

Subsidiary Legislation made under ss.93N & 157.

Family Proceedings (Children) (1996 Hague Convention) Rules 2011

LN.2011/112

Commencement **7.7.2011**

Amending enactments	Relevant current provisions	Commencement date
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EU Legislation/International Agreements involved:
1996 Hague Convention

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In exercise of the powers conferred on him by sections 93N and 157 of the Children Act 2009, in order to facilitate the implementation of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in Respect of Parental Responsibility and Measures for the Protection of Children signed at the Hague on the 19th day of October 1996, the Chief Justice has made the following Rules—

PART 1
PRELIMINARY

Title and commencement.

1. These Rules may be cited as the Family Proceedings (Children) (1996 Hague Convention) Rules 2011 and come into operation on the day of publication.

Interpretation.

2. Unless a contrary intention appears in the Act or in these Rules—

“the 1996 Hague Convention” means the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in Respect of Parental Responsibility and Measures for the Protection of Children;

“the Act” means the Children Act 2009;

“another Contracting State” has the meaning assigned to it by section 93A;

“application” means an application made under or by virtue of the Act or under these Rules, and “applicant” shall be construed accordingly;

“application form” means a document in which the applicant states his intention to seek a court order other than in accordance with the Part 3 procedure;

“application notice” means a document in which the applicant states his intention to seek a court order in accordance with the Part 3 procedure;

“authorised person” has the meaning assigned to it by section 64(9);

“business day” means any day other than a—

- (a) Saturday, Sunday, Christmas Day or Good Friday; or

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(b) bank holiday under the Banking and Financial Dealings Act or the Interpretation and General Clauses Act;

“Central Authority” has the meaning assigned to it by section 93K;

“child”–

(a) means, in relation to any relevant proceedings, subject to paragraphs (b) and (c), a person under the age of 18 with respect to whom the proceedings are brought;

(b) where section 63(1) applies, also includes a person who has reached the age of 18;

“children’s guardian” means a guardian *ad litem* appointed under section 91 for the child with respect to whom the proceedings are brought;

“Civil Procedure Rules” means the Civil Procedure Rules referred to in section 38A of the Supreme Court Act;

“contact activity condition” has the meaning assigned to it by section 33;

“contact activity direction” has the meaning assigned to it by section 32(2);

“contact order” has the meaning assigned to it by section 25(1);

“Contracting State” has the meaning assigned to it by section 93A;

“court officer” means a member of the court staff;

“designated officer for the court” means an officer of the Supreme Court designated by the Chief Justice for the purposes of these Rules;

“directions appointment” means a hearing for directions;

“emergency protection order” means an order made under section 94;

“family proceedings” shall be construed within the meaning of section 25(3) and (4);

“inherent jurisdiction” means the Supreme Court’s power to make any order or determine any issue in respect of a child, where it would be just and equitable to do so unless restricted by legislation or case law;

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“leave” includes permission or approval;

“legal representative” means a barrister or a solicitor;

“litigation friend” means somebody who represents a child in court, and whose duty is to act in the best interests of the child”;

“note” includes a record made by mechanical means;

“order” includes directions of the court;

“parental responsibility” has the meaning assigned to it by Article 1(2) of the 1996 Hague Convention in relation to proceedings under that Convention;

“Part 3 procedure” means the procedural requirements set out in Part 3;

“Part 5 procedure” means the procedural requirements set out in Part 5;

“recovery order” means an order under section 102;

“registry” means the registry of the Supreme Court;

“Registrar”, unless otherwise stated, means the Registrar of the Supreme Court;

“relevant proceedings” has the meaning assigned to it by section 157(3);

“risk assessment” has the meaning assigned to it by section 62(3);

“section” referred to in these Rules means a section in the Act;

“special guardianship order” has the meaning assigned to it by section 18;

“specified proceedings” has the meaning assigned to it by section 91(6);

“welfare officer” means a person who has been asked to prepare a welfare report under section 17(1)(b).

PART 2

PROCEEDINGS IN RESPECT OF THE 1996 HAGUE CONVENTION

Scope.

3. These Rules apply to any proceedings which are brought or which are intended to be brought in respect of matters to which Part VIIIA of the Children Act 2009 or the 1996 Hague Convention apply.

Parties to proceedings under the 1996 Hague Convention.

4.(1) Where proceedings are brought under these Rules 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.

