

Statutory Document No. 2002/0733

*Summary Jurisdiction Act 1989***SUMMARY JURISDICTION RULES 2002<sup>1</sup>***Coming into Operation:**1 February 2003*

In exercise of the powers conferred on the Clerk of the Rolls by section 91 of the Summary Jurisdiction Act 1989<sup>1</sup> and of all other enabling powers, the following Rules are hereby made: —

**PART 1 - GENERAL****1 Citation and commencement**

These Rules may be cited as the Summary Jurisdiction Rules 2002 and shall come into operation on the 1st February 2003.

**2 Interpretation**

(1) In these Rules, —

“**the 1983 Act**” means the Domestic Proceedings Act 1983<sup>2</sup>;

“**the 1989 Act**” means the Summary Jurisdiction Act 1989;

“**the 2001 Act**” means the Children and Young Persons Act 2001<sup>3</sup>;

“**child**” —

- (a) in Part 2, means a person who, in the opinion of the court, is under 14 years of age;
- (b) elsewhere, means a person under 18 years of age; and
- (c) in any case where an application is made under paragraph 2 or 6 of Schedule 1 to the 2001 Act, includes a person who has reached the age of 18;

“**contribution order**” has the meaning given by paragraph 3(2) of Schedule 3 to the 2001 Act,

“**court**” means a court of summary jurisdiction;

<sup>1</sup> 1989 c.15

<sup>2</sup> 1983 c.13

<sup>3</sup> 2001 c.20

- “**the Department**” means the Department of Health and Social Care;<sup>2</sup>
- “**directions appointment**” means a hearing for directions under rule 24(2),
- “**emergency protection order**” means an order under section 42 of the 2001 Act;
- “**file**” means deposit with the Chief Registrar;
- “**leave**” includes permission and approval,
- “**protection order**” means an order under section 15 of the 1983 Act;
- “**recovery order**” means an order under section 49 of the 2001 Act,
- “**section 11 order**” means an order under section 11 of the 2001 Act;
- “**special guardianship order**” has the meaning assigned by section 17A of the 2001 Act;<sup>3</sup>
- “**respondent**”, in relation to proceedings to which Part 4 applies, includes a defendant;
- “**welfare officer**” means a person who has been asked to prepare a welfare report under section 30 of the 2001 Act.
- “**young person**” means a person who, in the opinion of the court, has reached the age of 14 years but is under 17 years of age.
- (2) In these Rules references to a parent in relation to a child are references —
- (a) where the Department has parental responsibility for him under the 2001 Act, to the Department, and
  - (b) in any other case, to a parent who has parental responsibility for him under that Act.
- (3) In these Rules references to an application or other document being made in an appropriate form are to its being made —
- (a) in any circumstances where a form is prescribed by rules made under section 144 of the Magistrates’ Courts Act 1980 (an Act of Parliament)<sup>4</sup> for use in corresponding circumstances in a court in England, in that form with any necessary modifications;
  - (b) otherwise, in writing.

### 3 Revocation and savings

- (1) Subject to paragraph (2), the Rules specified in Schedule 1 are revoked.
- (2) Nothing in these Rules applies in connection with any proceedings begun before these Rules come into operation.
- (3) Nothing in these Rules affects —
  - (a) the Summary Jurisdiction Rules 1990<sup>5</sup>, or

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<sup>4</sup> 1980 c.43

<sup>5</sup> GC 63/90

- (b) the Summary Jurisdiction (Television Link and Video Recorded Evidence) Rules 1993<sup>6</sup>.

#### **4 Enforcement of orders for periodical payments**

- (1) Any sums paid to the Chief Registrar as mentioned in section 56(2) of the 1989 Act (periodical payments due under more than one order) shall be apportioned equally between the orders in question to the extent of the amount due under each order.
- (2) If, as a result of the apportionment under paragraph (1), the payments under any such order are no longer in arrears, the residue shall be applied to the amount due under the other order or (if there is more than one other order) apportioned equally in the same way between the other orders.

## **PART 2 - CRIMINAL PROCEEDINGS AGAINST CHILDREN AND YOUNG PERSONS**

#### **5 Application of Part 2**

- (1) This Part applies, subject to paragraphs (2) and (3), where any of the following proceedings are brought in a court in respect of a child or young person (“the relevant minor”) –
- (a) proceedings in which the relevant minor is charged with an offence, and
- (b) where the relevant minor appears or is brought before the court, proceedings under, –
- (i) section 83 of or Schedule 9 to the 2001 Act (supervision orders in criminal proceedings),
- (ii) section 5 of, or Schedule 1 to, the Criminal Justice Act 1963<sup>7</sup> (revocation and amendment of, and breaches of requirements of, probation orders and combination orders);
- (iii) Part III or IV of Schedule 3 to the Criminal Law Act 1981<sup>8</sup> (breaches of requirements of, and revocation and amendment of, community service orders and combination orders),
- (iv) paragraph 4 of Schedule 5 to the Criminal Justice Act 2001<sup>9</sup> (amendment of curfew orders), or

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<sup>6</sup> SD 433/93

<sup>7</sup> XIX p.975

<sup>8</sup> 1981 c.20

<sup>9</sup> 2001 c.4

- (v) paragraph 3 or 4 of Schedule 7 to that Act (breaches of requirements of, and revocation and amendment of, attendance centre orders).
- (2) Where the court is inquiring into an offence as examining justices, only rules 6, 7 and 9(3) apply.
- (3) Where the proceedings are of a kind mentioned in paragraph (1)(b) rules 8 and 13 do not apply.

## **6 Assistance in conducting case**

- (1) Except where the relevant minor is legally represented, the court shall allow his parent or guardian to assist him in conducting his case.
- (2) Where the parent or guardian cannot be found or cannot in the opinion of the court reasonably be required to attend, the court may allow any relative or other responsible person to take the place of the parent or guardian for the purposes of this Part.

