

# PROCEEDINGS RELATING TO CHILDREN EXCEPT PARENTAL ORDER PROCEEDINGS AND PROCEEDINGS FOR APPLICATIONS IN ADOPTION, PLACEMENT AND RELATED PROCEEDINGS

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# **I INTERPRETATION AND APPLICATION OF THIS PART**

## **12.1 Application of this Part**

- (1) The rules in this Part apply to—
  - (a) emergency proceedings;
  - (b) private law proceedings;
  - (c) public law proceedings;
  - (d) proceedings relating to the exercise of the court's inherent jurisdiction (other than applications for the court's permission to start such proceedings);
  - (e) proceedings relating to child abduction and the recognition and enforcement of decisions relating to custody under the European Convention;
  - (f) proceedings relating to the Council Regulation or the 1996 Hague Convention in respect of children; and
  - (g) any other proceedings which may be referred to in a practice direction.

(Part 18 sets out the procedure for making an application for permission to bring proceedings.)

(Part 31 sets out the procedure for making applications for recognition and enforcement of judgments under the Council Regulation or the 1996 Hague Convention.)

- (2) The rules in Chapter 7 of this Part also apply to family proceedings which are not within paragraph (1) but which otherwise relate wholly or mainly to the maintenance or upbringing of a minor.

## 12.2 Interpretation

In this Part –

‘the 2006 Act’ means the Childcare Act 2006<sup>1</sup>;

‘advocate’ means a person exercising a right of audience as a representative of, or on behalf of, a party;

‘care proceedings’ means proceedings for a care order under section 31(1)(a) of the 1989 Act;

‘Case Management Order’ means an order in the form referred to in Practice Direction 12A which may contain such of the provisions listed in that practice direction as may be appropriate to the proceedings;

‘child assessment order’ has the meaning assigned to it by section 43(2) of the 1989 Act;

‘contact activity condition’ has the meaning assigned to it by section 11C(2) of the 1989 Act;

‘contact activity direction’ has the meaning assigned to it by section 11A(3) of the 1989 Act;

‘contribution order’ has the meaning assigned to it by paragraph 23(2) of Schedule 2 to the 1989 Act;

‘education supervision order’ has the meaning assigned to it by section 36(2) of the 1989 Act;

‘emergency proceedings’ means proceedings for –

- (a) the disclosure of information as to the whereabouts of a child under section 33 of the 1986 Act<sup>2</sup>;
- (b) an order authorising the taking charge of and delivery of a child under section 34 of the 1986 Act<sup>3</sup>;
- (c) an emergency protection order;
- (d) an order under section 44(9)(b) of the 1989 Act varying a direction in an emergency protection order given under section 44(6) of that Act;
- (e) an order under section 45(5) of the 1989 Act extending the period during which an emergency protection order is to have effect;
- (f) an order under section 45(8) of the 1989 Act discharging an emergency protection order;
- (g) an order under section 45(8A) of the 1989<sup>4</sup> Act varying or discharging an emergency protection order in so far as it imposes an exclusion requirement on a person who is not entitled to apply for the order to be discharged;
- (h) an order under section 45(8B) of the 1989 Act<sup>5</sup> varying or discharging an emergency protection order in so far as it confers a power of arrest attached to an exclusion requirement;
- (i) warrants under sections 48(9) and 102(1) of the 1989 Act and under section 79 of the 2006 Act<sup>6</sup>; or
- (j) a recovery order under section 50 of the 1989 Act<sup>7</sup>;

‘emergency protection order’ means an order under section 44 of the 1989 Act;

‘enforcement order’ has the meaning assigned to it by section 11J(2) of the 1989 Act;

‘financial compensation order’ means an order made under section 11O(2) of the 1989 Act;

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1 2006 c.21.

2 Section 33 was amended by section 108(5) of and paragraph 62 of Schedule 13 to the Children Act 1989 and section 261(1) of and paragraph 124 of Schedule 27 to the Civil Partnership Act 2004.

3 Section 34 was amended by section 108(5) of and paragraphs 62 and 70 of Schedule 13 to the Children Act 1989 and article 12(3) of Children (Northern Ireland Consequential Amendments) Order 1995 (S.I. 1995/756).

4 Section 45(8A) was inserted by section 52 of and paragraph 4 of Schedule 6 to the Family Law Act 1996.

5 Section 45(8B) was inserted by section 52 of and paragraph 4 of Schedule 6 to the Family Law Act 1996.

6 Section 79 was amended by section 157 of and paragraphs 108 and 114(1) and (2) and (3)(b) of Schedule 14 to the Education and Inspections Act 2006 (c.40).

7 Section 50 was amended by section 261(1) of and paragraph 131 of Schedule 27 to the Civil Partnership Act 2004.

‘interim order’ means an interim care order or an interim supervision order referred to in section 38(1) of the 1989 Act;

‘private law proceedings’ means proceedings for –

- (a) a section 8 order except a residence order under section 8 of the 1989 Act relating to a child who is the subject of a care order;
  - (b) a parental responsibility order under sections 4(1)(c)<sup>1</sup>, 4ZA(1)(c)<sup>2</sup> or 4A(1)(b) of the 1989 Act<sup>3</sup> or an order terminating parental responsibility under sections 4(2A), 4ZA(5) or 4A(3) of that Act;
  - (c) an order appointing a child’s guardian under section 5(1) of the 1989 Act or an order terminating the appointment under section 6(7) of that Act;
  - (d) an order giving permission to change a child’s surname or remove a child from the United Kingdom under sections 13(1) or 14C(3) of the 1989 Act;
  - (e) a special guardianship order except where that order relates to a child who is subject of a care order;
  - (f) an order varying or discharging such an order under section 14D of the 1989 Act<sup>4</sup>;
  - (g) an enforcement order;
  - (h) a financial compensation order;
  - (i) an order under paragraph 9 of Schedule A1 to the 1989 Act following a breach of an enforcement order;
  - (j) an order under Part 2 of Schedule A1 to the 1989 Act revoking or amending an enforcement order; or
  - (k) an order that a warning notice be attached to a contact order;
- ‘public law proceedings’ means proceedings for –
- (a) a residence order under section 8 of the 1989 Act relating to a child who is the subject of a care order;
  - (b) a special guardianship order relating to a child who is the subject of a care order;
  - (c) a secure accommodation order under section 25 of the 1989 Act<sup>5</sup>;
  - (d) a care order, or the discharge of such an order under section 39(1) of the 1989 Act;
  - (e) an order giving permission to change a child’s surname or remove a child from the United Kingdom under section 33(7) of the 1989 Act;
  - (f) a supervision order under section 31(1)(b) of the 1989 Act<sup>6</sup>, the discharge or variation of such an order under section 39(2) of that Act, or the extension or further extension of such an order under paragraph 6(3) of Schedule 3 to that Act;
  - (g) an order making provision regarding contact under section 34(2) to (4) of the 1989 Act or an order varying or discharging such an order under section 34(9) of that Act;
  - (h) an education supervision order, the extension of an education supervision order under paragraph 15(2) of Schedule 3 to the 1989 Act, or the discharge of such an order under paragraph 17(1) of Schedule 3 to that Act<sup>7</sup>;
  - (i) an order varying directions made with an interim care order or interim supervision order under section 38(8)(b) of the 1989 Act;

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1 Section 4(1)(c) was amended by section 111(1) and (2) of the Adoption and Children Act 2002 and section 56 of and paragraphs 21(1) and (2) of Schedule 6 to the Welfare Reform Act 2009 (c.29).

2 Section 4ZA was inserted by section 56 of and paragraph 2 of Schedule 6 to the Human Fertilisation and Embryology Act 2008.

3 Section 4A(1)(b) was amended by section 75(1) and (2) of the Civil Partnership Act 2004.

4 Section 14D was inserted by section 115(1) of the Adoption and Children Act 2002.

5 Section 25 was amended by section 39 of and paragraphs 1 and 15 of Schedule 3 to the Children and Young Persons Act 2008 and section 24 of and paragraph 45 of Schedule 4 to the Access to Justice Act 1999.

6 Section 31(1)(b) was amended by sections 74 and 75 of and paragraphs 87 and 90 of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c.43).

7 Paragraph 17(1) was amended by article 5(1) of and paragraphs 37(1) and (14)(a) of Schedule 2 to the Local Education Authorities and Children’s Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158).

- (j) an order under section 39(3) of the 1989 Act varying a supervision order in so far as it affects a person with whom the child is living but who is not entitled to apply for the order to be discharged;
- (k) an order under section 39(3A) of the 1989<sup>1</sup> Act varying or discharging an interim care order in so far as it imposes an exclusion requirement on a person who is not entitled to apply for the order to be discharged;
- (l) an order under section 39(3B)<sup>2</sup> of the 1989 Act varying or discharging an interim care order in so far as it confers a power of arrest attached to an exclusion requirement;
- (m) the substitution of a supervision order for a care order under section 39(4) of the 1989 Act;
- (n) a child assessment order, or the variation or discharge of such an order under section 43(12) of the 1989 Act;
- (o) an order permitting the local authority to arrange for any child in its care to live outside England and Wales under paragraph 19(1) of Schedule 2 to the 1989 Act;
- (p) a contribution order, or revocation of such an order under paragraph 23(8) of Schedule 2 to the 1989 Act;
- (q) an appeal under paragraph 8(1) of Schedule 8 to the 1989 Act;  
‘special guardianship order’ has the meaning assigned to it by section 14A(1) of the 1989 Act<sup>3</sup>;  
‘supervision order’ has the meaning assigned to it by section 31(11) of the 1989 Act;  
‘supervision proceedings’ means proceedings for a supervision order under section 31(1)(b) of the 1989 Act;  
‘warning notice’ means a notice attached to an order pursuant to section 8(2) of the Children and Adoption Act 2006.

(The 1980 Hague Convention, the 1996 Hague Convention, the Council Regulation, and the European Convention are defined in rule 2.3.)

## II GENERAL RULES

### 12.3 Who the parties are

- (1) In relation to the proceedings set out in column 1 of the following table, column 2 sets out who may make the application and column 3 sets out who the respondents to those proceedings will be.

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1 Section 39(3A) was inserted by section 52 of and paragraph 2 of Schedule 6 to the Family Law Act 1996.  
2 Section 39(3B) was inserted by section 56 of and paragraph 2 of Schedule to the Family Law Act 1996.  
3 Section 14A(1) was inserted by section 115(1) of the Adoption and Children Act 2002.