(2) Notwithstanding sub-rule (1), the court will direct that a person with parental responsibility be made a party to proceedings, where that person requests to be one.

(3) 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; and
- (b) the management of proceedings.

Notice of proceedings to person with foreign parental responsibility.

5.(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 Contracting State which subsists in accordance with Article 16 of the 1996 Hague Convention following the child becoming habitually resident in Gibraltar; and
- (b) that person is not otherwise required to be joined as a respondent under rule 4.

(2) The applicant shall give notice of the proceedings to any person to whom the applicant believes sub-rule (1) applies in any case in which a person whom the applicant believed to have parental responsibility under the Act would be a respondent to those proceedings in accordance with rule 4.

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(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 sub-rule (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 sub-rule (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 sub-rule (1) applies receives notice of proceedings, that person may apply to the court to be joined as a party using the Part 3 procedure.

What the court will do when the application has been issued.

6. When proceedings have been issued the court will consider–

- (a) setting of a date for–
 - (i) a directions appointment; or
 - (ii) the hearing of the application or an application for an interim order,and if the court sets a date it shall do so in accordance with rule 11;
- (b) giving any of the directions listed in rule 10.

Children’s guardian, legal representative and reports under the Act.

7.(1) As soon as practicable after the issue of proceedings or the transfer of proceedings to the court, the court shall–

- (a) for specified proceedings, appoint a children’s guardian 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;

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- (b) where section 91(3) applies, consider whether a legal representative should be appointed to represent the child, and if so, appoint a legal representative accordingly; and
- (c) consider whether a report relating to the welfare of the child is required, and if so, request such a report in accordance with section 17.

Duty of the court officer.

8.(1) As soon as practicable after the issue of proceedings the court officer will return to the applicant the copies of the application.

(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 shall give the applicant notice of any hearing set by the court.

Service of the application.

9. The applicant must serve on any party to the proceedings—

- (a) the application; and
- (b) notice of any hearing set by the court,

not less than 14 days before the date of the hearing, unless the court specifies otherwise.

Directions.

10.(1) This rule does not apply to proceedings under rules 20 to 30.

(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 4(2) and (3);

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- (d) the attendance of the child;
 - (e) the appointment of a children's guardian or legal representative under section 91(3);
 - (f) the appointment of a litigation friend;
 - (g) the service of documents; and
 - (h) the filing of evidence including experts' reports and
 - (i) the exercise by an authorised person of any duty under section 36, 37, 61 or 62.
- (3) Sub-rule (4) applies where an authorised person has filed a report or risk assessment as a result of exercising a duty referred to in rule 10(2)(i).
- (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 authorised person who prepared the report attend any such hearing.
- (5) The court may exercise the powers in sub-rules (2) and (4) on an application or of its own initiative.
- (6) 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.
- (7) 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 or direct that a copy of the note be served on every party or make the note available to the parties.

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Setting dates for hearings and setting or confirming the timetable and date for the final hearing.

11.(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 purpose of giving directions or for such other purposes as the court directs.

(2) At the 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 sub-rule (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 sub-rule (1) is set at the transfer of proceedings, the date will be as soon as possible after the transfer.

(5) The requirement in sub-rule (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.

Attendance at hearings.

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12.(1) This rule does not apply to proceedings under rules 20 to 30 except for proceedings for a declaration under rule 30.

(2) Unless the court directs otherwise and subject to sub-rule (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 who is directed by the court 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 legal representative.

(4) When considering the interests of the child under sub-rule (3) the court will give–

- (a) the children's guardian;
- (b) the legal representative for the child; and
- (c) the child, if of sufficient understanding,

an opportunity to make representations.

(5) Subject to sub-rule (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.

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(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) Sub-rules (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 under section 47, an enforcement order under section 39 or an order under section 46 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 where that provision applies.

Steps taken by the parties.

13. 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.

Applications without notice.

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14.(1) This rule applies to—

- (a) for proceedings for an order under section 25;
- (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 any proceedings which may be instituted for collection, location and passport orders where rules 20 to 30 apply).

(2) An application in proceedings referred to in sub-rule (1) 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—

- (a) an order under section 25;
- (b) an emergency protection order;
- (c) an order for the disclosure of information as to the whereabouts of a child under section 100(1);
- (d) an order authorising the taking charge of and delivery of a child under section 100(1); or
- (e) an order authorising the taking charge of and delivery of a child under section 102(1),

is made without notice, the applicant must serve a copy of the application on each respondent within 48 hours after the order is made.

