



Jersey

CHILD ABDUCTION AND CUSTODY RULES 2005

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CHILD ABDUCTION AND CUSTODY RULES 2005

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THE SUPERIOR NUMBER OF THE ROYAL COURT, in pursuance of Article 28 of the [Child Abduction and Custody \(Jersey\) Law 2005](#), has made the following Rules –

Commencement [[see endnotes](#)]

1 Interpretation

In these Rules –

“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;

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

“Greffier” means Judicial Greffier;

“Law” means the [Child Abduction and Custody \(Jersey\) Law 2005](#).

2 Mode of application

- (1) Except as otherwise provided by these Rules, every application under the Hague Convention and the European Convention must be made by representation.
- (2) An application in custody proceedings for a declaration under Article 24(2) of the Law must be made by summons in those proceedings.

3 Contents of representation

- (1) The representation by which any application is made under the Hague Convention or the European Convention must state –

- (a) the name and date of birth of the child in respect of whom the application is made;
 - (b) the names of the child's parents or guardians;
 - (c) the whereabouts or suspected whereabouts of the child;
 - (d) the interest of the plaintiff in the matter and the grounds of the application; and
 - (e) particulars of any proceedings (including proceedings outside the Jersey) relating to the child,
- and must be accompanied by all relevant documents including (but not limited to) the documents specified in Article 8 of the Hague Convention or, as the case may be, Article 13 of the European Convention.
- (2) In applications under the Hague Convention, in addition to the matters specified in paragraph (1) –
 - (a) the representation by which an application is made for the purposes of Article 8 of that Convention for the return of a child must state the identity of the person alleged to have removed or retained the child and, if different, the identity of the person with whom the child is presumed to be;
 - (b) the representation by which an application is made for the purposes of Article 15 that Convention must identify the proceedings in which the request that such a declaration be obtained was made.
 - (3) In applications under the European Convention, in addition to the matters specified in paragraph (1), the representation must identify the decision relating to custody or rights of access which is sought to be registered or enforced or in relation to which a declaration that it is not to be recognized is sought.

4 Service of representation

The Court shall, subject to Rule 8, order that the representation referred to in Rule 3 be served personally on –

- (a) the person alleged to have brought into Jersey the child in respect of whom an application under the Hague Convention is made;
- (b) the person with whom the child is alleged to be;
- (c) any parent or guardian of the child who is in Jersey and is not otherwise a party;
- (d) the person in whose favour a decision relating to custody has been made if that person is not otherwise a party; and
- (e) any other person who appears to the Court to have a sufficient interest in the welfare of the child.

5 The return date

- (1) The return date in respect of a representation ordered to be served in accordance with Rule 4 shall be not more than 21 days from the date of the order.
- (2) A representation by which an application is made by an application is made under the Hague Convention or the European Convention shall not be placed on the pending list.

6 Evidence

- (1) A representation by which an application is made under the Hague Convention or the European Convention may be accompanied by affidavit evidence in support of the application.
- (2) A person on whom such a representation has been served may lodge affidavit evidence with the Court and serve a copy on the representor within 7 days after service of the representation on that person.
- (3) The representor may within 7 days thereafter lodge with the Court a statement in reply and serve a copy on the person referred to in paragraph (2).

7 Hearing

Any application under the Law may be dealt with by the Bailiff in chambers and references in these Rules to “the Court” shall be construed accordingly.

8 Dispensing with service

The Court or the Greffier may dispense with service of a representation or of any summons in any proceedings under the Law.

9 Adjournment of proceedings

The hearing in relation to a representation by which an application under the Hague Convention or the European Convention is made may be adjourned for a period not exceeding 21 days at any one time.