<i>Proceedings for</i>	<i>Applicants</i>	<i>Respondents</i>
A parental responsibility order (section 4(1)(c), 4ZA(1)(c), or section 4A(1)(b) of the 1989 Act)	<ul style="list-style-type: none"> <li>• The child's father; the step parent; or the child's parent (being a woman who is a parent by virtue of section 43 of the Human Fertilisation and Embryology Act 2008 and who is not a person to whom section 1(3) of the Family Law Reform Act 1987<sup>1</sup> applies) (sections 4(1)(c), 4ZA(1)(c) and 4A(1)(b) of the 1989 Act)</li> </ul>	<ul style="list-style-type: none"> <li>• Every person whom the applicant believes to have parental responsibility for the child; where the child is the subject of a care order, every person whom the applicant believes to have had parental responsibility immediately prior to the making of the care order; in the case of an application to extend, vary or discharge an order, the parties to the proceedings leading to the order which it is sought to have extended, varied or discharged; in the case of specified proceedings, the child</li> </ul>
An order terminating a parental responsibility order or agreement (section 4(2A), 4ZA(5) or section 4A(3) of the 1989 Act <sup>2</sup> )	<ul style="list-style-type: none"> <li>• Any person who has parental responsibility for the child; or with the court's permission, the child (section 4(3), 4ZA(6) and section 4A(3) of the 1989 Act)</li> </ul>	As above
An order appointing a guardian (section 5(1) of the 1989 Act <sup>3</sup> )	<ul style="list-style-type: none"> <li>• An individual who wishes to be appointed as guardian (section 5(1) of the 1989 Act)</li> </ul>	As above
An order terminating the appointment of a guardian (section 6(7) of the 1989 Act)	<ul style="list-style-type: none"> <li>• Any person who has parental responsibility for the child; or with the court's permission, the child (section 6(7) of the 1989 Act)</li> </ul>	As above
A section 8 order	<ul style="list-style-type: none"> <li>• Any person who is entitled to apply for a section 8 order with respect to the child (section 10(4) to (7) of the 1989 Act<sup>4</sup>); or with the court's permission, any person (section 10(2)(b) of the 1989 Act)</li> </ul>	As above

1 Section 1(3) was inserted by section 56 of and paragraphs 24(1) and (2) of Schedule 6 to the Human Fertilisation and Embryology Act 2008.

2 Section 4A(3) was inserted by section 112 of the Adoption and Children Act 2002.

3 Section 5(1) was amended by section 115(2), and (4)(a)(i) and (ii) of the Adoption and Children Act 2002.

4 Section 10(4) was amended by section 139(1) of and paragraphs 54, 56(a) and (b) of Schedule 3 to the Adoption and Children Act 2002. Section 10(5) was inserted by section 77 of the Civil Partnership Act 2004. Section 10(5A) was inserted by section 139(1) and paragraphs 54 and 56(c) of Schedule 3 to the Adoption and Children Act 2002. Section 10(5B) was inserted by section 36 of the Children and Young Persons Act 2008. Section 10(7A) was inserted by section 139(1) of and paragraphs 54 and 56(d) of Schedule 3 to the Adoption and Children Act 2002.

<i>Proceedings for</i>	<i>Applicants</i>	<i>Respondents</i>
An enforcement order (section 11J of the 1989 Act <sup>1</sup> )	<ul style="list-style-type: none"> <li>● A person who is, for the purposes of the contact order, a person with whom the child concerned lives or is to live; any person whose contact with the child concerned is provided for in the contact order; any individual subject to a condition under section 11(7)(b) of the 1989 Act or a contact activity condition imposed by a contact order; or with the court's permission, the child (section 11J(5) of the 1989 Act)</li> </ul>	<ul style="list-style-type: none"> <li>● The person the applicant alleges has failed to comply with the contact order.</li> </ul>
A financial compensation order (section 11O of the 1989 Act)	<ul style="list-style-type: none"> <li>● Any person who is, for the purposes of the contact order, a person with whom the child concerned lives or is to live; any person whose contact with the child concerned is provided for in the contact order; any individual subject to a condition under section 11(7)(b) of the 1989 Act or a contact activity condition imposed by a contact order; or with the court's permission, the child (section 11O(6) of the 1989 Act)</li> </ul>	<ul style="list-style-type: none"> <li>● The person the applicant alleges has failed to comply with the contact order</li> </ul>
An order permitting the child's name to be changed or the removal of the child from the United Kingdom (section 13(1), 14C(3) or 33(7) of the 1989 Act)	<ul style="list-style-type: none"> <li>● Any person (section 13(1), 14C(3), 33(7) of the 1989 Act)</li> </ul>	<ul style="list-style-type: none"> <li>● As for a parental responsibility order</li> </ul>
A special guardianship order (section 14A of the 1989 Act)	<ul style="list-style-type: none"> <li>● Any guardian of the child; any individual in whose favour a residence order is in force with respect to the child; any individual listed in subsection (5)(b) or (c) of section 10 (as read with subsection (10) of that section) of the 1989 Act; a local authority foster parent with whom the child has lived for a period of at least one year immediately preceding the application; or any person with the court's permission (section 14A(3) of the 1989 Act) (more than one such individual can apply jointly (section 14A(3) and (5) of that Act))</li> </ul>	<ul style="list-style-type: none"> <li>● As above, and if a care order is in force with respect to the child, the child</li> </ul>

<sup>1</sup> Section 11J was inserted by section 4(1) of the Children and Adoption Act 2006 (c.20).

<i>Proceedings for</i>	<i>Applicants</i>	<i>Respondents</i>
Variation or discharge of a special guardianship order (section 14D of the 1989 Act <sup>1</sup> )	<ul style="list-style-type: none"> <li>• The special guardian (or any of them, if there is more than one);any individual in whose favour a residence order is in force with respect to the child;the local authority designated in a care order with respect to the child;any individual within section 14D(1)(d) of the 1989 Act who has parental responsibility for the child;the child, any parent or guardian of the child and any step-parent of the child who has acquired, and has not lost, parental responsibility by virtue of section 4A of that Act with the court's permission; orany individual within section 14D(1)(d) of that Act who immediately before the making of the special guardianship order had, but no longer has, parental responsibility for the child with the court's permission</li> </ul>	As above
A secure accommodation order (section 25 section of the 1989 Act)	<ul style="list-style-type: none"> <li>• The local authority which is looking after the child; orthe Health Authority, Primary Care Trust, National Health Service Trust established under section 25 of the National Health Service Act 2006<sup>2</sup> or section 18(1) of the National Health Service (Wales) Act 2006<sup>3</sup>, National Health Service Foundation Trust or any local authority providing accommodation for the child (unless the child is looked after by a local authority)</li> </ul>	As above
A care or supervision order (section 31 of the 1989 Act)	<ul style="list-style-type: none"> <li>• Any local authority;the National Society for the Prevention of Cruelty to Children and any of its officers (section 31(1) of the 1989 Act);orany authorised person</li> </ul>	As above
An order varying directions made with an interim care or interim supervision order (section 38(8)(b) of the 1989 Act)	<ul style="list-style-type: none"> <li>• The parties to proceedings in which directions are given under section 38(6) of the 1989 Act; orany person named in such a direction</li> </ul>	As above
An order discharging a care order (section 39(1) of the 1989 Act)	<ul style="list-style-type: none"> <li>• Any person who has parental responsibility for the child;the child; orthe local authority designated by the order (section 39(1) of the 1989 Act)</li> </ul>	As above

1 Section 14D was inserted by section 115(1) of the Adoption and Children Act 2002.

2 2006 c.4.

3 2006 c.42

<i>Proceedings for</i>	<i>Applicants</i>	<i>Respondents</i>
An order varying or discharging an interim care order in so far as it imposes an exclusion requirement (section 39(3A) of the 1989 Act)	<ul style="list-style-type: none"> <li>● A person to whom the exclusion requirement in the interim care order applies who is not entitled to apply for the order to be discharged (section 39(3A) of the 1989 Act)</li> </ul>	As above
An order varying or discharging an interim care order in so far as it confers a power of arrest attached to an exclusion requirement (section 39(3B) of the 1989 Act)	<ul style="list-style-type: none"> <li>● Any person entitled to apply for the discharge of the interim care order in so far as it imposes the exclusion requirement (section 39(3B) of the 1989 Act)</li> </ul>	As above
An order substituting a supervision order for a care order (section 39(4) of the 1989 Act)	<ul style="list-style-type: none"> <li>● Any person entitled to apply for a care order to be discharged under section 39(1) (section 39(4) of the 1989 Act)</li> </ul>	As above
A child assessment order (section 43(1) of the 1989 Act)	<ul style="list-style-type: none"> <li>● Any local authority; the National Society for the Prevention of Cruelty to Children and any of its officers; or any person authorised by order of the Secretary of State to bring the proceedings and any officer of a body who is so authorised (section 43(1) and (13) of the 1989 Act)</li> </ul>	As above
An order varying or discharging a child assessment order (section 43(12) of the 1989 Act)	<ul style="list-style-type: none"> <li>● The applicant for an order that has been made under section 43(1) of the 1989 Act; or the persons referred to in section 43(11) of the 1989 Act (section 43(12) of that Act)</li> </ul>	As above
An emergency protection order (section 44(1) of the 1989 Act)	<ul style="list-style-type: none"> <li>● Any person (section 44(1) of the 1989 Act)</li> </ul>	<ul style="list-style-type: none"> <li>● As for a parental responsibility order</li> </ul>
An order extending the period during which an emergency protection order is to have effect (section 45(4) of the 1989 Act)	<ul style="list-style-type: none"> <li>● Any person who –has parental responsibility for a child as the result of an emergency protection order; and is entitled to apply for a care order with respect to the child (section 45(4) of the 1989 Act)</li> </ul>	As above
An order discharging an emergency protection order (section 45(8) of the 1989 Act)	<ul style="list-style-type: none"> <li>● The child; a parent of the child; any person who is not a parent of the child but who has parental responsibility for the child; or any person with whom the child was living before the making of the emergency protection order (section 45(8) of the 1989 Act)</li> </ul>	As above
An order varying or discharging an emergency protection order in so far as it imposes the exclusion requirement (section 45(8A) of the 1989 Act)	<ul style="list-style-type: none"> <li>● A person to whom the exclusion requirement in the emergency protection order applies who is not entitled to apply for the emergency protection order to be discharged (section 45(8A) of the 1989 Act)</li> </ul>	As above

<i>Proceedings for</i>	<i>Applicants</i>	<i>Respondents</i>
An order varying or discharging an emergency protection order in so far as it confers a power of arrest attached to an exclusion requirement (section 45(8B) of the 1989 Act)	<ul style="list-style-type: none"> <li>Any person entitled to apply for the discharge of the emergency protection order in so far as it imposes the exclusion requirement (section 45(8B) of the 1989 Act)</li> </ul>	As above
An emergency protection order by the police (section 46(7) of the 1989 Act)	<ul style="list-style-type: none"> <li>The officer designated for the purposes of section 46(3)(e) of the 1989 Act (section 46(7) of the 1989 Act)</li> </ul>	As above
A warrant authorising a constable to assist in exercise of certain powers to search for children and inspect premises (section 48 of the 1989 Act)	<ul style="list-style-type: none"> <li>Any person attempting to exercise powers under an emergency protection order who has been or is likely to be prevented from doing so by being refused entry to the premises concerned or refused access to the child concerned (section 48(9) of the 1989 Act)</li> </ul>	As above
A warrant authorising a constable to assist in exercise of certain powers to search for children and inspect premises (section 102 of the 1989 Act)	<ul style="list-style-type: none"> <li>Any person attempting to exercise powers under the enactments mentioned in section 102(6) of the 1989 Act who has been or is likely to be prevented from doing so by being refused entry to the premises concerned or refused access to the child concerned (section 102(1) of that Act)</li> </ul>	As above
An order revoking an enforcement order (paragraph 4 of Schedule A1 to the 1989 Act)	<ul style="list-style-type: none"> <li>The person subject to the enforcement order</li> </ul>	<ul style="list-style-type: none"> <li>The person who was the applicant for the enforcement order; and, where the child was a party to the proceedings in which the enforcement order was made, the child</li> </ul>
An order amending an enforcement order (paragraphs 5 to 7 of Schedule A1 to the 1989 Act)	<ul style="list-style-type: none"> <li>The person subject to the enforcement order</li> </ul>	<ul style="list-style-type: none"> <li>The person who was the applicant for the enforcement order. (Rule 12.33 makes provision about applications under paragraph 5 of Schedule A1 to the 1989 Act.)</li> </ul>
An order following breach of an enforcement order (paragraph 9 of Schedule A1 to the 1989 Act)	<ul style="list-style-type: none"> <li>Any person who is, for the purposes of the contact order, the person with whom the child lives or is to live; any person whose contact with the child concerned is provided for in the contact order; any individual subject to a condition under section 11(7)(b) of the 1989 Act or a contact activity condition imposed by a contact order; or with the court's permission, the child (paragraph 9 of Schedule A1 to the 1989 Act)</li> </ul>	<ul style="list-style-type: none"> <li>The person the applicant alleges has failed to comply with the unpaid work requirement imposed by an enforcement order; and where the child was a party to the proceedings in which the enforcement order was made, the child</li> </ul>