## **7 Duty of court to explain nature of proceedings etc.**

- (1) The court shall explain to the relevant minor the nature of the proceedings and, where he is charged with an offence, the substance of the charge.
- (2) The explanation shall be given in simple language suitable to his age and understanding.

## **8 Duty of court to take plea to charge**

Where the relevant minor is charged with an offence the court shall, after giving the explanation required by rule 7, ask him whether he pleads guilty or not guilty to the charge.

## **9 Evidence in support of charge or application**

- (1) Where, —
  - (a) the relevant minor is charged with an offence and does not plead guilty, or
  - (b) the proceedings are of a kind mentioned in rule 5(1)(b),the court shall hear the witnesses in support of the charge or, as the case may be, the application.
- (2) Except where, —
  - (a) the proceedings are of a kind mentioned in rule 5(1)(b), and
  - (b) the relevant minor is the applicant,each witness may at the close of his evidence-in-chief be cross-examined by or on behalf of the relevant minor.

- (3) If in any case where the relevant minor is not legally represented or assisted as provided by rule 6, the relevant minor, instead of asking questions by way of cross-examination, makes assertions, the court shall then put to the witness such questions as it thinks necessary on behalf of the relevant minor and may for this purpose question the relevant minor in order to bring out or clear up any point arising out of any such assertions.

## 10 Evidence in reply

If it appears to the court after hearing the evidence in support of the charge or application that a prima facie case is made out, the relevant minor shall, if he is not the applicant and is not legally represented, be told that he may give evidence or address the court, and the evidence of any witnesses shall be heard.

## 11 Procedure after finding against minor

- (1) This rule applies where, —
  - (a) the relevant minor is found guilty of an offence, whether after a plea of guilty or otherwise, or
  - (b) in proceedings of a kind mentioned in rule 5(1)(b) the court is satisfied that the case for the applicant, —
    - (i) if the relevant minor is not the applicant, has been made out, or
    - (ii) if he is the applicant, has not been made out.
- (2) Where this rule applies, —
  - (a) the relevant minor and his parent or guardian, if present, shall be given an opportunity of making a statement,
  - (b) the court shall take into consideration all available information as to the general conduct, home surroundings, school record and medical history of the relevant minor,
  - (c) if such information as aforesaid is not fully available, the court shall consider the desirability of adjourning the proceedings for such inquiry as may be necessary (including a report under section 30 of the 2001 Act),
  - (d) any written report of a probation officer, the Department, the Department of Education, educational establishment or registered medical practitioner may be received and considered by the court without being read aloud, and
  - (e) if the court considers it necessary in the interests of the relevant minor, it may require him or his parent or guardian, if present, to withdraw from the court.
- (3) The court shall arrange for copies of any written report before the court to be made available to, —

- (a) the legal representative, if any, of the relevant minor,
  - (b) any parent or guardian of the relevant minor who is present at the hearing, and
  - (c) the relevant minor, except where the court otherwise directs on the ground that it appears to it impracticable to disclose the report having regard to his age and understanding or undesirable to do so having regard to potential serious harm which might thereby be suffered by him.
- (4) Paragraph (5) applies in any case in which the relevant minor is not legally represented and –
- (a) a report which has not been made available to him in accordance with a direction under paragraph (3)(c) has been considered without being read aloud in pursuance of paragraph (2)(d) or
  - (b) where he or his parent or guardian has been required to withdraw from the court in pursuance of paragraph (2)(e).
- (5) In a case mentioned in paragraph (4) –
- (a) the relevant minor shall be told the substance of any part of the information given to the court bearing on his character or conduct which the court considers to be material to the manner in which the case should be dealt with unless it appears to it impracticable to do so having regard to his age and understanding, and
  - (b) the parent or guardian of the relevant minor, if present, shall be told the substance of any part of such information which the court considers to be material as aforesaid and which has reference to his character or conduct or to the character, conduct, home surroundings or health of the relevant minor;

and if such a person, having been told the substance of any part of such information, desires to produce further evidence with reference thereto, the court, if it thinks the further evidence would be material, shall adjourn the proceedings for the production thereof and shall, if necessary in the case of a report, require the attendance at the adjourned hearing of the person who made the report.

## **12 Duty of court to explain manner in which it proposes to deal with case and effect of order**

- (1) Before finally disposing of the case, the court shall inform the relevant minor and his parent or guardian, if present, or any person assisting him in his case, of the manner in which it proposes to deal with the case and allow any of those persons so informed to make representations; but the relevant minor shall not be so informed if the court considers it undesirable to do so.

- (2) On making any order, the court shall explain to the relevant minor the general nature and effect of the order unless, in the case of an order requiring his parent or guardian to enter into a recognizance, it appears to it undesirable to do so.

### **13 Notice to be given where remand is extended in absence of child or young person**

Where a child or young person has been remanded, and the period of remand is extended in his absence in accordance with section 40 of the 1989 Act, notice shall be given to him and his sureties (if any) of the date at which he will be required to appear before the court.

## **PART 3 - PROCEEDINGS UNDER CHILDREN AND YOUNG PERSONS ACT 2001**

### **14 Proceedings to which Part 3 applies**

- (1) This Part applies to proceedings in a court of summary jurisdiction on an application or appeal under —
  - (a) any provision of the 2001 Act, except section 83 or Schedule 9 (supervision orders in criminal proceedings); or
  - (b) section 30 of or Schedule 5 to the Education Act 2001<sup>10</sup> (education supervision orders).
- (2) Until the coming into operation of the said section 30 and Schedule 5, references in this Part to that section and Schedule shall be construed as references to section 70A of and Schedule 4A to the Isle of Man Education Act 1949<sup>11</sup>.

### **15 Matters prescribed for certain purposes of 2001 Act**

- (1) In addition to the persons mentioned in section 41(8) of the 2001 Act, the applicant for an assessment order which has been made may apply under section 41(9) for the order to be varied or revoked.
- (2) The following persons are prescribed for the purposes of section 42(7)(b) of the 2001 Act (application to vary directions) —
  - (a) the parties to the application for the order in respect of which it is sought to vary the directions;
  - (b) the Department;
  - (d) any person who is named in the directions.