10 Stay of proceedings

- (1) A party to proceedings under the Hague Convention must, where that party knows that an application relating to the merits of rights of custody is pending in or before a relevant authority, file with the Greffier a concise statement of the nature of the application which is pending, including the authority before which it is pending.
- (2) A party to –
 - (a) pending proceedings under Article 17 of the Law or under section 16 of the Child Abduction and Custody Act 1985 of the United Kingdom; or

- (b) proceedings as a result of which a decision relating to custody has been registered under Article 17 or section 16 (as the case may be), must, where that party knows that such an application as is specified in Article 21(2) of the Law, or in section 20(2) of that Act, is pending in or before a relevant authority, file a concise statement of the nature of the application which is pending.
- (3) The Greffier shall, on receipt of such a statement as is mentioned in paragraph (1) or (2), notify the relevant authority in which or before whom the application is pending and shall subsequently notify the authority of the result of the proceedings.
- (4) On the Greffier receiving notification equivalent to that mentioned in paragraph (3) from the appropriate court in any British jurisdiction –
 - (a) where the application relates to the merits of rights of custody, all further proceedings in the action shall be stayed unless and until the proceedings under the Hague Convention in the court in the British jurisdiction are dismissed, and the Greffier must notify the parties to the action of the stay and of any such dismissal accordingly; and
 - (b) where the application is such a one as is specified in Article 21(2) of the Law, or section 20(2) of the Child Abduction and Custody Act 1985 of the United Kingdom, the Greffier shall notify the parties to the action.
- (5) In this Rule “relevant authority” includes –
 - (a) the High Court, a county court and a magistrates’ court in England and Wales;
 - (b) the Court of Session, a sheriff court and a children’s hearing in Scotland;
 - (c) the High Court, a county court and a court of summary jurisdiction in Northern Ireland; and
 - (d) the Secretary of State.

11 Transfer of proceedings

- (1) At any stage in any proceedings under the Law the Court may, of its own motion or on the application by summons of any party to the proceedings issued on 2 days’ notice, order that the proceedings be transferred to the appropriate court in any British jurisdiction.
- (2) Where an order is made under paragraph (1), the Greffier shall send a copy of the order, which must state the grounds therefor, together with the originating summons, the documents accompanying it and any evidence, to the appropriate court in the relevant British jurisdiction.
- (3) Where proceedings are transferred to the appropriate court in any British jurisdiction, the costs of the whole proceedings both before and after the transfer shall be in the discretion of the court to which the proceedings are transferred.

- (4) Where proceedings are transferred to the Royal Court from the appropriate court in any British jurisdiction, the Greffier shall notify the parties of the transfer and the proceedings shall continue as if they had been begun by representation under Rule 2.
- (5) In paragraph (1) “the Court” includes the Greffier.

12 Interim directions

- (1) An application for interim directions under Article 7 or Article 20 of the Law may be made to the Court *ex parte*, but must be supported by affidavit.
- (2) If the Court refuses to make an order on an *ex parte* application, it may direct that the application be made *inter partes* by summons.

13 Obtaining authenticated copies of decisions

Any person who intends to make an application under the Hague Convention in a Contracting State other than the United Kingdom shall, on satisfying the Greffier as to that intention, be entitled to obtain an office copy sealed with the official seal of the Court of any order made by the Court relating to the child in respect of whom the application is made.

14 Revocation and variation of registered decisions

- (1) This Rule applies to decisions which have been registered under Article 17 of the Law and are subsequently varied or revoked by an authority in the Contracting State in which they were made.
- (2) When the Court cancels the registration of a decision which has been revoked, the Greffier shall notify the following of the cancellation –
 - (a) the person appearing to the Court to have actual custody of the child;
 - (b) the person on whose behalf the application for registration of the decision was made; and
 - (c) any other party to that application.
- (3) Where the Court is notified of the variation of a decision, the Greffier shall notify the following of the variation –
 - (a) the person appearing to the Court to have actual custody of the child; and
 - (b) any party to the application for registration of the decision,
and any such person may apply by summons in the proceedings for the registration of the decision, for the purpose of making representations to the Court before the registration is varied.
- (4) Any person appearing to the Court to have an interest in the matter may apply by summons in the proceedings for the registration of a decision for the cancellation or variation of the registration,

- (5) In this Rule “the Court” includes the Greffier.

15 Orders for disclosure of information

At any stage in proceedings under the European Convention the Court may, if it has reason to believe that any person may have relevant information about the child who is the subject of those proceedings, order that person to disclose such information and may for that purpose order that the person attend before it or file affidavit evidence.

16 Citation

These Rules may be cited as the Child Abduction and Custody Rules 2005.

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement
Child Abduction and Custody Rules 2005	R&O.188/2005	1 January 2006

Table of Renumbered Provisions

Original	Current

Table of Endnote References

There are currently no endnote references