

# PROCEDURE FOR MISCELLANEOUS APPLICATIONS

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## **I PROCEDURE**

### **8.1 Procedure**

Subject to rules 8.13 and 8.24, applications to which this Part applies must be made in accordance with the Part 19 procedure.

## **II APPLICATION FOR CORRECTED GENDER RECOGNITION CERTIFICATE**

### **8.2 Scope of this Chapter**

The rules in this Chapter apply to an application under section 6(1) of the Gender Recognition Act 2004 for the correction of a full gender recognition certificate issued under section 5(1) or 5A(1) of that Act<sup>1</sup>.

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<sup>1</sup> Section 5A(1) was inserted by section 250(1) and (4) of the Civil Partnership Act 2004.

### **8.3 Where to start proceedings**

The application must be made to the court which issued the original certificate unless the court directs otherwise.

### **8.4 Who the parties are**

Where the applicant is

- (a) the person to whom the original certificate was issued, the Secretary of State must be a respondent;
- (b) the Secretary of State, the person to whom the original certificate was issued must be a respondent.

### **8.5 Delivery of copy certificate to Secretary of State**

Where the court issues a corrected full gender recognition certificate, a court officer must send a copy of the corrected certificate to the Secretary of State.

## **III APPLICATION FOR ALTERATION OF MAINTENANCE AGREEMENT AFTER DEATH OF ONE PARTY**

### **8.6 Scope of this Chapter**

The rules in this Chapter apply to an application under section 36 of the 1973 Act<sup>1</sup> or paragraph 73 of Schedule 5 to the 2004 Act to alter a maintenance agreement after the death of one of the parties.

### **8.7 Where to start proceedings**

- (1) The application may be made in the High Court or a county court.
- (2) Where the application is made in a county court it must be made in the divorce county court or civil partnership proceedings county court for the district in which
  - (a) the deceased resided at the time of death; or
  - (b) if the deceased did not reside in England and Wales at the time of death-
    - (i) the respondent or one of the respondents resides or carries on business; or
    - (ii) where the respondent is the personal representative of the deceased, the deceased's estate is situated; or
  - (c) if neither (a) nor (b) applies
    - (i) the applicant resides or carries on business; or
    - (ii) where the applicant is the personal representative of the deceased, the deceased's estate is situated.

### **8.8 Who the parties are**

- (1) Where the applicant is
  - (a) the surviving party to the agreement, the personal representative of the deceased must be a respondent;
  - (b) the personal representative of the deceased, the surviving party to the agreement must be a respondent.

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<sup>1</sup> Section 36 was amended by section 26(1) of the Inheritance (Provision for Family and Dependents) Act 1975 (c.63).

- (2) The court may at any time direct that
  - (a) any person be made a party to proceedings; or
  - (b) a party be removed.

### **8.9 Representative parties**

- (1) The court may, before or after the application has been filed at court, make an order appointing a person to represent any other person or persons in the application where the person or persons to be represented
  - (a) are unborn;
  - (b) cannot be found;
  - (c) cannot easily be ascertained; or
  - (d) are a class of persons who have the same interest in an application and
    - (i) one or more members of that class are within sub-paragraphs (a), (b) or (c); or
    - (ii) to appoint a representative would further the overriding objective.
- (2) An application for an order under paragraph (1) may be made by
  - (a) any person who seeks to be appointed under the order; or
  - (b) any party to the application.
- (3) An application for an order under paragraph (1) must be served on
  - (a) all parties to the application to alter the maintenance agreement, if that application has been filed at court;
  - (b) the person sought to be appointed, if that person is not the applicant or a party to the application; and
  - (c) any other person as directed by the court.
- (4) The court's approval is required to settle proceedings in which a party is acting as a representative.
- (5) The court may approve a settlement where it is satisfied that the settlement is for the benefit of all the represented persons.
- (6) Unless the court directs otherwise, any order made on an application in which a party is acting as a representative
  - (a) is binding on all persons represented in the proceedings; and
  - (b) may only be enforced by or against a person who is not a party with the permission of the court.
- (7) An application may be brought by or against trustees, executors or administrators without adding as parties any persons who have a beneficial interest in the trust or estate and any order made on the application is binding on the beneficiaries unless the court orders otherwise.

### **8.10 Acknowledgment of service**

- (1) A respondent who is a personal representative of the deceased must file with the acknowledgment of service a statement setting out
  - (a) full particulars of the value of the deceased's estate for probate after providing for the discharge of the funeral, testamentary and administration expenses, debts and liabilities (including inheritance tax and interest); and
  - (b) the people (including names, addresses and details of any persons under disability) or classes of people beneficially interested in the estate and the value of their interests so far as ascertained.

