

Government Circular No. 1991/0191



Summary Jurisdiction Act 1989
Child Custody Act 1987

SUMMARY JURISDICTION (CHILD CUSTODY) RULES 1991¹

Coming into Operation: 14 October 1991

In exercise of the powers conferred on the Clerk of the Rolls by section 91 of the Summary Jurisdiction Act 1989¹ and sections 32 and 46 of the Child Custody Act 1987², the following rules are hereby made: —

PART I

GENERAL

1 Citation and commencement

- (1) These Rules may be cited as the Summary Jurisdiction (Child Custody) Rules 1991.
- (2) These Rules shall come into operation on the 14th October 1991.

2 Interpretation

In these Rules —

“**the Act**” means the Child Custody Act 1987;

“**the appropriate court**” means —

- (a) in relation to England and Wales, the High Court of Justice in England and Wales;
- (b) in relation to Scotland, the Court of Session;
- (c) in relation to Northern Ireland, Her Majesty's High Court of Justice in Northern Ireland;

“**the appropriate officer**” means —

¹ 1989 c.15

² 1987 c.11

- (a) in relation to England and Wales, the secretary of the principal registry of the Family Division of the High Court of Justice in England and Wales;
- (b) in relation to Scotland, the Deputy Principal Clerk of Session;
- (c) in relation to Northern Ireland, the Master (Care and Protection) of Her Majesty's High Court of Justice in Northern Ireland;

“British jurisdiction” means England and Wales, Scotland or Northern Ireland;

“custody order” means a custody order within the meaning of section 20 or section 49 of the Act, as the case may require;

“the Hague Convention” means the Convention referred to in section 23 of the Act;

“the order book” means the book kept under section 78 of the Summary Jurisdiction Act 1989;

“registration” means registration under —

- (a) section 38 of the Act; or
- (b) section 16 of the Child Abduction and Custody Act 1985³ (an Act of Parliament); or
- (c) Part I of the Family Law Act 1986⁴ (an Act of Parliament);

as the case may require.

PART II

PROCEEDINGS UNDER PART I OF THE CHILD CUSTODY ACT 1987

3 Application to register custody order

- (1) An application under section 12 of the Act for the registration of a custody order made by a court of summary jurisdiction in the Island shall be made in writing in form 1 in the Schedule to the court which made the order.
- (2) An application under paragraph (1) shall be accompanied by the following documents —
 - (a) a certified copy of the order;
 - (b) where the order has been varied, a certified copy of any variation order which is in force; and
 - (c) any other document relevant to the application.
- (3) Subject to paragraph (4), if it appears to the court to which an application is made under paragraph (1) that the order to which the application relates is in force, it shall cause the clerk of the court to send a copy of the

³ 1985 c.60

⁴ 1986 c.55

application, together with copies of the documents specified in paragraph (2), to the appropriate officer of the appropriate court.

- (4) If it appears to the court to which an application is made under paragraph (1) that the custody order to which the application relates is no longer in force with respect to the child or more than one child, or that a child or more than one child has attained the age of 16, it shall refuse to send the documents referred to in paragraphs (1) and (2) to the appropriate court, or shall indicate thereon with respect to which child or children the order is not to be registered, and the clerk of the court shall within 14 days give notice to the applicant of its refusal or indication accordingly.
- (5) A memorandum of the granting of an application made under paragraph (1) shall be entered in the order book of the court to which the application was made.
- (6) Where the clerk of the court which granted an application made under paragraph (1) receives notice of the registration in the appropriate court of the order, he shall cause particulars of the notice to be entered in the order book.

4 Revocation and variation of Manx order

- (1) Where a custody order made by a court of summary jurisdiction in the Island and registered in the appropriate court in any British jurisdiction is revoked or varied, the clerk of the court making the order of revocation or variation shall send a certified copy of that order to the appropriate officer.
- (2) Where the clerk of the court which made an order revoking or varying a registered order receives notice of the registration in the appropriate court the order of revocation or variation, he shall enter notice thereof in the order book.

5 Particulars of other proceedings

- (1) A party to proceedings for or relating to a custody order in a court of summary jurisdiction in the Island who knows of other proceedings (including proceedings out of the jurisdiction and concluded proceedings) which relate to the child concerned shall provide to the court a statement giving the information set out in form 2 in the Schedule.
- (2) For that purpose the clerk of a court of summary jurisdiction in which proceedings for or relating to a custody order are pending shall, as soon in those proceedings as may be practicable, notify the parties of the provisions of this rule by sending to each party a notice in the said form 2.

6 Stay of proceedings

- (1) Where under section 4(2) of the Act a court of summary jurisdiction stays proceedings on an application for a custody order it shall cause notice of the stay to be given to the parties to the proceedings.
- (2) Where under section 4(3) of the Act a court of summary jurisdiction removes a stay granted in accordance with section 4(2) it shall cause notice of the removal of the stay to be given to the parties to the proceedings and shall proceed to deal with the application accordingly.

