

1986 No. 203

SUPREME COURT, NORTHERN IRELAND

PROCEDURE

The Rules of the Supreme Court (Northern Ireland) (Amendment No. 3) 1986

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| <i>Made</i> | <i>30th June 1986</i> |
| <i>Coming into operation</i> | <i>1st August 1986</i> |
| <i>To be laid before Parliament</i> | |

We, the Northern Ireland Supreme Court Rules Committee, being the authority having for the time being power under section 55 of the Judicature (Northern Ireland) Act 1978(a) and sections 10 and 24 of the Child Abduction and Custody Act 1985(b) to make rules to give effect to Parts I and II of that Act, hereby, with the concurrence of the Lord Chancellor, exercise those powers as follows:—

Citation, interpretation and commencement

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Northern Ireland) (Amendment No. 3) Rules 1986 and shall come into operation on 1st August 1986.

(2) In these Rules an Order referred to by number or an Appendix referred to by letter means the Order so numbered and the Appendix so lettered in the Rules of the Supreme Court (Northern Ireland) 1980(c).

Business of the Supreme Court

2. Order 1, rule 12(a)(iii), shall be amended by substituting for the words “wardship, adoption and guardianship of minors” the words “wardship, adoption, guardianship of minors and the Child Abduction and Custody Act 1985”.

Originating Summonses

3. Order 7, rule 2(2), shall be amended by the insertion before the words “Order 90” of the words “Part II of”.

Proceedings relating to minors and the Child Abduction and Custody Act 1985

4. Order 90 shall be amended as follows—

(1) By substituting for the title to the Order the title “PROCEEDINGS RELATING TO MINORS AND THE CHILD ABDUCTION AND CUSTODY ACT 1985”.

(2) By dividing the Order into parts, of which Part I shall consist of rules 1 and 2 under the heading “GENERAL” and Part II shall consist of rules 3 to 9 under the heading “PROCEEDINGS RELATING TO MINORS”.

(3) By inserting, in rule 9(1), before the words “this Order applies” the words “this Part of”.

(4) By adding, after rule 9, the Part set out in Schedule 1 hereto.

(a) 1978 c. 23
 (b) 1985 c. 60
 (c) S.R. 1980 No. 346

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Dated 25th June 1986.

Lowry
John MacDermott
Hugh P. Kennedy
W. A. Campbell

I concur,

Hailsham of St. Marylebone, C.

Dated 30th June 1986.

Rules to be inserted in Order 90

III. CHILD ABDUCTION AND CUSTODY ACT 1985

Interpretation

10. In this Part of this Order, unless the context otherwise requires—

- (a) "the Act" means the Child Abduction and Custody Act 1985 and words or expressions bear the same meaning as in the Act;
- (b) "the Hague Convention" means the convention defined in section 1(1) of the Act and "the European Convention" means the convention defined in section 12(1) of the Act.

Mode of Application

11.—(1) Except as otherwise provided by this Part, every application under the Hague Convention and the European Convention shall be made by originating summons, which shall be in Form No. 6 in Appendix A and shall be issued out of the Office of Care and Protection.

(2) An application in custody proceedings for a declaration under section 23(2) of the Act shall be made by summons in those proceedings.

Contents of Originating Summons: general provisions

12. The originating summons under which any application is made under the Hague Convention or the European Convention shall state—

- (a) the name and date of birth of the child in respect of whom the application is made;
- (b) the names of the child's parents or guardians;
- (c) the whereabouts or suspected whereabouts of the child;
- (d) the interest of the plaintiff in the matter and the grounds of the application; and
- (e) particulars of any proceedings (including proceedings out of the jurisdiction and concluded proceedings) relating to the child,

and shall be accompanied by all relevant documents including but not limited to the documents specified in Article 8 of the Hague Convention or, as the case may be, Article 13 of the European Convention.

Contents of originating summons: particular provisions

13.—(1) In applications under the Hague Convention, in addition to the matters specified in rule 12—

- (a) the originating summons under which an application is made for the purposes of Article 8 for the return of a child shall state the identity of the person alleged to have removed or retained the child and, if different, the identity of the person with whom the child is alleged to be;
- (b) the originating summons under which an application is made for the purposes of Article 15 for a declaration shall identify the proceedings in which the request that such a declaration be obtained was made.