- (2) The respondent must file the acknowledgment of service and any statement required under this rule within 28 days beginning with the date on which the application is served.

### **8.11 Hearings may be in private**

The court may decide to hear any application to which this Chapter applies in private.

## **IV APPLICATION FOR QUESTION AS TO PROPERTY TO BE DECIDED IN SUMMARY WAY**

### **8.12 Scope of this Chapter**

The rules in this Chapter apply to an application under section 17 of the Married Women's Property Act 1882<sup>1</sup> or section 66 of the 2004 Act.

### **8.13 Procedure**

Where an application for an order under section 17 of the Married Women's Property Act 1882<sup>2</sup> or section 66 of the 2004 Act is made in any proceedings for a financial order, the application must be made in accordance with the Part 18 procedure.

### **8.14 Where to start proceedings**

- (1) The application may be made in the High Court or a county court.
- (2) Where the application is made in a county court it must be made in the court
  - (a) in which any matrimonial proceedings or civil partnership proceedings have been started or are intended to be started by the applicant or the respondent; or
  - (b) in the absence of any such proceedings, for the district in which the applicant or respondent resides.
- (3) The application may be made to the principal registry as if it were a county court if
  - (a) any matrimonial proceedings or civil partnership proceedings have been started there or are intended to be started there by the applicant or the respondent; and
  - (b) those proceedings are or will be treated as pending in a divorce county court or civil partnership proceedings county court.

### **8.15 Mortgagees as parties**

- (1) Where particulars of a mortgage are provided with the application
  - (a) the applicant must serve a copy of the application on the mortgagee; and
  - (b) the mortgagee may, within 14 days beginning with the date on which the application was received, file an acknowledgment of service and be heard on the application.
- (2) The court must direct that a mortgagee be made a party to the proceedings where the mortgagee requests to be one.

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<sup>1</sup> 1882 c.75.

<sup>2</sup> Section 17 was amended by the Statute Law (Repeals) Act 1969 (c.52) and section 43 of the Matrimonial and Family Proceedings Act 1984.

## 8.16 Injunctions

- (1) The court may grant an injunction<sup>(GL)</sup> only if the injunction<sup>(GL)</sup> is ancillary or incidental to the assistance sought by the applicant.
- (2) Applications for injunctive relief must be made in accordance with the procedure in rule 20.4 (how to apply for an interim remedy) and the provisions of rule 20.5 (interim injunction<sup>(GL)</sup>) to cease if application is stayed<sup>(GL)</sup> apply.

## 8.17 Application of other rules

Rule 9.24 applies where the court has made an order for sale under section 17 of the Married Women's Property Act 1882 or section 66 of the 2004 Act.

# V DECLARATIONS

## 8.18 Scope of this Chapter

The rules in this Chapter apply to applications made in accordance with

- (a) section 55 of the 1986 Act (declarations as to marital status) and section 58 of the 2004 Act (declarations as to civil partnership status);
- (b) section 55A of the 1986 Act<sup>1</sup> (declarations of parentage);
- (c) section 56(1)(b) and (2) of the 1986 Act<sup>2</sup> (declarations of legitimacy or legitimation); and
- (d) section 57 of the 1986 Act<sup>3</sup> (declarations as to adoptions effected overseas).

## 8.19 Where to start proceedings

The application may be made in the High Court or a county court and applications under section 55A of the 1986 Act may also be made in a magistrates' court.

## 8.20 Who the parties are

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

<i>Proceedings</i>	<i>Respondent</i>
Applications for declarations as to marital or civil partnership status	The other party to the marriage or civil partnership in question or, where the applicant is a third party, both parties to the marriage or civil partnership
Applications for declarations of parentage	(i) The person whose parentage is in issue; and (ii) any person who is or is alleged to be the parent of the person whose parentage is in issue, except where that person is the applicant.
Applications for declarations of legitimacy or legitimation	The applicant's father and mother or the survivor of them

1 Section 55A was inserted by section 83(1) and (2) of the Child Support, Pensions and Social Security Act 2000 (c. 19).

2 Section 56(1) was amended by section 83(5) of and paragraphs 3 and 5(a) of Schedule 8 to the Child Support, Pensions and Social Security Act 2000.

3 Section 57 was amended by section 139(1) of and paragraphs 46, and 49(a) and (b) of Schedule 3 to the Adoption and Children Act 2002 (c.38) and section 83(5) of and paragraphs 3 and 6 of Schedule 8 to the Child Support, Pensions and Social Security Act 2000.