<i>Proceedings for</i>	<i>Applicants</i>	<i>Respondents</i>
An order permitting the local authority to arrange for any child in its care to live outside England and Wales (Schedule 2, paragraph 19(1), to the 1989 Act)	<ul style="list-style-type: none"> <li>● The local authority (Schedule 2, paragraph 19(1), to the 1989 Act)</li> </ul>	As for a parental responsibility order
A contribution order (Schedule 2, paragraph 23(1), to the 1989 Act).	<ul style="list-style-type: none"> <li>● The local authority (Schedule 2, paragraph 23(1), to the 1989 Act)</li> </ul>	As above and the contributor
An order revoking a contribution order (Schedule 2, paragraph 23(8), to the 1989 Act)	<ul style="list-style-type: none"> <li>● The contributor; or the local authority</li> </ul>	As above
An order relating to contact with the child in care and any named person (section 34(2) of the 1989 Act) or permitting the local authority to refuse contact (section 34(4) of that Act)	<ul style="list-style-type: none"> <li>● The local authority; or the child (section 34(2) or 34(4) of the 1989 Act)</li> </ul>	<ul style="list-style-type: none"> <li>● As above; and the person whose contact with the child is the subject of the application</li> </ul>
An order relating to contact with the child in care (section 34(3) of the 1989 Act)	<ul style="list-style-type: none"> <li>● The child's parents; any guardian or special guardian of the child; any person who by virtue of section 4A of the 1989 Act has parental responsibility for the child; a person in whose favour there was a residence order in force with respect to the child immediately before the care order was made; a person who by virtue of an order made in the exercise of the High Court's inherent jurisdiction with respect to children had care of the child immediately before the care order was made (section 34(3)(a) of the 1989 Act); or with the court's permission, any person (section 34(3) (b) of that Act)</li> </ul>	<ul style="list-style-type: none"> <li>● As above; and the person whose contact with the child is the subject of the application</li> </ul>
An order varying or discharging an order for contact with a child in care under section 34 (section 34(9) of the 1989 Act)	<ul style="list-style-type: none"> <li>● The local authority; the child; or any person named in the order (section 34(9) of the 1989 Act)</li> </ul>	<ul style="list-style-type: none"> <li>● As above; and the person whose contact with the child is the subject of the application</li> </ul>
An education supervision order (section 36 of the 1989 Act)	<ul style="list-style-type: none"> <li>● Any local authority (section 36(1) of the 1989 Act)</li> </ul>	<ul style="list-style-type: none"> <li>● As above; and the child</li> </ul>
An order varying or discharging a supervision order (section 39(2) of the 1989 Act)	<ul style="list-style-type: none"> <li>● Any person who has parental responsibility for the child; the child; or the supervisor (section 39(2) of the 1989 Act)</li> </ul>	<ul style="list-style-type: none"> <li>● As above; and the supervisor</li> </ul>
An order varying a supervision order in so far as it affects the person with whom the child is living (section 39(3) of the 1989 Act)	<ul style="list-style-type: none"> <li>● The person with whom the child is living who is not entitled to apply for the order to be discharged (section 39(3) of the 1989 Act)</li> </ul>	<ul style="list-style-type: none"> <li>● As above; and the supervisor</li> </ul>

<i>Proceedings for</i>	<i>Applicants</i>	<i>Respondents</i>
An order varying a direction under section 44(6) of the 1989 Act in an emergency protection order (section 44(9)(b) of that Act)	<ul style="list-style-type: none"> <li>• The parties to the application for the emergency protection order in respect of which it is sought to vary the directions; the children's guardian; the local authority in whose area the child is ordinarily resident; or any person who is named in the directions</li> </ul>	<ul style="list-style-type: none"> <li>• As above, and the parties to the application for the order in respect of which it is sought to vary the directions; any person who was caring for the child prior to the making of the order; and any person whose contact with the child is affected by the direction which it is sought to have varied</li> </ul>
A recovery order (section 50 of the 1989 Act)	<ul style="list-style-type: none"> <li>• Any person who has parental responsibility for the child by virtue of a care order or an emergency protection order; or where the child is in police protection the officer designated for the purposes of section 46(3)(e) of the 1989 Act (section 50(4) of the 1989 Act)</li> </ul>	<ul style="list-style-type: none"> <li>• As above; and the person whom the applicant alleges to have effected or to have been or to be responsible for the taking or keeping of the child</li> </ul>
An order discharging an education supervision order (Schedule 3, paragraph 17(1), to the 1989 Act)	<ul style="list-style-type: none"> <li>• The child concerned; a parent of the child; or the local authority concerned (Schedule 3, paragraph 17(1), to the 1989 Act)</li> </ul>	<ul style="list-style-type: none"> <li>• As above; and the local authority concerned; and the child</li> </ul>
An order extending an education supervision order (Schedule 3, paragraph, 15(2), to the 1989 Act)	<ul style="list-style-type: none"> <li>• The local authority in whose favour the education supervision order was made (Schedule 3, paragraph 15(2), to the 1989 Act)</li> </ul>	<ul style="list-style-type: none"> <li>• As above; and the child</li> </ul>
An appeal under paragraph (8) of Schedule 8 to the 1989 Act	<ul style="list-style-type: none"> <li>• A person aggrieved by the matters listed in paragraph 8(1) of Schedule 8 to the 1989 Act</li> </ul>	<ul style="list-style-type: none"> <li>• The appropriate local authority</li> </ul>
An order for the disclosure of information as to the whereabouts of a child under section 33 of the 1986 Act	<ul style="list-style-type: none"> <li>• Any person with a legitimate interest in proceedings for an order under Part 1 of the 1986 Act; or a person who has registered an order made elsewhere in the United Kingdom or a specified dependent territory</li> </ul>	<ul style="list-style-type: none"> <li>• Any person alleged to have information as to the whereabouts of the child</li> </ul>
An order authorising the taking charge of and delivery of a child under section 34 of the 1986 Act	<ul style="list-style-type: none"> <li>• The person to whom the child is to be given up under section 34(1) of the 1986 Act</li> </ul>	<ul style="list-style-type: none"> <li>• As above; and the person who is required to give up the child in accordance with section 34(1) of the 1986 Act</li> </ul>
An order relating to the exercise of the court's inherent jurisdiction (including wardship proceedings)	<ul style="list-style-type: none"> <li>• A local authority (with the court's permission); any person with a genuine interest in or relation to the child; or the child (wardship proceedings only)</li> </ul>	<ul style="list-style-type: none"> <li>• The parent or guardian of the child; any other person who has an interest in or relationship to the child; and the child (wardship proceedings only and with the court's permission as described at rule 12.37)</li> </ul>

<i>Proceedings for</i>	<i>Applicants</i>	<i>Respondents</i>
A warrant under section 79 of the 2006 Act authorising any constable to assist Her Majesty's Chief Inspector for Education, Children's Services and Skills in the exercise of powers conferred on him by section 77 of the 2006 Act	<ul style="list-style-type: none"> <li>● Her Majesty's Chief Inspector for Education, Children's Services and Skills</li> </ul>	<ul style="list-style-type: none"> <li>● Any person preventing or likely to prevent Her Majesty's Chief Inspector for Education, Children's Services and Skills from exercising powers conferred on him by section 77 of the 2006 Act</li> </ul>
An order in respect of a child under the 1980 Hague Convention	<ul style="list-style-type: none"> <li>● Any person, institution or body who claims that a child has been removed or retained in breach of rights of custody or claims that there has been a breach of rights of access in relation to the child</li> </ul>	<ul style="list-style-type: none"> <li>● The person alleged to have brought the child into the United Kingdom; the person with whom the child is alleged to be; any parent or guardian of the child who is within the United Kingdom and is not otherwise a party; any person in whose favour a decision relating to custody has been made if that person is not otherwise a party; and any other person who appears to the court to have sufficient interest in the welfare of the child</li> </ul>
An order concerning the recognition and enforcement of decisions relating to custody under the European Convention	<ul style="list-style-type: none"> <li>● Any person who has a court order giving that person rights of custody in relation to the child</li> </ul>	As above
An application for the High Court to request transfer of jurisdiction under Article 15 of the Council Regulation or Article 9 of the 1996 Hague Convention (rule 12.65)	<ul style="list-style-type: none"> <li>● Any person with sufficient interest in the welfare of the child and who would be entitled to make a proposed application in relation to that child, or who intends to seek the permission of the court to make such application if the transfer is agreed</li> </ul>	<ul style="list-style-type: none"> <li>● As directed by the court in accordance with rule 12.65</li> </ul>
An application under rule 12.71 for a declaration as to the existence, or extent, of parental responsibility under Article 16 of the 1996 Convention	<ul style="list-style-type: none"> <li>● Any interested person including a person who holds, or claims 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</li> </ul>	<ul style="list-style-type: none"> <li>● Every person whom the applicant believes to have parental responsibility for the child; any person whom the applicant believes 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 where the child is the subject of a care order, every person whom the applicant believes to have had parental responsibility immediately prior to the making of the care order</li> </ul>

<i>Proceedings for</i>	<i>Applicants</i>	<i>Respondents</i>
A warning notice	<ul style="list-style-type: none"> <li>• The person who is, for the purposes of the contact order, the person with whom the child concerned lives or is to live; the person whose contact with the child concerned is provided for in the contact order; any individual subject to a condition under section 11(7)(b) of the 1989 Act or a contact activity condition imposed by the contact order; or with the court's permission, the child</li> </ul>	<ul style="list-style-type: none"> <li>• Any person who was a party to the proceedings in which the contact order was made. (Rule 12.33 makes provision about applications for warning notices)</li> </ul>

- (2) The court will direct that a person with parental responsibility be made a party to proceedings where that person requests to be one.
- (3) Subject to rule 16.2, the court may at any time direct that –
  - (a) any person or body be made a party to proceedings; or
  - (b) a party be removed.
- (4) If the court makes a direction for the addition or removal of a party under this rule, it may give consequential directions about –
  - (a) the service of a copy of the application form or other relevant documents on the new party;
  - (b) the management of the proceedings.
- (5) In this rule –
  - ‘a local authority foster parent’ has the meaning assigned to it by section 23(3) of the 1989 Act; and
  - ‘care home’, ‘independent hospital’, ‘local authority’ and ‘Primary Care Trust’ have the meanings assigned to them by section 105 of the 1989 Act.