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<sup>10</sup> 2001 c.33

<sup>11</sup> XVII p.516

**16 Application for leave to commence proceedings**

- (1) Where the leave of the court is required to bring any proceedings, the person seeking leave shall file —
  - (a) a written request for leave setting out the reasons for the application; and
  - (b) a draft of the application for the making of which leave is sought, together with sufficient copies for one to be served on each respondent.
- (2) On considering a request for leave filed under paragraph (1), the court shall —
  - (a) grant the request, whereupon the Chief Registrar shall inform the person making the request and, (where a report is being, or has been, made under section 17A(7) or (8), the Department of the decision, or<sup>4</sup>
  - (b) direct that a date be fixed for a hearing of the request, whereupon the Chief Registrar shall fix such a date and give such notice as the court directs to the person making the request and, (where a report is being, or has been, made under section 17A(7) or (8), the Department and to such other persons as the court requires to be notified, of the date so fixed.<sup>5</sup>
- (3) In the case of a request for leave to bring proceedings under Schedule 1 to the 2001 Act, the draft application under paragraph (1) shall be accompanied by a statement setting out the financial details which the person seeking leave believes to be relevant to the request and containing a declaration that it is true to the best of the maker's knowledge and belief, together with sufficient copies for one to be served on each respondent.

**17 Application**

- (1) Subject to paragraph (4), an applicant shall —
  - (a) file the application in the appropriate form, together with sufficient copies for one to be served on each respondent, and
  - (b) serve a copy of the application, endorsed in accordance with paragraph (2)(b), on each respondent not less than the period before the date fixed under paragraph (2)(a) as is specified in Schedule 2;

and where an application is made in respect of more than one child, all the children shall be included in one application.

- (2) On receipt of the documents filed under paragraph (1)(a), the Chief Registrar shall —



- (a) fix the date, time and place for a hearing or a directions appointment, allowing sufficient time for the applicant to comply with paragraph (1)(b),
  - (b) endorse the date, time and place so fixed upon the copies of the application filed by the applicant, and
  - (c) return the copies to the applicant forthwith.
- (3) The applicant shall, at the same time as complying with paragraph (1)(b), give written notice of the proceedings, and of the date, time and place of the hearing or appointment fixed under paragraph (2)(a) to the following persons –
- (a) in every case –
    - (i) the Department, where it is providing accommodation for the child;
    - (ii) any person who is caring for the child at the time when the proceedings are commenced;
  - (aa) in the case of an application for a special guardianship order –
    - (i) to the Department;
    - (ii) to the persons (if any) listed in section 17A(4);<sup>6</sup>
  - (ab) in the case of an application for an order under section 17D to vary or discharge a special guardianship order –
    - (i) to the Department (if it is not the applicant);
    - (ii) to the persons listed in section 17D(1);<sup>7</sup>
  - (b) in the case of an application under section 31 of the 2001 Act for a care order or supervision order –
    - (i) every person whom the applicant believes to be a party to pending proceedings under the 2001 Act in respect of the same child, and
    - (ii) every person whom the applicant believes to be a parent without parental responsibility for the child;
  - (c) in the case of an application under section 41 of the 2001 Act for an assessment order –
    - (i) every person whom the applicant believes to be a parent of the child,
    - (ii) every person whom the applicant believes to be caring for the child,
    - (iii) every person in whose favour a contact order is in force with respect to the child, and
    - (iv) every person who is allowed to have contact with the child by virtue of an order under section 33 of the 2001 Act;

- (d) in the case of an application under section 41(9) of the 2001 Act for the variation or revocation of an assessment order, those of the persons specified in section 41(8) who were not party to the application for the order;
  - (e) in the case of an application under section 42(1) for an emergency protection order, every person whom the applicant believes to be a parent of the child;
  - (f) in the case of an application under section 42(7) of the 2001 Act to vary directions given on the making of an emergency protection order —
    - (i) the Department;
    - (ii) any person whom the applicant believes to be affected by the direction which it is sought to have varied;
  - (g) in the case of an application under paragraph 6(2) of Schedule 2 to the 2001 Act (approval for arrangements for child to live outside Island), the parties to the proceedings leading to the care order;
- (4) Paragraph (5) applies to an application for —
- (a) a prohibited steps order, or a specific issue order, under section 11 of the 2001 Act,
  - (b) an emergency protection order,
  - (c) an order under section 47(4) of the 2001 Act authorising a search of premises,
  - (d) a recovery order, or
  - (e) a warrant under section 99(1) of the 2001 Act.
- (5) An application mentioned in paragraph (4) may, with leave of the Chief Registrar, be made *ex parte* in which case the applicant shall —
- (a) file with the Chief Registrar the application in respect of each child in the appropriate form at the time when the application is made or as directed by the Chief Registrar, and
  - (b) in the case of an application for a prohibited steps order, specific issue order or emergency protection order, and also in the case of an application for an order under section 66(1) of the 2001 Act where the application is *ex parte*, serve a copy of the application on each respondent within 48 hours after the making of the order.
- (6) Where the court refuses to make an order on an *ex parte* application it may direct that the application be made *inter partes*.
- (7) In the case of proceedings under Schedule 1 to the 2001 Act, the application under paragraph (1) shall be accompanied by a statement setting out the financial details which the applicant believes to be relevant to the application and containing a declaration that it is true to the maker's

best knowledge and belief, together with sufficient copies for one to be served on each respondent.

