

L.N. 3 of 2016

Rules of the High Court (Amendment) (No. 4) Rules 2015

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Rules of the High Court (Amendment) (No. 4) Rules 2015

(Made by the Rules Committee of the High Court under section 54 of
the High Court Ordinance (Cap. 4))

1. Commencement

These Rules come into operation immediately after the Child Abduction Legislation (Miscellaneous Amendments) Ordinance 2014 (16 of 2014) comes into operation.

2. Rules of the High Court amended

The Rules of the High Court (Cap. 4 sub. leg. A) are amended as set out in rules 3 to 21.

3. Order 3, rule 2 amended (reckoning periods of time)

Order 3, Chinese text, rule 2(4), after “整天”—

Add

“或整日”.

4. Order 7, rule 2 amended (form of summons, etc.)

Order 7, rule 2(3)—

Repeal

everything after “rule 5(1)”

Substitute

“, Order 54, rule 2(3) and Order 121, rule 2(1).”.

5. Order 11, rule 9 amended (service of originating summons, petition, notice of motion, etc.)

(1) Order 11, rule 9(1), after “Subject to”—

Add

“paragraph (4A) and”.

(2) Order 11, rule 9(4), after “Subject to”—

Add

“paragraph (4A) and”.

(3) Order 11, after rule 9(4)—

Add

“(4A) Service out of the jurisdiction of any originating summons or summons issued under Order 121, rule 2 is permissible without the leave of the Court.”.

6. Order 121, rule 1 amended (interpretation)

(1) Order 121, rule 1—

Repeal paragraph (1)

Substitute

“(1) In this Order, unless the context otherwise requires—
application (申請) means an application under the Convention or the Ordinance;

decision (決定) includes a judgment or an order of any judicial authority as well as an order of an administrative authority;

Ordinance (《條例》) means the Child Abduction and Custody Ordinance (Cap. 512);

relevant authority (有關當局) includes the Court, a District Court and a juvenile court.”.

(2) Order 121, rule 1—

Repeal paragraph (3).

7. Order 121, rule 2 amended (mode of application)

Order 121, rule 2—

Repeal paragraph (1)

Substitute

“(1) Except as provided in the Ordinance and in paragraphs (1A) and (2), an originating application under the Ordinance may be made by originating summons in—

(a) (subject to subparagraph (b)) Form No. 10A in Appendix A; or

(b) (if the application is made ex parte as provided in this Order) Form No. 10B in Appendix A.

(1A) If there are existing proceedings commenced under the Ordinance in Hong Kong, an application may be made by summons.”.

8. Order 121, rule 3 amended (application for return of a child)

(1) Order 121, rule 3(1), after “return of a child”—

Add

“under the Ordinance”.

(2) Order 121, rule 3—

Repeal paragraph (2)

Substitute

“(2) The affidavit must be filed at the same time as the application.

- (3) However, for an urgent case, the affidavit may be filed—
 - (a) within the time specified by the Court; or
 - (b) (if no time is specified by the Court) as soon as possible after the application.”.

9. Order 121, rule 4 amended (application for a declaration under section 10)

- (1) Order 121, English text, rule 4, heading—

Repeal

“section 10”

Substitute

“section 10 of the Ordinance”.

- (2) Order 121, rule 4—

Repeal paragraph (2)

Substitute

- “(2) The affidavit must be filed at the same time as the application.
- (3) However, for an urgent case, the affidavit may be filed—
 - (a) within the time specified by the Court; or
 - (b) (if no time is specified by the Court) as soon as possible after the application.
- (4) The application may be made ex parte.”.

10. Order 121, rule 5 amended (defendants)

- (1) Order 121, rule 5, heading—

Repeal

“Defendants”

Substitute

“**Respondents to application for return of child**”.

- (2) Order 121, rule 5(1)—

Repeal

“defendants”

Substitute

“respondents”.

- (3) Order 121, rule 5(2)—

Repeal

“defendants”

Substitute

“respondents”.

- (4) Order 121, English text, rule 5(2)—

Repeal

“section 10”

Substitute

“section 10 of the Ordinance”.

11. Order 121, rule 6 amended (time for acknowledging service)

Order 121, rule 6—

Repeal

everything after “pursuant to rule 2”

Substitute

“is—

- (a) (subject to subparagraph (b)) 7 days after the service of the originating summons, including the day of service; or

- (b) (if the service takes place out of the jurisdiction) 14 days after the service of the originating summons, including the day of service.”.

