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PART 29 – MISCELLANEOUS


PART 29 – MISCELLANEOUS

See also Practice Direction 29A, Practice Direction 29B, Practice Direction 29C

Part 29 MISCELLANEOUS

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Personal details

29.1

- (1) Unless the court directs otherwise, a party is not required to reveal –
- (a) the party's home address or other contact details;
 - (b) the address or other contact details of any child;
 - (c) the name of a person with whom the child is living, if that person is not the applicant; or
 - (d) in relation to an application under section 28(2) of the 2002 Act (application for permission to change the child's surname), the proposed new surname of the child.
- (2) Where a party does not wish to reveal any of the particulars in paragraph (1), that party must give notice of those particulars to the court and the particulars will not be revealed to any

person unless the court directs otherwise.

(3) Where a party changes home address during the course of proceedings, that party must give notice of the change to the court.

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Disclosure of information under the 1991 Act

29.2

Where the Secretary of State requires a person mentioned in regulation 3(1), 4(2) or 6(2)(a) of the Child Support Information Regulations 2008¹ to furnish information or evidence for a purpose mentioned in regulation 4(1) of those Regulations, nothing in these rules will –

- (a) prevent that person from furnishing the information or evidence sought; or
- (b) require that person to seek permission of the court before doing so.

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Method of giving notice

29.3

(1) Unless directed otherwise, a notice which is required by these rules to be given to a person must be given –

- (a) in writing; and
- (b) in a manner in which service may be effected in accordance with Part 6.

(2) Rule 6.33 applies to a notice which is required by these rules to be given to a child as it applies to a document which is to be served on a child.

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Withdrawal of applications in proceedings

29.4

(1) This rule applies to applications in proceedings –

- (a) under Part 7;
- (b) under Parts 10 to 14 or under any other Part where the application relates to the welfare or upbringing of a child or;
- (c) where either of the parties is a protected party.

(2) Where this rule applies, an application may only be withdrawn with the permission of the court.

(3) Subject to paragraph (4), a person seeking permission to withdraw an application must file a written request for permission setting out the reasons for the request.

(4) The request under paragraph (3) may be made orally to the court if the parties are present.

(5) A court officer will notify the other parties of a written request.

(6) The court may deal with a written request under paragraph (3) without a hearing if the other parties, and any other persons directed by the court, have had an opportunity to make written representations to the court about the request.

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The Human Rights Act 1998

29.5

(1) In this rule –

'the 1998 Act' means the Human Rights Act 1998;

'Convention right' has the same meaning as in the 1998 Act; and

'declaration of incompatibility' means a declaration of incompatibility under section 4 of the 1998 Act².

(2) A party who seeks to rely on any provision of or right arising under the 1998 Act or seeks a remedy available under that Act must inform the court in that party's application or otherwise in writing specifying –

(a) the Convention right which it is alleged has been infringed and details of the alleged infringement; and

(b) the relief sought and whether this includes a declaration of incompatibility.

(3) The High Court may not make a declaration of incompatibility unless 21 days' notice, or such other period of notice as the court directs, has been given to the Crown.

(4) Where notice has been given to the Crown, a Minister, or other person permitted by the 1998 Act, will be joined as a party on giving notice to the court.

(5) Where a claim is made under section 7(1) of the 1998 Act (claim that public authority acted unlawfully) in respect of a judicial act –

(a) that claim must be set out in the application form or the appeal notice; and

(b) notice must be given to the Crown.

(6) Where paragraph (4) applies and the appropriate person (as defined in section 9(5) of the 1998 Act) has not applied within 21 days, or such other period as the court directs, beginning with the date on which the notice to be joined as a party was served, the court may join the appropriate person as a party.

(7) On any application concerning a committal order, if the court ordering the release of the person concludes that that person's Convention rights have been infringed by the making of the order to which the application or appeal relates, the judgment or order should so state, but if the court does not do so, that failure will not prevent another court from deciding the matter.

(8) Where by reason of a rule, practice direction or court order the Crown is permitted or required –

(a) to make a witness statement;

(b) to swear an affidavit^(GL);

(c) to verify a document by a statement of truth; or

(d) to discharge any other procedural obligation,

that function will be performed by an appropriate officer acting on behalf of the Crown, and the court may if necessary nominate an appropriate officer.

(Practice Direction 29A (Human Rights – Joining the Crown) makes provision for the notices mentioned in this rule.)

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Documents in proceedings concerning gender recognition

29.6

(1) This rule applies to all documents in proceedings brought under –

(a) section 12(1)(g) or (h) of, or paragraph 11(1)(e) of Schedule 1 to, the 1973 Act³;

(aa) section 12A(3) of the 1973 Act in a case where section 12(1)(g) or (h) of the 1973 Act applies;

(ab) section 50(1)(d) of the 2004 Act([1]);

(ac) section 50(1)(e) of the 2004 Act; or

(b) the Gender Recognition Act 2004.