## 18 Withdrawal of application

- (1) An application may be withdrawn only with leave of the court.
- (2) Subject to paragraph (3), a person seeking leave to withdraw an application shall file and serve on the parties a written request for leave setting out the reasons for the request.
- (3) The request under paragraph (2) may be made orally to the court if the parties and, if appointed, the welfare officer are present.
- (4) Upon receipt of a written request under paragraph (2), the court shall —
  - (a) grant the request if the parties consent in writing and the court thinks fit, in which case the Chief Registrar shall notify the parties and the welfare officer of the granting of the request; or
  - (b) the Chief Registrar shall fix a date for the hearing of the request and give at least 7 days' notice to the parties and the welfare officer of the date fixed.
- (5) Where a person is seeking to withdraw an application for a special guardianship order —
  - (i) that person must also file and serve a copy of the written request under paragraph (2) on the Department;
  - (ii) an oral request under paragraph (3) may be made only if a representative of the Department is also present who has taken part in or is taking part in the preparation of a report under section 17A(7) or (8), unless the court otherwise allows.<sup>8</sup>

## 19 Parties

- (1) The respondents to proceedings under the 2001 Act shall be the following persons —
  - (a) in every case except proceedings under section 68 of, or paragraph 3(1) or (7) of Schedule 3 to, the 2001 Act —
    - (i) every person whom the applicant believes to have parental responsibility for the child;
    - (ii) where the child is the subject of a care order, every person whom the applicant believes to have had parental responsibility immediately before the making of the care order;
    - (iii) where the application is to extend, vary or revoke an order, the parties to the proceedings leading to the order which it is sought to have extended, varied or revoked;

- (b) in the case of an application for a section 11 order, every person whom the applicant believes, –
- (i) to be named in a court order with respect to the same child, which has not ceased to have effect,
  - (ii) to be a party to pending proceedings in respect of the same child, or
  - (iii) to be a person with whom the child has lived for at least 3 years before the application,
- unless, in a case to which (i) or (ii) applies, the applicant believes that the court order or pending proceedings are not relevant to the application;
- (c) in the case of proceedings under section 33 of the 2001 Act, the person whose contact with the child is the subject of the application;
- (d) in the case of proceedings under section 42(7)(b) of the 2001 Act –
- (i) the parties to the application for the order in respect of which it is sought to vary the directions;
  - (ii) any person who was caring for the child before the making of the order;
  - (iii) any person whose contact with the child is affected by the direction which it is sought to have varied;
  - (iv) any person who is named in the directions.
- (e) in the case of an application under section 49 of the 2001 Act, the person whom the applicant alleges to have effected or to have been or to be responsible for the taking or keeping of the child;
- (f) in the case of an application under section 66 of the 2001 Act, the registered person;
- (g) in the case of proceedings under section 68 of the 2001 Act, the Department;
- (h) in the case of an application under section 99(1) of the 2001 Act, any person preventing or likely to prevent the exercise of powers referred to in the said section 99(1);
- (i) in the case of proceedings under Schedule 1 to the 2001 Act, those persons whom the applicant believes to be interested in or affected by the proceedings;
- (j) in the case of proceedings under paragraph 3(1) or (7) of Schedule 3 to the 2001 Act, the contributor or the Department, as the case may be;
- (k) in the case of proceedings under paragraph 9 of Schedule 4 to the 2001 Act, the supervisor;

- (1) in the case of proceedings under section 30 of the Education Act 2001 (education supervision orders), the child;
  - (m) in the case of proceedings under paragraph 5(2) of Schedule 5 to that Act, the child;
  - (n) in the case of proceedings under paragraph 7 of Schedule 5 to that Act, the child and the Department of Education.
- (2) In any proceedings to which this Part applies a person may file a request in writing that he or another person —
    - (a) be joined as a party, or
    - (b) cease to be a party.
  - (3) On considering a request under paragraph (2) the court shall, subject to paragraph (4) —
    - (a) in the case of a request under paragraph (2)(a), grant it without a hearing or representations, whereupon the Chief Registrar shall inform the parties, (where a report is being, or has been, prepared under section 17A(7) or (8)), the Department and the person making the request of that decision, or<sup>9</sup>
    - (b) in any case, order that a date be fixed for the consideration of the request, whereupon the Chief Registrar shall give notice of the date so fixed, together with a copy of the request —
      - (i) in the case of a request under paragraph (2)(a), to the applicant, and
      - (ii) in the case of a request under paragraph (2)(b) to the parties; and<sup>10</sup>
      - (iii) in either case (where a report is being, or has been, prepared under section 17A(7) or (8)) to the Department; or<sup>11</sup>
    - (c) invite the parties or any of them to make written representations, within a specified period, as to whether the request should be granted; and upon the expiry of the period the court shall act in accordance with sub-paragraph (a) or (b).
  - (4) Where a person with parental responsibility requests that he be joined under paragraph (2)(a), the court shall grant his request.
  - (5) In any proceedings to which this Part applies the court may direct —
    - (a) that a person who would not otherwise be a respondent under these Rules be joined as a party to the proceedings, or
    - (b) that a party to the proceedings cease to be a party.

## 20 Service

- (1) Where service of a document is required by these Rules it may be effected —

- (a) if the person to be served is not known by the person serving to be acting by an advocate —
    - (i) by delivering it to him personally, or
    - (ii) by delivering it at, or by sending it by post to, his residence or his last known residence, or
  - (b) if the person to be served is known by the person serving to be acting by an advocate —
    - (i) by delivering the document at, or sending it by post to, the advocate's address for service, or
    - (ii) by sending a legible copy of the document by facsimile transmission to the advocate's office.
- (2) Where a child who is a party to any proceedings is required by these Rules to serve a document, service shall be effected by —
- (a) the advocate acting for the child,
  - (b) where there is no such advocate, the Chief Registrar.
- (3) Service of any document on a child shall, subject to any direction of the Chief Registrar or the court, be effected by service on —
- (a) the advocate acting for the child,
  - (b) where there is no such advocate, with leave of the Chief Registrar or the court, the child;
- and where a copy is served on the child under sub-paragraph (b), a copy shall also be served on the Attorney General unless the Chief Registrar or the court otherwise directs.
- (4) Where the Chief Registrar or the court refuses leave under paragraph (3)(b), a direction shall be given under paragraph (7).
- (5) A document served by post shall, unless the contrary is proved, be deemed to have been served on the second business day after posting.
- (6) At or before the first directions appointment in, or hearing of, proceedings to which this Part applies, whichever occurs first, the applicant shall file a statement that service of —
- (a) a copy of the application has been effected on each respondent, and
  - (b) notice of the proceedings has been effected under rule 17(3); and the statement shall indicate —
    - (i) the manner, date, time and place of service, or
    - (ii) where service was effected by post, the date, time and place of posting.
- (7) In any proceedings to which this Part applies, the Chief Registrar or the court may direct that a requirement of these Rules to serve a document shall not apply or shall be effected in such manner as the Chief Registrar or court directs.