12. Order 121, rule 6A added

Order 121, after rule 6—

Add

“6A. Hearing of originating summons (O. 121, r. 6A)

- (1) A day and time for the attendance of the parties before the Court for the hearing of an originating summons may be fixed on the application of the applicant.
- (2) If an originating summons is required to be served, the time limited for acknowledging service may, where appropriate, be abridged so as to expire on the 2nd day before the day so fixed.
- (3) If an originating summons is required to be served and a day is fixed under paragraph (1) for the hearing of the originating summons, the applicant must, at least 4 clear days before that day, serve on the respondent—
 - (a) the originating summons and the affidavit required under this Order; or
 - (b) (if the respondent has been served with the originating summons and the affidavit required under this Order) a notice of the day fixed for the hearing.
- (4) If the hearing of an originating summons required to be served is adjourned and any party to the proceedings desires to apply at the resumed hearing for any order or direction not previously asked for,

that party must, at least 2 clear days before the resumed hearing of the originating summons, serve on the other party a notice specifying those orders and directions.”.

13. Order 121, rule 7 amended (further evidence)

(1) Order 121, rule 7(1)—

Repeal

“defendant”

Substitute

“respondent”.

(2) Order 121, rule 7(2)—

Repeal

“plaintiff”

Substitute

“applicant”.

(3) Order 121, rule 7(2)—

Repeal

“defendant”

Substitute

“respondent”.

14. Order 121, rule 8 amended (assignment of proceedings)

Order 121, rule 8—

Repeal

“defendant”

Substitute

“respondent”.

15. Order 121, rule 9 amended (interim directions)

Order 121, English text, rule 9—

Repeal

“section 7”

Substitute

“section 7 of the Ordinance”.

16. Order 121, rule 10 amended (stay of custody application pending determination of proceedings under the Convention)

Order 121, English text, rule 10(1)—

Repeal

“section 20(2)”

Substitute

“section 20(2) of the Ordinance”.

17. Order 121, rule 11A added

Order 121, after rule 11—

Add

“11A. Application for a location order under section 15(2) of the Ordinance (O. 121, r. 11A)

(1) An application for a location order under section 15(2) of the Ordinance must be supported by an affidavit sworn by—

(a) the applicant; or

(b) a person duly authorized to swear it on behalf of the applicant.

(2) The affidavit must, as far as possible—

- (a) state the particulars of the person who has, or may reasonably obtain, applicable information about the child;
 - (b) state the basis for believing that the person mentioned in subparagraph (a) has, or may reasonably obtain, applicable information about the child;
 - (c) provide any other relevant information; and
 - (d) exhibit all relevant documents.
- (3) The affidavit must be filed at the same time as the application.
- (4) However, for an urgent case, the affidavit may be filed—
- (a) within the time specified by the Court; or
 - (b) (if no time is specified by the Court) as soon as possible after the application.
- (5) The application may be made ex parte.”.

18. Order 121, rule 12 amended (application for an order under section 16)

- (1) Order 121, rule 12, heading—

Repeal

“section 16”

Substitute

“section 16(3) of the Ordinance: for prohibiting removal of child from Hong Kong to certain jurisdictions”.

- (2) Order 121, rule 12(1)—

Repeal

“section 16”

Substitute

“section 16(3) of the Ordinance”.

- (3) Order 121, Chinese text, rule 12(1)(a)—

Repeal

“有關”.

- (4) Order 121, Chinese text, rule 12(1)(b)—

Repeal

“該”.

- (5) Order 121, Chinese text, rule 12(2)—

Repeal

“有關誓章須在可能範圍內，盡量”

Substitute

“在盡可能的範圍內，誓章須”.

- (6) Order 121, English text, rule 12(2)(d)(i)—

Repeal

“section 16(3)(a) or (b)”

Substitute

“section 16(3)(a) or (b) of the Ordinance”.

- (7) Order 121, Chinese text, rule 12(3)—

Repeal

“有關誓章須在可能範圍內，盡量”

Substitute

“在盡可能的範圍內，誓章須”.

- (8) Order 121, Chinese text, rule 12(4)—

Repeal

“上述誓章須與有關”

Substitute

“誓章須與”.

- (9) Order 121, rule 12(5)—

Repeal

everything after “may be”

Substitute

“filed—

- (a) within the time specified by the Court; or
- (b) (if no time is specified by the Court) as soon as possible after the application.”.

- (10) Order 121, after rule 12(5)—

Add

“(6) The application may be made ex parte.”.