(Part 16 contains the rules relating to the representation of children.)

## **12.4 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 –
  - (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 12.3.
- (2) The applicant shall give notice of the proceedings to any person to whom the applicant believes paragraph (1) applies in any case in which a person whom the applicant believed to have parental responsibility under the 1989 Act would be a respondent to those proceedings in accordance with rule 12.3.
- (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 a person who is believed to have parental responsibility for the child in accordance with paragraph (1) 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.

### **12.5 What the court will do when the application has been issued**

When the proceedings have been issued the court will consider –

- (a) setting a date for –
  - (i) a directions appointment;
  - (ii) in private law proceedings, a First Hearing Dispute Resolution Appointment;
  - (iii) in care and supervision proceedings and in so far as practicable other public law proceedings, the First Appointment; or
  - (iv) the hearing of the application or an application for an interim order, and if the court sets a date it will do so in accordance with rule 12.13 and Practice Directions 12A and 12B;
- (b) giving any of the directions listed in rule 12.12 or, where Chapter 6, section 1 applies, rule 12.48; and
- (c) doing anything else which is set out in Practice Directions 12A or 12B or any other practice direction.

(Practice Directions 12A and 12B supplementing this Part set out details relating to the First Hearing Dispute Resolution Appointment and the First Appointment.)

### **12.6 Children’s guardian, solicitor and reports under section 7 of the 1989 Act**

As soon as practicable after the issue of proceedings or the transfer of the proceedings to the court, the court will –

- (a) in specified proceedings, appoint a children’s guardian under rule 16.3(1) unless –
  - (i) such an appointment has already been made by the court which made the transfer and is subsisting; or
  - (ii) the court considers that such an appointment is not necessary to safeguard the interests of the child;
- (b) where section 41(3) of the 1989 Act applies, consider whether a solicitor should be appointed to represent the child, and if so, appoint a solicitor accordingly;
- (c) consider whether to ask an officer of the service or a Welsh family proceedings officer for advice relating to the welfare of the child;
- (d) consider whether a report relating to the welfare of the child is required, and if so, request such a report in accordance with section 7 of the 1989 Act.

(Part 16 sets out the rules relating to representation of children.)

### **12.7 What a court officer will do**

- (1) As soon as practicable after the issue of proceedings the court officer will return to the applicant the copies of the application together with the forms referred to in Practice Direction 5A.
- (2) As soon as practicable after the issue of proceedings or the transfer of proceedings to the court or at any other stage in the proceedings the court officer will –

- (a) give notice of any hearing set by the court to the applicant; and
- (b) do anything else set out in Practice Directions 12A or 12B or any other practice direction.

### **12.8 Service of the application**

The applicant will serve –

- (a) the application together with the documents referred to in Practice Direction 12C on the persons referred to and within the time specified in that Practice Direction; and
- (b) notice of any hearing set by the court on the persons referred to in Practice Direction 12C at the same time as serving the application.

### **12.9 Request for transfer from magistrates' court to county court or to another magistrates' court**

- (1) In accordance with the Allocation Order, a magistrates' court may order proceedings before the court (or any part of them) to be transferred to another magistrates' court or to a county court.
- (2) Where any request to transfer proceedings to another magistrates' court or to a county court is refused, the court officer will send a copy of the written record of the reasons for refusing the transfer to the parties.

### **12.10 Procedure following refusal of magistrates' court to order transfer**

- (1) Where a request under rule 12.9 to transfer proceedings to a county court in accordance with the provisions of the Allocation Order is refused, a party to the proceedings may apply to a county court for an order transferring proceedings from the magistrates' court.
- (2) Such an application must be made in accordance with Part 18 and the Allocation Order.

### **12.11 Transfer of proceedings from one court to another court**

Where proceedings are transferred from one court to another court in accordance with the provisions of the Allocation Order, the court officer from the transferring court will notify the parties of any order transferring the proceedings.

### **12.12 Directions**

- (1) This rule does not apply to proceedings under Chapter 6 of this Part.
- (2) At any stage in the proceedings, the court may give directions about the conduct of the proceedings including –
  - (a) the management of the case;
  - (b) the timetable for steps to be taken between the giving of directions and the final hearing;
  - (c) the joining of a child or other person as a party to the proceedings in accordance with rules 12.3(2) and (3);
  - (d) the attendance of the child;
  - (e) the appointment of a children's guardian or of a solicitor under section 41(3) of the 1989 Act;
  - (f) the appointment of a litigation friend;
  - (g) the service of documents;
  - (h) the filing of evidence including experts' reports; and

- (i) the exercise by an officer of the Service, Welsh family proceedings officer or local authority officer of any duty referred to in rule 16.38(1)
- (3)** Paragraph (4) applies where –
  - (a) an officer of the Service or a Welsh family proceedings officer has filed a report or a risk assessment as a result of exercising a duty referred to in rule 16.38(1)(a); or
  - (b) a local authority officer has filed a report as a result of exercising a duty referred to in rule 16.38(1)(b).
- (4)** The court may –
  - (a) give directions setting a date for a hearing at which that report or risk assessment will be considered; and
  - (b) direct that the officer who prepared the report or risk assessment attend any such hearing.
- (5)** The court may exercise the powers in paragraphs (2) and (4) on an application or of its own initiative.
- (6)** Where the court proposes to exercise its powers of its own initiative the procedure set out in rule 4.3(2) to (6) applies.
- (7)** Directions of a court which are still in force immediately prior to the transfer of proceedings to another court will 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.

(Rule 12.48 provides for directions in proceedings under the 1980 Hague Convention and the European Convention.)

### **12.13 Setting dates for hearings and setting or confirming the timetable and date for the final hearing**

- (1)** At the –
  - (a) transfer to a court of proceedings;
  - (b) postponement or adjournment of any hearing; or
  - (c) conclusion of any hearing at which the proceedings are not finally determined, the court will set a date for the proceedings to come before the court again for the purposes of giving directions or for such other purposes as the court directs.
- (2)** At any hearing the court may –
  - (a) confirm a date for the final hearing or the week within which the final hearing is to begin (where a date or period for the final hearing has already been set);
  - (b) set a timetable for the final hearing unless a timetable has already been fixed, or the court considers that it would be inappropriate to do so; or
  - (c) set a date for the final hearing or a period within which the final hearing of the application is to take place.
- (3)** The court officer will notify the parties of –
  - (a) the date of a hearing fixed in accordance with paragraph (1);
  - (b) the timetable for the final hearing; and

- (c) the date of the final hearing or the period in which it will take place.
- (4) Where the date referred to in paragraph (1) is set at the transfer of proceedings, the date will be as soon as possible after the transfer.
- (5) The requirement in paragraph (1) to set a date for the proceedings to come before the court again is satisfied by the court setting or confirming a date for the final hearing.

#### **12.14 Attendance at hearings**

- (1) This rule does not apply to proceedings under Chapter 6 of this Part except for proceedings for a declaration under rule 12.71.
- (2) Unless the court directs otherwise and subject to paragraph (3), the persons who must attend a hearing are –
  - (a) any party to the proceedings;
  - (b) any litigation friend for any party or legal representative instructed to act on that party's behalf; and
  - (c) any other person directed by the court or required by Practice Directions 12A or 12B or any other practice direction to attend.
- (3) Proceedings or any part of them will take place in the absence of a child who is a party to the proceedings if –
  - (a) the court considers it in the interests of the child, having regard to the matters to be discussed or the evidence likely to be given; and
  - (b) the child is represented by a children's guardian or solicitor.
- (4) When considering the interests of the child under paragraph (3) the court will give –
  - (a) the children's guardian;
  - (b) the solicitor for the child; and
  - (c) the child, if of sufficient understanding, an opportunity to make representations.
- (5) Subject to paragraph (6), where at the time and place appointed for a hearing, the applicant appears but one or more of the respondents do not, the court may proceed with the hearing.
- (6) The court will not begin to hear an application in the absence of a respondent unless the court is satisfied that –
  - (a) the respondent received reasonable notice of the date of the hearing; or
  - (b) the circumstances of the case justify proceeding with the hearing.
- (7) Where, at the time and place appointed for a hearing one or more of the respondents appear but the applicant does not, the court may –
  - (a) refuse the application; or
  - (b) if sufficient evidence has previously been received, proceed in the absence of the applicant.
- (8) Where at the time and place appointed for a hearing neither the applicant nor any respondent appears, the court may refuse the application.
- (9) Paragraphs (5) to (8) do not apply to a hearing where the court –
  - (a) is considering –
    - (i) whether to make a contact activity direction or to attach a contact activity condition to a contact order; or

- (ii) an application for a financial compensation order, an enforcement order or an order under paragraph 9 of Schedule A1 to the 1989 Act following a breach of an enforcement order; and
  - (b) has yet to obtain sufficient evidence from, or in relation to, the person who may be the subject of the direction, condition or order to enable it to determine the matter.
- (10)** Nothing in this rule affects the provisions of Article 18 of the Council Regulation in cases to which that provision applies.

(The Council Regulation makes provision in Article 18 for the court to stay proceedings where the respondent is habitually resident in another Member State of the European Union and has not been adequately served with the proceedings as required by that provision.)

### **12.15 Steps taken by the parties**

If –

- (a) the parties or any children’s guardian agree proposals for the management of the proceedings (including a proposed date for the final hearing or a period within which the final hearing is to take place); and
- (b) the court considers that the proposals are suitable, it may approve them without a hearing and give directions in the terms proposed.

### **12.16 Applications without notice**

- (1)** This rule applies to –
  - (a) proceedings for a section 8 order;
  - (b) emergency proceedings; and
  - (c) proceedings relating to the exercise of the court’s inherent jurisdiction (other than an application for the court’s permission to start such proceedings and proceedings for collection, location and passport orders where Chapter 6 applies).
- (2)** An application in proceedings referred to in paragraph (1) may, in the High Court or a county court, be made without notice in which case the applicant must file the application –
  - (a) where the application is made by telephone, the next business day after the making of the application; or
  - (b) in any other case, at the time when the application is made.
- (3)** An application in proceedings referred to in paragraph (1)(a) or (b) may, 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.
- (4)** Where –
  - (a) a section 8 order;
  - (b) an emergency protection order;
  - (c) an order for the disclosure of information as to the whereabouts of a child under section 33 of the 1986 Act; or
  - (d) an order authorising the taking charge of and delivery of a child under section 34 of the 1986 Act,
 is made without notice, the applicant must serve a copy of the application on each respondent within 48 hours after the order is made.
- (5)** Within 48 hours after the making of an order without notice, the applicant must serve a copy of the order on –

- (a) the parties, unless the court directs otherwise;
  - (b) any person who has actual care of the child or who had such care immediately prior to the making of the order; and
  - (c) in the case of an emergency protection order and a recovery order, the local authority in whose area the child lives or is found.
- (6) 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 will proceed in accordance with rules 12.3 to 12.15.
- (7) Where the hearing takes place outside the hours during which the court office is normally open, the court or court officer will take a note of the proceedings.