(4) Within 48 hours after the making of an order without notice, the applicant must serve a copy of the order on—

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- (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 Agency.

(5) 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 rule 11 to 13.

(6) 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.

Investigation under section 84 of the Act.

15.(1) This rule applies where a direction is given to the Agency by the court under section 84(1).

- (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 or the court officer will -
 - (a) serve or direct that the direction be served on or make the direction available to-
 - (i) the parties to the proceedings in which the direction is given; and
 - (ii) the Agency where it is not a party; and
 - (b) serve or direct that any documentary evidence directed by the court be served on or make that documentary evidence available to the Agency.

(5) Where the Agency informs the court of any of the matters set out in section 84(3)(a) to (b) 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 84 on the parties.

Disclosure of a report under section 18(9) or (10) of the Act.

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16.(1) In proceedings for a special guardianship order, the Agency must file the report under section 18(9) or (10) within the timetable fixed by the court.

(2) The court will consider whether to give a direction that the report under section 18(9) or (10) 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.

(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 sub-rule (2).

(6) In sub-rule (3), information includes personal details information which a party has declined to reveal.

(7) In sub-rule (6), unless the court directs otherwise, a party is not required to reveal-

- (a) the party's home address or other contact details;
- (b) the address or other contact details of any child;
- (c) the name of a person with whom the child is living, if that person is not the applicant; or
- (d) pursuant to section 21(2)(1)(b) of the Adoption Act, the proposed new surname of the child.

(8) Where a party does not wish to reveal any of the particulars in sub-rule (7), that party must give notice of those particulars to the court and the particulars will not be revealed to any person unless the court directs otherwise.

(9) Where a party changes any of the particulars listed in sub-rule (7) during the course of the proceedings, that party must give notice of the change to the court.

Additional evidence.

17.(1) This rule applies to proceedings for a section 25 order or a special guardianship order.

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- (2) Unless the court directs otherwise, a party must not-
- (a) file or serve any document other than in accordance with these rules;
 - (b) in completing a form prescribed by these rules 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.

Expert evidence-examination of a child.

18. (1) No person may, without the leave of the court, cause the child to be medically or psychiatrically examined, or otherwise assessed, for the purpose of the preparation of expert evidence for use in the proceedings.

(2) An application for leave under sub-rule (1) shall, unless the court otherwise directs, be served on all the parties to the proceedings and on the children's guardian.

(3) Where the leave of the court has not been given under sub-rule (1), no evidence arising out of an examination or assessment to which that sub-rule applies may be adduced without the leave of the court.

Hearings under this Part.

19.(1) The court may give directions about the order of speeches and the evidence at a hearing.

(2) Subject to any directions given under sub-rule (1), the parties and the children's guardian must adduce their evidence at a hearing in the following order-

- (a) the applicant;

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- (b) any party with parental responsibility;
- (c) other respondents;
- (d) the children's guardian; and
- (e) the child, if the child is a party to proceedings and there is no children's guardian.

Transfer of proceedings under Article 8 of the 1996 Hague Convention.

20.(1) Where the court is considering the transfer of proceedings to the court of another Contracting State under rules 21 to 23 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 Contracting State under rules 21 to 23 will continue to apply until the court in that other Contracting State accepts jurisdiction in accordance with the provisions of the 1996 Hague Convention, 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 or direct that a copy of the directions order be served on or is made available to every party.

(5) A register of all applications and requests for transfer of jurisdiction to or from another Contracting State will be kept by the registry.

Application by a party for transfer of the proceedings.

21.(1) A party may apply to the court under Article 8(1) of the 1996 Hague Convention-

- (a) to stay the proceedings or a specified part of the proceedings and to invite the parties to introduce a request before a court of another Contracting State; or

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- (b) to make a request to a court of another Contracting State to assume jurisdiction for the proceedings, or a specified part of the proceedings.
- (2) An application under sub-rule (1) must be made to the Supreme Court using the Part 3 procedure.
- (3) The applicant must file the application notice and serve it on the respondents not less than 42 days before the hearing of the application.

Application by a court of another Contracting State for the transfer of proceedings.

22.(1) This rule applies where a court of another Contracting State makes an application 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 of the application; and
 - (b) serve the application, and notice of the hearing on all other parties in Gibraltar not less than 5 days before the hearing of the application.

Exercise by the court of its own initiative of powers to seek to transfer the proceedings.