**21 Answer to application**

- (1) Within 14 days of service of an application for a section 11 order or an order under section 17A or section 17D, each respondent shall file and serve on the parties an answer to the application in the appropriate form.<sup>12</sup>
- (2) Within 14 days of service of an application under Schedule 1 to the 2001 Act, each respondent shall file and serve on the parties –
  - (a) an answer to the application in the appropriate form, and
  - (b) a statement setting out the financial details which the respondent believes to be relevant to the application and containing a declaration that it is true to the best of his knowledge and belief.

**22 Advocate for child**

- (1) An advocate appointed under section 96 of the 2001 Act in relation to proceedings to which this Part applies shall represent the child –
  - (a) subject to sub-paragraph (b), in accordance with instructions received from the Attorney General;
  - (b) in accordance with instructions received from the child, where the advocate considers, having taken into account the views of the Attorney General, –
    - (i) that the child wishes to give instructions which conflict with those of the Attorney General, and
    - (ii) that he is able, having regard to his understanding, to give such instructions on his own behalf (in which case he shall conduct the proceedings), or
  - (c) in default of instructions under sub-paragraph (a) or (b), in furtherance of the best interests of the child.
- (2) An advocate appointed as mentioned in paragraph (1) shall serve and accept service of documents on behalf of the child in accordance with rule 20(2)(a) and (3)(a) and, where the child has not himself been served and has sufficient understanding, advise the child of the contents of any document so served.

**23 Welfare officer**

- (1) The welfare officer shall, unless excused by the court or the Chief Registrar, attend a hearing if the Chief Registrar gives him notice that his report will be given or considered at that hearing; and any party may question the welfare officer about his report at such a hearing.
- (2) A welfare officer shall file a copy of any written report at or by such time as the Chief Registrar or the court directs or, in the absence of a direction, at least 14 days before a hearing of which he is given notice under paragraph (1); and the Chief Registrar shall, as soon as practicable, serve

a copy of the report on the parties and (if a report is being, or has been, prepared under section 17A(7) or (8)) the Department.<sup>13</sup>

## 24 Directions

- (1) In this rule, “party” includes —
  - A welfare officer, where the direction concerns a report under section 30 of the 2001 Act; and
  - The Department, where the direction concerns a report under section 17A(7) or (8) of the 2001 Act.<sup>14</sup>
- (2) In any proceedings to which this Part applies the Chief Registrar or the court may, subject to paragraph (4), give, vary or revoke directions for the conduct of the proceedings, including —
  - (a) the timetable for the proceedings;
  - (b) varying the time within which or by which an act is required, by these Rules, to be done;
  - (c) the attendance of the child;
  - (d) the service of documents;
  - (e) the submission of evidence including experts’ reports;
  - (f) the preparation of welfare reports under section 30 of the 2001 Act;
  - (fa) the preparation of reports under section 17A(7) or (8) of the 2001 Act;<sup>15</sup>
  - (fb) the attendance of the person who prepared the report under section 17A(7) or (8) of the 2001 Act at any hearing at which the report is to be considered;<sup>16</sup>
  - (g) consolidation with other proceedings; and the Chief Registrar shall, on receipt of an application, consider whether such directions need to be given.
- (3) Where the Chief Registrar is holding a directions appointment and considers, for whatever reason, that it is inappropriate to give a direction on a particular matter, he shall refer the matter to the court which may give any appropriate direction.
- (4) Directions under paragraph (2) may be given, varied or revoked either
  - (a) of the Chief Registrar or the court’s own motion having given the parties notice of the intention to do so and an opportunity to attend and be heard or to make written representations,
  - (b) on the written request of a party specifying the direction which is sought, filed and served on the other parties, or
  - (c) on the written request of a party specifying the direction which is sought, to which the other parties consent and which they or their representatives have signed.



- (5) In an urgent case, the request under paragraph (4)(b) may, with the leave of the Chief Registrar or the court, be made —
  - (a) orally,
  - (b) without notice to the parties, or
  - (c) both orally and without notice to the parties.
- (6) On receipt of a request under paragraph (4)(b) the Chief Registrar shall fix a date for the hearing of the request and give not less than 2 days' notice to the parties of the date so fixed.
- (7) On considering a request under paragraph (4)(c) the Chief Registrar or the court shall either —
  - (a) grant the request, whereupon the Chief Registrar shall inform the parties of the decision, or
  - (b) direct that a date be fixed for the hearing of the request, whereupon the Chief Registrar shall fix such a date and give not less than 2 days' notice to the parties of the date so fixed.
- (8) A party may request, in accordance with paragraph 4(b) or (c), that an order be made under section 12(5) of the 2001 Act or, if he is entitled to apply for such an order, under section 35(1) of that Act, and paragraphs (5), (6) and (7) shall apply accordingly.
- (9) Where in any proceedings the court has power to make an order of its own motion, the power to give directions under paragraph (2) shall apply.
- (10) The Chief Registrar or the court shall take a note of the giving, variation or revocation of a direction under this rule and serve, as soon as practicable, a copy of the note on any party who was not present at the giving, variation or revocation.

