

The Family Proceedings (Sark) Rules, 2021

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The Family Proceedings (Sark) Rules, 2021

THE COURT OF THE SENESCHAL, in exercise of the powers conferred on it by sections 23(2)(b) and 44 of the Children (Sark) Law, 2016^a and sections 25(2), 27(2)(c), 69(2)(b), 75(h) and 85 of the Child Protection (Sark) Law, 2020^b, and all other powers enabling it in that behalf, hereby orders:-

PART I

THE OVERRIDING OBJECTIVE

Statement and application of overriding objective.

1. (1) The overriding objective of these rules is to enable the Court to deal with cases justly, having regard to -

- (a) the overriding principle that the child's welfare is the paramount consideration,
- (b) the child welfare principles, and
- (c) the child welfare checklist.

(2) The parties are required to help the Court to further the overriding objective.

^a Order in Council No. VIII of 2016; amended by Guernsey Ordinance No. IX of 2016; Sark Ordinance No. I of 2017.

^b Order in Council No. XIII of 2020.

PART II
APPLICATION OF RULES

Application of rules.

2. (1) Subject to paragraphs (2) and (3), these rules apply to family proceedings in the Court.

(2) These rules apply to –

- (a) applications to the Court by MASH for a disclosure order under section 14 of the Child Protection Law, and
- (b) referrals by MASH to the Court of any matter for determination under section 17(1) and 17(3) of the Child Protection Law,

only to the extent that they are not disapplied or modified by the provisions of Part X of these rules.

(3) These rules apply to such other proceedings, or part thereof, concerning the welfare of a child as the Court, whether by practice direction or otherwise, may direct.

(4) For the avoidance of doubt, the Court of the Seneschal Civil Rules, 2019, and the Court of the Seneschal Rules, 2015, do not apply in proceedings to which, in accordance with this rule, these rules apply.

PART III
SERVICE OF DOCUMENTS

Service on an individual.

3. (1) Subject to paragraph (2) and rule 7, service of a document on an individual must be effected by the Prévôt -

- (a) where the individual is in Sark –
 - (i) personally, or
 - (ii) by leaving the document at the individual's usual or last-known residence in Sark,
- (b) where the individual is in Guernsey, by transmitting the document to the Sergeant for service in accordance with the provisions of rule 2 of the Royal Court Civil Rules, 2007^c ("**the Guernsey Rules**"), or
- (c) where the individual is in Alderney, by transmitting the document to the Alderney Greffier for service in accordance with the provisions of rule 1 of the Court of Alderney Civil Rules, 2005 ("**the Alderney Rules**").

(2) Where –

- (a) in the proceedings to which the document relates, or

^c Order of the Royal C No. 4 of 2007.

- (b) in a document which relates to the proceedings or to the subject-matter thereof, being a document to which the individual was a party,

the individual has given an address for service, the Prévôt may effect service –

- (i) where the address for service is in Sark, by leaving the document there, or
- (ii) where the address for service is in Guernsey or Alderney, by transmitting the document to the Sergeant for service in accordance with the Guernsey Rules, or to the Alderney Greffier for service in accordance with the Alderney Rules, as the case may be.

Service on a legal person or unincorporated body.

4. (1) Subject to paragraph (3), service of a document on a legal person must be effected by the Prévôt –

- (a) by leaving the document at any place of business in Sark of the legal person,
- (b) if the legal person has a registered office in Guernsey or Alderney, at that registered office, by transmitting the document to the Sergeant for service in accordance with the Guernsey Rules, or to the Alderney Greffier for service in accordance with the Alderney Rules, as the case may be.

(2) Subject to paragraph (3), service of a document on an unincorporated body must be effected by the Prévôt –

- (a) on any partner, member of the committee or other governing body, or any manager, director or other similar officer, of the unincorporated body, in the same manner as if service were being effected on such person as an individual in accordance with rule 3(1), or
 - (b) by leaving the document at any place of business in Sark of the unincorporated body.
- (3) Where –
- (a) in the proceedings to which the document relates, or
 - (b) in a document which relates to the proceedings or to the subject-matter thereof, being a document to which the legal person or the unincorporated body to be served was a party,

the legal person or the unincorporated body, as the case may be, has given an address for service, the Prévôt may effect service –

- (i) where the address for service is in Sark, by leaving the document there, or
- (ii) where the address for service is in Guernsey or Alderney, by transmitting the document to the Sergeant for service in accordance with the Guernsey Rules, or to the Alderney Greffier for service in accordance with the Alderney Rules,

as the case may be.

(4) For the purposes of this rule "**legal person**" means a person other than an individual, an unincorporated body, the Chief Pleas of Sark or any Committee thereof, or MASH.

Service on the Chief Pleas of Sark.