23.(1) The court having jurisdiction in relation to the proceedings may exercise its powers of its own initiative under 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.

Application to the Supreme Court to make a request under Article 9 of the 1996 Hague Convention to request transfer of jurisdiction.

24.(1) An application for the court to request transfer of jurisdiction in a matter concerning a child from another Contracting State under Article 9 of the 1996 Hague Convention must be made to the Supreme 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.

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(3) Where there is agreement between the court and the court or competent authority to which the request under sub-rule (1) is made to transfer the matter to the Supreme Court of Gibraltar, 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 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 Supreme Court of Gibraltar.

(5) The applicant must attach the notice referred to in sub-rule (4) 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 Supreme 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.

Procedure where the court receives a request from the authorities of another Contracting State to assume jurisdiction in a matter concerning a child.

25.(1) Where any court other than the Supreme Court receives a request to assume jurisdiction in a matter concerning a child from a court or other authority which has jurisdiction in another Contracting State, that court must immediately refer the request to the Supreme Court for a decision regarding acceptance of jurisdiction to be made.

(2) Upon the Supreme Court agreeing to the request under sub-rule (1), the court officer will notify the parties to the proceedings before the other Contracting State of that decision, and the case must be allocated as if the application had been made in Gibraltar.

(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 Contracting State no later than 5 days before the date of that hearing.

Service of the court's order or request relating to transfer of jurisdiction under the 1996 Hague Convention.

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

Questions as to the court's jurisdiction or whether the proceedings should be stayed.

27.(1) If at any time after issue of the application it appears to the court that under Article 13 of the 1996 Hague Convention it is or may be required to stay the proceedings or decline jurisdiction, the court must—

- (a) stay the proceedings; and
 - (b) fix a date for a hearing to determine jurisdiction or whether there should be a stay or other order.
- (2) The court officer will serve notice of the hearing referred to in sub-rule (1)(b) on the parties to the proceedings.
- (3) The court must, in writing—
- (a) give reasons for its decision under sub-rule (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, without a hearing.

Request for consultation as to contemplated placement of child in Gibraltar

28.(1) This rule applies to a request made 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 Gibraltar.

(2) Where the court receives a request directly from a court in another Contracting State, the court shall, as soon as practicable after receipt of the request, notify the Central Authority of the request and take the appropriate action under sub-rule (4).

(3) Where it appears to the court officer that no proceedings relating to the child are pending before the Gibraltar courts, the court officer must inform the Central Authority of that fact and forward to the Central Authority all documents relating to the request sent by the court in the other Contracting State.

(4) Where the court receives a request forwarded by the Central Authority and proceedings relating to the child are pending before the court it must as soon as practicable after receipt of the request fix a directions hearing.

Request made by the court in Gibraltar for consultation as to contemplated placement of child in another Contracting State.

29.(1) This rule applies where the court is contemplating the placement of a child in 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 that State in relation to the contemplated placement.

(2) In this rule, a reference to “the request” includes a reference to a report prepared for the 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.

(4) The court may send the request to the Central Authority for onward transmission to the central authority or other authority having jurisdiction in the other Contracting State.

(5) The court should give consideration to the documents which should accompany the request.

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.

30.(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.

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(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 Supreme Court.

(3) An application for a declaration referred to in sub-rule (1) may not be made where the question raised is otherwise capable of resolution in any other family proceedings in respect of the child.

PART 3

*PROCEDURE FOR OTHER APPLICATIONS IN PROCEEDINGS UNDER THE 1996
HAGUE CONVENTION*

Types of application for which Part 3 procedure may be followed.

31.(1) The Part 3 procedure is the procedure set out in this Part.

(2) An applicant may use the Part 3 procedure if the application is made-

- (a) in the course of existing proceedings;
- (b) to start proceedings except where some other Part of these rules prescribes the procedure to start proceedings; or
- (c) in connection with proceedings which have been concluded.

(3) Sub-rule (2) does not apply to applications where any other rule in any other Part sets out the procedure for that type of application.

Respondents to applications under this Part.

32.(1) The following persons are to be respondents to an application under this Part-

- (a) where there are existing proceedings or proceedings have been concluded, the parties to those proceedings;
- (b) where there are no existing proceedings-
 - (i) if notice has been given by an applicant for an adoption order pursuant to the Adoption Act, the Agency; and

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(ii) if an application is made for permission to apply for an order in proceedings, any person who will be a party to the proceedings brought if permission is granted; and

(c) any other person as the court may direct.

