



Statutory Document No. 104/04

THE SUMMARY JURISDICTION ACT 1989

**THE SUMMARY JURISDICTION (MATRIMONIAL PROCEEDINGS)
RULES 2004**

Coming into operation

1st April 2004

In exercise of the powers conferred on the Clerk of the Rolls by section 91 of the Summary Jurisdiction Act 1989¹, and of all other enabling powers, the following Rules are hereby made:—

General

1. Citation and commencement

These Rules may be cited as the Summary Jurisdiction (Matrimonial Proceedings) Rules 2004 and shall come into operation on the 1st April 2004.

2. Interpretation

(1) In these Rules —

"the Act" means the Matrimonial Proceedings Act 2003²;

"application" means an application for an order made under or by virtue of the Act and "applicant" shall be construed accordingly;

"business day" means any day other than —

(a) a Saturday, Sunday, Christmas Day or Good Friday; or

(b) a bank holiday within the meaning of the Bank Holidays Act 1989³;

"court" means a court of summary jurisdiction constituted in accordance with section 49(1) of the Summary Jurisdiction Act 1989;

"directions appointment" means a hearing for directions under rule 24(1) of the 2002 Rules;

"file" means file in the General Registry;

"institution" has the same meaning as in the Custody Act 1995⁴;

"the 2002 Rules" means the Summary Jurisdiction Rules 2002⁵.

¹ 1989 c.15

² 2003 c.7

³ 1989 c.5

⁴ 1995 c.1

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(2) Subject to paragraph (1), expressions used in these Rules and defined in the Act have the same meanings as in the Act.

(3) References in these Rules to a specified form (eg. "Form 5") are to the form so specified in the Rules of the High Court (Matrimonial Proceedings) 2004⁶, with any necessary modifications.

3. Application of these Rules etc.

(1) These Rules apply to proceedings in a court of summary jurisdiction under the following provisions of the Act —

- (a) section 50 (alteration of maintenance agreement);
- (b) Part 3 (maintenance orders etc.);
- (c) Part 5 (family homes and domestic violence).

(2) The following provisions of the 2002 Rules apply with any necessary modifications to proceedings to which these Rules apply as they apply to proceedings to which Part 3 of those Rules applies —

- rule 16 (application for leave)
- rule 17(1) and (2) (applications)
- rule 20 (service)
- rule 22 (advocate for child)
- rule 23 (welfare officer)
- rule 24 (directions)
- rule 25 (timing of proceedings)
- rule 26 (attendance of parties)
- rule 27 (documentary evidence)
- rule 29 (amendment)
- rule 30 (oral evidence)
- rule 31 (hearing)
- rule 35 (investigation under s.29 of 2001 Act)
- rule 39 (confidentiality of documents).

4. Applications: general

- (1) Subject to paragraph (3) and rule 10, an applicant shall —
 - (a) file the application in the appropriate form or, where there is no such form, in writing, together with sufficient copies for one to be served on the respondent, and
 - (b) serve a copy of the application, endorsed in accordance with paragraph (2)(b), together with any notice attached under paragraph (2)(c), on the

⁵ SD 733/02

⁶ SD /04

respondent at least 14 days before the date fixed under paragraph (2)(a).

(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) A court may proceed on an application made orally where it is made by virtue of section 64(4) of the Act, and where an application is so made paragraph (1) shall not apply.

5. Parties

(1) The respondent on an application for the variation or revocation of an order under section 69 of the Act shall be —

- (a) the party to the marriage in question other than the applicant and
- (b) where the order requires payments to be made to or in respect of a child who is 16 years of age or over, that child.

(2) The respondents on an application for the revival of an order under section 69(9) of the Act shall be the parties to the proceedings leading to the order which it is sought to have revived.

6. Answer to application

Within 7 days of service of an application for a maintenance order, agreement order or continuance order, or for variation, revocation or revival of an order under section 69 of the Act, each respondent shall file and serve on the parties an answer to the application.