5. (1) Service of a document on the Chief Pleas of Sark or any Committee thereof may be effected by the Prévôt leaving the document at the offices of the Chief Pleas.

(2) Service of a document on the Chief Pleas of Sark or any Committee thereof may be effected in such other manner as the Court may direct, including substituted service in accordance with rule 10.

Service on MASH.

6. (1) Service of a document on MASH may be effected by the Prévôt leaving it at the offices of MASH.

(2) Service of a document on MASH may be effected in such other manner as the Court may direct, including substituted service in accordance with rule 10.

Service on or by a child.

7. (1) Where a child is a party to an application under the Children Law or the Child Protection Law –

(a) service of any document on the child may be effected by the Prévôt –

(i) on the child's Advocate,

(ii) where the child is not represented by an Advocate, on a child's representative, or

- (iii) where the child is not represented by an Advocate, and no child's representative has been appointed, in accordance with the directions of the Court, and
- (b) service of any document by the child may be effected by the Prévôt –
 - (i) upon the instructions of the child's Advocate,
 - (ii) where the child is not represented by an Advocate, upon the instructions of the child's representative, or
 - (iii) where the child is not represented by an Advocate, and no child's representative has been appointed, in accordance with the directions of the Court.

(2) Service of a document on a child who is a party to an application under the Children Law or the Child Protection Law may be effected in such other manner as the Court may direct, including substituted service in accordance with rule 10.

Prévôt to state mode of service.

8. The Prévôt, having effected service of a document in accordance with rule 3, 4, 5, 6 or 7, or having attempted so to effect service, must record the mode of service as follows –

- (a) in the case of service in accordance with rule 3(1)(a)(i), 3(2)(i), 5 or 6, with the letter "A",

- (b) in the case of service in accordance with rule 3(1)(a)(ii), 4(1)(a), 4(2)(b) or 4(3)(i), where the Prévôt left the document at the address in question with a person who appeared to the Prévôt to be a reliable adult and who undertook to bring the document to the attention of the person to be served, with the letter "B",
- (c) in the case of service, in accordance with these rules, in Guernsey or Alderney, by replicating the mode of service stated in respect of the document by the Sergeant or the Alderney Greffier, as the case may be, and
- (d) otherwise, with the letter "C".

Effect of Prévôt's statement of service.

9. A statement of service recorded under rule 8 –

- (a) with the letter "A" or "B", enables the matter to proceed in all respects,
- (b) with the letter "C", enables the matter to be tabled, but nothing more unless, when the matter is tabled –
 - (i) the party who was to be served appears in person or by an Advocate, or
 - (ii) the Court is satisfied that the party who was to be served has notice of the document or that service of the document was good,

in either of which cases the matter may proceed in all respects.

Substituted service.

10. (1) Where service in Sark, Guernsey or Alderney of a document in the manner required by these Rules would, but for the provisions of this rule, be impracticable or would entail undue expense, the Court may make such order for substituted or other service, whether by notice, advertisement or otherwise, as it thinks just.

(2) A party applying for an order under paragraph (1) must file an affidavit in support of the application.

(3) Where the Court makes an order under paragraph (1), proof of service in accordance with the order must be by affidavit or, where service was effected by the Prévôt, by the statement of the Prévôt.

Service out of the jurisdiction.

11. (1) Without prejudice to the provisions of these rules enabling service of a document in Guernsey or Alderney, the Court may give leave to effect service of a document out of the jurisdiction.

(2) The Court must not make an order under paragraph (1) unless it is satisfied, by affidavit or otherwise, that the matter to which the document relates–

(a) is properly justiciable before the Court, and

(b) is a proper one for service out of the jurisdiction.

(3) An order of the Court under paragraph (1) must state –

(a) the form, manner and time in which, and conditions subject to which, service is to be effected, and

- (b) the minimum period which must elapse between the date of service and the date on which the matter may be tabled.

(4) Where the Court makes an order under paragraph (1), proof of service in accordance with the order shall be by affidavit or, where service was effected by the Prévôt, by the statement of the Prévôt.

Service in other manner permitted by law.

12. (1) The provisions of rules 3 to 11 –

- (a) are in addition to, and not in derogation from, the provisions of any enactment or rule of court relating to the service of documents, and
- (b) do not apply where the Court orders service in some other manner.

(2) Where service of any document is required to be made out of normal office hours, such service may be effected by the Prévôt or –

- (a) where the document to be served relates to an application to be made by MASH, or where it relates to an order of the Court or the Royal Court made pursuant to such an application, by any person duly authorised by the Chairperson of MASH,
- (b) where the document to be served relates to an application to be made by a person represented by an Advocate, or where it relates to an order of the Court or the Royal Court made pursuant to such an application, by a representative of that Advocate's firm,

(c) by a police officer,

but otherwise in accordance with the provisions of rules 3 to 7, and proof of service must be by affidavit or, where service was effected by the Prévôt, by the statement of the Prévôt.

