

Subsidiary Legislation made under s.23(2).

Surrogacy (Parental Order) Rules 2021

LN.2021/224

Commencement

8.4.2021

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SCHEDULE

In exercise of the powers conferred upon him by section 23(2) of the Surrogacy Act 2021 and all other enabling powers, the Chief Justice has made the following Rules-

Title and commencement.

1.(1) These Rules may be cited as the Surrogacy (Parental Order) Rules 2021 and come into operation on the day of publication.

(2) These Rules operate without prejudice to any rules in relation to adoption.

(3) Except where the contrary intention appears, the rules herein apply to all parental order proceedings in Gibraltar.

Interpretation.

2. In these Rules—

“the Act” means the Surrogacy Act 2021;

“Applicants” means a sole applicant if the application is made pursuant to section 21 of the Act;

“Form S1”, “Form S2” and “Form S3” mean the corresponding forms set out in the Schedule;

“the other parent” means any person who is a parent of the child but is not one of the applicants or the woman who carried the child (including any man who is the father by virtue of section 8 of the Act or any woman who is a parent by virtue of section 9 of the Act);

“parental order” means an order made under Part 3 of the Act;

“parental order proceedings” means proceedings for the making of a parental order under the Act;

“parental order reporter” means an officer appointed pursuant to section 23(3) of the Act to act on behalf of a child who is the subject of parental order proceedings;

“provision for contact” means any order in Gibraltar providing for contact arrangements;

“Registry” means the Supreme Court Registry.

Case Management Powers.

3.(1) The powers in these Rules are in addition to any powers given to the court by any other rule or practice direction or by any other enactment or any powers it may otherwise have.

(2) Except where these Rules provide otherwise, the court may—

- (a) extend or shorten the time for compliance with any rule, practice direction or court order (even if an application for extension is made after the time for compliance has expired);
- (b) make such order for disclosure and inspection, including specific disclosure of documents, as it thinks fit;
- (c) adjourn or bring forward a hearing;
- (d) require a party or a party's legal representative to attend the court;
- (e) hold a hearing and receive evidence by telephone or by using any other method of direct oral communication;
- (f) direct that part of any proceedings be dealt with as separate proceedings;
- (g) stay the whole or part of any proceedings or judgment either generally or until a specified date or event;
- (h) consolidate proceedings;
- (i) hear two or more applications on the same occasion;
- (j) direct a separate hearing of any issue;
- (k) decide the order in which issues are to be heard;
- (l) exclude an issue from consideration;
- (m) dismiss or give a decision on an application after a decision on a preliminary issue; and
- (n) take any other step or make any other order for the purpose of managing the case.

(3) A power of the court under these Rules to make an order includes a power to vary or revoke the order.

(4) Any provision in these Rules–

(a) requiring or permitting directions to be given by the court is to be taken as including provision for such directions to be varied or revoked; and

(b) requiring or permitting a date to be set is to be taken as including provision for that date to be changed or cancelled.

(5) The court may not extend the period within which an application must be made.

(6) Except where an enactment provides otherwise, the court may exercise its powers on an application or of its own initiative.

(7) Where the court proposes to make an order of its own initiative–

(a) it may give any person likely to be affected by the order an opportunity to make representations; and

(b) where it does so it must specify the time by and the manner in which the representations must be made.

(8) Where the court proposes–

(a) to make an order of its own initiative; and

(b) to hold a hearing to decide whether to make the order,

it must give each party likely to be affected by the order at least 5 days' notice of the hearing.

(9) The court may make an order of its own initiative without hearing the parties or giving them an opportunity to make representations.

(10) Where the court has made an order under subrule (9)–

(a) a party affected by the order may apply to have it set aside, varied or stayed; and

(b) the order must contain a statement of the right to make such an application.

(11) An application under subrule (10)(a) must be made–

- (a) within such period as may be specified by the court; or
- (b) if the court does not specify a period, within 7 days beginning with the date on which the order was served on the party making the application.

(12) If the court of its own initiative strikes out a statement of case or dismisses an application (including an application for permission to appeal) and it considers that the application is totally without merit—

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

(13) Where there has been an error of procedure such as a failure to comply with a rule or practice direction—

- (a) the error does not invalidate any step taken in the proceedings unless the court so orders; and
- (b) the court may make an order to remedy the error.

Parties.

4.(1) An application for a parental order under section 20 of the Act may be made by applicants who are—

- (a) married;
- (b) civil partners of each other; or
- (c) two persons who are living as partners in an enduring family relationship and are not within the prohibited degrees of relationship in relation to each other,

and satisfy the conditions set out in section 20(1) of the Act.