(2) In applications under the European Convention, in addition to the matters specified in rule 12 the originating summons shall identify the decision relating to custody or on rights of access which is sought to be registered or enforced or in relation to which a declaration that it is not to be recognised is sought.

Defendants

14. The defendants to an application under the Act shall be—

- (a) the person alleged to have brought into the United Kingdom the child in respect of whom an application under the Hague Convention is made;
- (b) the person with whom the child is alleged to be;
- (c) any parent or guardian of the child who is within the United Kingdom and is not otherwise a party; and
- (d) the person in whose favour a decision relating to custody has been made, if he is not already a party; and

- (e) any other person who appears to the Court to have a sufficient interest in the welfare of the child.

Appearance

15. Notwithstanding Order 12, rule 9, the time limited for entering an appearance to an originating summons by which an application is made under the Hague Convention or the European Convention shall be 4 days after service of the originating summons (including the day of service) or, in the case of a defendant joined under rule 14(e), such time as the Court may direct.

Evidence and notice of appointment to hear summons

16.—(1) Notwithstanding Order 28, rule 1A—

- (a) the plaintiff on issuing an originating summons under the Hague Convention or the European Convention may lodge a statement in support of his application in the Office and shall serve a copy of the same on the defendant with the originating summons;
- (b) a defendant to an application under the Hague Convention or the European Convention may within 7 days after service of the originating summons on him lodge affidavit evidence in the Office and serve a copy of the same on the plaintiff;
- (c) the plaintiff in an application under the European Convention may within 7 days thereafter lodge in the Office a statement in reply and serve a copy thereof on the defendant.

(2) Notwithstanding Order 28, rule 2, the plaintiff must at the time of issue of the originating summons obtain an appointment for the attendance of the parties before the Court for the hearing of the summons, and a day and time, not later than 14 days from the date of issue of the summons, shall be fixed by a notice in Form No. 10 in Appendix A sealed by the proper officer.

(3) Order 28, rule 3(1), shall apply to a notice under the previous paragraph in the same manner as it applies to a notice under Order 28, rule 2.

Hearing

17. Any application under the Act (other than an application (a) to join a defendant (b) to dispense with service, or (c) for the transfer of proceedings) shall be heard and determined by a judge and shall be dealt with in chambers unless the Court otherwise directs.

Dispensing with service

18. The Court may dispense with service of any summons (whether originating or ordinary) in any proceedings under the Act.

Adjournment of Summons

19. Notwithstanding Order 28, rule 5, the hearing of the originating summons under which an application under the Hague Convention or the European Convention is made may be adjourned for a period not exceeding 21 days at a time.

Stay of Proceedings

20.—(1) A party to proceedings under the Hague Convention shall, where he knows that an application relating to the merits of rights of custody is pending in or before a relevant authority, file in the Office a concise statement of the nature of the application which is pending, and of the authority before which it is pending.

(2) A party—

- (a) to pending proceedings under section 16 of the Act, or
- (b) to proceedings as a result of which a decision relating to custody has been registered under section 16 of the Act,

shall, where he knows that such an application as is specified in section 20(2) of the Act is pending in or before a relevant authority, file a concise statement of the nature of the application which is pending.

(3) The proper officer shall on receipt of such a statement as is mentioned in paragraph (1) or (2) notify the relevant authority in which or before whom the application is pending and shall subsequently notify it or him of the result of the proceedings.

- (4) On the Court receiving notification equivalent to that mentioned in paragraph (3) from the Court of Session or the High Court in England and Wales—
- (a) Where proceedings relating to the merits of the rights of custody (as construed in section 9 of the Act) are pending before the court and the court receives notification equivalent to that mentioned in paragraph (3) from the Court of Session or the High Court in England and Wales, those proceedings shall be stayed and the parties to the pending proceedings shall be notified by the proper officer accordingly.
 - (b) Where pending proceedings have been stayed by the Court in accordance with subparagraph (a) and the Court receives notification from the Court of Session or the High Court in England and Wales that an order has been made under Article 12 of the Hague Convention for the return of the child concerned, those pending proceedings shall be dismissed and the proper officer shall notify the parties to those proceedings accordingly.
 - (c) Where pending proceedings have been stayed by the Court in accordance with subparagraph (a) and the Court receives notification from the Court of Session or the High Court in England and Wales that application under the Hague Convention has been dismissed, the stay on the proceedings shall be removed and the proper officer shall notify the parties to those proceedings accordingly.
- (5) Where any proceedings such as are mentioned in section 20(2) of the Act are pending before the Court and the Court receives notification equivalent to that mentioned in paragraph (3) from the Court of Session or High Court in England and Wales and the condition specified in section 20(1)(b) of the Act is satisfied, the proper officer shall notify the parties to the pending proceedings accordingly.
- (6) In this rule “relevant authority” includes the High Court, a County Court or a Magistrates’ Court in England and Wales, the Court of Session, a Sheriff Court, a Children’s Hearing within the meaning of Part III of the Social Work (Scotland) Act 1968, the High Court in Northern Ireland, a county court in Northern Ireland, a court of summary jurisdiction in Northern Ireland or the Secretary of State.