(3) For the purposes of paragraph (2), "**out of normal office hours**" means on a Saturday, Sunday, Good Friday, Christmas Day or public holiday, or between the hours of 5 pm and 9 am on any day.

Power of Court to dispense with service.

13. Notwithstanding any rule or practice direction requiring any document to be served on any person, the Court may direct that the requirement for service in any particular case may be dispensed with, or that any time specified for complying with a requirement may be reduced, or may direct that service in any such case may be deemed to have been properly effected in accordance with these rules.

PART IV

APPLICATIONS TO THE COURT

Form and manner of application to the Court.

14. (1) An application to the Court must be made in the form and manner prescribed for that purpose by practice direction or, if no such form has been prescribed, by a statement in writing of the order, finding or determination sought.

(2) The form of application must include the applicant's address for service and must be accompanied by such information and documents as may be prescribed.

Service of notice of application on parties.

15. (1) Except where an application is made ex parte pursuant to rule 18, the applicant must serve a copy of the application, together with a notification of the date of the first hearing, in accordance with paragraph (2).

(2) Subject to paragraph (3), service under paragraph (1) must be effected on all other parties at least four clear days, or such other period as the Court may direct, prior to the date of the first hearing.

(3) Service of an application under section 30(1) of the Child Protection Law (emergency child protection order) must be effected at least one clear day prior to the date of the hearing.

Withdrawal of application.

16. Subject to rule 50, an application may be withdrawn only with leave of the Court.

Parties to give address for service.

17. Each party must, no later than the first directions or other hearing at which the party is present or represented, give an address for service.

Ex parte applications.

18. (1) Any application may, with leave of the Court, be made ex parte, subject to the provisions of paragraph (3).

(2) Where the Court refuses to give leave for an application to be made ex parte, it may direct that the application must be made inter partes and may, if it thinks fit, set a date for the inter partes hearing, and the applicant must thereupon serve a copy of the application in accordance with rule 15.

(3) Where the Court gives leave for an application to be made ex parte, it must fix a date for the hearing of the matter inter partes and the applicant

must serve a copy of the order and any supporting documentation, together with a notification of the date set for the inter partes hearing, on all parties to the application.

PART V

PARTIES TO PROCEEDINGS ETC.

Parties.

19. (1) The respondents to proceedings to which these rules apply shall, subject to paragraphs (2) and (3), and except where rule 48 applies, be any person whom the applicant believes to be interested in or affected by the proceedings, including, without limitation, the following persons –

- (a) any person who has parental responsibility for the child,
- (b) any person who, immediately before the making of any order by the Court which had the effect of terminating that person's parental responsibility, had parental responsibility for the child,
- (c) where the child is accommodated by, or on behalf of, MASH, MASH,
- (d) in the case of an application to extend, vary or discharge an order, the parties to the proceedings in which the order was made, and
- (e) any person whom the Court has ordered, on an application or otherwise, at any stage of the proceedings, should be joined as a party.

(2) A child may not be a party to any proceedings, except proceedings relating to a community parenting order, unless the Court so directs.

(3) The Court may, at any stage of the proceedings, whether or not an application has been made, direct that a party to the proceedings cease to be a party.

Separate representation of children.

20. (1) If in any proceedings, where a child is not, by virtue of rule 19, a party to those proceedings, it appears to the Court that it is in the best interests of the child that the child is made a party to those proceedings, the Court may appoint either or both of –

(a) a child's representative, and

(b) an Advocate,

to represent the child in the proceedings.

(2) An order under paragraph (1) may be made by the Court of its own initiative, or on the application of –

(a) a party to the proceedings, or

(b) a child's representative or Advocate already appointed in relation to the child, or

(c) the child, if the Court is satisfied that the child has the necessary understanding.

(3) Unless the Court otherwise directs, a person appointed under this rule to represent the child in any proceedings shall be treated as a party for the

purposes of any provision of these rules requiring a document to be served on, or notice to be given to, a party to the proceedings.

(4) An Advocate appointed in relation to a child, whether under this rule or otherwise, shall represent the child –

- (a) in accordance with instructions received from the child's representative, if any, appointed, unless it appears to the Advocate, having taken account of the views of the child's representative, that the child wishes to give instructions which conflict with those of the child's representative, in which case the Advocate shall apply to the Court for directions as to whether the Advocate should represent the child in accordance with the child's instructions,
- (b) where no child's representative has been appointed, and the child has sufficient understanding to instruct an Advocate, and wishes to do so, in accordance with instructions received from the child, or
- (c) in default of instructions under paragraph (a) or (b), in furtherance of the best interests of the child.