Applications for declarations as to adoption effected overseas

The person(s) whom the applicant is claiming are or are not the applicant's adoptive parents

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- (2) The applicant must include in his application particulars of every person whose interest may be affected by the proceedings and his relationship to the applicant.
- (3) The acknowledgment of service filed under rule 19.5 must give details of any other persons the respondent considers should be made a party to the application or be given notice of the application.
- (4) Upon receipt of the acknowledgment of service, the court must give directions as to any other persons who should be made a respondent to the application or be given notice of the proceedings.
- (5) A person given notice of proceedings under paragraph (4) may, within 21 days beginning with the date on which the notice was served, apply to be joined as a party.
- (6) No directions may be given as to the future management of the case under rule 19.9 until the expiry of the notice period in paragraph (5).

### **8.21 The role of the Attorney General**

- (1) The applicant must, except in the case of an application for a declaration of parentage, send a copy of the application and all accompanying documents to the Attorney General at least one month before making the application.
- (2) The Attorney General may, when deciding whether to intervene in the proceedings, inspect any document filed at court relating to any family proceedings mentioned in the declaration proceedings.
- (3) If the court is notified that the Attorney General wishes to intervene in the proceedings, a court officer must send the Attorney General a copy of any subsequent documents filed at court.
- (4) The court must, when giving directions under rule 8.20(4), consider whether to ask the Attorney General to argue any question relating to the proceedings.
- (5) If the court makes a request to the Attorney General under paragraph (4) and the Attorney General agrees to that request, the Attorney General must serve a summary of the argument on all parties to the proceedings.

### **8.22 Declarations of parentage**

- (1) If the applicant or the person whose parentage or parenthood is in issue, is known by a name other than that which appears in that person's birth certificate, that other name must also be stated in any order and declaration of parentage.
- (2) A court officer must send a copy of a declaration of parentage and the application to the Registrar General within 21 days beginning with the date on which the declaration was made.

## VI APPLICATION FOR PERMISSION TO APPLY FOR A FINANCIAL REMEDY AFTER OVERSEAS PROCEEDINGS

### 8.23 Scope of this Chapter

Subject to rule 9.26(6), the rules in this Chapter apply to an application for permission to apply for a financial remedy under section 13 of the 1984 Act and paragraph 4 of Schedule 7 to the 2004 Act.

(Rule 9.26(6) enables the application for permission to apply for a financial remedy under section 13 of the 1984 Act or paragraph 4 of Schedule 7 to the 2004 Act to be heard at the same time as the application for a financial remedy under Part 3 of the 1984 Act or Schedule 7 to the 2004 Act where that application is an application for a consent order.)

### 8.24 Where and how to start proceedings

- (1) Subject to paragraph (2), the application must be made in the principal registry.
- (2) Where rule 9.26(6) applies, the application must be made in the court hearing the application for a financial remedy.

(Rule 9.5(2) specifies the court where the application for the consent order should be filed.)

- (3) The application must be made in accordance with the Part 18 procedure.

### 8.25 Application to be made without notice

- (1) The court may grant an application made without notice if it appears to the court that there are good reasons for not giving notice.
- (2) If the applicant makes an application without giving notice, the applicant must state the reasons why notice has not been given.

### 8.26 Notification of hearing date

The court officer must

- (a) fix a date, time and place for the hearing of the application by a judge, but not a district judge; and
- (b) give notice of the date of the hearing to the applicant.

### 8.27 Hearings to be in private unless the court directs otherwise

An application under this Chapter must be heard in private unless the court directs otherwise.

### 8.28 Direction that application be dealt with by a district judge of the principal registry

If the application is granted, the judge may direct that the application for a financial remedy under Part 3 of the 1984 Act or Schedule 7 to the 2004 Act may be heard by a district judge of the principal registry.

## VII APPLICATION FOR THE TRANSFER OF A TENANCY UNDER SECTION 53 OF, AND SCHEDULE 7 TO, THE 1996 ACT

### 8.29 Scope of this Chapter

This Chapter applies to an application for the transfer of a tenancy under section 53 of, and Schedule 7 to, the 1996 Act.

### 8.30 Where to start proceedings

- (1) Subject to paragraph (2), the application may be made in the High Court or a county court.
- (2) The application must be made to the court in which any divorce, judicial separation, nullity or civil partnership proceedings are pending between the parties.

### 8.31 Service of the application

- (1) The court will serve a copy of the application on
  - (a) the respondent; and
  - (b) the landlord (as defined by paragraph 1 of Schedule 7 to the 1996 Act<sup>1</sup>), unless the court directs that the applicant must do so.
- (2) Where service is effected by the applicant, the applicant must file a certificate of service.

### 8.32 Who the parties are

The court will direct that a landlord be made a party to the proceedings where the landlord requests to be one.

### 8.33 Orders for disclosure

Any party may apply to the court under rule 21.2 for an order that any person must attend an appointment before the court and produce any documents that are specified or described in the order.