## **25 Timing of proceedings**

- (1) Any period of time fixed by these Rules, or by any order or direction, for doing any act shall be reckoned in accordance with this rule.
- (2) Where the period, being a period of 7 days or less, would include a day which is not a business day, that day shall be excluded.
- (3) Where the time fixed for filing a document with the Chief Registrar expires on a day on which the General Registry is closed, and for that reason the document cannot be filed on that day, the document shall be filed in time if it is filed on the next day on which the General Registry is open.
- (4) Where these Rules provide a period of time within which or by which a certain act is to be performed in the course of proceedings, that period may not be extended otherwise than by a direction of the Chief Registrar or the court under rule 24.
- (5) At —

- (a) the transfer to a court of proceedings,
- (b) the postponement or adjournment of any hearing or directions appointment in the course of proceedings, or
- (c) the conclusion of any such hearing or directions appointment other than one at which the proceedings are determined, or so soon thereafter as is practicable,

the Chief Registrar or the court shall —

- (i) fix a date upon which the proceedings shall come before the Chief Registrar or the court again for such purposes as the Chief Registrar or the court directs, which date shall, where paragraph (a) applies, be as soon as possible after the transfer, and
- (ii) give notice to the parties and to the welfare officer and, (where a report has been, or is being, prepared under section 17A(7) or (8), the Department of the date so fixed.<sup>17</sup>

## 26 Attendance of parties

- (1) Subject to paragraph (2), a party shall attend a directions appointment of which he has been given notice in accordance with rule 24(5) unless the Chief Registrar or the court otherwise directs.
- (2) Proceedings to which this Part applies shall take place in the absence of any party including the child 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 party is represented by an advocate;and when considering the interests of the child under sub-paragraph (a) the court shall give the advocate for the child and, if he is of sufficient understanding, the child, an opportunity to make representations.
- (3) Subject to paragraph (4), where at the time and place appointed for a hearing or directions appointment the applicant appears but one or more of the respondents do not, the Chief Registrar or the court may proceed with the hearing or appointment.
- (4) Without prejudice to section 44(3) of the 1989 Act, the court shall not begin to hear an application in the absence of a respondent unless it is satisfied that the circumstances of the case justify proceeding with the hearing.

## 27 Documentary evidence

- (1) Subject to paragraphs (4) and (5), in any proceedings to which this Part applies a party shall file and serve on the parties and any welfare officer and, (where a report has been, or is being, prepared under section 17A(7) or (8)) the Department —

- (a) written statements of the substance of the oral evidence which the party intends to adduce at a hearing of, or a directions appointment in, those proceedings, which shall –
    - (i) be dated,
    - (ii) be signed by the person making the statement, and
    - (iii) contain a declaration that the maker of the statement believes it to be true and understands that it may be placed before the court, and
  - (b) copies of any documents, including, subject to rule 28(3), experts' reports, upon which the party intends to rely, at a hearing of, or a directions appointment in, those proceedings,
- at or by such time as the Chief Registrar or the court directs or, in the absence of a direction, before the hearing or appointment.<sup>18</sup>
- (2) A party may, subject to any direction of the Chief Registrar or the court about the timing of statements under this rule, file and serve on the parties a statement which is supplementary to a statement served under paragraph (1).
  - (3) At a hearing or directions appointment a party may not, without the leave of the Chief Registrar, in the case of a directions appointment, or the court –
    - (a) adduce evidence, or
    - (b) seek to rely on a document, in respect of which he has failed to comply with the requirements of paragraph (1).
  - (4) In proceedings for a section 11 order or for a special guardianship order under section 17A a party shall –
    - (a) neither file nor serve any document other than as required or authorised by these Rules, and
    - (b) in completing an appropriate form, neither give information, nor make a statement, which is not required or authorised by that form, without the leave of the Chief Registrar or the court.<sup>19</sup>
  - (5) In proceedings for a section 11 order or for a special guardianship order under section 17A, no statement or copy may be filed under paragraph (1) until such time as the Chief Registrar or the court directs.<sup>20</sup>

## **27A Disclosure of report under section 17A(7) or (8)**

- (1) In proceedings for a special guardianship order, the Department shall file the report under section 17A(7) or (8) of the 2001 Act within the timetable fixed by the court.
- (2) The court shall consider whether to give a direction that the report under section 17A(7) or (8) of the 2001 Act be disclosed to each party to the proceedings.

- (3) Before giving a direction for the report to be disclosed, the court shall 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 Chief Registrar shall serve a copy of the report filed under paragraph (1) –
  - (i) in accordance with any direction given under paragraph (2); and
  - (ii) on any welfare officer.<sup>21</sup>

## **28 Expert evidence – examination of child**

- (1) No person may, without the leave of the Chief Registrar or 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 paragraph (1) shall, unless the Chief Registrar or the court otherwise directs, be served on all the parties to the proceedings.
- (3) Where the leave of the Chief Registrar or the court has not been given under paragraph (1), no evidence arising out of an examination or assessment to which that paragraph applies may be adduced without the leave of the court.

## **29 Amendment**

- (1) Subject to rule 27(2), a document which has been filed or served in any proceedings may not be amended without the leave of the Chief Registrar or the court which shall, unless the Chief Registrar or the court otherwise directs, be requested in writing.
- (2) On considering a request for leave to amend a document the Chief Registrar or the court shall either –
  - (a) grant the request, whereupon the Chief Registrar shall inform the person making the request of that decision, or
  - (b) invite the parties or any of them to make representations, within a specified period, as to whether such an order should be made. 18 Summary Jurisdiction Rules 2002
- (3) A person amending a document shall file it with the Chief Registrar and serve it on those persons on whom it was served prior to amendment; and the amendments shall be identified.

## **30 Oral evidence**

- (1) The Chief Registrar shall, except where it appears to him to be impracticable to do so, cause an audio recording to be made of the oral evidence given at a hearing of, or directions appointment in, proceedings.

- (2) Where no audio recording is made of such evidence, the Chief Registrar or the court shall keep a note of the substance of the evidence.
- (3) An audio recording shall be kept by the Chief Registrar for a period of not less than 3 years following the conclusion of the proceedings.
- (4) For the purposes of paragraph (3) proceedings are concluded when (disregarding any power to grant leave to appeal out of time) there is no further possibility of an appeal in respect of the proceedings.
- (5) The following persons –
  - (a) any party to the proceedings or his advocate,
  - (b) the Attorney General,
  - (c) the Department (if not a party to the proceedings), and
  - (d) with the leave of the court or of any judge of the High Court, any other person,

shall be entitled on application to the Chief Registrar to obtain a copy of a recording kept under paragraph (3).