Appointment of child's representative.

21. The Court may, at any stage of the proceedings, appoint a person ("**child's representative**") to act in the proceedings either generally or for a specific purposes or purposes and may, at any stage of the proceedings, discharge such person from so acting or alter the purpose or purposes for which such person was appointed.

PART VI
CASE MANAGEMENT BY COURT

Court's duty to manage cases.

22. (1) The Court must actively manage cases for the purpose of furthering the overriding objective.

- (2) Active case management includes (without limitation) –
- (a) encouraging the parties to co-operate with each other in the conduct of the proceedings,
 - (b) identifying the issues, and the parties, at an early stage,
 - (c) deciding promptly which issues need full investigation and hearing and which do not,
 - (d) deciding the procedure to be followed in the case and the order in which issues are to be resolved,
 - (e) encouraging the parties to use any appropriate form of alternative dispute resolution and facilitating the use of such procedures,
 - (f) actively encouraging and assisting parties to settle the whole or part of the case on terms that reflect the overriding objective of these rules,
 - (g) fixing timetables or otherwise controlling the progress of the case,
 - (h) dealing with as many aspects of the case as is practicable on the same occasion,

- (i) dealing with the case, or any aspect of it, where it appears appropriate to do so, without requiring the parties to attend court,
- (j) making appropriate use of technology,
- (k) giving directions to ensure that the case proceeds quickly and efficiently,
- (l) ensuring that no party gains an unfair advantage by reason of that party's failure to give full disclosure of all relevant facts prior to the proceedings or the hearing of any application, and
- (m) giving directions to ensure that the case proceeds quickly and efficiently.

General powers of Court.

23. (1) The Court has the powers set out in this rule, except where these rules provide otherwise, in addition to any powers conferred on the Court by these rules or any other enactment or practice direction.

- (2) The Court may –
 - (a) extend or shorten the time for compliance with any rule or other enactment, court order or practice direction even if the application for an extension is made after the time for compliance has expired,
 - (b) adjourn or bring forward a hearing,
 - (c) stay the whole or part of any proceedings generally or until a specified date or event,

- (d) decide the order in which issues are to be heard and give directions as to the steps to be taken in the proceedings,
- (e) dismiss or give judgment in any proceedings after a decision on a preliminary issue,
- (f) direct that part of any proceedings be dealt with separately,
- (g) consolidate any proceedings, or make an order that two or more proceedings be tried at the same time, or one immediately after another, or that any of them should be stayed until any other of them is determined,
- (h) exclude an issue from determination if in the opinion of the Court the determination of that issue is unnecessary in order to achieve justice in the proceedings,
- (i) waive any requirement that evidence in support of any application be given by affidavit,
- (j) require the maker of an affidavit to attend court for cross-examination or generally to give evidence in the proceedings,
- (k) require any party, Advocate, child's representative or any other person to attend the Court, and give directions as to the attendance or otherwise of the child,
- (l) give directions concerning the appointment of an Advocate or child's representative to represent the child,
- (m) deal with any matter in the absence of any party,

- (n) hold a hearing and receive evidence by telephone or other electronic means or by using any other method of direct oral communication : Provided that where evidence is received by telephone or other electronic means, all persons participating must be able to hear one another and to identify one another so far as is practicable,
- (o) deal with a matter on written representations submitted by the parties instead of by oral representations,
- (p) direct that any evidence be given in written form,
- (q) direct that notice of any proceedings or application be given to any person, and
- (r) take any other step, including the giving, varying or revoking of directions, or make any other order for the purpose of managing the case and furthering the overriding objectives of these rules.

Variation of case management timetable.

24. The Court may, on application by one or more of the parties or otherwise, vary any date which has been fixed for any act required to be performed by any party or generally vary the timetable for the management of the proceedings.

Attendance at hearings.

25. (1) Subject to paragraph (2), a party must attend a directions or other hearing of which the party has been given notice unless the Court directs otherwise.

(2) Proceedings, or any part of them, may take place in the absence of any party, including the child, if –

- (a) the Court considers that it is in the interests of the child, having regard to the matters to be discussed or the evidence likely to be given, and
- (b) the party is represented by an Advocate or, in the case of a child, a child's representative,

and the party or the party's Advocate, and any child's representative in the case of a child, has been given the opportunity to make representations.

(3) Where a party has been given notice of a directions hearing, the Court may hear the application in the party's absence if –

- (a) the Court is satisfied that the party received reasonable notice of the date and time of the hearing, or
- (b) the Court is satisfied that the circumstances of the case justify proceeding with the hearing.

PART VII

CONDUCT OF PROCEEDINGS

Court's power to make order of its own initiative.