### 8.34 Injunctions

- (1) The court may grant an injunction<sup>(GL)</sup> only if the injunction<sup>(GL)</sup> is ancillary or incidental to the assistance sought by the applicant.
- (2) Applications for injunctive relief must be made in accordance with the procedure in rule 20.4 (how to apply for an interim remedy) and the provisions of rule 20.5 (interim injunction<sup>(GL)</sup> to cease if application is stayed<sup>(GL)</sup>) apply accordingly.

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<sup>1</sup> Paragraph 1 of Schedule 7 to the Family Law Act 1996 was amended by section 82 of and paragraphs 16(1) and (2) of Schedule 9 to the Civil Partnership Act 2004 and article 2 of and paragraph 10(b)(i) of the Schedule to the Housing Act 1996 (Consequential Amendments) Order 1997 (S.I. 1997/74).

## VIII APPLICATIONS FOR ORDERS PREVENTING AVOIDANCE UNDER SECTION 32L OF THE CHILD SUPPORT ACT 1991

### 8.35 Scope of this Chapter

Subject to rule 8.40, the rules in this Chapter apply to applications made under section 32L (1) and (2) of the 1991 Act<sup>1</sup>.

### 8.36 Interpretation

In this Chapter  
child support maintenance has the meaning assigned to it in section 3(6) of the 1991 Act<sup>2</sup>;  
reviewable disposition has the meaning assigned to it in section 32L(5) of the 1991 Act.

### 8.37 Where to start proceedings

- (1) The application must be made to the High Court and be filed in
  - (a) the principal registry ; or
  - (b) any district registry.
- (2) The application may be heard by a judge but not a district judge except
  - (a) a district judge of the principal registry of the Family Division; or
  - (b) a district judge in a district registry who is directed by a judge to hear the application.

(Section 32L(10)(a) of the 1991 Act defines court for the purposes of section 32L as being the High Court only.)

### 8.38 Who the parties are

- (1) The applicant to the proceedings is the Commission and the respondent is the person who has failed to pay child support maintenance.
- (2) The court may at any time direct that
  - (a) any person be made a party to proceedings; or
  - (b) a party be removed from the proceedings.

### 8.39 Service of the application

- (1) The applicant must serve the application and a copy of the applicant's written evidence on
  - (a) any respondent;
  - (b) the person in whose favour the reviewable disposition is alleged to have been made; and
  - (c) such other persons as the court directs.
- (2) Where an application includes an application relating to land, the applicant must serve a copy of the application on any
  - (a) mortgagee;
  - (b) trustee of a trust of land or settlement; and
  - (c) other person who has an interest in the land,  
of whom particulars are given in the application.

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<sup>1</sup> Section 32L was inserted by section 24 of the Child Maintenance and Other Payments Act 2008 (c.6).

<sup>2</sup> Section 3(6) was amended by section 1(2) of the Child Support, Pensions and Social Security Act 2000.

- (3) Any person served under paragraph (2) may make a request to the court in writing, within 14 days beginning with the date of service of the application, for a copy of the applicant's written evidence.
- (4) Any person who
  - (a) is served with copies of the application and the applicant's written evidence under paragraph (1); or
  - (b) receives a copy of the applicant's written evidence following a request under paragraph (3), may, within 14 days beginning with the date of service or receipt, file a statement in answer.
- (5) A statement in answer filed under paragraph (4) must be verified by a statement of truth.

#### **8.40 Applications without notice**

- (1) This rule applies to an application under section 32L(1) of the 1991 Act.
- (2) The court may grant an application made without notice if it appears to the court that there are good reasons for not giving notice.
- (3) If the applicant makes an application without giving notice, the evidence in support of the application must state the reasons why notice has not been given.
- (4) If the court grants an application under paragraph (2)
  - (a) the order must include a provision allowing any respondent to apply to the court for an order to be reconsidered as soon as just and convenient at a full hearing; and
  - (b) the applicant must, as soon as reasonably practicable, serve upon each respondent a copy of the order and a copy of the written evidence in support of the application.

## **IX APPLICATION FOR CONSENT TO MARRIAGE OF A CHILD OR TO REGISTRATION OF CIVIL PARTNERSHIP OF A CHILD**

#### **8.41 Scope of this Chapter**

The rules in this Chapter apply to an application under

- (a) section 3 of the Marriage Act 1949<sup>1</sup>; or
- (b) paragraph 3, 4 or 10 of Schedule 2 to the 2004 Act.

#### **8.42 Child acting without a children's guardian**

The child may bring an application without a children's guardian, unless the court directs otherwise.

#### **8.43 Who the respondents are**

Where an application follows a refusal to give consent to

- (a) the marriage of a child; or
- (b) a child registering as the civil partner of another person, every person who has refused consent will be a respondent to the application.

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<sup>1</sup> 1949 c.76.