(2) An application for a parental order under section 21 of the Act may only be made by one person who satisfied the conditions set out in section 21(1) of the Act.

(3) The respondents to an application for a parental order are—

- (a) the woman who carried the child;

- (b) the other parent (if any);
- (c) any person in whose favour there is provision for contact; and
- (d) any other person or body with parental responsibility for the child at the date of the application.

(4) The court will direct that a person with parental responsibility for the child be made a party to proceedings where that person requests to be one.

(5) The court may at any time direct that—

- (a) any other person or body be made a respondent to the proceedings; or
- (b) a respondent be removed from the proceedings.

(6) If the court makes a direction for the addition or removal of a party, it may give consequential directions about—

- (a) serving a copy of the application form on any new respondent;
- (b) serving relevant documents on the new party; and
- (c) the management of the proceedings.

(7) An application for a parental order shall be made in Form S1.

Notice of proceedings to a person with foreign parental responsibility.

5.(1) This rule applies where a child is subject to proceedings to which at the date of the application—

- (a) a person holds or is believed to hold parental responsibility for the child under the law of another State which subsists in accordance with Article 16 of the 1996 Hague Convention following the child becoming habitually resident in 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 subrule (1) applies.

(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 subrule (1) to the Court, upon making, or responding to the application as appropriate.

(4) Where the existence of such a person only becomes apparent to a party at a later date during the proceedings, that party must notify the Registry of those details at the earliest opportunity.

(5) Where a person to whom subrule (1) applies receives notice of proceedings, that person may apply to the court to be joined as a party using the procedure set out in Part 3 of the Family Proceedings (Children) (1996 Hague Convention) Rules 2011.

Application Issued.

6.(1) As soon as practicable after the issue of proceedings the Registry will—

- (a) subject to subrule (2), set a date for the first directions hearing; and
- (b) return to the applicants the copies of the application together with any other documents the applicant is required to serve.

(2) Where it considers it appropriate the court may dispense with a first directions hearing, and give the directions provided for in rule 9.

Service of the application and other documents.

7.(1) The applicants must, within 14 days before the hearing or first directions hearing, serve on the respondents—

- (a) the application in Form S1 as issued by the court; and
- (b) Form S2 for acknowledging service.

(2) Any document may be served out of Gibraltar without leave.

Acknowledgement of service.

8.(1) Within 14 days of the service of an application for a parental order, each respondent must file an acknowledgment of service in Form S2 and serve it on all the other parties.

(2) Where an application is served out of Gibraltar the time limit for filing and serving Form S2 shall be the time fixed for filing an acknowledgement of service or equivalent for

the time being prescribed in England plus seven days provided that where the service of the application is effected in the United Kingdom the time shall be twenty-one days.

(3) Where an application is served out of Gibraltar the applicants shall notify the respondents of the applicable time limit for acknowledging service.

The first directions hearing.

9.(1) At the first directions hearing in the proceedings the court may–

- (a) appoint a parental order reporter;
- (b) fix a timetable for the filing of–
 - (i) any report from a parental order reporter;
 - (ii) if a statement of facts has been filed, any amended statement of facts; and
 - (iii) any other evidence;
- (c) give directions relating to the report of the parental order reporter and other evidence;
- (d) consider whether any other person should be a party to the proceedings and, if so, give directions in accordance with rule 4(4) or (5) joining that person as a party;
- (e) give directions relating to the appointment of a litigation friend for any protected party unless a litigation friend has already been appointed;
- (f) give directions about–
 - (i) tracing the other parent or the woman who carried the child;
 - (ii) service of documents;
 - (iii) subject to subrule (2), disclosure as soon as possible of information and evidence to the parties; and
 - (iv) the final hearing;
- (g) set a date for the hearing of the application.

(2) Rule 12 applies to any direction given under subrule (1)(f)(iii) as it applies to a direction given under rule 12(1).

(3) The parties or their legal representatives must attend the first directions hearing unless the court directs otherwise.

(4) Directions may also be given at any stage in the proceedings—

(a) of the court's own initiative; or

(b) on the application of a party or the parental order reporter.

(5) Where the court proposes to exercise its powers in subrule (1) of its own initiative the procedure set out in rule 3(6) to (11) shall apply.

(6) For the purposes of giving directions or for such purposes as the court directs—

(a) the court may set a date for a further directions hearing or other hearing; and

(b) the Registry will give notice of any date so fixed to the parties and to the parental order reporter.

(7) After the first directions hearing the Registry will send a certified copy of the entry in the register of births to the parental order reporter.

Circumstances where agreement of the other parent or the woman who carried the child is not required.