26. (1) Except where a rule or other enactment or a practice direction provides otherwise, the Court may exercise its powers on an application or of its own initiative.

(2) Where the Court proposes to make an order of its own initiative it must, unless in all the circumstances it considers it inappropriate so to do, give any person likely to be affected a reasonable opportunity to make

representations, whether orally, in writing, by telephone or other electronic means or by such other means as the Court thinks fit.

Other powers in relation to orders.

27. (1) When the Court makes an order or gives a direction, it may –
- (a) make the order or give the direction subject to conditions, and
 - (b) specify the consequence of failure to comply with the order, direction or a condition.
- (2) A power of the Court under these rules to make an order –
- (a) may be exercised at any stage of the proceedings, and
 - (b) includes a power to stay, vary or revoke that order.

Consent orders.

28. (1) Where all the parties to the proceedings reach agreement as to the disposal of the proceedings or any part thereof, the Court may, if it considers it appropriate to do so, approve the proposals and make an order accordingly without the necessity for a final hearing.

(2) Where the Court does not consider that it is appropriate to approve any proposals for the disposal of proceedings or part thereof agreed by the parties, it may make such directions as it thinks fit for the continuation of the proceedings.

Rectification of errors of procedure.

29. Where there has been an error of procedure such as a failure to comply with a rule or practice direction –

- (a) the error does not invalidate any step taken in the proceedings unless the Court so orders, and
- (b) the Court may make an order to remedy the error.

Obtaining further information.

30. Subject to any rule of law to the contrary, the Court may at any time order any party to –

- (a) clarify any matter which is in dispute in the proceedings, or
- (b) give additional information in relation to any such matter.

PART VIII

EVIDENCE IN PROCEEDINGS

Documentary evidence

Documentary evidence.

31. (1) At a directions or other hearing, no party may file or serve any document, nor adduce any documentary evidence or seek to rely on a document, other than in accordance with these rules or with leave of the Court.

(2) The Court may, if it thinks fit, in exceptional circumstances, order that a document, or part thereof, or any information contained therein, should be withheld from a party to the proceedings, or that disclosure of such document or information should be subject to conditions.

(3) Where a child is a party to the proceedings and, in the opinion of the Court, the disclosure of a document, or any information contained therein, may be damaging to the child, the Court may withhold the document or information from the child; but if the child is represented by an Advocate or child's representative, or both, such document or information must be disclosed to that Advocate or child's representative (or both, as the case may be).

Disclosure and inspection

Meaning of "disclosure" and "inspection".

32. For the purposes of rules 33 and 34 –

“**disclosure**”, in relation to a document, means a statement that a document exists or has existed, and

“**inspection**”, in relation to a document, means inspection by a person of a document disclosed by another person.

Disclosure and inspection of documents generally.

33. Subject to rule 34, the Court may give directions –

(a) as to what disclosure of documents, if any, is necessary,
and

(b) as to inspection of documents.

Orders for disclosure against a person not a party.

34. (1) This rule applies where an application is made to the Court for disclosure by a person who is not a party to the proceedings and is without prejudice to any other power which the Court may have to order such disclosure.

(2) The Court may make an order under this rule only where disclosure is necessary in order to dispose fairly of the proceedings.

(3) An order under this rule must specify the document or the classes of documents which the respondent must disclose, may require the respondent to indicate what has happened to any documents which are no longer under the respondent's control, and may specify the time and place for disclosure and inspection.

Witness statements

Witness statements.

35. (1) A witness statement is a written statement signed by a person which contains the evidence which that person would be allowed to give orally.

(2) A witness statement must comply with any requirements set out in a practice direction.

(3) A witness statement must be supported by affidavit or by the oath of the person who made it.

(4) The Court may give directions as to the requirements for, and use in any hearing of, witness statements.

Expert evidence

Meaning of "expert".

36. For the purpose of these rules, an expert is a person who has been instructed to give or prepare expert evidence for the purpose of proceedings.

Duty to restrict expert evidence.

37. (1) Expert evidence must be restricted to that which is reasonably required to resolve the proceedings.

(2) No party may call an expert or put in evidence an expert's report without the leave of the Court.

- (3) A party applying for leave under this rule must identify –
 - (a) the field in which the party wishes to rely on expert evidence, and
 - (b) where practicable, the expert in that field on whose evidence the party wishes to rely,

and, where leave is granted, it will be in relation to that field or in relation to the named expert, or both.

- (4) In granting leave, the Court may limit the amount of the expert's fees and expenses that the party who wishes to rely on the expert may recover from any other party.

- (5) The Court may, in any case, limit the amount that can be paid by way of fees and expenses to an expert.

Expert's duty to the Court.

38. (1) It is the duty of an expert to help the Court on matters within that expert's expertise.