Application notice to be filed.

34.(1) Subject to sub-rule (2), the applicant must file an application notice.

(2) An applicant may make an application without filing an application notice if–

(a) this is permitted by a rule; or

(b) the court dispenses with the requirement for an application notice.

Notice of an application.

35.(1) Subject to sub-rule (2), a copy of the application notice must be served on–

(a) each respondent; and

(b) the children’s guardian, (if any).

(2) An application may be made without serving a copy of the application notice if this is permitted by–

(a) a rule; or

(b) the court.

Time when an application is made.

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

What an application notice must include.

36.(1) An application notice must–

(a) state what order the applicant is seeking;

- (b) state briefly why the applicant is seeking the order; and
 - (c) be verified by a statement of truth, where the applicant intends to rely on matters set out in the application as evidence.
- (2) A draft of the order sought must be attached to the application notice.

Service of a copy of an application notice.

37.(1) A copy of the application notice must be served—

- (a) as soon as practicable after it is filed; and
 - (b) in any event—
 - (i) where the application is for an interim order, at least 14 days; and
 - (ii) in any other case, at least 7 days,
- before the court is to deal with the application.
- (2) The applicant must, when filing the application notice, file a copy of any written evidence in support.
- (3) If a copy of an application notice is served by a court officer it must be accompanied by—
- (a) a notice of the date and place where the application will be heard;
 - (b) a copy of any witness statement in support; and
 - (c) a copy of the draft order which the applicant has attached to the application.
- (4) If—
- (a) an application notice is served; but
 - (b) the period of notice is shorter than the period required by these rules,

the court may direct that, in the circumstances of the case, sufficient notice has been given and hear the application.

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- (5) This rule does not require written evidence-
- (a) to be filed if it has already been filed; or
 - (b) to be served on a party on whom it has already been served.

Applications which may be dealt with without a hearing.

38.(1) The court may deal with an application without a hearing if-

- (a) the court does not consider that a hearing would be appropriate; or
- (b) the parties agree as to the terms of the order sought or the parties agree that the court should dispose of the application without a hearing and the court does not consider that a hearing would be appropriate.

(2) Where-

- (a) an application is made for permission to make an application in proceedings under the Act; and
- (b) the court refuses the application without a hearing in accordance with sub-rule (1)(a),

the court must, at the request of the applicant, re-list the application and fix a date for a hearing.

Service of application notice following court order where application made without notice.

39.(1) This rule applies where the court has disposed of an application which it permitted to be made without service of a copy of the application notice.

(2) Where the court makes an order, whether granting or dismissing the application, a copy of the application notice and any evidence in support must unless the court orders otherwise, be served with the order on all the parties in proceedings.

(3) The order must contain a statement of the right to make an application to set aside or vary the order under rule 40.

Application to set aside or vary order made without notice.

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40.(1) A person who was not served with a copy of the application notice before an order was made under rule 39 may apply to have the order set aside or varied.

(2) An application under this rule must be made within 7 days beginning with the date on which the order was served on the person making the application.

Power of the court to proceed in the absence of a party.

41.(1) Where the applicant or any respondent fails to attend a hearing of an application, the court may proceed in the absence of that person.

(2) Where—

- (a) the applicant or any respondent fails to attend the hearing of an application; and
- (b) the court makes an order at the hearing,

the court may, on application or its own initiative, re-list the application.

Dismissal of totally without merit applications.

42. If the court dismisses an application (including an application for permission to appeal) and considers that the application is totally without merit—

- (a) the court's order must record that fact; and
- (b) the court must at the same time consider whether it is appropriate to make a civil restraint order under the provisions of the Civil Procedure Rules.

PART 4

*SERVICE ON CHILDREN OF PROCEEDINGS UNDER THE 1996 HAGUE
CONVENTION.*

Service on children.

43.(1) Where these Rules require—

- (a) a document to be served on a party;

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- (b) a party to be notified of any matter; or
- (c) a party to be supplied with a copy of a document,

in addition to the persons to be served in accordance with sub-rule (2), the bodies or persons referred to in sub-rule (3) must be served, notified or supplied with a copy of the document, as applicable, unless the court directs otherwise.