10.(1) This rule applies where the agreement of the other parent or the woman who carried the child to the making of the parental order is not required as the person in question cannot be found or is incapable of giving agreement.

(2) The applicants must—

(a) state that the agreement is not required in the application form, or at any later stage by filing a written note with the court;

(b) file a statement of facts setting out a summary of the history of the case and any other facts to satisfy the court that the other parent or the woman who carried the child cannot be found or is incapable of giving agreement.

(3) Upon filing of the application form or written note—

(a) the Applicant must—

- (i) unless the other parent or the woman who carried the child cannot be found, inform the other parent or the woman who carried the child that their agreement is not required;
- (ii) send a copy of the statement of facts filed in accordance with subrule (2)(b) to—
 - (aa) the other parent unless the other parent cannot be found;
 - (bb) the woman who carried the child unless the woman cannot be found; and
 - (cc) the parental order reporter once appointed; and
- (b) if the applicants consider that the other parent or the woman who carried the child is incapable of giving agreement the court will consider whether to appoint a litigation friend for the other parent or the woman who carried the child unless a litigation friend is already appointed for the other parent or the woman who carried the child.

Agreement.

11.(1) Unless the court directs otherwise, the agreement of the other parent or the woman who carried the child to the making of the parental order may be given in Form S3 or a form to the like effect.

- (2) Any form of agreement executed outside Gibraltar must be witnessed by—
 - (a) any person for the time being authorised by law in the place where the document is executed to administer an oath for any judicial or other legal purpose;
 - (b) a British Consular officer;
 - (c) a notary public; or
 - (d) if the person executing the document is serving in any of the regular armed forces of the Crown, an officer holding a commission in any of those forces.

Reports of the parental order reporter and disclosure to the parties.

12.(1) The court will consider whether to give a direction that a confidential report of the parental order reporter be disclosed to each party to the proceedings.

(2) Before giving such a direction the court will consider whether any information should be deleted.

(3) The court may direct that the report shall not be disclosed to a party.

Notice of final hearing.

13.(1) The Registry will give notice to the parties and to the parental order reporter–

- (a) of the date and time when the application will be heard; and
- (b) of the fact that, unless the person wishes or the court requires, the person need not attend.

(2) The hearing must be listed as soon as practicable.

The final hearing.

14.(1) Any person who has been given notice in accordance with rule 13 may attend the final hearing and be heard on the question of whether an order should be made.

(2) The court may direct that any person must attend a final hearing.

Proof of identity of the child.

15.(1) Unless the contrary is shown, the child referred to in the application will be deemed to be the child referred to in the form of agreement to the making of the parental order where the conditions in subrule (2) apply.

(2) The conditions are–

- (a) the application identifies the child by reference to a full certified copy of an entry in the register of births;
- (b) the form of agreement identifies the child by reference to a full certified copy of an entry in the register of births attached to the form; and
- (c) the copy of the entry in the register of births referred to in subrule (a) is the same or relates to the same entry in the register of births as the copy of the entry in the register of births attached to the form of agreement.

(3) Where the precise date of the child's birth is not proved to the satisfaction of the court, the court will determine the probable date of birth.

(4) The probable date of the child's birth may be specified in the parental order as the date of the child's birth.

(5) Where the child's place of birth cannot be proved to the satisfaction of the court, the particulars of the country of birth may be omitted from the parental order.

Disclosing information to an adult who was subject to a parental order.

16.(1) The person who is subject to the parental order has the right to receive from the court which made the parental order a copy of the following—

- (a) the application form for a parental order (but not the documents attached to that form);
- (b) the parental order and any other orders relating to the parental order proceedings;
- (c) a transcript of the court's decision; and
- (d) a report made to the court by the parental order reporter.

(2) This rule does not apply to a person under the age of 18 years.

Keeping of registers, custody, inspection, disclosure, security of documents.

17.(1) Any person who obtains any information in the course of, or relating to, parental order proceedings must treat that information as confidential and must only disclose it if—

- (a) the disclosure is necessary for the proper exercise of that person's duties; or
- (b) the information is requested by a court or public authority (within or outside of Gibraltar) having power to determine parental order proceedings and related matters, for the purpose of that court or authority discharging its duties relating to those proceedings and matters.

(2) Subject to the provisions of these rules, any practice direction or any direction given by the court—

- (a) no document or order held by the court in parental order proceedings will be open to inspection by any person; and
- (b) no copy of any such document or order, or of an extract from any such document or order, shall be taken by or given to any person.

Orders.

18. A parental order takes effect from the date when it is made, or such later date as the court may specify.

Copies of orders.