- (2) The duty of an expert under paragraph (1) overrides any obligation to the person from whom the expert has received instructions or by whom the expert is paid.

Examination of a child.

39. (1) No person may cause a child to be medically or psychiatrically examined, or otherwise assessed, for the purpose of preparation of expert evidence for use in the proceedings without the leave of the Court.

(2) Where the permission of the Court has not been given under paragraph (1), no evidence arising out of an examination or assessment referred to in that paragraph may be adduced without the leave of the court.

Written report.

40. (1) Expert evidence must be given in a written report unless the Court directs otherwise.

(2) The Court must not direct an expert to attend a hearing unless it is necessary to do so in the interests of justice.

(3) A party may, with leave of the Court, put written questions to an expert instructed by another party in the proceedings for the purpose only, unless the Court otherwise directs, of clarification of the report; and the answers to such questions shall be treated as part of the expert's report.

(4) Where a party puts written questions to an expert instructed by another party in accordance with paragraph (3), and the expert does not answer that question, the Court may order –

- (a) that the instructing party may not rely on that expert's evidence, or
- (b) that the instructing party may not recover the fees and expenses of that expert from any other party.

Joint instructions to single expert.

41. (1) Where two or more parties (“**the instructing parties**”) wish to submit expert evidence on a particular issue, the Court may direct that the evidence on that issue is to be given by one expert only.

(2) Where the instructing parties cannot agree who should be the expert, the Court may –

- (a) select the expert from a list prepared or identified by the instructing parties, or
- (b) give directions as to an alternative manner of selection.

(3) Where the Court gives a direction under paragraph (1) -

- (a) unless the Court otherwise directs, the instructions must be contained in a letter the terms of which are agreed by all the parties, and
- (b) where the parties do not agree the terms of such letter, the instructions may be determined by the Court.

(4) Where the Court permits the instructing parties to give separate instructions to a single joint expert, each instructing party must send a copy of that party's instructions to the other instructing parties.

(5) Where an expert who has been jointly instructed under this rule is directed by the Court to attend a hearing, any party may question the expert notwithstanding that that party was one of the instructing parties.

Disclosure of expert's report.

42. Where a party has obtained an expert's report in connection with proceedings, such report must be disclosed to the Court and, unless the Court gives leave for it not to be further disclosed, to all other parties; and in such a case any party may use that expert's report as evidence at any relevant hearing.

Directions of Court in relation to experts.

43. The Court may, in addition to any other power to give directions, whether under these rules or otherwise, give such directions in relation to any matter concerning expert evidence as it considers appropriate.

PART IX

SPECIAL PROVISIONS CONCERNING CERTAIN APPLICATIONS

Community parenting order

Application for special contact order.

44. (1) An application for a special contact order under section 25(2) of the Child Protection Law may be made by any of the following persons –

- (a) any person who has parental responsibility for the child,
- (b) any person who cared for the child immediately before the making of the community parenting order, except a foster carer, manager of a residential establishment or any other person acting on behalf of MASH,
- (c) any person in favour of whom an order relating to contact with the child has at any time been made, or
- (d) any other person, with leave of the Court.

Application for discharge of community parenting order.

45. An application for the discharge of a community parenting order may be made by –

- (a) any person who had parental responsibility for the child immediately before the making of the community parenting order, or
- (b) any other person, with leave of the Court,

in addition, as provided by section 27(2) of the Child Protection Law, to MASH and the child.

PART X
REFERRALS TO COURT BY MASH

General.

46. (1) This Part applies to –
- (a) applications to the Court by MASH for a disclosure order under section 14 of the Child Protection Law, and
 - (b) referrals by MASH to the Court of any matter for determination under section 17 of that Law.
- (2) Subject to rule 47 and the following provisions of this Part, these rules apply to the proceedings mentioned in paragraph (1).

Disapplication of certain rules.

47. Rules 19, 23(2)(c) and 23(2)(h), 26, 27 and 57 do not apply to proceedings to which this Part applies.

Parties to referrals by MASH.

48. (1) Where a condition for referral is stated by MASH and referred for determination by the Court under section 17 of the Child Protection Law, the parties to the proceedings shall be MASH who, for the avoidance of doubt, shall be

deemed for the purpose of these rules to be the applicant in such proceedings, together with –

- (a) any person of a class or description prescribed under section 17(2) of that Law,
- (b) any person whom the Court has ordered, on an application or otherwise, at any stage of the proceedings, should be joined as a party.

(2) The Court may, at any stage of the proceedings, whether or not an application has been made, direct that a party to the proceedings cease to be a party.

Date of first and subsequent hearings.

49. (1) Where possible, the first hearing of a matter to which this Part applies must take place within 21 clear days of the date when application is made under rule 14.