(Practice Direction 12E (Urgent Business) provides further details of the procedure for out of hours applications. See also Practice Direction 12D (Inherent Jurisdiction (including Wardship Proceedings).)

(Rule 12.47 provides for without-notice applications in proceedings under Chapter 6, section 1 of this Part, (proceedings under the 1980 Hague Convention and the European Convention).)

### **12.17 Investigation under section 37 of the 1989 Act**

- (1) This rule applies where a direction is given to an appropriate authority by the court under section 37(1) of the 1989 Act.
- (2) On giving the direction the court may adjourn the proceedings.
- (3) As soon as practicable after the direction is given the court will record the direction.
- (4) As soon as practicable after the direction is given the court officer will –
- (a) serve the direction on –
    - (i) the parties to the proceedings in which the direction is given; and
    - (ii) the appropriate authority where it is not a party;
  - (b) serve any documentary evidence directed by the court on the appropriate authority.
- (5) Where a local authority informs the court of any of the matters set out in section 37(3)(a) to (c) of the 1989 Act it will do so in writing.
- (6) Unless the court directs otherwise, the court officer will serve a copy of any report to the court under section 37 of the 1989 Act on the parties.

(Section 37 of the 1989 Act refers to the appropriate authority and section 37(5) of that Act sets out which authority should be named in a particular case.)

### **12.18 Disclosure of a report under section 14A(8) or (9) of the 1989 Act**

- (1) In proceedings for a special guardianship order, the local authority must file the report under section 14A(8) or (9) of the 1989 Act<sup>1</sup> within the timetable fixed by the court.
- (2) The court will consider whether to give a direction that the report under section 14A(8) or (9) of the 1989 Act be disclosed to each party to the proceedings.
- (3) Before giving a direction for the report to be disclosed, the court must consider whether any information should be deleted from the report.

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<sup>1</sup> Sections 14A(8) and (9) were inserted by section 115(1) of the Adoption and Children Act 2002.

- (4) The court may direct that the report must not be disclosed to a party.
- (5) The court officer must serve a copy of the report in accordance with any direction under paragraph (2).
- (6) In paragraph (3), information includes information which a party has declined to reveal under rule 29.1(1).

#### **12.19 Additional evidence**

- (1) This rule applies to proceedings for a section 8 order or a special guardianship order.
- (2) Unless the court directs otherwise, a party must not –
  - (a) file or serve any document other than in accordance with these rules or any practice direction;
  - (b) in completing a form prescribed by these rules or any practice direction, give information or make a statement which is not required or authorised by that form; or
  - (c) file or serve at a hearing –
    - (i) any witness statement of the substance of the oral evidence which the party intends to adduce; or
    - (ii) any copy of any document (including any experts' report) which the party intends to rely on.
- (3) Where a party fails to comply with the requirements of this rule in relation to any witness statement or other document, the party cannot seek to rely on that statement or other document unless the court directs otherwise.

#### **12.20 Expert evidence-examination of child**

- (1) No person may cause the child to be medically or psychiatrically examined, or otherwise assessed, for the purpose of preparation of expert evidence for use in the proceedings without the court's permission.
- (2) Where the court's permission has not been given under paragraph (1), no evidence arising out of an examination or assessment referred to in that paragraph may be adduced without the court's permission.

#### **12.21 Hearings**

- (1) The court may give directions about the order of speeches and the evidence at a hearing.
- (2) Subject to any directions given under paragraph (1), the parties and the children's guardian must adduce their evidence at a hearing in the following order –
  - (a) the applicant;
  - (b) any party with parental responsibility for the child;
  - (c) other respondents;
  - (d) the children's guardian;
  - (e) the child, if the child is a party to proceedings and there is no children's guardian.

### **III SPECIAL PROVISIONS ABOUT PUBLIC LAW PROCEEDINGS**

#### **12.22 Application of rules 12.23 to 12.26**

Rules 12.23 to 12.26 apply to care and supervision proceedings and in so far as practicable other public law proceedings.

### **12.23 Timetable for the Child**

- (1) The court will set the timetable for the proceedings in accordance with the Timetable for the Child.
- (2) The ‘Timetable for the Child’ means the timetable set by the court in accordance with its duties under section 1 and 32 of the 1989 Act<sup>1</sup> and will –
  - (a) take into account dates of the significant steps in the life of the child who is the subject of the proceedings; and
  - (b) be appropriate for that child.

### **12.24 Directions**

- (1) The court will direct the parties to –
  - (a) monitor compliance with the court’s directions; and
  - (b) tell the court or court officer about –
    - (i) any failure to comply with a direction of the court; and
    - (ii) any other delay in the proceedings.

### **12.25 First Appointment, Case Management Conference and Issues Resolution Hearing**

- (1) The court may set the date for the First Appointment, Case Management Conference and Issues Resolution Hearing at the times and in the circumstances referred to in Practice Direction 12A.
- (2) The matters which the court will consider at the hearings referred to in paragraph (1) are set out in Practice Direction 12A.

### **12.26 Discussion between advocates**

- (1) When setting a date for a Case Management Conference or an Issues Resolution Hearing the court will direct a discussion between the parties’ advocates to –
  - (a) discuss the provisions of a draft of the Case Management Order; and
  - (b) consider any other matter set out in Practice Direction 12A.
- (2) Where there is a litigant in person the court will give directions about how that person may take part in the discussions between the parties’ advocates.
- (3) The court will direct that following a discussion between advocates they must prepare or amend a draft of the Case Management Order for the court to consider.
- (4) Where it is not possible for the advocates to agree the terms of a draft of the Case Management Order, the advocates should specify on a draft of the Case Management Order or on a separate document if more practicable –
  - (a) those provisions on which they agree; and
  - (b) those provisions on which they disagree.
- (5) Unless the court directs otherwise –
  - (a) any discussion between advocates must take place no later than 2 days; and
  - (b) a draft of the Case Management Order must be filed with the court no later than 1 day, before the Case Management Conference or the Issues Resolution Hearing whichever may be appropriate.

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<sup>1</sup> Section 1 was amended by section 115(2) and (3) of the Adoption and Children Act 2002.

- (6) For the purposes of this rule ‘advocate’ includes a litigant in person.

### **12.27 Matters prescribed for the purposes of the Act**

- (1) Proceedings for an order under any of the following provisions of the 1989 Act –
- (a) a secure accommodation order under section 25;
  - (b) an order giving permission to change a child’s surname or remove a child from the United Kingdom under section 33(7);
  - (c) an order permitting the local authority to arrange for any child in its care to live outside England and Wales under paragraph 19(1) of Schedule 2;
  - (d) the extension or further extension of a supervision order under paragraph 6(3) of Schedule 3;
  - (e) appeals against the determination of proceedings of a kind set out in sub-paragraphs (a) to (d); are specified for the purposes of section 41 of that Act in accordance with section 41(6)(i) of that Act.
- (2) The persons listed as applicants in the table set out in rule 12.3 to proceedings for the variation of directions made with interim care or interim supervision orders under section 38(8) of the 1989 Act are the prescribed class of persons for the purposes of that section.
- (3) The persons listed as applicants in the table set out in rule 12.3 to proceedings for the variation of a direction made under section 44(6) of the 1989 Act in an emergency protection order are the prescribed class of persons for the purposes of section 44(9) of that Act.

### **12.28 Exclusion requirements: interim care orders and emergency protection orders**

- (1) This rule applies where the court includes an exclusion requirement in an interim care order or an emergency protection order.
- (2) The applicant for an interim care order or emergency protection order must –
- (a) prepare a separate statement of the evidence in support of the application for an exclusion requirement;
  - (b) serve the statement personally on the relevant person with a copy of the order containing the exclusion requirement (and of any power of arrest which is attached to it);
  - (c) inform the relevant person of that person’s right to apply to vary or discharge the exclusion requirement.
- (3) Where a power of arrest is attached to an exclusion requirement in an interim care order or an emergency protection order, the applicant will deliver –
- (a) a copy of the order; and
  - (b) a statement showing that the relevant person has been served with the order or informed of its terms (whether by being present when the order was made or by telephone or otherwise), to the officer for the time being in charge of the police station for the area in which the dwelling-house in which the child lives is situated (or such other police station as the court may specify).
- (4) Rules 10.6(2) and 10.10 to 10.17 will apply, with the necessary modifications, for the service, variation, discharge and enforcement of any exclusion requirement to which a power of arrest is attached as they apply to an order made on an application under Part 4 of the 1996 Act.
- (5) The relevant person must serve the parties to the proceedings with any application which that person makes for the variation or discharge of the exclusion requirement.
- (6) Where an exclusion requirement ceases to have effect whether –

- (a) as a result of the removal of a child under section 38A(10) or 44A(10) of the 1989 Act<sup>1</sup>;
- (b) because of the discharge of the interim care order or emergency protection order; or
- (c) otherwise,  
the applicant must inform –
  - (i) the relevant person;
  - (ii) the parties to the proceedings;
  - (iii) any officer to whom a copy of the order was delivered under paragraph (3); and
  - (iv) (where necessary) the court.
- (7) Where the court includes an exclusion requirement in an interim care order or an emergency protection order of its own motion, paragraph (2) will apply with the omission of any reference to the statement of the evidence.
- (8) In this rule, ‘the relevant person’ has the meaning assigned to it by sections 38A(2) and 44A(2) of the 1989 Act.

### **12.29 Notification of consent**

- (1) Consent for the purposes of the following provisions of the 1989 Act –
  - (a) section 16(3)<sup>2</sup>;
  - (b) section 38A(2)(b)(ii) or 44A(2)(b)(ii); or
  - (c) paragraph 19(3)(c) or (d) of Schedule 2,  
must be given either –
    - (i) orally to the court; or
    - (ii) in writing to the court signed by the person giving consent.
- (2) Any written consent for the purposes of section 38A(2) or 44A(2) of the 1989 Act must include a statement that the person giving consent –
  - (a) is able and willing to give to the child the care which it would be reasonable to expect a parent to give; and
  - (b) understands that the giving of consent could lead to the exclusion of the relevant person from the dwelling-house in which the child lives.

### **12.30 Proceedings for secure accommodation orders: copies of reports**

In proceedings under section 25 of the 1989 Act, the court will, if practicable, arrange for copies of all written reports filed in the case to be made available before the hearing to –

- (a) the applicant;
- (b) the parent or guardian of the child to whom the application relates;
- (c) any legal representative of the child;
- (d) the children’s guardian; and
- (e) the child, unless the court directs otherwise,  
and copies of the reports may, if the court considers it desirable, be shown to any person who is entitled to notice of any hearing in accordance with Practice Direction 12C.

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<sup>1</sup> Sections 38A(10) and 44A(10) were inserted by section 52 of and paragraphs 1 and 3 of Schedule 6 to the Family Law Act 1996.

<sup>2</sup> Paragraph (a) was repealed by sections 6(1), (2), 15(2) of and Schedule 3 to the Children and Adoption Act 2006.

## IV SPECIAL PROVISIONS ABOUT PRIVATE LAW PROCEEDINGS

### 12.31 The First Hearing Dispute Resolution Appointment

- (1) The court may set a date for the First Hearing Dispute Resolution Appointment after the proceedings have been issued.
- (2) The court officer will give notice of any of the dates so fixed to the parties.