### **31 Hearing**

- (1) Before the hearing, the members of the court who will be dealing with the case shall read any documents which have been filed under rule 27 or rule 27A in respect of the hearing.<sup>22</sup>
- (2) The Chief Registrar at a directions appointment, or the court at a hearing or directions appointment, may give directions as to the order of speeches and evidence.
- (3) Subject to directions under paragraph (2), at a hearing or directions appointment in proceedings, the parties shall adduce their evidence in the following order –
  - (a) the applicant,
  - (b) any party with parental responsibility for the child,
  - (c) other respondents,
  - (d) the child if he is a party to the proceedings.
- (3A) At the hearing at which the report under section 17A(7) or (8) is considered, a party to whom the report or part of it has been disclosed may question the person who prepared the report about it.<sup>23</sup>
- (4) After the final hearing of proceedings, the court shall make its decision as soon as is practicable.
- (5) Before the court makes an order or refuses an application or request, the Chief Registrar shall record in writing –
  - (a) the names of the justice or justices constituting the court by which the decision is made, and

- (b) in consultation with the members of the court, any findings of fact and the reasons for the court's decision.
- (6) When making an order or when refusing an application, the court, or one of the members of the court by which the decision is made, shall either —
  - (a) state any findings of fact and the reasons for the court's decision, or
  - (b) if the court or member considers it convenient to do so, deliver to each party present, and cause to be sent to any party not present, a copy of the record prepared under paragraph (5).
- (7) After the court announces its decision, the Chief Registrar shall as soon as practicable —
  - (a) make a record of any order made in the appropriate form or, where there is no such form, in writing; and enter the record in the order book; and
  - (b) subject to paragraph (8), serve a copy of any order made on the parties to the proceedings and on any person with whom the child is living, and, where applicable, on the Department (where a report has been prepared under section 17A(7) or (8)).<sup>24</sup>
- (8) Within 48 hours after the making of an order under section 47(4) of the 2001 Act or the making *ex parte* of —
  - (a) a prohibited steps order or a specific issue order under section 11 of that Act,
  - (b) an order under section 42, 49 or 66(1) of that Act, or
  - (c) a warrant under section 99 of that Act, the applicant shall serve a copy of the order or warrant in the appropriate form on —
    - (i) each party,
    - (ii) any person who has actual care of the child, or who had such care immediately before the making of the order or issue of the warrant, and
    - (iii) in the case of an order or warrant referred to in subparagraph (b) or (c), the Department.

### 32 Enforcement of residence order

Where a person in whose favour a residence order is in force wishes to enforce it he shall file a written statement describing the alleged breach of the arrangements settled by the order, whereupon the Chief Registrar shall fix a date, time and place for a hearing of the proceedings and give notice, as soon as practicable, to the person wishing to enforce the residence order and to any person whom it is alleged is in breach of the arrangements settled by that order, of the date fixed.

**33 Notification of consent**

Consent for the purposes of section 32(6) of, or paragraph 6(1) of Schedule 2 to, the 2001 Act shall be given either —

- (a) orally in court, or
- (b) in writing to the Chief Registrar or the court and signed by the person giving his consent.

**34 Secure accommodation**

In proceedings under section 27 of the 2001 Act, the Chief Registrar shall, if practicable, arrange for copies of all written reports before the court to be made available before the hearing to —

- (a) the applicant,
- (b) the parent or guardian of the child,
- (c) any advocate for the child, and
- (d) the child, unless the Chief Registrar or the court otherwise directs; and copies of such reports may, if the court considers it desirable, be shown to any person who is entitled to notice of the proceedings in accordance with these Rules.

**35 Investigation under section 29**

- (1) This rule applies where a direction is given to the Department by a court under section 29(1) of the 2001 Act.
- (2) On giving a direction the court shall adjourn the proceedings and the Chief Registrar or the court shall record the direction in writing.
- (3) A copy of the direction recorded under paragraph (2) shall, as soon as practicable after the direction is given, be served by the Chief Registrar on the parties to the proceedings in which the direction is given and, where the Department is not a party, on the Department.
- (4) When serving the copy of the direction on the Department the Chief Registrar shall also serve copies of such of the documentary evidence which has been, or is to be, adduced in the proceedings as the court may direct.
- (5) Where the Department informs the court of any of the matters set out in section 29(3)(a) and (b) of the 2001 Act it shall do so in writing.
- (6) Nothing in rule 39 prevents the notification by the Chief Registrar to the Department of the direction.

**36 Appeals under section 68**

An appeal under section 68 of the 2001 Act shall be by application in accordance with rule 17.

**37 Contribution orders**

- (1) An application for a contribution order under paragraph 3(1) of Schedule 3 to the 2001 Act shall be accompanied by a copy of the contribution notice served in accordance with paragraph 2(1) of that Schedule and a copy of any notice served by the contributor under paragraph 2(7) of that Schedule.
- (2) Where the Department notifies the Chief Registrar of an agreement reached under paragraph 3(6) of Schedule 2, it shall do so in writing.
- (3) An application for the variation or revocation of a contribution order under paragraph 3(7) of Schedule 2 shall be accompanied by a copy of the contribution order which it is sought to vary or revoke.

