



STATUTORY INSTRUMENTS.

S.I. No. 434 of 2020



DISTRICT COURT RULES (DONOR-ASSISTED HUMAN
REPRODUCTION) 2020

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DISTRICT COURT RULES (DONOR-ASSISTED HUMAN
REPRODUCTION) 2020

The District Court Rules Committee, in exercise of the powers conferred on them by section 91 of the Courts of Justice Act 1924, section 72 of the Courts of Justice Act 1936, section 34 of the Courts (Supplemental Provisions) Act 1961, section 24 of the Interpretation Act 2005, section 21 of the Children and Family Relationships Act 2015 and of all other powers enabling them in this behalf, do hereby, with the concurrence of the Minister for Justice and Equality, make the following rules of court.

Dated this 28th day of July 2020.

Colin Daly

Chairperson

Patrick Durcan

Shane McCarthy

Riobard Pierse

James Finn

Lisa Scott

I concur in the making of the following rules of court.

Dated this 13th day of October 2020

Helen McEntee

Minister for Justice and Equality

S.I. No. 434 of 2020

DISTRICT COURT RULES (DONOR-ASSISTED HUMAN
REPRODUCTION) 2020

1. (1) These Rules, which shall come into operation on the 22nd day of October 2020, may be cited as the District Court (Donor-Assisted Human Reproduction) Rules 2020.

(2) These Rules shall be construed together with the District Court Rules 1997 (S.I. No. 93 of 1997) and all other District Court Rules.

(3) The District Court Rules as amended by these Rules may be cited as the District Court Rules 1997 to 2020.

2. The District Court Rules 1997 (S.I. No. 93 of 1997) are amended by the substitution for Order 58 of the Order set out in Schedule 1.

3. The Forms in Schedule 2 shall be added to Schedule C of the District Court Rules 1997 (S.I. No. 93 of 1997) in the appropriate sequence.

Schedule 1
“Order 58
Custody and Guardianship of Children
Declaration of Parentage

Definition

1. In this Order—

“the 1964 Act” means the Guardianship of Infants Act 1964 (No. 7 of 1964);

“the 1987 Act” means the Status of Children Act 1987 (No. 26 of 1987);

“the 1997 Act” means the Children Act 1997 (No. 40 of 1997);

“the 2015 Act” means the Children and Family Relationships Act 2015 (No. 9 of 2015);

“child” means a person who has not attained full age;

“intending parent” has the meaning assigned to it in section 20 of the 2015 Act.

Venue

2. (1) Proceedings under the 1964 Act may be brought, heard or determined at any sitting of the Court for the court area where any party to the proceedings resides or carries on any profession, business or occupation.

(2) Where, however the Clerk, having consulted the Judge for the time being assigned to the district within which such area is situated, certifies on a notice of application or a summons that the proceedings are urgent, the said notice or summons may, subject to the provisions of rule 9, be issued for, and the proceedings may be heard and determined at any sitting of the Court in that district.

(3) Proceedings under section 21 of the 2015 Act may be brought, heard or determined at any sitting of the Court for the court area in which an applicant ordinarily resides or carries on any profession, business or occupation, or where no applicant under that section ordinarily resides or carries on any profession, business or occupation in the State, at any sitting of the Court for the Dublin Metropolitan District.

Hearing to be otherwise than in public

3. Proceedings under the 1964 Act and proceedings under section 21 of the 2015 Act concerning a child under the age of 18 years shall be heard otherwise than in public and only the officers of the Court, the parties and their legal representatives, witnesses (subject to the provisions of Order 8) and such other persons as the Judge in his or her discretion shall allow, shall be permitted to be present at the hearing.

Guardianship applications and Court orders

4. (1) An application to the Court under section 6A (as inserted by the 1987 Act and as substituted by section 48 of the 2015 Act) of the 1964 Act by a person who, being a parent of a child, is not a guardian of the child, for an order appointing the person as guardian of the child shall be preceded by the completion by the applicant of a notice in the Form 58.1 Schedule C. The notice shall be served upon the other parent and upon any other guardian of the child. The order of the Court granting such application shall be in the Form 58.2 Schedule C.