(2) Documents to which this rule applies must, while they are in the custody of the court, be kept in a place of special security.

(In relation to paragraph (1)(aa), section 9(6) of the Marriage (Same Sex Couples) Act 2013 provides that where a civil partnership is converted into a marriage, the civil partnership ends on the conversion, and the resulting marriage is to be treated as having subsisted since the date the civil partnership was formed.)

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Stamping or sealing court documents

29.7

(1) A court officer must, when issuing the following documents, seal^(GL), or otherwise authenticate them with the stamp of the court –

(a) the application form;

(b) an order; and

(c) any other document which a rule or practice direction requires the court officer to seal^(GL) or stamp.

(2) The court officer may place the seal^(GL) or the stamp on the document –

(a) by hand; or

(b) by printing a facsimile of the seal^(GL) on the document whether electronically or otherwise.

(3) A document purporting to bear the court's seal^(GL) or stamp will be admissible in evidence without further proof.

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Applications for relief which is precluded by the 1991 Act

29.8

(1) This rule applies where an application is made for an order which, in the opinion of the court, it would be prevented from making under section 8 or 9 of the 1991 Act and in this rule, 'the matter' means the question of whether or not the court would be so prevented.

(2) The court will consider the matter without holding a hearing.

(3) Where the court officer receives the opinion of the court, as mentioned in paragraph (1), the court officer must send a notice to the applicant of that opinion.

(4) Paragraphs (5) to (11) apply where the court officer sends a notice under paragraph (3).

(5) Subject to paragraph (6), no requirement of these rules apply except the requirements –

(a) of this rule;

(b) as to service of the application by the court officer; and

(c) as to any procedural step to be taken following the making of an application of the type in question.

(6) The court may direct that the requirements of these rules apply, or apply to such extent or with such modifications as are set out in the direction.

(7) If the applicant informs the court officer, within 14 days of the date of the notice, that the applicant wishes to persist with the application, the court will give appropriate directions for the matter to be heard and determined and may provide for the hearing to be without notice.

(8) Where directions are given in accordance with paragraph (7), the court officer must –

- (a) inform the applicant of the directions;
- (b) send a copy of the application to the other parties;
- (c) if the hearing is to be without notice, inform the other parties briefly –
 - (i) of the nature and effect of the notice given to the applicant under paragraph (3);
 - (ii) that the matter is being resolved without a hearing on notice; and
 - (iii) that they will be notified of the result; and
- (d) if the hearing is to be on notice, inform the other parties of –
 - (i) the circumstances which led to the directions being given; and
 - (ii) the directions.

(9) If the applicant does not inform the court officer as mentioned in paragraph (7), the application shall be treated as having been withdrawn.

(10) Where –

- (a) the matter is heard in accordance with directions given under paragraph (7); and
- (b) the court determines that it would be prevented, under section 8 or 9 of the 1991 Act, from making the order sought by the applicant,

the court will dismiss the application.

(11) Where the court dismisses the application –

- (a) the court must give its reasons in writing; and
- (b) the court officer must send a copy of the reasons to the parties.

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Modification of rule 29.8 where the application is not freestanding

29.9

(1) Where the court officer sends a notice under rule 29.8(3) in relation to an application which is contained in another document ('the document') which contains material extrinsic to the application –

- (a) subject to paragraph (2), the document will be treated as if it did not contain the application in respect of which the notice was served; and
- (b) the court officer, when sending copies of the documents to the respondents under any provision of these rules, must attach –
 - (i) a copy of the notice under rule 29.8(3); and
 - (ii) a notice informing the respondents of the effect of paragraph (1)(a).

(2) If the court determines that it is not prevented by section 8 or 9 of the 1991 Act from making the order sought by the application, the court –

- (a) must direct that the document shall be treated as if it contained the application; and
- (b) may give such directions as it considers appropriate for the subsequent conduct of the proceedings.

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Standard requirements

29.10

- (1) Every judgment or order must state the name and judicial title of the person who made it.

(2) Every judgment or order must –

- (a) bear the date on which it is given or made; and
- (b) be sealed^(GL) by the court.

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Drawing up and filing of judgments and orders

29.11

(1) Except as provided by a rule or a practice direction, every judgment or order will be drawn up by the court unless –

- (a) the court orders a party to draw it up;
- (b) a party, with the permission of the court, agrees to draw it up; or
- (c) the court dispenses with the need to draw it up.

(2) The court may direct that –

(a) a judgment or an order drawn up by a party must be checked by the court before it is sealed^(GL); or

(b) before a judgment or an order is drawn up by the court, the parties must file an agreed statement of its terms.

(3) Where a judgment or an order is to be drawn up by a party –

(a) that party must file it no later than 7 days after the date on which the court ordered or gave permission for the order to be drawn up so that it can be sealed by the court; and

(b) if that party fails to file it within that period, any other party may draw it up and file it.