(2) The persons referred to in this sub-rule are–

- (a) one of the child’s parents or guardians;
- (b) if there is no parent or guardian, an adult whom the child resides or in whose care the child is;
- (c) a litigation friend;
- (d) the children’s guardian; or
- (e) some other person as the court may direct.

(3) The persons or bodies referred to in this sub-rule are–

- (a) such of the following who are appointed in the proceedings–
 - (i) the children’s guardian (if the children’s guardian is not otherwise to be served);
 - (ii) the welfare officer;
 - (iii) an authorised person; and
- (b) the Agency when it is preparing a report under section 18(9) or (10).

PART 5

ALTERNATIVE PROCEDURE FOR APPLICATIONS UNDER THE 1996 HAGUE CONVENTION

Types of application for which Part 5 procedure may be followed.

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44.(1) The Part 5 procedure is the procedure set out in this Part.

(2) An applicant may use the Part 5 procedure where the Part 3 procedure does not apply and-

- (a) the applicant seeks the court's decision on a question which is unlikely to involve a substantial dispute of fact; or
- (b) sub-rule (4) applies.

(3) The court may at any stage direct that the application is to continue as if the applicant had not used the Part 5 procedure, and, if it does so, the court may give any directions it considers appropriate.

(4) A rule may, in relation to a specified type of proceedings-

- (a) require or permit the use of the Part 5 procedure; and
- (b) disapply or modify any of the rules set out in this Part as they apply to those proceedings.

Contents of the application.

45.(1) Where the applicant uses the Part 5 procedure, the application must state-

- (a) that this Part applies;
- (b) either-
 - (i) the question which the applicant wants the court to decide; or
 - (ii) the order which the applicant is seeking and the legal basis of the application for that order;
- (c) if the application is being made under an enactment, what that enactment is;
- (d) if the applicant is applying in a representative capacity, what that capacity is; and
- (e) if the respondent appears or is to appear in a representative capacity, what that capacity is.

Issue of application without naming respondents.

46.(1) A practice direction may set out circumstances in which an application may be issued under this Part without naming a respondent.

(2) The practice direction may set out those cases in which an application or permission must be made by the application notice before the application is issued.

(3) The application for permission-

- (a) need not be served on any other person; and
- (b) must be accompanied by a copy of the application which the applicant proposes to issue.

(4) Where the court gives permission, it will give directions about the future management of the application.

Acknowledgement of service.

47.(1) Subject to sub-rule (2), each respondent must-

- (a) file an acknowledgement of service within 14 days beginning with the date on which the application is served; and
- (b) serve the acknowledgement of service on the applicant and any other party.

(2) If the application is to be served out of the jurisdiction, the respondent must file and serve an acknowledgement of service-

- (a) within 21 days, where the person to be served is within Europe;
- (b) within 31 days, where the person to be served is other than within Europe; or
- (c) such other period as the court may direct.

(3) The acknowledgement of service must-

- (a) state whether the respondent contests the application;

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- (b) state, if the respondent seeks a different order from that set out in the application, what that order is; and
- (c) be signed by the respondent or the respondent's legal representative.

Consequence of not filing an acknowledgement of service.

48.(1) This rule applies where—

- (a) the respondent has failed to file an acknowledgement of service; and
- (b) the time period for doing so has expired.

(2) The respondent may attend the hearing of the application but may not take part in the hearing unless the court gives permission.

Filing and serving written evidence.

49.(1) The applicant must, when filing the application, file the written evidence on which the applicant intends to rely.

- (2) The applicant's evidence must be served on the respondent with the application.
- (3) A respondent who wishes to rely on written evidence must file it when filing the acknowledgement of service.
- (4) A respondent who files written evidence must also, at the same time, serve a copy of that evidence on the other parties.
- (5) Within 14 days beginning with the date on which a respondent's evidence was served on the applicant, the applicant may file further written evidence in reply.
- (6) An applicant who files further written evidence must also, within the same time limit, serve a copy of that evidence on the other parties.

Evidence – general.

50.(1) No written evidence may be relied on at the hearing of the application unless—

- (a) it has been served in accordance with rule 49; or

- (b) the court gives permission.
- (2) The court may require or permit a party to give oral evidence at the hearing.
- (3) The court may give directions requiring the attendance for cross-examination of a witness who has given written evidence.

Procedure where respondent objects to use of the Part 5 procedure.

51.(1) A respondent who contends that the Part 5 Procedure should not be used because–

- (a) there is a substantial dispute of fact; and
- (b) the use of the Part 5 procedure is not required or permitted by a rule or practice direction,

must state the reasons for that contention when filing the acknowledgement of service.