(2) An application to the Court under section 6C (as inserted by section 49 of the 2015 Act) of the 1964 Act by a person who, not being a parent of a child, is eligible under section 6C(2) of the 1964 Act to make such application for an order appointing the person as a guardian of the child shall be preceded by the completion by the applicant of a notice in the Form 58.30 Schedule C. The notice shall be served upon each person who is a parent or guardian of the child concerned. In the case of an application by a person to whom section 6C(2)(b) of the 1964 Act applies, the notice shall be served upon the Child and Family Agency. The order of the Court granting such application shall be in the Form 58.31 Schedule C and shall specify whether and if so, to what extent, the applicant shall enjoy the rights and responsibilities of a guardian specified in section 6C(11) of the 1964 Act.

(3) A nomination under section 6E(1) (as inserted by section 49 of the 2015 Act) of the 1964 Act by a qualifying guardian shall be in the Form 58.32 Schedule C and shall be signed and dated by the qualifying guardian concerned in the presence of a witness who is not the nominated person. An application to the Court under section 6E(3) (as inserted by section 49 of the 2015 Act) of the 1964 Act by a qualifying guardian or nominated person for an order under section 6E(5) of the 1964 Act appointing the person as a guardian of the child shall be preceded by the completion by the applicant of a notice in the Form 58.33 Schedule C. The original notice shall be lodged with the Clerk with the original nomination or a true copy annexed and a copy of the notice and annexed nomination shall be served upon each person mentioned in section 6E(4) of the 1964 Act. The order of the Court granting such application shall be in the Form 58.34 Schedule C and shall specify any limitations or conditions imposed in accordance with section 6E(6) of the 1964 Act. Where the Court imposes a condition pursuant to section 6E(6)(b) of the 1964 Act relating to the periodic review by the Court of the appointment of a person as temporary guardian, it may make such directions, including as to the listing of the matter before the Court and as to the giving of notice of such hearing as it considers necessary.

(4) An application to the Court under section 6E(9) (as inserted by section 49 of the 2015 Act) of the 1964 Act by a temporary guardian or the qualifying guardian concerned for an order under section 6E(11) of the 1964 Act shall be preceded by the completion by the applicant of a notice in the Form 58.35 Schedule C. Such notice shall be served upon each person mentioned in section 6E(10) of the 1964 Act. The order of the Court granting such application shall be in the Form 58.36 Schedule C and shall, where an order is made under 6E(11)(c) of the 1964 Act, specify any rights and responsibilities of guardianship which the qualifying guardian shall have. Where the Court imposes a condition pursuant to section 6E(12)(b) of the 1964 Act relating to the periodic review by the Court of the order, it may make such directions, including as to the listing of the matter before the Court and as to the giving of notice of such hearing as it considers necessary.

(5) An application to the Court under section 6F(1) (as inserted by section 49 of the 2015 Act) of the 1964 Act by a person mentioned in section 6F(2) of the 1964 Act for a declaration that a person named in the application is or is not a guardian, by virtue of the circumstances set out in section 2(4A) or 6B(3) of the 1964 Act, of a child named in the application (the “child concerned”) shall be preceded by the completion by the applicant of a notice in the Form 58.37 Schedule C. Such notice shall be served upon each person mentioned in section 6F(3) of the 1964 Act and upon any other person directed by the Court to be given notice of the application. The order of the Court granting such application shall be in the Form 58.38 Schedule C.

(6) An application under section 7(4) of the 1964 Act (as substituted by section 50 of the 2015 Act) shall be preceded by the issue and service of a notice in the Form 58.3 Schedule C upon the surviving guardian or testamentary guardian of the child, as the case may be. The order of the Court on hearing the application shall be in the Form 58.4 or 58.6 Schedule C, as appropriate.

(7) An application to appoint a guardian or guardians under section 8(1) of the 1964 Act shall be made ex parte in the first instance subject to the prior lodgement with the Clerk of a notice in the Form 58.7 Schedule C. The order of the Court thereon shall be in the Form 58.8 Schedule C.

