

CHAPTER 71

REGISTRATION AND ENFORCEMENT OF PART I ORDERS UNDER THE FAMILY LAW ACT 1986

Interpretation of this Chapter

71.1. In this Chapter-

"the Act of 1986" means the Family Law Act 1986(a);

"appropriate court" means the High Court in England and Wales or the High Court in Northern Ireland or, in relation to a specified dependent territory, the corresponding court in that territory, as the case may be;

"Part I order" has the meaning assigned in section 32 of the Act of 1986;

"proper officer" means the Secretary of the principal registry of the Family Division of the High Court in England and Wales or the Master (care and protection) of the High Court in Northern Ireland or, in relation to a specified dependent territory, the corresponding officer of the appropriate court in that territory, as the case may be;

"register" means the Part I orders register kept under rule 71.2;

"specified dependent territory" means a dependent territory specified in an Order in Council made under section 43 of the Act of 1986.

Part I orders register

71.2.-(1) The Deputy Principal Clerk shall maintain a register to be called the Part I orders register for the purposes of Chapter V of Part I of the Act of 1986(b).

(2) In Part I of the register there shall be recorded applications for registration of a Part I order in another part of the United Kingdom; and in Part II of the register there shall be recorded Part I orders registered for enforcement in Scotland.

(3) The register may be inspected by-

- (a) the person who applied for registration; and
- (b) any other person who satisfies the Deputy Principal Clerk that he has an interest to do so.

Applications for registration of Part I orders in another court

71.3.-(1) An application under section 27 of the Act of 1986 to register a Part I order made by the Court of Session in an appropriate court shall be made by letter to the Deputy Principal Clerk.

(2) An application under paragraph (1) shall be accompanied by-

- (a) a copy of the letter of application;
- (b) an affidavit by the applicant;
- (c) a copy of that affidavit;
- (d) a certified copy of the interlocutor of the Part I order;
- (e) a certified copy of the interlocutor of any variation which is in force in respect of the Part I order; and
- (f) any other document relevant to the application and a copy of it.

(a) 1986 c.55.

(b) Part 1 was amended by the Children Act 1989 (c.41), Schedule 13, paragraph 2.

(3) An affidavit required under this rule shall set out-

- (a) the name and address of the applicant and his right under the Part I order;
- (b) the name and date of birth of the child in respect of whom the Part I order was made, the present whereabouts or suspected whereabouts of the child and the name of any person with whom he is alleged to be;
- (c) the name and address of any other person who has an interest in the Part I order;
- (d) whether the custody order is to be registered in England and Wales, Northern Ireland or a specified dependent territory, and the court in which it is to be registered;
- (e) whether the Part I order is in force;
- (f) whether the Part I order is already registered and, if so, where it is registered; and
- (g) details of any order known to the applicant which affects the child and is in force in the jurisdiction in which the Part I order is to be registered.

(4) Where the Deputy Principal Clerk refuses to send an application under this rule to the appropriate court on the ground that the Part I order is no longer in force, he shall give written intimation to the applicant; and the applicant shall have the right to have the application brought before the Lord Ordinary for determination.

(5) The Deputy Principal Clerk shall retain the letter of application under this rule and any documents which accompany it and which are not transmitted to the appropriate court under section 27(3) of the Act of 1986.

Transmission of applications for registration

71.4.-(1) Where the Deputy Principal Clerk is satisfied that the Part I order is in force, he shall send the documents mentioned in section 27(3) of the Act of 1986 to the proper officer of the court in which the Part I order is to be registered.

(2) For the purposes of section 27(3)(b) of the Act of 1986, the prescribed particulars of any variation which is in force in respect of a Part I order shall be a certified copy of the interlocutor of any such variation.

(3) On sending an application under paragraph (1), the Deputy Principal Clerk shall make an entry in Part I of the register recording the date and particulars of the application and the Part I order.

(4) On receiving notification from a proper officer of an appropriate court that the Part I order has been registered in that court under section 27(4) of the Act of 1986, the Deputy Principal Clerk shall record the date of registration in Part I of the register.

Registration of Part I orders from another court

71.5.-(1) The prescribed officer under section 27(4) of the Act of 1986 shall be the Deputy Principal Clerk.

(2) Where the Deputy Principal Clerk receives a certified copy of a Part I order from a court for registration under section 27(4) of the Act of 1986, he shall enter the following particulars in Part II of the register:-

- (a) the name and address of the applicant and his interest under the Part I order;
- (b) a brief description of the nature of the Part I order, its date and the court which made it; and
- (c) the name and whereabouts or suspected whereabouts of the child who is the subject of the Part I order, his date of birth and the date on which he will attain the age of 16 years.