- (2) When the court receives the acknowledgement of service and any written evidence, it will give directions as to the future management of the case.

PART 6

REGISTRATION OF ORDERS UNDER THE 1996 HAGUE CONVENTION

Scope.

52. This Part applies to proceedings for the recognition, non-recognition and registration of measures to which the 1996 Hague Convention applies.

Interpretation.

53.(1) In this Part “judgment” is to be construed as meaning any measure taken by an authority with jurisdiction under Chapter II of the 1996 Hague Convention.

- (2) References in this Part to registration are to the registration of a judgment in accordance with the provisions of this Part.

Where to start proceedings.

54.(1) Every application under this Part, except for an application under rule 68 for a certified copy of a judgment, must be made to the registry.

(2) Notwithstanding sub-rule (1), where recognition of a judgment is raised as an incidental question in proceedings under the 1996 Hague Convention the court hearing those proceedings may determine the question of recognition.

Application for registration, recognition or non-recognition of a judgment.

55.(1) Any interested party may apply to the court for an order that the judgment be registered, recognised or not recognised.

- (2) An application for registration, recognition and non-recognition must be—
- (a) made to the Supreme Court; and
 - (b) in the form, and supported by such documents and information as the Registrar may require.

Documents – supplementary

56. Where the person making an application under this Part does not produce the documents required by rule 55(2)(b) 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.

Directions.

57.(1) As soon as practicable after an application under this Part has been made, the court may give such directions as it considers appropriate, including as regards the following matters—

- (a) whether service of the application may be dispensed with;
- (b) expedition of the proceedings or any part of the proceedings (and any direction for expedition may specify a date by which the court must give its decision);
- (c) the steps to be taken in the proceedings and the time by which each step is to be taken;

- (d) the service of documents;
 - (e) the filing of evidence.
- (2) The court or court officer will–
- (a) record the giving, variation or revocation of directions under this rule; and
 - (b) as soon as practicable serve or direct that a copy of the directions order be served or is made available to every party.

Registration for enforcement or order for non-recognition of a judgment.

58.(1) This rule applies where an application is made for an order that a judgment given in another Contracting State, should be registered, or should not be recognised.

- (2) Where the application is made for an order that the judgment should be registered–
- (a) upon receipt of the application, and subject to any direction given by the court under rule 57, the court officer will serve the application on the person against whom registration is sought; and
 - (b) the court will not accept submissions from either the person against whom registration is sought or any child in relation to whom the judgment was given.
- (3) Where the application is for an order that the judgment should not be recognised–
- (a) upon receipt of the application, and subject to any direction given by the court under rule 57, the court officer will serve the application on the person in whose favour judgment was given; and
 - (b) the person in whose favour the judgment was given must file an answer to the application and serve it on the applicant–
 - (i) within 1 month of service of the application; or
 - (ii) if the applicant is habitually resident in another Member State, within two months of service of the application.

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(4) In cases to which the 1996 Hague Convention applies and the Council Regulation does not apply, the court may extend the time set out in sub-rule (3)(b)(ii) on account of distance.

(5) The person in whose favour the judgment was given may request recognition or registration of the judgment in their answer, and in that event must comply with rule 55(2)(b), to the extent that such documents, information and evidence are not already contained in the application for non-recognition.

(6) If the person in whose favour the judgment was given fails to file an answer as required by sub-rule (3)–

(a) where the Hague Convention of 15th November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters applies, the court shall apply Article 15 of that Convention; and

(b) in all other cases, the court will not consider the application unless–

(i) it is proved to the satisfaction of the court that the person in whose favour judgment was given was served with the application within a reasonable period of time to arrange his or her response; or

(ii) the court is satisfied that the circumstances of the case justify proceeding with consideration of the application.

Stay of recognition proceedings by reason of an appeal.

59. Where recognition or non-recognition of a judgment given in a Contracting State is sought, or is raised as an incidental question in other proceedings, the court may stay the proceedings if an ordinary appeal against the judgment has been lodged.

Effect or refusal of application for a decision that a judgment should not be recognised.

60. Where the court refuses an application for a decision that a judgment should not be recognised, the court may–

(a) direct that the decision to refuse the application is to be treated as a decision that the judgment be recognised; or

(b) treat the answer under rule 58(3)(b) as an application that the judgment be registered for enforcement if rule 58(5) is complied with and order that the judgment be registered for enforcement in accordance with rule 61.