Transfer of Proceedings

- 21.—(1) At any stage in any proceedings under the Act the Court may, of its own motion or on the application by summons of any party to the proceedings issued on 2 days notice, order that the proceedings be transferred to the Court of Session or the High Court in England and Wales.
- (2) Where an order is made under paragraph (1) the proper officer shall send a copy of the order, which shall state the grounds therefore, together with the originating summons and the documents annexed thereto, to the Court of Session or the High Court in England and Wales, as the case may be.
- (3) Where proceedings are transferred to the Court of Session or the High Court in England and Wales the costs of the whole proceedings both before and after the transfer shall be, at the discretion of the Court to which the proceedings are transferred.
- (4) Where proceedings are transferred to the High Court from the Court of Session or the High Court in England and Wales the proper officer shall notify the parties of the transfer and the proceedings shall continue as if they had been begun by originating summons under rule 11.

Interim directions

22. An application for interim directions under section 5 or section 19 of the Act may where the case is one of urgency be made ex parte supported by a statement but shall otherwise be made by summons.

Obtaining authenticated copies of decisions

23. Without prejudice to the generality of Order 66, rule 5, any person who intends to make an application under the Hague Convention in a Contracting State other than the United Kingdom shall on satisfying the Court be entitled to obtain an office copy sealed with the seal of the Supreme Court of any order made in the High Court relating to the child in respect of whom the application is to be made.

Revocation and variation of registered decisions

24.—(1) This rule applies to decisions which have been registered under section 16 of the Act and are subsequently varied or revoked by an authority in the Contracting State in which they were made.

(2) The Court shall, on cancelling the registration of a decision which has been revoked, notify—

- (a) the person appearing to the Court to have actual custody of the child;
- (b) the person on whose behalf the application for registration of the decision was made; and
- (c) any other party to that application of the cancellation.

(3) The Court shall, on being notified of the variation of a decision, notify—

- (a) the person appearing to the Court to have actual custody of the child; and
- (b) any party to the application for registration of the decision;

of the variation and any such person may apply by summons in the proceedings for the registration of the decision, for the purpose of making representations to the Court before the registration is varied.

(4) Any person appearing to the Court to have an interest in the matter may apply by summons in the proceedings for the registration of a decision for the cancellation or variation of the registration.

Orders for disclosure of information

25. 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 evidence.

EXPLANATORY NOTE

(This note is not part of the Rules.)

These Rules amend the Rules of the Supreme Court (Northern Ireland) 1980 so as to introduce, as a new Part III of Order 90, a procedure governing applications under the Child Abduction and Custody Act 1985 ("the 1985 Act"). The main aspects of the procedure are—

- (a) Applications are to be made by way of originating summons (rule 11).
- (b) The contents of the summons are prescribed, generally as regards applications under both the Hague and European Conventions (rule 12) and with special provisions relating to applications under each particular Convention (rule 13).
- (c) The persons who are to be defendants to applications under the 1985 Act are defined (Rule 14).
- (d) The originating summons procedure is adapted to allow for an expedited hearing; the normal time limited for the defendant to enter an appearance is shortened (rule 15); the normal rules governing filing of evidence and obtaining an appointment for hearing of the summons are abridged (rule 16).
- (e) The normal period for which the Court can adjourn the hearing of the summons is reduced to 21 days at a time (rule 19).
- (f) A procedure is prescribed relating to stay of proceedings in the circumstances covered by the 1985 Act (rule 20) and for transfer of proceedings to other courts in the United Kingdom (rule 21).

The Rules also make minor consequential amendments.