(8) An application to appoint a guardian or guardians under section 8(2) of the 1964 Act shall be made ex parte if made by the surviving parent, subject to the prior lodgement with the Clerk of a notice in the Form 58.9, Schedule C, and in any other case it shall be preceded by the issue and service of a notice in the Form 58.9 Schedule C upon that parent. The order of the Court thereon shall be in the Form 58.10 Schedule C.

(9) An application to the Court to remove from office a guardian mentioned in section 8(4) of the 1964 Act (substituted by section 51 of the 2015 Act) and to appoint another guardian in his or her place under section 8(5) of the 1964 Act shall be preceded by the issue and service of a notice in the Form 58.11 Schedule C upon each guardian of the child. The order of the Court thereon shall be in the Form 58.13 Schedule C.

(10) An application to appoint a guardian in place of a deceased guardian, under section 8(5) of the 1964 Act, may be made ex parte where the child has no guardian or where the applicant is the only guardian, subject to the prior

lodgement with the Clerk of a notice in the Form 58.12 Schedule C, and in any other case it shall be preceded by the issue and service of the said notice upon each guardian of the child. The order of the Court thereon shall be in the Form 58.14 Schedule C.

(11) An application to the Court to remove from office a guardian mentioned in section 8(6) of the 1964 Act (inserted by section 51 of the 2015 Act) shall be preceded by the issue and service of a notice in the Form 58.39 Schedule C upon each guardian of the child. The order of the Court thereon shall be in the Form 58.40 Schedule C.

Statement of arrangements

4A. In any application:

- (i) under rule 4, concerning the guardianship of a child,
- (ii) under rule 5, seeking a direction under section 11 or an order under section 11B or 11E of the 1964 Act concerning or affecting a child, or
- (iii) under rule 8A, seeking a declaration under section 21 of the 2015 Act, where the child to whom the application relates is under the age of 18 years,

the applicant shall complete and annex to the notice of application a statement of arrangements in the Form 58.49, Schedule C concerning each child to whom the application relates, including both factual information concerning the child and the applicant's proposals in relation to the application. The applicant shall attach two copies of the applicant's statement of arrangements to the copy notice of application served on each respondent. Where a respondent agrees the applicant's statement of arrangements (including the proposals), the respondent shall signify his or her agreement on one copy of the statement and return that copy to the applicant (or applicant's solicitor). Any respondent who intends to contest the application shall set out the matters in dispute and/or that respondent's proposals in relation to the application on one copy of the statement and return that copy to the applicant (or applicant's solicitor). The applicant shall not later than four days before the date fixed for the hearing of the application file with the Clerk a copy of the statement of arrangements as completed by the applicant and any respondent.

Application seeking Court's direction

5. (1) Where the Court's direction is sought under section 11 of the 1964 Act, the application shall be preceded by the issue and service of a notice in the Form 58.17 Schedule C upon each other person who is a parent or guardian of the child concerned. The order of the Court thereon shall be in the Form 58.18 Schedule C.

(2) An application to the Court under section 11B of the 1964 Act for an order giving a relative of a child or a person with whom the child resides or has formerly resided access to the child shall be preceded by the issue and service of

a notice in the Form 58.19 Schedule C upon each of the guardians of the child. The order of the Court thereon shall be in the Form 58.20 Schedule C.

(3) An application to the Court under section 11E of the 1964 Act (inserted by section 57 of the 2015 Act) for an order giving a person mentioned in section 11E(1) of the 1964 Act custody of a child shall be preceded by the issue and service of a notice in the Form 58.41 Schedule C upon each of the guardians of the child. The order of the Court thereon shall be in the Form 58.42 Schedule C.

(4) In any application to which this rule applies, the provisions of rule 4A shall apply *mutatis mutandis*.

Application to vary/discharge

6. An application under section 12 of the 1964 Act for an order varying or discharging a previous order shall be preceded by the issue and service of a notice in the Form 58.21 Schedule C upon each of the other guardians or each of the guardians of the child as the case may be. The order of the Court thereon shall be in the Form 58.22 Schedule C.