19. Within 14 days beginning with the date on which the final order was made, or such shorter time as the court may direct, the Registry will send a copy, which is sealed, authenticated with the stamp of the court or certified as a true copy of a parental order, to the Registrar of Births and Deaths.

SCHEDULE

Form S1

Application for a Parental Order

Section 20 or 21 of the Surrogacy Act 2021

To be completed by the court
IN THE SUPREME COURT OF GIBRALTAR
Claim Number:
Date received by the court:
Date issued:

Please complete this form using black ink.

If there is more than one child you must fill in a separate form for each child.

Please answer every part. If a part does not apply or you do not know what to say please say so. If there is not enough room continue on another sheet (put the child’s name and the number of the part on the sheet).

If you have any concerns about giving your address or that of your child, you may give an alternative address where papers can be served. However, you must notify the court of the actual address.

1. About the child

The birth name of the child

First name

Middle name(s)

Surname

Date of birth

Gender MALE FEMALE

Address where the child was born

.....
.....
.....
.....

Address where the child lives now

.....
.....
.....
.....

The person(s) who have parental responsibility

The name(s) of the child if a Parental Order is made

The child has had a home with the Applicant(s) continually since

**2. About the applicant(s)
1st or only Applicant**

Your first name

Middle name(s)

Surname

Date of birth

Gender MALE FEMALE

Place of birth

Your occupation

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Are you a genetic parent of the child? YES NO

Are you domiciled in Gibraltar YES NO

**2nd Applicant
(If a joint application)**

Your first name

Middle name(s)

Surname

Date of birth

Gender MALE FEMALE

Place of birth

Your occupation

Are you a genetic parent of the child? YES NO

Are you domiciled in Gibraltar YES NO

All applicants

If you do not wish your address to be made known to the respondent, leave the address details blank and provide separately to the Registrar.

Address
.....
.....
.....
.....

Home telephone number

Mobile telephone number

Have you lived at this address for more than 5 years? YES NO

If no, please provide details of all previous addresses you have lived at for the last 5 years

.....
.....
.....
.....
.....
.....

Your Lawyer’s details

Do you have a lawyer acting for you? YES NO

If yes, please give the following details

Your lawyer’s name

Name of firm

Address
.....
.....
.....
.....

Telephone number

Fax number

Lawyer’s reference

3. About the birth parents

The birth mother

Her full name

Her full address
.....
.....
.....
.....

The birth father or other parent (if applicable)

Full name

Full address
.....
.....
.....
.....

4. Parental agreement

Does the birth mother agree to a Parental Order being made? YES NO

Does the birth father or other parent (if applicable) agree to a Parental Order being made? YES NO

- The agreement of the birth mother and other parent (where appropriate) is required, or must be dispensed with under one of the grounds listed below, before an order can be made.
- The child must be at least 6 weeks old when the agreement is given.

Will you be asking the court to dispense with YES NO

the agreement of a birth parent?

If yes, give the name(s) of the birth parent(s) whose agreement you wish to dispense with.

The grounds for dispensing with the agreement are [] The person(s) cannot be found or [] The person(s) are incapable of giving agreement

Please provide a separate statement of facts you are relying on for dispensing with agreement (and copies for the respondent(s)).

IMPORTANT: You must send a copy of your statement of facts to each respondent. If you intend to ask the court to keep your address confidential, you should make sure that the statement of facts does not include any information that could identify where you live.

5. General Information

Has the child ever been looked after by a public body? YES [] NO []

If Yes, Give the period during which the public body has looked after the child.

Give details of the organisation

Have there been, or are there any other court proceedings pending or in progress which concern this child? YES [] NO []

If yes, please give details of the proceedings

Give the name of the court and the case number of the proceedings, if known

.....
.....
.....
.....

To the best of your knowledge, have there been, or are there any court proceedings pending or in progress which concern any other children of your family?

YES NO

If yes, give details of the proceedings.

Give the name of the court and the case number of the proceedings, if known

.....
.....
.....
.....

Cases concerning a related child

To the best of my knowledge, no proceedings relating to a full, half or step brother or sister of the child have been completed or commenced in any court

OR

The following proceedings relating to a full, half or step brother or sister of the child have been completed/commenced (please, **attach a copy of the final order**)

.....
.....

.....

Relationship to child (eg. Sister, half-brother)	Type of order made (or applied for)	Date of order (or date of next hearing)	Name of court	Case number (or serial number)

6. Respondents

The respondent(s) will be

- The woman who carried the child
- Any other person who is a parent of the child but is not an applicant (including any man who is the father by virtue of section 8 of the Surrogacy Act 2021 or any woman who is a parent by virtue of section 9 of that Act)
- Any person in whose favour there is provision for contact with the child
- Any other persons or body with parental responsibility for the child at the date of the application.