PART III**PROCEEDINGS UNDER PART II OR III OF THE CHILD CUSTODY ACT 1987****7 Stay of proceedings**

- (1) Where any proceedings in which a decision falls to be made on the merits of rights of custody (as defined in section 31 of the Act) are pending in a court of summary jurisdiction and that court receives notice from the appropriate court in any British jurisdiction that an application in respect of the child concerned has been made under the Hague Convention, the court of summary jurisdiction shall order that all further proceedings in the proceedings pending before it shall be stayed, and shall cause notice to be given to the parties to the proceedings accordingly.
- (2) Where a court of summary jurisdiction which has stayed any proceedings under paragraph (1) receives notice from the appropriate court that an order has been made under Article 12 of the Hague Convention for the return of the child concerned, the court shall dismiss the complaint and cause notice to be given to the parties to the proceedings accordingly.
- (3) Where a court of summary jurisdiction which has stayed any proceedings under paragraph (1) receives notice from the appropriate court in any British jurisdiction that an order for the return of the child has been refused (other than in the circumstances set out in the third paragraph of Article 12 of the Hague Convention), the court shall order that the stay be lifted, so notify the parties to the proceedings, and proceed to deal with the complaint accordingly.
- (4) Where a court of summary jurisdiction which has stayed any proceedings under paragraph (1) receives notice from the appropriate court in any part of the United Kingdom that an order has been made under the third paragraph of Article 12 of the Hague Convention staying or dismissing the application thereunder, the court shall continue the stay on the proceedings pending before it or, in a case where the appropriate court has dismissed the application, dismiss the complaint, and shall cause notice to be given to the parties accordingly.

8 Notice of registration of order

Where any proceedings such as are mentioned in section 42(2)(a), (b) or (c) of the Act are pending in a court of summary jurisdiction and that court receives notice from the High Court or the appropriate court in any British jurisdiction —

- (a) that an application has been made for the registration of a decision made in respect of the child in proceedings commenced before the proceedings which are pending (other than a decision mentioned in section 42(3) of the Act or section 20(3) of the Child Abduction and Custody Act 1985 (an Act of Parliament)), or
- (b) that such a decision has been registered,

the court shall cause notice to be given to the parties in those proceedings that it has received notice of the application or of the registration, as the case may be.

9 Authenticated copy of court order

- (1) A person who wishes to make an application under the Hague Convention in a Contracting State other than the United Kingdom and who wishes to obtain from a court of summary jurisdiction an authenticated copy of a decision of that court relating to the child in respect of whom the application is to be made shall apply in writing to the clerk of the court.
- (2) An application under paragraph (1) shall specify —
 - (a) the name and date or approximate date of birth of the child concerned;
 - (b) the date or approximate date of the proceedings in which the decision of the court was given, and the nature of the proceedings;
 - (c) the Contracting State in which the application in respect of the child is to be made;
 - (d) the relationship of the applicant to the child concerned;
 - (e) the postal address of the applicant.
- (3) Where the clerk of a court receives an application under this rule, he shall send by post to the applicant at the address indicated in the application for the purpose an authenticated copy of the decision concerned.
- (4) For the purposes of paragraph (3) a copy of a decision shall be deemed to be authenticated if it is accompanied by a statement signed by the clerk of the court that it is a true copy of the decision concerned.

10 Application for declaration of unlawful removal of child

An application to a court of summary jurisdiction under section 45(2) of the Act may be made orally or in writing in the course of the custody proceedings (as defined in section 49(1) of the Act).

MADE

31 MAY 1991

SCHEDULE

Rule 3(1).

FORM 1

APPLICATION FOR REGISTRATION IN A BRITISH JURISDICTION OF A MANX CUSTODY ORDER (Child Custody Act 1987 s.12)
To the High Bailiff/Clerk to the Justices
Name of applicant:
Address:
applies for the registration in England and Wales/Scotland/Northern Ireland of a custody order made on 19 with respect to:
Name[s] of child[ren]:
Date[s] of birth:
Address or suspected whereabouts:
Name of person with whom he is alleged to be:
The applicant's interest under the order is:
The following other persons have an interest under the order: (State whether served on each person named)
The order is not registered in another court/is already registered in
To the best of the applicant's information and belief the custody order is in force and [no other order affecting the child] [the following other order] is in force in the place where the order is to be registered
Signed
Date
<i>Note:</i> The application must be accompanied by a certified copy of the custody order to which it relates, a certified copy of any variation order which is in force, and any other document which is relevant to the application.

FORM 2

Rule 5.

NOTICE OF REQUIREMENT TO GIVE PARTICULARS OF OTHER PROCEEDINGS (Child Custody Act 1987 s.18)	
<i>(Name of court)</i>	
To:	
Address:	
Application of <i>(applicant)</i> under <i>(statute)</i>	
As a party to these proceedings you are required to inform the court if you know of any other proceedings (including proceedings out of the jurisdiction and concluded proceedings) relating to <i>(name of child)</i>	
The information you should provide, if known, is -	
(a) the place in which and the court in which the other proceedings were instituted;	
(b) the nature and current state of such proceedings and the relief claimed;	
(c) the names of the parties to the proceedings and their relationship to the child;	
(d) if the relief claimed in the proceedings before this court was not claimed in the other proceedings, the reasons why it was not claimed in the other proceedings.	
The information should be provided in writing to the undersigned at the address below.	
Dated	19
	Clerk to the Justices/High Bailiff's Clerk
<i>(Address)</i>	

ENDNOTES

Table of Endnote References

¹ 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.