Application for production of child

7. An application under Part III of the 1964 Act for an order for the production of a child shall be preceded by the issue and service of a notice in the Form 58.23 Schedule C upon the person having custody of the child. The order of the Court thereon shall be in the Form 58.24 Schedule C which shall be served upon the said person. The order of the Court under Part III of the Act shall be in the Form 58.25, 58.26 or 58.27 Schedule C, as appropriate.

Enforcement order or –complaint of non-compliance

8. (1) An application to the Court under section 18A(1) of the 1964 Act (inserted by section 60 of the 2015 Act) for an enforcement order shall be preceded by the issue and service of a notice in the Form 58.43 Schedule C upon each guardian and parent of the child concerned. An enforcement order of the Court shall be in the Form 58.44 Schedule C.

(2) An application under section 18C(1) of the 1964 Act (inserted by section 60 of the 2015 Act) for an order varying or terminating an enforcement order or any part of that order shall be preceded by the issue and service of a notice in the Form 58.45 Schedule C upon each of the persons on whom the application for the enforcement order was served. The order of the Court thereon shall be in the Form 58.46 Schedule C.

(3) An application to the Court under section 18D(1) of the 1964 Act (inserted by section 60 of the 2015 Act) by a parent or guardian of the child for an order requiring another guardian or parent to reimburse expenses incurred shall be preceded by the issue and service of a notice in the Form 58.47 Schedule C upon the respondent guardian or parent of the child concerned. An enforcement order of the Court shall be in the Form 58.48 Schedule C.

(4) Where complaint is made to a Judge alleging an offence of failure or refusal under section 5 of the Courts (No. 2) Act 1986, to comply with the requirements of a direction given in an order under section 7 of the 1964 Act, section 11 of the 1964 Act, or section 11B (inserted by the 1997 Act) of the 1964 Act, the summons which may be issued and served upon the person against whom the offence is alleged shall be in the Form 58.28 or 58.29 Schedule C, as appropriate. The relevant provisions of Order 15 shall apply in such case.

Application for declaration of parentage: DAHR

8A. (1) An application to the Court under section 21 of the 2015 Act for a declaration of parentage shall be preceded by the issue by the applicants of a notice in the Form 58.54, Schedule C.

(2) The child, including an adult child, to whom an application for a declaration under section 21 of the 2015 Act relates shall be named as a respondent to the application.

(3) The application shall be grounded on an affidavit sworn by each applicant, and where necessary other affidavit evidence in support of the application, which shall:

- (i) include, and verify, the facts grounding the statement that the child to whom the application relates is a child to whom section 20 of the 2015 Act applies, and in particular in a case to which section 20(1)(b)(ii) of the 2015 Act applies, verify that the person who performed the DAHR procedure outside the State was authorised to do so under the law of the place where the procedure was performed and the law providing for such authorisation;
- (ii) include, and verify, the facts grounding the statement that the applicant referred to in section 21(2)(b) of the 2015 Act was, at the time referred to in section 20 (1)(c) of the 2015 Act, the intending parent of the child, and
- (iii) in the case of the applicant referred to in section 21(2)(b) of the 2015 Act, confirm that he or she consents to the making of a declaration under section 21 of the 2015 Act.

(4) True copies of the notice, affidavits and any exhibits thereto shall be served on each respondent not later than 14 days before the date fixed for the hearing.

(5) The original notice, affidavits and any exhibits thereto not served by the Clerk, shall be lodged, together with a statutory declaration as to service, with the Clerk not later than seven days before the date fixed for the hearing.

(6) On the date fixed for the hearing of the application, the Court may, if it does not determine the application, adjourn the application and, of its own motion:

- (i) direct that all necessary papers in the matter be sent to the Attorney General in accordance with section 21(5) of the

2015 Act (without prejudice to the power of the Court to do so at any other time);

- (ii) where so requested by the Attorney General, order that the Attorney General be added as a party to the proceedings in accordance with section 21(6) of the 2015 Act;
- (iii) direct that such other person as the Court thinks fit be given notice of the application in accordance with section 21(7) of the 2015 Act;
- (iv) where notice has been given to such person in accordance with section 21(7) of the 2015 Act, order that such other person as the Court thinks fit be added as a party to the proceedings;
- (v) give such further directions as it considers appropriate for the conduct of the proceedings on the application and the hearing thereof, including but not limited to the provision of further particulars or information, and any other matter to which Part 2 of the 2015 Act relates.