Please put the address where the respondent usually lives or can be served with papers

You will have to serve a copy of this application and the order papers required on each of the respondents (including the birth parent(s))

The name of the respondent	The respondent's address
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7. Declaration

Joint applications only

We declare that:

- We are married to each other and our marriage certificate is attached
- Or**
- We are civil partners and our civil partnership certificate is attached
- Or**
- We are living as partners in an enduring family relationship and are not within the prohibited degrees of relationship to each other.

All Applicants

I/We declare that:

- no money or other benefit (other than for expenses reasonably incurred) has been received or given by the applicant(s) for or in consideration of the matters set out in section 20(6) of the Surrogacy Act 2021
- A copy of the child’s birth certificate is attached and the child is the person to whom the attached certified copy of the entry in a register of births relates
- The information I/we have given is correct and complete to the best of my/our knowledge.

I/we believe the facts stated on this form are true. Court proceedings may be brought against a person who makes or causes to be made, a false statement in a document.

Signed	1 st or only applicant	Date

Signed	2 nd Applicant – if a joint application	Date

Form S2 - Acknowledgement

Section 20 and 21 of the Surrogacy Act 2021

To the applicant(s): You will need a copy of this form for each respondent and birth parent.

On each copy you must put in the boxes:

- The name and address of each respondent or birth parent, and the name of the child.
- If the application is served out of Gibraltar, the period for filing and serving this form.

Respondent's name and address

To the respondent

The birth name of the child

Put the surname last

You will get with this form a copy of

- an application that has been made to the court

Please

- read the application
- answer the questions on this form.

The court will send you a Notice of Hearing separately.

You must

- return this acknowledgement to the court at 32-36 Town Range
- send or give a copy of this acknowledgement to the applicant(s), birth parent(s) and each respondent (see parts 2, 3, and 6 of Form S1) **within** **days** from the date you were served with the Application for a Parental Order.

1.

(a) Your Name
Put your surname first

(b) Your address
if you do not wish your address to be made known to the applicant(s), leave the address details blank and provide separately to the Registrar of the Supreme Court

.....
.....
.....
.....

(c) When did you receive this form?

2.

(a) Have you given consent to the court making a parental order? YES NO

(b) Do you wish to oppose the application? YES NO

If yes, please explain briefly why

.....
.....
.....
.....

3.

Do you wish to give evidence on the question as to whether a parental order should be made? YES NO

If yes, please give brief details

.....
.....
.....
.....

4.

Do you have a lawyer acting for you?

YES

NO

If yes, please give the following details

Your lawyer's name

Name of firm

Address

.....
.....
.....
.....

Telephone number

Fax number

Lawyer's reference

5. I declare that the information I have given is true and correct to the best of my belief.

Signed

Date

Form S3

Agreement to the making of a parental order in respect of my child

Section 20 or 21 of the Surrogacy Act 2021

Name of child

Before signing this form you are advised to seek legal advice about agreeing to the making of a parental order and the effect on your parental rights. If you are making this agreement outside Gibraltar you should seek legal advice about the law in the country concerned.

I agree to a parental order being made in respect of _____ (my child), who is the child to whom the attached certified copy of the entry in a register of births relates, in favour of * [_____] * (the named prospective parents)]

If a parental order is made in respect of my child, I understand that I will no longer legally be treated as the parent and that my child will become part of the family of the applicant(s).

I understand that I may withdraw my agreement at any time until the court makes the parental order. If I do withdraw my agreement and want my child returned to me, I understand that I must notify the court that I have changed my mind and I must, at all times, act through the court and not approach the applicants directly.

I have not received any payment or reward from any person making arrangements for the parental order for my child.

[I have taken legal advice]/[I have not taken legal advice, but I have been advised to do so], about giving agreement to a parental order being made in respect of my child and the effect on my parental rights.

*(delete as appropriate)

I agree unconditionally and with full understanding of what is involved, to the making of a parental order in respect of _____ (my child) in favour of _____ (the applicant(s)).

Signed.....

On..... day of 20

Witness Statement

2021-09

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This form was signed by
.....

On the day of 20

Before me (print full name).....

Signed.....

Office of witness.....

Address of witness

.....
.....

When this form is executed outside of Gibraltar, it must be witnessed by;-

- (a) any person for the time being authorised by law in the place where the document is executed to administer an oath for any judicial or other legal purpose;
- (b) a British Consular officer;
- (c) a notary public; or
- (d) if the person executing the document is serving in any of the regular armed forces of the Crown, an officer holding a commission in any of those forces.