Notification of the court's decision on an application for registration or non-recognition.

61.(1) Where the court has–

- (a) made an order on an application for an order that a judgment should be registered for enforcement; or
- (b) refused an application that a judgment should not be recognised and ordered under rule 60 that the judgment be registered for enforcement,

the court officer will as soon as practicable take the appropriate action under sub-rule (2) or (3).

(2) If the court refuses the application for the judgment to be registered for enforcement, the court officer will serve the order on the applicant and the person against whom judgment was given in the state of origin.

(3) If the court orders that the judgment should be registered for enforcement, the court officer will–

- (a) register the judgment in the central index of judgments kept by the registry;
- (b) confirm on the order that the judgment has been registered; and
- (c) serve on the parties the court's order endorsed with the court officer's confirmation that the judgment has been registered.

(4) A sealed order of the court endorsed in accordance with sub-rule (3)(b) will constitute notification that the judgment has been registered under Article 26 of the 1996 Hague Convention and in this Part “notice of registration” means a sealed order so endorsed.

(5) The notice of registration must state–

- (a) full particulars of the judgment registered and the order for registration;
- (b) the name of the party making the application and his address for service within the jurisdiction;
- (c) the right of the person against whom judgment was given to appeal against the order for registration; and

- (d) the period within which an appeal against the order for registration may be made.

Effect of registration under rule 61.

62. Registration of a judgment under rule 61 will serve for the purpose of Article 24 of the 1996 Hague Convention as a decision that the judgment is recognised.

The central index of judgments registered under rule 61.

63. The central index of judgments registered under rule 61 will be kept by the Supreme Court registry.

Decision on recognition of a judgment only.

64.(1) Where an application is made seeking recognition of a judgment only, the provisions of rules 58 and 59 apply to that application as they do to an application for registration for enforcement.

(2) Where the court orders that the judgment should be recognised, the court officer will serve a copy of the order on each party as soon as practicable.

(3) A sealed order of the court will constitute notification that the judgment has been recognised under Article 24 of the 1996 Hague Convention.

(4) The sealed order shall indicate—

- (a) full particulars of the judgment recognised;
- (b) the name of the party making the application and his address for service within the jurisdiction;
- (c) the right of the person against whom judgment was given to appeal against the order for recognition; and
- (d) the period within which an appeal against the order for recognition may be made.

Stay of enforcement where appeal pending in state of origin.

65.(1) A party against whom enforcement is sought of a judgment which has been registered under rule 61 may apply to the Court of Appeal for the proceedings to be stayed where—

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- (a) he has lodged an appeal against the order that the judgment be registered for enforcement; and
- (b) he has lodged an ordinary appeal in the Contracting State of origin; or
- (c) the time for such an appeal has not yet expired.

(2) Where an application for a stay is filed in the circumstances described in sub-rule (1)(c), the Court of Appeal may specify the time within which an appeal must be lodged.

Enforcement of judgments registered under rule 61.

66.(1) The court will not enforce a judgment registered under rule 61 until after–

- (a) the expiration of any applicable period under rule 65; or
- (b) if that period has been extended following an appeal, the expiration of the period as so extended.

(2) A party applying to the court for the enforcement of a registered judgment must produce to the court a certificate of service of–

- (a) the notice of registration of the judgment; and
- (b) any order made by the court in relation to the judgment.

Request for a certificate or a certified copy of a judgment.

67.(1) An application for a certified copy of a judgment must be made to the Supreme Court without giving notice to any other party.

(2) The application must be made in the form, and supported by such documents and information as the Registrar may require.

(3) The certified copy of the judgment will be an office copy sealed with the seal of the court and signed by the Registrar, it will be issued with a certified copy of any order which has varied any of the terms of the original order.

(4) Where the application is made for the purposes of applying for recognition or recognition and enforcement of the order in another Contracting State, the court must indicate on the

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certified copy of the judgment the grounds on which it based its jurisdiction to make the order, for the purposes of Article 23(2)(a) of the 1996 Hague Convention.

Application for provisional, including protective measures.

68. An application for provisional, including protective measures under Articles 11 or 12 of the 1996 Hague Convention may be made notwithstanding that the time for appealing against an order for registration of a judgment has not expired or that a final determination of any issue relating to enforcement of the judgment is pending.