- (3) On registering the Part I order, the Deputy Principal Clerk shall-
- (a) retain the application and the documents which accompanied it; and
 - (b) give written intimation to-
 - (i) the court from which he received the application, and
 - (ii) the applicant who applied for registration,that the Part I order has been registered.

(4) Where the Deputy Principal Clerk gives written intimation to an applicant under paragraph (3), he shall state the date when the registration of the Part I order will automatically cease to have effect on the child attaining the age of 16 years.

Cancellation or variation of registered Part I orders

71.6.-(1) Where the Court of Session revokes, recalls or varies a Part I order which it has made, the Deputy Principal Clerk, on being informed by the party who applied for the revocation, recall or variation that the Part I order has been registered in an appropriate court, shall-

- (a) send a certified copy of the interlocutor of the revocation, recall or variation, as the case may be, to the proper officer of the court in which the Part I order is registered;
- (b) record the transmission of the certified copy of that interlocutor in Part I of the register; and
- (c) record the revocation, recall or variation, as the case may be, in Part I of the register.

(2) On receiving notification from the proper officer of the court in which the Part I order is registered that he has amended his record, the Deputy Principal Clerk shall record the fact that the amendment has been made in Part II of the register.

(3) Where the Deputy Principal Clerk receives a certified copy of an order which revokes, recalls or varies a Part I order registered in the Court of Session from an appropriate court, he shall-

- (a) note the change and its date in Part II of the register; and
- (b) give written intimation to-
 - (i) the court from which he received the certified copy of the order which revokes, recalls or varies, as the case may be, the Part I order,
 - (ii) the person who applied for registration of the Part I order, and
 - (iii) the person, if different, who applied for the revocation, recall or variation, as the case may be, of the Part I order, that he has amended the register.

(4) An application to the Court of Session under section 28(2) of the Act of 1986 to cancel all or a part of the registration of a Part I order which it has registered shall be made by petition and shall be served on-

- (a) the person who applied for registration, if he is not the petitioner; and
- (b) any other interested person.

(5) Where, under section 28(2) of the Act of 1986, the court cancels all or a part of the registration of a Part I order which it has registered, the Deputy Principal Clerk shall-

- (a) note the cancellation and its date in Part II of the register; and
- (b) give written intimation to-
 - (i) the court which made the Part I order;
 - (ii) the person who applied for registration; and
 - (iii) the person, if different, who applied for cancellation of the Part I order.

Enforcement of registered Part I orders in Scotland

71.7.-(1) An application under section 29(1) of the Act of 1986 to enforce a Part I order registered in the Court of Session shall be made by petition.

(2) Where the petitioner in an application under paragraph (1) is not the person who applied for registration of the Part I order, the petition shall be served on that person.

Applications to sist or refuse enforcement proceedings

71.8.-(1) An application under section 30(1) of the Act of 1986 to sist enforcement proceedings, or under section 31(1) or (2) of the Act of 1986 to dismiss a petition for enforcement of a Part I order, shall be made by lodging answers at any time in the process of the petition for enforcement; and the answers shall be served on every other party and, if he is not a party, the applicant for registration of the Part I order.

(2) An application under section 30(3) of the Act of 1986 (recall of sist of enforcement proceedings) shall be made by motion.

(3) Where the court pronounces an interlocutor under section 30(2) or (3) or section 31(3) of the Act of 1986, the Deputy Principal Clerk shall-

- (a) make an entry in Part II of the register noting the terms of the interlocutor and the date; and
- (b) give written intimation to-
 - (i) the person who applied for registration where he was not a party to the application under section 30(1) or section 31(1) or (2) of the Act of 1986; and
 - (ii) the court from which the application for registration was received, of the terms of the interlocutor.

Orders for disclosure of information

71.9. Where the court makes an order under section 33(1) of the Act of 1986 (order on person to disclose information as to child's whereabouts), it may ordain the person against whom the order was made to appear before it or to lodge an affidavit.

Applications for interdict under section 35(3) of the Act of 1986

71.10. An application by a person mentioned in section 35(4)(b) or (c) of the Act of 1986^(a) for interdict or interim interdict under section 35(3) of the Act of 1986 (prohibition of removal of child from United Kingdom) shall be made-

- (a) by note in the process of a petition depending before the court to which this Chapter applies; or
- (b) where there is no such depending process, by petition.

^(a) Section 35(4)(b) was amended by the Age of Legal Capacity (Scotland) Act 1991 (c.50), Schedule 2, paragraph 47.