(7) An application by a party under section 21(5) of the 2015 Act (for a direction that all necessary papers in the matter be sent to the Attorney General) or under section 21(7) of the 2015 Act (for an order that a person be added as a party to the proceedings) may be made by notice of motion (which may be made returnable to the date fixed for the hearing of the application or to any date to which same has been adjourned). Unless the Court otherwise permits, the notice of motion shall be served on all other parties to the proceedings at least seven days before the date fixed for the hearing of the motion.

(8) Service of notices or other documents in proceedings under this rule shall be effected by a means permitted by section 42 of the 2015 Act.

(9) Any declaration made under section 21 of the 2015 Act shall be in the Form 58.55, Schedule C, or such modification thereof as may be appropriate.

Service and lodgment of documents

9. (1) A notice or court order required by this Order to be served shall be accompanied in the case of a notice of proceedings under:

- (i) section 6A (as inserted by section 12 of the 1987 Act and as substituted by section 48 of the 2015 Act) of the 1964 Act;
- (ii) section 11 of the 1964 Act, or
- (iii) section 11B (inserted by section 9 of the 1987 Act) of the 1964 Act,

in which a solicitor is acting for the applicant, by a statutory declaration of the solicitor indicating, if it be the case, that the solicitor has complied with subsection (2) of section 20 of the 1964 Act (as inserted by section 11 of the 1997 Act and as amended by section 24 of the Mediation Act 2017) in relation to the matter, and may be served upon the person to whom it is directed in accordance with the provisions of Order 41 at least 14 days or, in the case of

proceedings certified as urgent under rule 2(2), at least two days, before the date of the sitting of the Court to which it is returnable.

(2) Save where service has been affected by the Clerk, the original of every such notice or order served shall, accompanied, in appropriate cases, by a copy of the statutory declaration described in rule 9(1), together with a statutory declaration as to service thereof, be lodged with the Clerk at least two days before the date of the said sitting.

Clerk to supply copies of orders

10. Where the Court makes an order under the 1964 Act or a declaration under section 21 of the 2015 Act, the Clerk shall give, or send by ordinary post, a copy of such order or declaration to each person in whose favour or against whom the order or declaration was made.

Proof of age

11. The age of a child may be proved by producing a certified extract from the Register of Births showing the date of the child's birth or by such other evidence as the Court considers sufficient.

Court may direct service

12. In any proceedings under the 1964 Act the Court may direct the service of notice upon any person not already served.

Effect of appeal from orders

13. Notwithstanding the provisions of Order 25, rule 4 and Order 101 and that an appellant has entered into a recognizance for appeal, an appeal from an order made under the 1964 Act shall stay the operation of the order only if, and to such extent and upon such terms (if any), as the Court shall determine.

Report/ascertaining the views of the child

14. (1) An application to the Court by a party to make an order:

(i) under section 32(1)(a) or section 32(1)(b) of the 1964 Act,
or

(ii) under section 47 of the Family Law Act 1995

may be included in writing in the summons, or made at the hearing.

(2) The Court may exercise the power of its own motion to make an order:

(i) in proceedings to which section 3(1)(a) of the 1964 Act applies, under section 32(1)(a) or section 32(1)(b) of the 1964 Act, or

(ii) under section 47 of the Family Law Act 1995

at any time and from time to time during the proceedings, having heard the parties.

- (3) An application to the Court by a party to make an order:
- (i) under section 12A(4) of the 1964 Act (inserted by the 2015 Act), or
 - (ii) under section 20 of the Child Care Act 1991

may be included in writing in the summons, or made at the hearing.

- (4) The Court may exercise the power of its own motion to make an order:
- (i) under section 12A(4) of the 1964 Act (inserted by the 2015 Act), or
 - (ii) under section 20 of the Child Care Act 1991

at any time and from time to time during the proceedings, having heard the parties.

(5) Where the Court grants an application for an order mentioned in sub-rule (1) or sub-rule (2), or makes such an order of its own motion, the order requisitioning the report shall be in the Form 58.50, 58.51, 58.52 or 58.53, Schedule C, as appropriate.

