if an application is made for permission to apply for an order in proceedings, any person who will be a party to the proceedings brought if permission is granted; and
- (c) any other person as the court may direct.

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

- (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.

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

- (1) Subject to paragraph (2), a copy of the application notice must be served on –
  - (a) each respondent;
  - (b) in relation to proceedings under Part 11, the person who is, or, in the case of an application to start proceedings, it is intended will be, the subject of the proceedings; and
  - (c) in relation to proceedings under Parts 12 and 14, the children’s guardian (if any).
- (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 18.8 deals with service of a copy of the application notice.)

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

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

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

- (1) An application notice must state –
  - (a) what order the applicant is seeking; and
  - (b) briefly, why the applicant is seeking the order.
- (2) A draft of the order sought must be attached to the application notice.

(Part 17 requires an application notice to be verified by a statement of truth if the applicant wishes to rely on matters set out in his application as evidence.)

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

- (1)** Subject to rule 2.4, a copy of the application notice must be served in accordance with the provisions of Part 6 –
  - (a) as soon as practicable after it is filed; and
  - (b) in any event –
    - (i) where the application is for an interim order under rule 9.7 at least 14 days; and
    - (ii) in any other case, at least 7 days;before the court is to deal with the application.
- (2)** The applicant must, when filing the application notice, file a copy of any written evidence in support.
- (3)** If a copy of an application notice is served by a court officer it must 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 the draft order which the applicant has attached to the 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.

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

- (1)** The court may deal with an application without a hearing if –
  - (a) the court does not consider that a hearing would be appropriate; or
  - (b) the parties agree as to the terms of the order sought or the parties agree that the court should dispose of the application without a hearing and the court does not consider that a hearing would be appropriate.
- (2)** Where –
  - (a) an application is made for permission to make an application in proceedings under the 1989 Act; and
  - (b) the court refuses the application without a hearing in accordance with paragraph (1)(a), the court must, at the request of the applicant, re-list the application and fix a date for a hearing.
- (3)** Paragraph (2) does not apply to magistrates' courts.

## **18.10 Service of application notice following court order where application made without notice**

- (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 must unless the court orders otherwise, be served with the order on –
  - (a) all the parties in proceedings; and
  - (b) in relation to proceedings under Part 11, the person who is, or, in the case of an application to start proceedings, it is intended will be, the subject of the proceedings.
- (3) The order must contain a statement of the right to make an application to set aside<sup>(GL)</sup> or vary the order under rule 18.11.

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

- (1) A person who was not served with a copy of the application notice before an order was made under rule 18.10 may apply to have the order set aside<sup>(GL)</sup> 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.

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

- (1) Where the applicant or any respondent fails to attend the hearing of an application, the court may proceed in the absence of that person.
- (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.
- (3) Paragraph (2) does not apply to magistrates' courts.

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

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.