7. Orders under section 64 in the absence of the respondent

For the purposes of section 64(9)(a), (b) and (c) of the Act, evidence of the consent of the respondent to the making of the order, of the financial resources of the respondent and of the financial resources of the child shall be by way of a written statement signed by the respondent or, where the application is in respect of financial provision for a child and the child has made the statement, the child.

8. Application under section 65

(1) Where, under section 65(4) of the Act, a court decides to treat an application under section 65 as if it were an application for a maintenance order, the court shall indicate orally which of grounds (a) and (b) in section 65(4) it considers applicable, and a memorandum of the decision and the grounds therefor shall be entered in the order book.

(2) Where a court decides as aforesaid and the respondent is not then present or represented in court, or the respondent or his representative does not then

agree to the continuance of the hearing, the court shall adjourn the hearing and the Chief Registrar shall serve notice of the decision and the grounds therefor on the respondent.

9. Setting aside on failure of service

Where an application has been sent to a respondent in accordance with rule 20(1) of the 2002 Rules and, after an order has been made on the application, it appears to the court that the application did not come to the knowledge of the respondent in due time, the court may of its own motion set aside the order and may give such directions as it thinks fit for the rehearing of the application.

Proceedings under Part 5 of the Act

10. Applications under Part 5 of the Act

(1) An application for an occupation order or a non-molestation order under Part 5 of the Act shall be made in Form 22.

(2) An application for an occupation order or a non-molestation order which is made in other proceedings which are pending shall be made in Form 22.

(3) An application in Form 22 shall be supported —

(a) by a statement which is signed and is declared to be true; or

(b) with the leave of the court, by oral evidence.

(4) An application in Form 22 may, with the leave of the Chief Registrar or of the court, be made *ex parte*, in which case the evidence in support of the application shall state the reasons why the application is made *ex parte*.

(5) An application made on notice (together with any statement supporting it and a notice of the time and place of the hearing) shall be served by the applicant on the respondent personally not less than 2 business days prior to the date on which the application will be heard.

(6) The court or the Chief Registrar may abridge the period specified in paragraph (5).

(7) Where the applicant is acting in person, service of the application may, with the leave of the Chief Registrar or of the court, be effected in accordance with rule 20 of the 2002 Rules.

(8) Where the court under section 91(4) of the Act refuses to make an order on the application, the Chief Registrar shall give notice of the refusal to the parties.

(9) A copy of an application for an occupation order under section 95, 97 or 98 of the Act shall be served by the applicant by post on the mortgagee or, as the case may be, the landlord of the dwelling-house in question with a notice in Form 25 informing him of his right to make representations in writing or at any hearing.

(10) The applicant shall file a statement in Form 26 after he has served the application.

(11) Nothing in these rules shall be construed as requiring any party to reveal the address of his private residence (or that of any child) except by order of the court.

(12) Where a party declines to reveal an address in reliance upon paragraph (1) he shall file notice of that address in Form 36 and that address shall not be revealed to any person except by order of the court.

11. Hearing of applications under Part 5

(1) This rule applies to the hearing of applications under Part 5 of the Act, and any order made on the hearing shall be issued in Form 27.

(2) Where an order is made on an application, a copy of the order together with a copy of the application and of any statement supporting it shall be served by the applicant on the respondent personally.

(3) Where the applicant is acting in person, service of a copy of an order made on an application made *ex parte* shall be effected by the coroner if the applicant so requests.

(4) Where the application is for an occupation order under section 95, 97 or 98 of the Act, a copy of any order made on the application shall be served by the applicant on the mortgagee or, as the case may be, the landlord of the dwelling-house in question.

(5) A copy of an order made on an application heard *inter partes* shall be served by the applicant on the respondent personally.

(6) Where the applicant is acting in person, service of a copy of the order made on an application heard *inter partes* may, with the leave of the Chief Registrar or of the court, be effected in accordance with rule 20 of the 2002 Rules.