(Provisions relating to the timing of and issues to be considered at the First Hearing Dispute Resolution Appointment are contained in Practice Direction 12B.)

### 12.32 Answer

A respondent must file and serve on the parties an answer to the application for an order in private law proceedings within 14 days beginning with the date on which the application is served.

### 12.33 Applications for warning notices or applications to amend enforcement orders by reason of change of residence

- (1) This rule applies in relation to an application to the High Court or a county court for –
  - (a) a warning notice to be attached to a contact order; or
  - (b) an order under paragraph 5 of Schedule A1 to the 1989 Act to amend an enforcement order by reason of change of residence.
- (2) The application must be made without notice.
- (3) The court may deal with the application without a hearing.
- (4) If the court decides to deal with the application at a hearing, rules 12.5, 12.7 and 12.8 will apply.

### 12.34 Service of a risk assessment

- (1) Where an officer of the Service or a Welsh family proceedings officer has filed a risk assessment with the court, subject to paragraph (2), the court officer will as soon as practicable serve copies of the risk assessment on each party.
- (2) Before serving the risk assessment, the court must consider whether, in order to prevent a risk of harm to the child, it is necessary for –
  - (a) information to be deleted from a copy of the risk assessment before that copy is served on a party; or
  - (b) service of a copy of the risk assessment (whether with information deleted from it or not) on a party to be delayed for a specified period, and may make directions accordingly.

### 12.35 Service of enforcement orders or orders amending or revoking enforcement orders

- (1) Paragraphs (2) and (3) apply where the High Court or a county court makes –
  - (a) an enforcement order; or
  - (b) an order under paragraph 9(2) of Schedule A1 to the 1989 Act (enforcement order made following a breach of an enforcement order).

- (2) As soon as practicable after an order has been made, a copy of it must be served by the court officer on –
  - (a) the parties, except the person against whom the order is made;
  - (b) the officer of the Service or the Welsh family proceedings officer who is to comply with a request under section 11M of the 1989 Act<sup>1</sup> to monitor compliance with the order; and
  - (c) the responsible officer.
- (3) Unless the court directs otherwise, the applicant must serve a copy of the order personally on the person against whom the order is made.
- (4) The court officer must send a copy of an order made under paragraph 4, 5, 6 or 7 of Schedule A1 to the 1989 Act (revocation or amendment of an enforcement order) to –
  - (a) the parties;
  - (b) the officer of the Service or the Welsh family proceedings officer who is to comply with a request under section 11M of the 1989 Act to monitor compliance with the order;
  - (c) the responsible officer; and
  - (d) in the case of an order under paragraph 5 of Schedule A1 to the 1989 Act (amendment of enforcement order by reason of change of residence), the responsible officer in the former local justice area.
- (5) In this rule, ‘responsible officer’ has the meaning given in paragraph 8(8) of Schedule A1 to the 1989 Act.

## V SPECIAL PROVISIONS ABOUT INHERENT JURISDICTION PROCEEDINGS

### 12.36 Where to start proceedings

- (1) An application for proceedings under the Inherent Jurisdiction of the court must be started in the High Court.
- (2) Wardship proceedings, except applications for an order that a child be made or cease to be a ward of court, may be transferred to the county court unless the issues of fact or law make them more suitable for hearing in the High Court.

(The question of suitability for hearing in the High Court is explained in Practice Direction 12D (Inherent Jurisdiction (including Wardship Proceedings)).)

### 12.37 Child as respondent to wardship proceedings

- (1) A child who is the subject of wardship proceedings must not be made a respondent to those proceedings unless the court gives permission following an application under paragraph (2).
- (2) Where nobody other than the child would be a suitable respondent to wardship proceedings, the applicant may apply without notice for permission to make the wardship application –
  - (a) without notice; or
  - (b) with the child as the respondent.

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<sup>1</sup> Section 11M was inserted by section 4(1) of the Children and Adoption Act 2006.

### **12.38 Registration requirements**

The court officer will send a copy of every application for a child to be made a ward of court to the principal registry for recording in the register of wards.

### **12.39 Notice of child's whereabouts**

- (1)** Every respondent, other than a child, must file with the acknowledgment of service a notice stating –
  - (a) the respondent's address; and
  - (b) either –
    - (i) the whereabouts of the child; or
    - (ii) that the respondent is unaware of the child's whereabouts if that is the case.
- (2)** Unless the court directs otherwise, the respondent must serve a copy of that notice on the applicant.
- (3)** Every respondent other than a child must immediately notify the court in writing of –
  - (a) any subsequent changes of address; or
  - (b) any change in the child's whereabouts, and, unless the court directs otherwise, serve a copy of that notice on the applicant.
- (4)** In this rule a reference to the whereabouts of a child is a reference to –
  - (a) the address at which the child is living;
  - (b) the person with whom the child is living; and
  - (c) any other information relevant to where the child may be found.

### **12.40 Enforcement of orders in wardship proceedings**

The High Court may secure compliance with any direction relating to a ward of court by an order addressed to the tipstaff.

(The role of the tipstaff is explained in Practice Direction 12D (Inherent Jurisdiction (including Wardship Proceedings)).)

### **12.41 Child ceasing to be ward of court**

- (1)** A child who, by virtue of section 41(2) of the Senior Courts Act 1981, automatically becomes a ward of court on the making of a wardship application will cease to be a ward on the determination of the application unless the court orders that the child be made a ward of court.
- (2)** Nothing in paragraph (1) affects the power of the court under section 41(3) of the Senior Courts Act 1981 to order that any child cease to be a ward of court.

### **12.42 Adoption of a child who is a ward of court**

An application for permission –

- (a) to start proceedings to adopt a child who is a ward of court;
- (b) to place such a child for adoption with parental consent; or
- (c) to start proceedings for a placement order in relation to such a child, may be made without notice in accordance with Part 18.

## VI PROCEEDINGS UNDER THE 1980 HAGUE CONVENTION, THE EUROPEAN CONVENTION, THE COUNCIL REGULATION, AND THE 1996 HAGUE CONVENTION

### 12.43 Scope

This Chapter applies to –

- (a) proceedings relating to children under the 1980 Hague Convention or the European Convention; and
- (b) applications relating to the Council Regulation or the 1996 Hague Convention in respect of children.

### SECTION 1

*Proceedings under the 1980 Hague Convention or the European Convention*

### 12.44 Interpretation

(1) In this section –

‘the 1985 Act’ means the Child Abduction and Custody Act 1985;  
‘Central Authority’ means, in relation to England and Wales, the Lord Chancellor;  
‘Contracting State’ has the meaning given in –

- (a) section 2 of the 1985 Act in relation to the 1980 Hague Convention; and
  - (b) section 13 of the 1985 Act in relation to the European Convention; and
- ‘decision relating to custody’ has the same meaning as in the European Convention.

(‘the 1980 Hague Convention’ and the ‘the European Convention’ are defined in rule 2.3)

### 12.45 Where to start proceedings

Every application under the 1980 Hague Convention or the European Convention must be –

- (a) made in the High Court and issued in the principal registry; and
- (b) heard by a Judge of the High Court unless the application is;
  - (i) to join a respondent; or
  - (ii) to dispense with service or extend the time for acknowledging service.

### 12.46 Evidence in support of application

Where the party making an application under this section does not produce the documents referred to in Practice Direction 12F, the court may –

- (a) fix a time within which the documents are to be produced;
- (b) accept equivalent documents; or
- (c) dispense with production of the documents if the court considers it has sufficient information.

### 12.47 Without-notice applications

(1) This rule applies to applications –

- (a) commencing or in proceedings under this section;
- (b) for interim directions under section 5 or 19 of the 1985 Act<sup>1</sup>;

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<sup>1</sup> Section 5 was amended by section 115(2), (4)(a) (i), (4)(b) and 4(c) of the Adoption and Children Act 2002.

- (c) for the disclosure of information about the child and for safeguarding the child's welfare, under rule 12.57;
  - (d) for the disclosure of relevant information as to where the child is, under section 24A of the 1985 Act<sup>1</sup>; or
  - (e) for a collection order, location order or passport order.
- (2) Applications under this rule may be made without notice, in which case the applicant must file the application –
- (a) where the application is made by telephone, the next business day after the making of the application; or
  - (b) in any other case, at the time when the application is made.
- (3) Where an order is made without notice, the applicant must serve a copy of the order on the other parties as soon as practicable after the making of the order, unless the court otherwise directs.
- (4) Where the court refuses to make an order on an application without notice, it may direct that the application is made on notice.
- (5) Where any hearing takes place outside the hours during which the court office is usually open –
- (a) if the hearing takes place by telephone, the applicant's solicitors will, if practicable, arrange for the hearing to be recorded; and
  - (b) in all other cases, the court or court officer will take a note of the proceedings.

(Practice Direction 12E (Urgent Business) provides further details of the procedure for out of hours applications. See also Practice Direction 12D (Inherent Jurisdiction (including Wardship Proceedings)).)

## 12.48 Directions

- (1) As soon as practicable after an application to which this section applies has been made, the court may give directions as to the following matters, among others –
- (a) whether service of the application may be dispensed with;
  - (b) whether the proceedings should be transferred to another court under rule 12.54;
  - (c) expedition of the proceedings or any part of the proceedings (and any direction for expedition may specify a date by which the court must issue its final judgment in the proceedings or a specified part of the proceedings);
  - (d) the steps to be taken in the proceedings and the time by which each step is to be taken;
  - (e) whether the child or any other person should be made a party to the proceedings;
  - (f) if the child is not made a party to the proceedings, the manner in which the child's wishes and feelings are to be ascertained, having regard to the child's age and maturity and in particular whether an officer of the Service or a Welsh family proceedings officer should report to the court for that purpose;
  - (g) where the child is made a party to the proceedings, the appointment of a children's guardian for that child unless a children's guardian has already been appointed;
  - (h) the attendance of the child or any other person before the court;
  - (i) the appointment of a litigation friend for a child or for any protected party, unless a litigation friend has already been appointed;
  - (j) the service of documents;
  - (k) the filing of evidence including expert evidence; and

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<sup>1</sup> Section 24A was inserted by section 67(4) of the Family Law Act 1986.

- (1) whether the parties and their representatives should meet at any stage of the proceedings and the purpose of such a meeting.

(Rule 16.2 provides for when the court may make the child a party to the proceedings and rule 16.4 for the appointment of a children's guardian for the child who is made a party. Rule 16.5 (without prejudice to rule 16.6) requires a child who is a party to the proceedings but not the subject of those proceedings to have a litigation friend.)

- (2) Directions of a court which are in force immediately prior to the transfer of proceedings to another court under rule 12.54 will 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 directions.
- (3) The court or court officer will –
  - (a) take a note of the giving, variation or revocation of directions under this rule; and
  - (b) as soon as practicable serve a copy of the directions order on every party.

#### **12.49 Answer**

- (1) Subject to paragraph (2) and to any directions given under rule 12.48, a respondent must file and serve on the parties an answer to the application within 7 days beginning with the date on which the application is served.
- (2) The court may direct a longer period for service where the respondent has been made a party solely on one of the following grounds –
  - (a) a decision relating to custody has been made in the respondent's favour; or
  - (b) the respondent appears to the court to have sufficient interest in the welfare of the child.