19. Order 121, rules 12A to 12D added

Order 121, after rule 12—

Add

“12A. Application for an order under section 16(4) of the Ordinance: for variation, discharge, suspension or revival (O. 121, r. 12A)

- (1) An application for an order under section 16(4) of the Ordinance must be supported by an affidavit sworn by—
 - (a) the applicant; or
 - (b) a person duly authorized to swear it on behalf of the applicant.
- (2) The affidavit must, as far as possible—

- (a) state the ground of the application;
 - (b) provide any other relevant information; and
 - (c) exhibit all relevant documents.
- (3) The affidavit must be filed at the same time as the application.
- (4) However, for an urgent case, the affidavit may be filed—
- (a) within the time specified by the Court; or
 - (b) (if no time is specified by the Court) as soon as possible after the application.
- (5) The application may be made ex parte.

12B. Application for a recovery order under section 17(2) of the Ordinance (O. 121, r. 12B)

- (1) An application for a recovery order under section 17(2) of the Ordinance must be supported by an affidavit sworn by—
- (a) the applicant; or
 - (b) a person duly authorized to swear it on behalf of the applicant.
- (2) The affidavit must, as far as possible—
- (a) state the particulars of the person with whom the child is believed to be;
 - (b) state the circumstances warranting the making of the order;
 - (c) provide any other relevant information; and
 - (d) exhibit all relevant documents.
- (3) The affidavit must be filed at the same time as the application.

- (4) However, for an urgent case, the affidavit may be filed—
 - (a) within the time specified by the Court; or
 - (b) (if no time is specified by the Court) as soon as possible after the application.
- (5) The application may be made ex parte.

12C. Application for an order under section 21(3) of the Ordinance: for prohibiting removal of child out of Hong Kong (O. 121, r. 12C)

- (1) An application for an order under section 21(3) of the Ordinance must be supported by an affidavit sworn by—
 - (a) the applicant; or
 - (b) a person duly authorized to swear it on behalf of the applicant.
- (2) The affidavit must, as far as possible—
 - (a) provide the information set out in paragraph (3) about the following persons—
 - (i) the child;
 - (ii) the applicant;
 - (iii) the person believed to be intending to remove, or to be removing, the child out of Hong Kong; and
 - (iv) the person specified in section 21(2)(a) of the Ordinance who has the custody of the child under a court order or who is exercising the rights of that custody (other than the applicant);

- (b) state the basis for believing that the person mentioned in subparagraph (a)(iii) may remove the child out of Hong Kong;
 - (c) provide any other relevant information; and
 - (d) exhibit all relevant documents.
- (3) The information includes—
- (a) the following in respect of the child—
 - (i) name (in both Chinese and English, if applicable);
 - (ii) date of birth (if available);
 - (iii) gender;
 - (iv) birth certificate number (if available);
 - (v) Hong Kong Identity Card number (if available);
 - (vi) travel document number (if available); and
 - (vii) address (if available);
 - (b) the following in respect of the applicant—
 - (i) name (in both Chinese and English, if applicable);
 - (ii) gender;
 - (iii) Hong Kong Identity Card number or travel document number;
 - (iv) address;
 - (v) contact telephone number; and
 - (vi) relationship with the child;
 - (c) the following in respect of the person mentioned in paragraph (2)(a)(iii)—

-
- (i) name (in both Chinese and English, if applicable);
 - (ii) gender;
 - (iii) (if available) Hong Kong Identity Card number or travel document number;
 - (iv) address (if available);
 - (v) contact telephone number (if available);
and
 - (vi) relationship with the child; and
- (d) the following in respect of the person mentioned in paragraph (2)(a)(iv)—
- (i) name (in both Chinese and English, if applicable);
 - (ii) gender;
 - (iii) (if available) Hong Kong Identity Card number or travel document number;
 - (iv) address (if available);
 - (v) contact telephone number (if available);
and
 - (vi) relationship with the child.
- (4) The affidavit must be filed at the same time as the application.
- (5) However, for an urgent case, the affidavit may be filed—
- (a) within the time specified by the Court; or
 - (b) (if no time is specified by the Court) as soon as possible after the application.
- (6) The application may be made ex parte.

12D. Application for an order under section 21(4) of the Ordinance: for variation, discharge, suspension or revival (O. 121, r. 12D)

- (1) An application for an order under section 21(4) of the Ordinance must be supported by an affidavit sworn by—
 - (a) the applicant; or
 - (b) a person duly authorized to swear it on behalf of the applicant.
- (2) The affidavit must, as far as possible—
 - (a) state the ground of the application;
 - (b) provide any other relevant information; and
 - (c) exhibit all relevant documents.
- (3) The affidavit must be filed at the same time as the application.
- (4) However, for an urgent case, the affidavit may be filed—
 - (a) within the time specified by the Court; or
 - (b) (if no time is specified by the Court) as soon as possible after the application.
- (5) The application may be made *ex parte*.”.