(7) The court may direct that a further hearing be held in order to consider any representations made by a mortgagee.

(8) An application to vary, extend or discharge an order made under Part 5 of the Act shall be made in Form 28.

12. Enforcement of orders made on applications under Part 5

(1) Where a power of arrest is attached to one or more of the provisions ("the relevant provisions") of an order made under Part 5 of the Act —

(a) the relevant provisions shall be set out in Form 29 and the form shall not include any provisions of the order to which the power of arrest was not attached; and

(b) a copy of the form shall be sent to the Chief Constable.

The copy of the form delivered under sub-paragraph (b) shall be accompanied by a statement showing that the respondent 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).

(2) Where an order is made varying or discharging the relevant provisions, the Chief Registrar shall —

(a) immediately inform the Chief Constable; and

(b) send a copy of the order to the Chief Constable.

(3) An application for the issue of a warrant for the arrest of the respondent shall be made in Form 30 and the warrant shall be delivered by the Chief Registrar to the Chief Constable.

- (4) The court before whom a person is brought following his arrest may —
- (a) determine whether the facts, and the circumstances which led to the arrest, amounted to disobedience of the order, or
 - (b) adjourn the proceedings and, where such an order is made, the arrested person may be released and —
 - (i) be dealt with within 14 days of the day on which he was arrested; and
 - (ii) be given not less than 2 business days' notice of the adjourned hearing.

Nothing in this paragraph prevents the issue of a notice under rule 13(4) if the arrested person is not dealt with within the period mentioned in sub-paragraph (b)(i).

(5) In paragraph (4) "arrest" means arrest under a power of arrest attached to an order or under a warrant of arrest.

13. Committal

(1) This rule applies for the enforcement of orders made on applications under Part 5 of the Act by committal.

(2) Subject to paragraphs (7) and (8), an order shall not be enforced by committal unless —

- (a) a copy of the order in Form 27 has been served personally on the respondent; and
 - (b) where the order requires the respondent to do an act, the copy has been so served before the expiration of the time within which he was required to do the act and was accompanied by a copy of any order, made between the date of the order and the date of service, fixing that time.
- (3) At the time when the order is drawn up, the Chief Registrar shall —
- (a) where the order made is (or includes) a non-molestation order, and
 - (b) where the order made is an occupation order and the court so directs,

issue a copy of the order, indorsed with or incorporating a notice as to the consequences of disobedience, for service in accordance with paragraph (2).

(4) If the respondent fails to obey the order, the Chief Registrar shall, at the request of the applicant, issue a notice warning the respondent that an application will be made for him to be committed and, subject to paragraph (8), the notice shall be served on him personally.

(5) The request for issue of the notice under paragraph (4) shall be treated as an application, and shall —

- (a) identify the provisions of the order or undertaking which it is alleged have been disobeyed or broken;

- (b) list the ways in which it is alleged that the order or undertaking has been disobeyed or broken;
- (c) be supported by a statement which is signed and is declared to be true and which states the grounds on which the application is made,

and, unless service is dispensed with under paragraph (8), a copy of the statement shall be served with the notice.

(6) If an order for the committal of the respondent is made, it shall include provision for the issue of a warrant of committal and, unless the court otherwise orders —

- (a) a copy of the order shall be served personally on the person to be committed either before or at the time of the execution of the warrant; or
- (b) the order for the issue of the warrant may be served on the person to be committed at any time within 36 hours after the execution of the warrant.

(7) An order requiring a person to abstain from doing an act may be enforced by committal order even though a copy of the order has not been served personally, if the court is satisfied that, pending such service, the respondent had notice of it either —

- (a) by being present when the order was made;
- (b) by being notified of the terms of the order whether by telephone or otherwise.

(8) The court may dispense with service of a copy of the order under paragraph (2) or a notice under paragraph (4) if the court thinks it just to do so.