#### **12.50 Filing and serving written evidence**

- (1) The respondent to an application to which this section applies may file and serve with the answer a statement verified by a statement of truth, together with any further evidence on which the respondent intends to rely.
- (2) The applicant may, within 7 days beginning with the date on which the respondent's evidence was served under paragraph (1), file and serve a statement in reply verified by a statement of truth, together with any further evidence on which the applicant intends to rely.

#### **12.51 Adjournment**

The court will not adjourn the hearing of an application to which this section applies for more than 21 days at any one time.

#### **12.52 Stay of proceedings upon notification of wrongful removal etc.**

- (1) In this rule and in rule 12.53 –
  - (a) 'relevant authority' means –
    - (i) the High Court;
    - (ii) a county court;
    - (iii) a magistrates' court;
    - (iv) the Court of Session;
    - (v) a sheriff court;

- (vi) a children's hearing within the meaning of section 93 of the Children (Scotland) Act 1995;
  - (vii) the High Court in Northern Ireland;
  - (viii) a county court in Northern Ireland;
  - (ix) a court of summary jurisdiction in Northern Ireland;
  - (x) the Royal Court of Jersey;
  - (xi) a court of summary jurisdiction in Jersey;
  - (xii) the High Court of Justice of the Isle of Man;
  - (xiii) a court of summary jurisdiction in the Isle of Man; or
  - (xiv) the Secretary of State; and
- (b) 'rights of custody' has the same meaning as in the 1980 Hague Convention.
- (2) Where a party to proceedings under the 1980 Hague Convention knows that an application relating to the merits of rights of custody is pending in or before a relevant authority, that party must file within the proceedings under the 1980 Hague Convention a concise statement of the nature of that application, including the relevant authority in or before which it is pending.
- (3) On receipt of a statement filed in accordance with paragraph (2) above, a court officer will notify the relevant authority in or before which the application is pending and will subsequently notify the relevant authority of the result of the proceedings.
- (4) On receipt by the relevant authority of a notification under paragraph (3) from the High Court or equivalent notification from the Court of Session, the High Court in Northern Ireland or the High Court of Justice of the Isle of Man –
- (a) all further proceedings in the action will be stayed<sup>(GL)</sup> unless and until the proceedings under the 1980 Hague Convention in the High Court, Court of Session, the High Court in Northern Ireland or the High Court of Justice of the Isle of Man are dismissed; and
  - (b) the parties to the action will be notified by the court officer of the stay<sup>(GL)</sup> and dismissal.

### **12.53 Stay of proceedings where application made under s.16 of the 1985 Act (registration of decisions under the European Convention)**

- (1) A person who –
- (a) is a party to –
    - (i) proceedings under section 16 of the 1985 Act; or
    - (ii) proceedings as a result of which a decision relating to custody has been registered under section 16 of the 1985 Act; and
  - (b) knows that an application is pending under –
    - (i) section 20(2) of the 1985 Act;
    - (ii) Article 21(2) of the Child Abduction and Custody (Jersey) Law 2005; or
    - (iii) section 42(2) of the Child Custody Act 1987 (an Act of Tynwald),
 must file within the proceedings under section 16 of the 1985 Act a concise statement of the nature of the pending application.
- (2) On receipt of a statement filed in accordance with paragraph (1) above, a court officer will notify the relevant authority in or before which the application is pending and will subsequently notify the relevant authority of the result of the proceedings.
- (3) On receipt by the relevant authority of a notification under paragraph (2) from the High Court or equivalent notification from the Court of Session, the High Court in Northern Ireland or the High Court of Justice of the Isle of Man, the court officer will notify the parties to the action.

## **12.54 Transfer of proceedings**

- (1)** At any stage in proceedings under the 1985 Act the court may –
  - (a) of its own initiative; or
  - (b) on the application of a party with a minimum of two days' notice; order that the proceedings be transferred to a court listed in paragraph (4).
- (2)** Where the court makes an order for transfer under paragraph (1) –
  - (a) the court will state its reasons on the face of the order;
  - (b) a court officer will send a copy of the order, the application and the accompanying documents (if any) and any evidence to the court to which the proceedings are transferred; and
  - (c) the costs of the proceedings both before and after the transfer will be at the discretion of the court to which the proceedings are transferred.
- (3)** Where proceedings are transferred to the High Court from a court listed in paragraph (4), a court officer will notify the parties of the transfer and the proceedings will continue as if they had been commenced in the High Court.
- (4)** The listed courts are the Court of Session, the High Court in Northern Ireland, the Royal Court of Jersey or the High Court of Justice of the Isle of Man.

## **12.55 Revocation and variation of registered decisions**

- (1)** This rule applies to decisions which –
  - (a) have been registered under section 16 of the 1985 Act; and
  - (b) are subsequently varied or revoked by an authority in the Contracting State in which they were made.
- (2)** The court will, on cancelling the registration of a decision which has been revoked, notify –
  - (a) the person appearing to the court to have care of the child;
  - (b) the person on whose behalf the application for registration of the decision was made; and
  - (c) any other party to the application.
- (3)** The court will, on being informed of the variation of a decision, notify –
  - (a) the party appearing to the court to have care of the child; and
  - (b) any party to the application for registration of the decision; and any such person may apply to make representations to the court before the registration is varied.
- (4)** Any person appearing to the court to have an interest in the proceedings may apply for the registration of a decision for the cancellation or variation of the decision referred to in paragraph (1).

## **12.56 The central index of decisions registered under the 1985 Act**

A central index of decisions registered under section 16 of the 1985 Act, together with any variation of those decisions made under section 17 of that Act, will be kept by the principal registry.

## **12.57 Disclosure of information in proceedings under the European Convention**

At any stage in proceedings under the European Convention the court may, if it has reason to believe that any person may have relevant information about the child who is the subject of

those proceedings, order that person to disclose such information and may for that purpose order that the person attend before it or file affidavit<sup>(GL)</sup> evidence.

## **SECTION 2**

*Applications relating to the Council Regulation and the 1996 Hague Convention*

### **12.58 Interpretation**

- (1) In this section –  
‘Central Authority’ means, in relation to England and Wales, the Lord Chancellor;  
‘Contracting State’ means a State party to the 1996 Hague Convention;  
‘judgment’ has the meaning given in Article 2(4) of the Council Regulation;  
‘Member State’ means a Member State bound by the Council Regulation or a country which has subsequently adopted the Council Regulation;  
‘parental responsibility’ has the meaning given in –
  - (a) Article 2(7) of the Council Regulation in relation to proceedings under that Regulation; and
  - (b) Article 1(2) of the 1996 Hague Convention in relation to proceedings under that Convention; and‘seised’ has the meaning given in Article 16 of the Council Regulation.
- (2) In rules 12.59 to 12.70, references to the court of another member State or Contracting State include authorities within the meaning of ‘court’ in Article 2(1) of the Council Regulation, and authorities of Contracting States which have jurisdiction to take measures directed to the protection of the person or property of the child within the meaning of the 1996 Hague Convention.

### **12.59 Procedure under Article 11(6) of the Council Regulation where the court makes a non-return order under Article 13 of the 1980 Hague Convention**

- (1) Where the court makes an order for the non-return of a child under Article 13 of the 1980 Hague Convention, it must immediately transmit the documents referred to in Article 11(6) of the Council Regulation –
  - (a) directly to the court with jurisdiction or the central authority in the Member State where the child was habitually resident immediately before the wrongful removal to, or wrongful retention in, England and Wales; or
  - (b) to the Central Authority for England and Wales for onward transmission to the court with jurisdiction or the central authority in the other Member State mentioned in sub-paragraph (a).
- (2) The documents required by paragraph (1) must be transmitted by a method which, in the case of direct transmission to the court with jurisdiction in the other Member State, ensures and, in any other case, will not prevent, their receipt by that court within one month of the date of the non-return order.

### **12.60 Procedure under Article 11(7) of the Council Regulation where the court receives a non-return order made under Article 13 of the 1980 Hague Convention by a court in another Member State**

- (1) This rule applies where the court receives an order made by a court in another Member State for the non-return of a child.

- (2) In this rule, the order for non-return of the child and the papers transmitted with that order from the court in the other Member State are referred to as ‘the non-return order’.
- (3) Where, at the time of receipt of the non-return order, the court is already seized of a question of parental responsibility in relation to the child, –
- (a) the court officer shall immediately –
- (i) serve copies of the non-return order on each party to the proceedings in which a question of parental responsibility in relation to the child is at issue; and
- (ii) where the non-return order was received directly from the court or the central authority in the other Member State, transmit to the Central Authority for England and Wales a copy of the non-return order.
- (b) the court shall immediately invite the parties to the 1980 Hague Convention proceedings to file written submissions in respect of the question of custody by a specified date, or to attend a hearing to consider the future conduct of the proceedings in the light of the non-return order.
- (4) Where, at the time of receipt of the non-return order, the court is not already seized of the question of parental responsibility in relation to the child, it shall immediately –
- (a) open a court file in respect of the child and assign a court reference to the file;
- (b) serve a copy of the non-return order on each party to the proceedings before the court in the Member State which made that order;
- (c) invite each party to file, within 3 months of notification to that party of receipt of the non-return order, submissions in the form of –
- (i) an application for an order under –
- (aa) the 1989 Act; or
- (bb) (in the High Court only) an application under the inherent jurisdiction in respect of the child; or
- (ii) where permission is required to make an application for the order in question, an application for that permission;
- (d) where the non-return order was received directly from the court or central authority in the other Member State, transmit to the Central Authority for England and Wales a copy of the non-return order.
- (5) In a case to which paragraph (4) applies where no application is filed within the 3 month period provided for by paragraph (4)(c) the court must close its file in respect of the child.

(Enforcement of a subsequent judgment requiring the return of the child, made under Article 11(8) by a court examining custody of the child under Article 11(7), is dealt with in Part 31 below.)

### **12.61 Transfer of proceedings under Article 15 of the Council Regulation or under Article 8 of the 1996 Hague Convention**

- (1) Where the court is considering the transfer of proceedings to the court of another Member State or Contracting State under rules 12.62 to 12.64 it will –
- (a) fix a date for a hearing for the court to consider the question of transfer; and
- (b) give directions as to the manner in which the parties may make representations.
- (2) The court may, with the consent of all parties, deal with the question of transfer without a hearing.
- (3) Directions which are in force immediately prior to the transfer of proceedings to a court in another Member State or Contracting State under rules 12.62 to 12.64 will continue to apply

until the court in that other State accepts jurisdiction in accordance with the provisions of the Council Regulation or the 1996 Hague Convention (as appropriate), subject to any variation or revocation of the directions.

- (4) The court or court officer will –
  - (a) take a note of the giving, variation or revocation of directions under this rule; and
  - (b) as soon as practicable serve a copy of the directions order on every party.
- (5) A register of all applications and requests for transfer of jurisdiction to or from another Member State or Contracting State will be kept by the principal registry.