(2) Subsequent hearings must be listed as expeditiously as possible, having regard to all the circumstances of the case.

Withdrawal of proceedings by MASH.

50. (1) Notwithstanding the provisions of rule 16, and at any stage before the proceedings are determined, MASH may withdraw any application or referral to which this Part applies, in whole or in part, without the leave of the Court.

(2) In the event of the withdrawal by MASH of an application or referral in whole, the Court must dismiss the application.

Powers of the Court.

51. (1) The Court may, at any time, whether or not an application has been made, allow amendment of any statement supporting the conditions of referral.

(2) At the conclusion of any proceedings before it under section 17(3) or (4) of the Child Protection Law, the Court must –

- (a) where it finds that none of the conditions for referral have been established in whole or in part, dismiss the application, or
- (b) where it finds that any condition for referral stated by MASH is established, in whole or in part, consider and determine the referral under section 17 of that Law.

PART XI
APPEALS

Persons who may appeal.

52. (1) Subject to paragraph (2), the persons who may appeal against a decision made in any proceedings in the Court are the parties to those proceedings.

(2) The following additional persons may appeal against decisions made in the course of proceedings notwithstanding that they were not a party to those proceedings –

- (a) MASH, against a decision of the Court under Part III of the Child Protection Law,

- (b) any placement agency involved in the proposed placement of a child out of the jurisdiction, against a decision of the Court under Part VI of that Law,

and any other person, against a decision made in any other proceedings, with the leave of the Royal Court.

Manner and grounds of appeal.

53. (1) An appeal against any decision of the Court to which these rules apply must be instituted by notice served on all the parties to the proceedings in the course of which the decision was made stating the grounds of the appeal and the order sought.

(2) Except where the Children Law or the Child Protection Law provides that an appeal must be on a question of law, the grounds of appeal may be any ground of appeal which involves –

- (a) a question of law alone,
- (b) a question of fact alone, or
- (c) a question of mixed fact and law.

PART XII

GENERAL AND MISCELLANEOUS

Disclosure of addresses etc.

54. (1) Nothing in these rules shall be construed as requiring any party to disclose the address of his or her residence (or that of any child), except by order of the Court.

(2) Where a person declines to disclose an address in reliance on paragraph (1), the person must give notice of that address to the Court, and such address must not be revealed to any person except by order of the Court.

(3) A party is not required to disclose to any person, except by order of the Court, the name of any person, not being the applicant, with whom a child is living.

Communication of information relating to proceedings.

55. (1) No person may communicate to any person not a party to any proceedings to which these rules apply any information relating to those proceedings, whether or not such information is contained in a document, including an Act of Court, filed with the Court, unless and to the extent expressly permitted to do so in accordance with this rule.

(2) The Court may give directions, in a specific case or by practice direction, concerning the communication of information by parties or other specified persons or classes of person relating to such proceedings, and such directions may impose different requirements in respect of different persons or classes of person, and may include conditions restricting the persons, or classes of person, to whom such information is permitted to be communicated, or the purposes for which it is communicated.

(3) Subject to any contrary direction under paragraph (2), information contained in an Act of Court relating to any proceedings to which these rules apply, excluding any written judgment or other information issued with, or annexed to, such Act of Court, may be disclosed in the following circumstances –

(a) such disclosure must be for the purpose only of, and limited to what is necessary for, the protection of any

child or children, whether involved in the proceedings to which the Act of Court relates or otherwise,

(b) such disclosure may not be made to any person or agency other than –

(i) the Chief Pleas,

(ii) the Committee,

(iii) MASH or a designated official (within the meaning given by section 87(1) of the Child Protection Law,

(iv) a police officer or customs officer,

(v) the Guernsey Prison Governor or any person authorised by him or her,

(vi) medical or educational professionals,

(vii) the Legal Aid Administrator or any person authorised by him or her,

(viii) any legal representative acting for the above, and

(c) the person making the disclosure must –

(i) make the person or agency to whom the disclosure is made ("**the recipient**") aware of the confidentiality of the information and the limited purposes for which disclosure is made,

- (ii) advise the recipient of the requirement to store the information securely in such a way that its confidentiality is maintained, and
- (iii) further advise the recipient of the need to comply with the recipient's duties under the Data Protection (Bailiwick of Guernsey) Law, 2017^d.

(4) A person or agency listed in paragraph (3)(b) to whom a disclosure is made in accordance with paragraph (3) may, subject to any direction of the Court to the contrary, disclose the information to any other person or agency listed in that subparagraph provided that such further disclosure is made in compliance with the requirements of paragraph (3).

Dissemination of judgments.

56. (1) No part of any judgment of the Court may be published unless express permission is given in accordance with this rule.

(2) The Court may, at any stage of the proceedings, give directions concerning the publication, or prohibiting or restricting the publication, of any judgment of the Court.