(6) Where, under either 12A(4) of the 1964 Act or section 20 of the Child Care Act 1991, the Court adjourns proceedings and directs the Child and Family Agency to undertake an investigation of a child's circumstances, if the Child and Family Agency is not a party to those proceedings, the Clerk shall as soon as possible notify the Child and Family Agency (in the Form 84.32 Schedule C, with any necessary modifications) of the Court's decision.

(7) Where, upon so adjourning, the Court gives directions under section 20(2) of the Child Care Act 1991 as to the care and custody of the child or makes a supervision order in respect of the child pending the outcome of the investigation by the Child and Family Agency —

- (a) an order of the Court giving such directions shall be in the Form 84.33 Schedule C.
- (b) any such supervision order shall be in the Form 84.34, Schedule C,

and the order shall be served upon each person directly affected thereby.”

Schedule 2

No. 58.54

SCHEDULE C

O.58, r. 8A(1)

Children and Family Relationships Act 2015, Section 21

District Court Area of

District No.

Notice of application for a declaration of parentage

BETWEEN

..... of*(in court (area and) district aforesaid), the mother of the child,
First Applicant and.....of(in court (area and) district aforesaid),
intending parent, Second Applicant

AND of*(in court (area and) district aforesaid).....
Respondent

*[AND of
Notice Party]

In the matter of of (the child concerned)

TAKE NOTICE that the above-named first applicant of *(in court
(area and) district aforesaid), and the above-named second applicant of
..... *(in court (area and) district aforesaid) who are over the age of 18
years, will apply at the sitting of the District Court to be held at on
the ... day of 20., at a.m./p.m. for a declaration under Section 21 of
the Children and Family Relationships Act 2015 that the second applicant
referred to in section 21(2)(b) of the said Act, the intending parent, is a parent of
the respondent child.

Dated this ... day of 20..

Signed
Applicant/Solicitor for the First Applicant

Signed
Applicant/Solicitor for the Second Applicant

To The District Court Clerk, District Court Office, at

and

ToofRespondent

Toof[Notice Party]*

*Delete inapplicable words

No. 58.55

SCHEDULE C

O.58, r. 8A(9)

Children and Family Relationships Act 2015, Section 21

District Court Area of

District No.

DECLARATION IN THE MATTER OF SECTION 21 OF THE CHILDREN AND FAMILY RELATIONSHIPS ACT 2015

BETWEEN

..... of*(in court (area and) district aforesaid), the mother of the child, first applicant and.....of(in court (area and) district aforesaid), intending parent, second applicant

AND of*(in court (area and) district aforesaid)..... Respondent

*[AND of Notice Party]

In the matter of of (the child concerned)

WHEREAS the application of the above named applicants pursuant to Section 21 of the Children and Family Relationships Act 2015, came before this Court sitting at and was determined on this day

HAVING READ the affidavit(s) filed in court

HAVING HEARD the parties

THE COURT BEING SATISFIED

THATof..... *(in Court (area and) district aforesaid), a child, having been born on theday of20..., at, is a child to whom section 20 of the Children and Family Relationships Act 2015 applies, and

*THAT it is in the best interests of the said child to make this declaration, the said child having not attained the age of 18 years

NOW IT IS HEREBY DECLARED that:

..... of, the second named applicant, being the applicant referred to in section 21(2)(b) of the Children And Family Relationships Act 2015 is a parent of the said child.

Which said Declaration is made the day of20.....

Signed

Judge of the District Court

To: The parties

*Delete as appropriate

EXPLANATORY NOTE

(This note is not part of the instrument and does not purport to be a legal interpretation.)

These rules substitute Order 58 to facilitate the operation of Parts II and III of the Children and Family Relationships Act 2015, which provide for matters relating to donor-assisted human reproduction (DAHR) and the parentage of children born as a result of donor-assisted human reproduction, which were commenced on the 4th May 2020. The rules prescribe procedure under section 21 of the 2015 Act for a declaration of parentage, on the application of the mother of the child and the person who was, at the time when the DAHR procedure was performed, the intending parent of the child and was the only intending parent of the child.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
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