#### **12.62 Application by a party for transfer of the proceedings**

- (1) A party may apply to the court under Article 15(1) of the Council Regulation or under Article 8(1) of the 1996 Hague Convention –
  - (a) to stay<sup>(GL)</sup> the proceedings or a specified part of the proceedings and to invite the parties to introduce a request before a court of another Member State or Contracting State; or
  - (b) to make a request to a court of another Member State or another Contracting State to assume jurisdiction for the proceedings, or a specified part of the proceedings.
- (2) An application under paragraph (1) must be made –
  - (a) to the court in which the relevant parental responsibility proceedings are pending; and
  - (b) using the Part 18 procedure.
- (3) The applicant must file the application notice and serve it on the respondents –
  - (a) where the application is also made under Article 11 of the Council Regulation, not less than 5 days, and
  - (b) in any other case, not less than 42 days, before the hearing of the application.

#### **12.63 Application by a court of another Member State or another Contracting State for transfer of the proceedings**

- (1) This rule applies where a court of another Member State or another Contracting State makes an application under Article 15(2)(c) of the Council Regulation or under Article 9 of the 1996 Hague Convention that the court having jurisdiction in relation to the proceedings transfer the proceedings or a specific part of the proceedings to the applicant court.
- (2) When the court receives the application, the court officer will –
  - (a) as soon as practicable, notify the Central Authority for England and Wales of the application; and
  - (b) serve the application, and notice of the hearing on all other parties in England and Wales not less than 5 days before the hearing of the application.

#### **12.64 Exercise by the court of its own initiative of powers to seek to transfer the proceedings**

- (1) The court having jurisdiction in relation to the proceedings may exercise its powers of its own initiative under Article 15 of the Council Regulation or Article 8 of the 1996 Hague Convention in relation to the proceedings or a specified part of the proceedings.

- (2) Where the court proposes to exercise its powers, the court officer will give the parties not less than 5 days' notice of the hearing.

#### **12.65 Application to High Court to make request under Article 15 of the Council Regulation or Article 9 of the 1996 Hague Convention to request transfer of jurisdiction**

- (1) An application for the court to request transfer of jurisdiction in a matter concerning a child from another Member State or another Contracting State under Article 15 of the Council Regulation, or Article 9 of the 1996 Hague Convention (as the case may be) must be made to the principal registry and heard in the High Court.
- (2) An application must be made without notice to any other person and the court may give directions about joining any other party to the application.
- (3) Where there is agreement between the court and the court or competent authority to which the request under paragraph (1) is made to transfer the matter to the courts of England and Wales, the court will consider with that other court or competent authority the specific timing and conditions for the transfer.
- (4) Upon receipt of agreement to transfer jurisdiction from the court or other competent authority in the Member State, or Contracting State to which the request has been made, the court officer will serve on the applicant a notice that jurisdiction has been accepted by the courts of England and Wales.
- (5) The applicant must attach the notice referred to in paragraph (3) to any subsequent application in relation to the child.
- (6) Nothing in this rule requires an application with respect to a child commenced following a transfer of jurisdiction to be made to or heard in the High Court.
- (7) Upon allocation, the court to which the proceedings are allocated must immediately fix a directions hearing to consider the future conduct of the case.

#### **12.66 Procedure where the court receives a request from the authorities of another Member State or Contracting State to assume jurisdiction in a matter concerning a child**

- (1) Where any court other than the High Court receives a request to assume jurisdiction in a matter concerning a child from a court or other authority which has jurisdiction in another Member State or Contracting State, that court must immediately refer the request to a Judge of the High Court for a decision regarding acceptance of jurisdiction to be made.
- (2) Upon the High Court agreeing to the request under paragraph (1), the court officer will notify the parties to the proceedings before the other Member State or Contracting State of that decision, and the case must be allocated as if the application had been made in England and Wales.
- (3) Upon allocation, the court to which the proceedings are allocated must immediately fix a directions hearing to consider the future conduct of the case.

- (4) The court officer will serve notice of the directions hearing on all parties to the proceedings in the other Member State or Contracting State no later than 5 days before the date of that hearing.

#### **12.67 Service of the court's order or request relating to transfer of jurisdiction under the Council Regulation or the 1996 Hague Convention**

The court officer will serve an order or request relating to transfer of jurisdiction on all parties, the Central Authority of the other Member State or Contracting State, and the Central Authority for England and Wales.

#### **12.68 Questions as to the court's jurisdiction or whether the proceedings should be stayed**

- (1) If at any time after issue of the application it appears to the court that under any of Articles 16 to 18 of the Council Regulation it does not or may not have jurisdiction to hear an application, or that under Article 19 of the Council Regulation or Article 13 of the 1996 Hague Convention it is or may be required to stay<sup>(GL)</sup> the proceedings or to decline jurisdiction, the court must –
  - (a) stay<sup>(GL)</sup> the proceedings; and
  - (b) fix a date for a hearing to determine jurisdiction or whether there should be a stay<sup>(GL)</sup> or other order.
- (2) The court officer will serve notice of the hearing referred to at paragraph (1)(b) on the parties to the proceedings.
- (3) The court must, in writing –
  - (a) give reasons for its decision under paragraph (1); and
  - (b) where it makes a finding of fact, state such finding.
- (4) The court may with the consent of all the parties deal with any question as to the jurisdiction of the court, or as to whether the proceedings should be stayed<sup>(GL)</sup>, without a hearing.

#### **12.69 Request for consultation as to contemplated placement of child in England and Wales**

- (1) This rule applies to a request made –
  - (a) under Article 56 of the Council Regulation, by a court in another Member State; or
  - (b) under Article 33 of the 1996 Hague Convention by a court in another Contracting State for consultation on or consent to the contemplated placement of a child in England and Wales.
- (2) Where the court receives a request directly from a court in another Member State or Contracting State, the court shall, as soon as practicable after receipt of the request, notify the Central Authority for England and Wales of the request and take the appropriate action under paragraph (4).
- (3) Where it appears to the court officer that no proceedings relating to the child are pending before a court in England and Wales, the court officer must inform the Central Authority for England and Wales of that fact and forward to the Central Authority all documents relating to the request sent by the court in the other Member State or Contracting State.
- (4) Where the court receives a request forwarded by the Central Authority for England and Wales, the court must, as soon as practicable after receipt of the request, either –

- (a) where proceedings relating to the child are pending before the court, fix a directions hearing; or
- (b) where proceedings relating to the child are pending before another court in England and Wales, send a copy of the request to that court.

#### **12.70 Request made by court in England and Wales for consultation as to contemplated placement of child in another Member State or Contracting State**

- (1) This rule applies where the court is contemplating the placement of a child in another Member State under Article 56 of the Council Regulation or another Contracting State under Article 33 of the 1996 Hague Convention, and proposes to send a request for consultation with or for the consent of the central authority or other authority having jurisdiction in the other State in relation to the contemplated placement.
- (2) In this rule, a reference to ‘the request’ includes a reference to a report prepared for purposes of Article 33 of the 1996 Hague Convention where the request is made under that Convention.
- (3) Where the court sends the request directly to the central authority or other authority having jurisdiction in the other State, it shall at the same time send a copy of the request to the Central Authority for England and Wales.
- (4) The court may send the request to the Central Authority for England and Wales for onward transmission to the central authority or other authority having jurisdiction in the other Member State.
- (5) The court should give consideration to the documents which should accompany the request.

(See Chapters 1 to 3 of this Part generally, for the procedure governing applications for an order under paragraph 19(1) of Schedule 2 to the 1989 Act permitting a local authority to arrange for any child in its care to live outside England and Wales.)

(Part 14 sets out the procedure governing applications for an order under section 84 (giving parental responsibility prior to adoption abroad) of the Adoption and Children Act 2002.)

#### **12.71 Application for a declaration as to the extent, or existence, of parental responsibility in relation to a child under Article 16 of the 1996 Hague Convention**

- (1) Any interested person may apply for a declaration –
  - (a) that a person has, or does not have, parental responsibility for a child; or
  - (b) as to the extent of a person’s parental responsibility for a child, where the question arises by virtue of the application of Article 16 of the 1996 Hague Convention.
- (2) An application for a declaration as to the extent, or existence of a person’s parental responsibility for a child by virtue of Article 16 of the 1996 Hague Convention must be made in the principal registry and heard in the High Court.
- (3) An application for a declaration referred to in paragraph (1) may not be made where the question raised is otherwise capable of resolution in any other family proceedings in respect of the child.

## VII COMMUNICATION OF INFORMATION: PROCEEDINGS RELATING TO CHILDREN

### 12.72 Interpretation

- (1) In this Chapter ‘independent reviewing officer’ means a person appointed in respect of a child in accordance with regulation 2A of the Review of Children’s Cases Regulations 1991<sup>1</sup>, or regulation 3 of the Review of Children’s Cases (Wales) Regulations 2007<sup>2</sup>.

### 12.73 Communication of information: general

- (1) For the purposes of the law relating to contempt of court, information relating to proceedings held in private (whether or not contained in a document filed with the court) may be communicated –
  - (a) where the communication is to –
    - (i) a party;
    - (ii) the legal representative of a party;
    - (iii) a professional legal adviser;
    - (iv) an officer of the service or a Welsh family proceedings officer;
    - (v) the welfare officer;
    - (vi) the Legal Services Commission;
    - (vii) an expert whose instruction by a party has been authorised by the court for the purposes of the proceedings;
    - (viii) a professional acting in furtherance of the protection of children;
    - (ix) an independent reviewing officer appointed in respect of a child who is, or has been, subject to proceedings to which this rule applies;
  - (b) where the court gives permission; or
  - (c) subject to any direction of the court, in accordance with rule 12.75 and Practice Direction 12G.
- (2) Nothing in this Chapter permits the communication to the public at large, or any section of the public, of any information relating to the proceedings.
- (3) Nothing in rule 12.75 and Practice Direction 12G permits the disclosure of an unapproved draft judgment handed down by any court.

### 12.74 Instruction of experts

- (1) No party may instruct an expert for any purpose relating to proceedings, including to give evidence in those proceedings, without the permission of the court.
- (2) Where the permission of the court has not been given under paragraph (1), no evidence arising out of an unauthorised instruction may be introduced without permission of the court.

### 12.75 Communication of information for purposes connected with the proceedings

- (1) A party or the legal representative of a party, on behalf of and upon the instructions of that party, may communicate information relating to the proceedings to any person where necessary to enable that party –

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1 S.I. 1991/895

2 S.I. 2007/307.

- (a) by confidential discussion, to obtain support, advice or assistance in the conduct of the proceedings;
  - (b) to engage in mediation or other forms of alternative dispute resolution;
  - (c) to make and pursue a complaint against a person or body concerned in the proceedings; or
  - (d) to make and pursue a complaint regarding the law, policy or procedure relating to a category of proceedings to which this Part applies.
- (2) Where information is communicated to any person in accordance with paragraph (1)(a) of this rule, no further communication by that person is permitted.
- (3) When information relating to the proceedings is communicated to any person in accordance with paragraphs (1)(b),(c) or (d) of this rule –
- (a) the recipient may communicate that information to a further recipient, provided that –
    - (i) the party who initially communicated the information consents to that further communication; and
    - (ii) the further communication is made only for the purpose or purposes for which the party made the initial communication; and
  - (b) the information may be successively communicated to and by further recipients on as many occasions as may be necessary to fulfil the purpose for which the information was initially communicated, provided that on each such occasion the conditions in sub-paragraph (a) are met.