Costs.

57. The Court may, at any stage of the proceedings, make such order as to the costs of the proceedings, or of any stage or application in the proceedings, as the Court thinks just.

^d Order in Council No. VI of 2018; amended by No. IV of 2018; Ordinance Nos. VIII and X of 2018; G.S.I. No. 21 of 2018.

Affidavits.

58. An affidavit for the purposes of these rules must be made –
- (a) in the Island of Sark, before the Seneschal or Deputy Seneschal, a Lieutenant Seneschal, a Notary Public or an Advocate of five years' standing or more,
 - (b) in the Islands of Guernsey, Herm or Jethou, before the Bailiff, Deputy Bailiff or a Lieutenant-Bailiff, a Judge of the Royal Court, a Jurat of the Royal Court, a Notary Public or an Advocate of five years' standing or more,
 - (c) in the Island of Alderney, before a Jurat of the Court of Alderney, a Notary Public or an Advocate of five years' standing or more,
 - (d) in a place outside the Bailiwick –
 - (i) before a person empowered to administer oaths in that place, or
 - (ii) in accordance with the rules in force in that place governing the administration of oaths for any judicial or other legal purpose, or
 - (iii) where the deponent is serving in any of the regular armed forces of the Crown, before an officer holding a commission in any of those forces.

Interpretation.

59. In these rules, unless the context otherwise requires -

"**address for service**" means an address at which any summons, notice or other document relating to the proceedings can validly be served on the person making the election,

"**Advocate**" means an Advocate of the Royal Court of Guernsey,

"**Alderney Greffier**" means the Greffier of the Court of Alderney,

"**Alderney Rules**": see rule 3(1)(c),

"**Chairperson of MASH**" means the person holding that office by virtue of paragraph 2(1) of Schedule 1 of the Child Protection Law, and includes the Deputy Chairperson elected in accordance with paragraph 2(2) of the said Schedule,

"**the Child Protection Law**" means the Child Protection (Sark) Law, 2020,

"**child welfare checklist**" has the meaning given in the Children Law and in the Child Protection Law,

"**child welfare principles**" has the meaning given in the Children Law and in the Child Protection Law,

"**child's representative**": see rule 21,

"**the Children Law**" means the Children (Sark) Law, 2016,

"**clear day**" means a period of 24 hours ending at midnight and does not include any Saturday, Sunday, Good Friday, Christmas day or public holiday,

"**the Committee**" has the meaning given in section 87(1) of the Child Protection Law,

"the Court" means the Court of the Seneschal,

"customs officer" has the meaning given in section 87(1) of the Child Protection Law,

"direction" means any direction of the Court, including a practice direction,

"expert": see rule 36,

"family proceedings" has the meaning given in the Children Law and in the Child Protection Law,

"Guernsey Prison Governor" means the person appointed under section 3 of the Prison (Guernsey) Ordinance, 2013^e,

"Guernsey Rules": see rule 3(1)(b),

"Legal Aid Administrator" means the holder of the office of Legal Aid Administrator established under section 2 of the Legal Aid (Bailiwick of Guernsey) Law, 2003^f, and includes the Deputy Legal Aid Administrator appointed under paragraph 7 of the First Schedule to that Law,

"MASH", for the avoidance of doubt, means the Multi-Agency Safeguarding Hub established by section 9 of, and Schedule 1 to, the Child Protection Law,

^e Ordinance No. XXIX of 2013; amended by No. XXVII of 2015; No. XXXVI of 2016.

^f Order in Council No. VI of 2004; amended by Ordinance No. IX of 2016. There are other amendments not relevant to these rules.

"**parental responsibility**" has the meaning given in section 5 of the Children Law,

"**placement agency**" has the meaning given in section 53 of the Child Protection Law,

"**public holiday**" means a day appointed as a public holiday by Ordinance of the Chief Pleas,

"**Prévôt**" includes the Deputy Prévôt and an Assistant Deputy Prévôt,

"**Sergeant**" means Her Majesty's Sergeant in Guernsey and includes any of the Deputy or Assistant Sergeants.

Citation.

60. These Rules may be cited as the Family Proceedings (Sark) Rules, 2021.

Commencement and transitional provisions.

61. (1) These Rules were made by the Court of the Seneschal on 23rd April, 2021, having been approved by the Royal Court on 10th March, 2021 in accordance with section 15 of the Reform (Sark) Law, 2008[§], and shall come into force on the same day as the Child Protection Law.

(2) Subject to paragraph (3), these rules shall apply to any proceedings commenced on or after the date of commencement.

(3) The Court may make such orders in respect of proceedings commenced before the date of commencement as it thinks just.

§ Order in Council No. V of 2008; there are amendments not relevant to this provision.