20. Order 121, rule 13 amended (searching for, inspecting and obtaining copies of documents filed in proceedings under the Ordinance)

- (1) Order 121, Chinese text, rule 13, heading—

Repeal

“搜尋、查閱及取得存於《條例》下的法律程序檔案的文件副本”

Substitute

“搜尋、查閱及取得在根據《條例》進行的法律程序中存檔的文件的副本”。

- (2) Order 121, Chinese text, rule 13(2)—

Repeal

“(進行公開”

Substitute

“(在公開”。

- (3) Order 121, Chinese text, rule 13(2)(a) and (b)—

Repeal

“如”。

21. Appendix A amended (forms)

- (1) Appendix A, English text, Form No. 10—

Repeal

“(O. 7 r. 2”

Substitute

“(O. 7 r. 2;”。

- (2) Appendix A, after Form No. 10—

Add

“No. 10A

Originating summons—expedited form for applications under Child Abduction and Custody Ordinance

(O. 121 r. 2)

IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF FIRST INSTANCE

20....., No.

In the matter of an application under of the Child Abduction and Custody Ordinance (Cap. 512) and Order 121 of the Rules of the High Court (Cap. 4 sub. leg. A) in respect of a child, namely

Between *A.B.* Applicant

AND

C.D. Respondent

Let *C.D.* of attend before the Registrar (or Judge) in Chambers, at the High Court in Hong Kong, on day, the day of 20....., at o'clock (or, if no application has yet been made for a day to be fixed, on a day to be fixed), on the hearing of an application by the applicant *A.B.* of that

And let the respondent within 7 days after service of this summons (or within 14 days after service of this summons out of the jurisdiction) on the respondent counting the day of service, return the accompanying Acknowledgment of Service to the Registry of the High Court.

Dated the day of 20.....

Note:—This summons may not be served later than 12 calendar months beginning with the above date unless renewed by order of the Court.

This summons was taken out by
of
solicitors for the applicant whose address is as stated above.

[or where the applicant acts in person:

This summons was taken out by the applicant who resides at
and (if the applicant does not reside within the jurisdiction) whose address for service is].

Note:—If the respondent does not attend personally or by counsel or solicitor at the time and place above-mentioned, such order will be made as the Court may think just and expedient.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

No. 10B

Ex parte originating summons for applications under Child Abduction and Custody Ordinance

(O. 121 r. 2)

IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

20....., No.

In the matter of an application under of the Child Abduction and Custody Ordinance (Cap. 512) and Order 121 of the Rules of the High Court (Cap. 4 sub. leg. A) in respect of a child, namely

Let all parties concerned attend before the Judge in Chambers (or the master), at the High Court in Hong Kong, on day, the day of 20....., at o'clock, on the hearing of an application by the applicant *A.B.* that

Dated the day of 20.....

This summons was taken out by
of
solicitors for the applicant whose address is
.....”

Made this 21st day of December 2015.

The Hon. Mr. Justice
Andrew CHEUNG
Chief Judge of the High Court

The Hon. Mr. Justice Johnson
LAM V.P.

The Hon. Mr. Justice Thomas AU

Stewart WONG, S.C.

Paul T.K. LAM, S.C.

Denis BROOK

Brian GILCHRIST

Herbert LI

LUNG Kim-wan
Registrar, High Court

Explanatory Note

These Rules amend the Rules of the High Court (Cap. 4 sub. leg. A) (*HC Rules*) to provide for the procedures relating to applications for certain court orders under the Child Abduction and Custody Ordinance (Cap. 512) (*Ordinance*), and to effect other related and technical amendments.

2. The procedures relating to those applications are provided for as follows—
 - (a) rule 17 adds to the HC Rules a new Order 121, rule 11A relating to a location order under section 15(2) of the Ordinance; and
 - (b) rule 19 adds to the HC Rules the following—
 - (i) a new Order 121, rule 12A relating to an order for variation, discharge, suspension or revival under section 16(4) of the Ordinance;
 - (ii) a new Order 121, rule 12B relating to a recovery order under section 17(2) of the Ordinance;
 - (iii) a new Order 121, rule 12C relating to an order for prohibiting removal of a child out of Hong Kong under section 21(3) of the Ordinance; and
 - (iv) a new Order 121, rule 12D relating to an order for variation, discharge, suspension or revival under section 21(4) of the Ordinance.
3. Rules 4, 5, 7, 8(2), 9(2), 11, 12, 18(10) and 21 contain related amendments and rules 3, 6, 8(1), 9(1), 10, 13 to 16, 18(1) to (9) and 20 contain technical amendments.