(9) Where service of a notice under paragraph (4) is dispensed with under paragraph (8) and a committal order is made, the court may of its own motion fix a date and time when the person to be committed is to be brought before the court.

(10) Paragraphs (2) to (6), (8) and (9) apply to the enforcement of undertakings with the necessary modifications and as if —

- (a) for paragraph (2) there were substituted —
 - "(2) A copy the undertaking shall be delivered by the Chief Registrar to the party giving the undertaking —
- (a) by handing a copy of the document to him before he leaves the court building; or
- (b) where his place of residence is known, by posting a copy to him at his place of residence; or
- (c) through his advocate,

and, where delivery cannot be effected in this way, the Chief Registrar shall deliver a copy of the document to the party for whose benefit the undertaking is given, and that party shall cause it to be served personally as soon as is practicable.";

- (b) in paragraph (8), the words from "a copy" to "paragraph (2) or" were omitted.

(11) Where a person in custody under a warrant or order desires to apply to the court for his discharge, he shall make his application in writing attested by the chief officer of the institution where he is detained showing that he has purged or is desirous of purging his contempt and the Chief Registrar shall, not less than one day before the application is heard, serve notice of it on the party (if any) at whose instance the warrant or order was issued.

(12) The court by whom an order of committal is made may by order direct that the execution of the order of committal shall be suspended for such period or on such terms or conditions as it may specify.

(13) Where execution of an order of committal is suspended by an order under paragraph (12), the applicant for the order of committal must, unless the court otherwise directs, serve on the person against whom it was made a notice informing him of the making and terms of the order under that paragraph.

(14) The court may adjourn consideration of the penalty to be imposed for contempts found proved and such consideration may be restored if the respondent does not comply with any conditions specified by the court.

(15) Where the court makes a hospital order or a guardianship order under section 111 of the Act, the Chief Registrar shall —

- (a) send to the hospital any information which will be of assistance in dealing with the patient;
- (b) inform the applicant when the respondent is being transferred to hospital.

(16) Where a transfer direction given by the Department of Home Affairs under section 54 of the Mental Health Act 1998⁷ is in force in respect of a person remanded in custody by the court, the Chief Registrar shall notify —

- (a) the chief officer of the institution where that person was detained; and
- (b) the hospital where he is detained,

of any committal hearing which that person is required to attend, and the Chief Registrar shall give notice in writing to the hospital where that person is detained of any further remand.

14. Bail applications

(1) An application for bail made by a person arrested under a power of arrest or a warrant of arrest may be made either orally or in writing.

(2) Where an application is made in writing, it shall contain the following particulars —

- (a) the full name of the person making the application;
- (b) the address of the place where the person making the application is detained at the time when the application is made;

⁷ 1998 c.3

- (c) the address where the person making the application would reside if he were to be granted bail;
- (d) the amount of the recognizance in which he would agree to be bound; and
- (e) the grounds on which the application is made and, where a previous application has been refused, full particulars of any change in circumstances which has occurred since that refusal.

(3) An application made in writing shall be signed by the person making the application or by a person duly authorised by him in that behalf or, where the person making the application is a minor or is for any reason incapable of acting, by a guardian ad litem acting on his behalf and a copy shall be served by the person making the application on the applicant for the Part 5 order.

Revocation

15. Revocation

Part 4 (rules 40 to 45) of the 2002 Rules is revoked.

MADE 6th February 2004

J. M. Kerruish

Her Majesty's First Deemster and Clerk of the Rolls

EXPLANATORY NOTE

(This note is not part of the Rules.)

These Rules make provision for matrimonial proceedings in courts of summary jurisdiction under section 50 (alteration of maintenance agreement), Part 3 (maintenance orders etc.) and Part 5 (family homes and domestic violence) of the Matrimonial Proceedings Act 2003. They replace Part 4 of the Summary Jurisdiction Rules 2002.