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Access to and inspection of documents retained in court

29.12

(1) Except as provided by this rule or by any other rule or Practice Direction, no document or copy of a document filed or lodged in the court office shall be open to inspection by any person without the permission of the court, and no copy of any such document or copy shall be taken by, or issued to, any person without such permission.

(2) A copy of an order made in open court will be issued to any person who requests it.

(3) Subject to rules 14.24 and 29.1(2) and to any direction given by the court, a party to any family proceedings, or the legal representative, children's guardian or litigation friend for a party in any family proceedings, may have a search made for, and may inspect, and obtain a copy of, any document or copy of a document filed or lodged in the court office in those proceedings.

(4) Any person who intends to make an application in relation to a child under the 1980 Hague Convention in a Contracting State (as defined in rule 12.44) other than the United Kingdom shall, if the court is satisfied that that person intends to make such an application, be entitled to obtain a copy bearing the seal^(GL) of the court of any order made in relation to the child under the 1989 Act or under the inherent jurisdiction, whether or not that person was a party to the proceedings in which the order was made.

(5) For the purposes of this rule, "document" and "copy" have the meanings given in rule 21.1(3).

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Service of judgments and orders

29.13

(1) The court officer must, unless the court directs otherwise, serve a copy of a judgment or an order made in family proceedings to every party affected by it.

(2) Where a judgment or an order has been drawn up by a party and is to be served by the court officer the party who drew it up must file a copy to be retained at court and sufficient copies for service on all the parties.

(3) A party in whose favour an order is made need not prove that a copy of the order has reached a party to whom it is required to be sent under this rule.

(4) This rule does not affect the operation of any rule or enactment which requires an order to be served in a particular way

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Power to require judgment or order to be served on a party as well as the party's solicitor

29.14

Where the party on whom a judgment or order is served is acting by a solicitor, the court may order the judgment or order to be served on the party as well as on the party's solicitor.

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When judgment or order takes effect

29.15

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

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Correction of errors in judgments and orders

29.16

(1) The court may at any time correct an accidental slip or omission in a judgment or order.

(2) A party may apply for a correction without notice.

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Transfer of proceedings

29.17

(1) Subject to paragraph (3), a court may transfer a case to another court, either of its own initiative or on the application of one of the parties if –

(a) the parties consent to the transfer;

(b) the court has held a hearing to determine whether a transfer should be ordered; or

(c) paragraph (2) applies.

(2) A court may transfer a case without a hearing if –

(a) the court has notified the parties in writing that it intends to order a transfer; and

(b) no party has, within 14 days of the notification being sent, requested a hearing to determine whether a transfer should be ordered.

(3) A case may not be transferred from the family court to the High Court unless –

(a) the decision to transfer was made by a judge sitting in the family court who is a person to whom paragraph (4) applies; or

(b) one or more of the circumstances specified in Practice Direction 29C applies.

(4) This paragraph applies to a person who is –

- (a) the President of the Family Division;
- (b) an ordinary judge of the Court of Appeal (including the vice-president, if any, of either division of that court);
- (c) a puisne judge of the High Court.

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Application for change of area

29.18

The Part 18 procedure applies to an application to the family court for existing proceedings to be heard in a different Designated Family Judge area.

(His Majesty's Courts and Tribunals Service publishes information to enable Designated Family Judge areas to be identified.)

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Allocation of proceedings to another level of judge

29.19

(1) Paragraphs (2) and (3) apply where there has been allocation without a hearing.

(2) A party may request the court to reconsider allocation at a hearing.

(3) Unless the court directs otherwise, a party may make a request referred to in paragraph (2)

–

(a) at any hearing where that party first has notice of allocation; or

(b) in writing no later than 2 days before the first hearing in the proceedings after the party receives notice of allocation.

(4) When the party requests the court to reconsider allocation in accordance with paragraph (3) (b), the party must at the same time notify other parties of the request in writing.

(5) The court may reconsider allocation of its own initiative.

(6) Rule 4.3 does not apply to allocation without a hearing.

(7) In this rule 'allocation' means allocation of proceedings other than appeal proceedings to a level of judge.

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Footnotes

1. S.I. 2008/2551. Return to footnote reference 1

2. Section 4 was amended by section 40(4) of and paragraphs 66(1) and (2) of Schedule 9 to the Constitutional Reform Act 2005 and section 378(1) and paragraph 156 of Schedule 16 to the Armed Forces Act 2006 and section 67(1) of and paragraph 43 of Schedule 6 to the Mental Capacity Act 2005. Return to footnote reference 2

3. Section 12(g) was amended by section 148 of and paragraph 34 of Schedule 4 to the Mental Health Act 1983 and section 4(4) of and paragraphs 1 and 2 of Schedule 2 to the Gender Recognition Act 2004. Return to footnote reference 3

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