**38 Exclusion requirements**

- (1) This rule applies where the court includes an exclusion requirement in a relevant order; and in this rule “exclusion requirement”, “relevant order” and “relevant person” have the same meanings as in Schedule 5 to the 2001 Act.
- (2) The applicant for a relevant order shall –
  - (a) prepare a separate statement of the evidence in support of the application for an exclusion requirement;
  - (b) serve the statement personally on the relevant person with a copy of the order containing the exclusion requirement (and of any power of arrest which is attached to it);
  - (c) inform the relevant person of his right to apply to vary or revoke the exclusion requirement.
- (3) Where a power of arrest is attached to an exclusion requirement in a relevant order, the Chief Registrar shall cause a copy of the order to be sent to the Chief Constable together with a statement that the relevant person has been served with the order or informed of its terms (whether by being present when the order was made or by telephone or otherwise).
- (4) The relevant person shall serve the parties to the proceedings with any application which he makes for the variation or revocation of the exclusion requirement.
- (5) Where a court varies or revokes an exclusion requirement to which a power of arrest is attached, the Chief Registrar shall cause a copy of the order varying or revoking the requirement to be sent to the Chief Constable.
- (6) Where an exclusion requirement ceases to have effect whether –
  - (a) as a result of the removal of a child under paragraph 5 of Schedule 5 to the 2001 Act,
  - (b) because of the revocation of the relevant order, or



- (c) otherwise, the applicant shall inform —
  - (i) the relevant person, 22 Summary Jurisdiction Rules 2002
  - (ii) the parties to the proceedings,
  - (iii) the Chief Constable (where a copy of the order was sent to him under paragraph (3), and
  - (iv) (where necessary) the Chief Registrar.
- (7) Where the court includes an exclusion requirement in a relevant order of its own motion, paragraph (2) applies with the omission of any reference to the statement of the evidence.

### **39 Confidentiality of documents**

No document, other than a record of an order, held by the court and relating to proceedings shall be disclosed except to —

- (a) a party to the proceedings or his advocate,
- (b) the Attorney General,
- (c) the Department, or
- (d) the certifying officer (within the meaning of the Legal Aid (General) Regulations 1997<sup>12</sup>);

without the leave of the Chief Registrar or the court.

## **PART 4<sup>25</sup>**

**40 [Revoked]<sup>26</sup>**

**41 [Revoked]<sup>27</sup>**

**42 [Revoked]<sup>28</sup>**

**43 [Revoked]<sup>29</sup>**

**44 [Revoked]<sup>30</sup>**

**45 [Revoked]<sup>31</sup>**

**MADE 31 OCTOBER 2002**

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<sup>12</sup> SD 144/97



**SCHEDULE 1**

Rule 3.

**RULES REVOKED**

<b>Reference</b>	<b>Title</b>
GC 1142	The Summary Jurisdiction (Children Act) Rules 1926
GC 107/49	The Summary Jurisdiction (Children and Young Persons) Rules 1949
GC 168/49	The Summary Jurisdiction (Children and Young Persons) (Amendment) Rules 1949
GC 27/51	The Summary Jurisdiction (Children and Young Persons) (Amendment) Rules 1951
GC 8/92	The Summary Jurisdiction (Family) Rules 1992

**SCHEDULE 2**

## Rule 17(1)(b)

**TIME BEFORE HEARING BY WHICH NOTICE OF APPLICATION IS TO BE SERVED**

<b>Provision under which application is made</b>	<b>Subject matter of application</b>	<b>Time</b>
THE 2001 ACT		
Section 27	Secure accommodation	1 day
Section 31	Care order or supervision order	3 days
Section 33	Contact with child subject to care order	3 days
Section 35(7)(b)	Variation of interim care order	3 days
Section 39	Variation or revocation of care order or supervision order	7 days
Section 41(1)	Assessment order	7 days
Section 41(9)	Variation or revocation of assessment order	2 days
Section 42(1)	Emergency protection order	1 day
Section 42(7)	Variation of direction as to contact or assessment	1 day
Section 44(4)	Extension of emergency protection order	1 day
Section 44(6)	Revocation of emergency protection order	1 day
Section 49	Recovery order	1 day
Section 66(1)	Cancellation etc. of registration of child minder or day-carer	1 day
Section 99	Search warrant	1 day
Any other provision	-	14 days
EDUCATION ACT 2001		
Section 30(1)	Education supervision order	7 days
Schedule 5 paragraph 5(2)	Extension of education supervision order	7 days
Schedule 5 paragraph 7	Revocation of education supervision order	7 days

## ENDNOTES

### Table of Endnote References

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<sup>1</sup> The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.

<sup>2</sup> Definition of “the Department” amended by SD2014/0166.

<sup>3</sup> Definition of “special guardianship order” inserted by SD2014/0166.

<sup>4</sup> Subpara (a) amended by SD2014/0166.

<sup>5</sup> Subpara (b) amended by SD2014/0166.

<sup>6</sup> Subpara (aa) inserted by SD2014/0166.

<sup>7</sup> Subpara (ab) inserted by SD2014/0166.

<sup>8</sup> Para (5) inserted by SD2014/0166.

<sup>9</sup> Subpara (a) amended by SD2014/0166.

<sup>10</sup> Para (ii) substituted by SD2014/0166.

<sup>11</sup> Para (iii) inserted by SD2014/0166.

<sup>12</sup> Para (1) amended by SD2014/0166.

<sup>13</sup> Para (2) amended by SD2014/0166.

<sup>14</sup> Para (1) substituted by SD2014/0166.

<sup>15</sup> Subpara (fa) inserted by SD2014/0166.

<sup>16</sup> Subpara (fb) inserted by SD2014/0166.

<sup>17</sup> Para (ii) amended by SD2014/0166.

<sup>18</sup> Para (1) amended by SD2014/0166.

<sup>19</sup> Para (4) amended by SD2014/0166.

<sup>20</sup> Para (5) amended by SD2014/0166.

<sup>21</sup> Rule 27A inserted by SD2014/0166.

<sup>22</sup> Para (1) amended by SD2014/0166.

<sup>23</sup> Para (3A) inserted by SD2014/0166.

<sup>24</sup> Subpara (b) amended by SD2014/0166.

<sup>25</sup> Part 4 revoked by SD104/04.

<sup>26</sup> Rule 40 revoked by SD104/04.

<sup>27</sup> Rule 41 revoked by SD104/04.

<sup>28</sup> Rule 42 revoked by SD104/04.

<sup>29</sup> Rule 43 revoked by SD104/04.

<sup>30</sup> Rule 44 revoked by SD104/04.

<sup>31</sup> Rule 45 revoked by SD104/04.