

## INSTITUTE OF FAMILY LAW ARBITRATORS

### NOTE CONCERNING THE REVISED 2016 RULES AND FORMS

IFLA has further reviewed the Children Scheme Rules and Form ARB1CS originally issued on 18 July 2016 (when the Children Scheme was launched) and has issued a Revised 2016 Edition of both the Rules and the Form, which came into effect on 1 November 2016.

Some points to note (*including those relevant to the July 2016 edition, now shown in italics*) are as follows:

#### **Revised Children Scheme Rules**

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| Front page | There is a new front page to the Rules including a box the content of which underlines the commitment of IFLA to safeguarding and welfare. The text points to the location of the safeguarding and welfare provisions within the Rules and Form ARB1CS. Finding these provisions in the Rules is further facilitated by a general list of the Contents.   |
| Art.2.2(h) | There is a new provision excluding from the scope of an IFLA CS arbitration any case where a person with parental responsibility is not a party to the arbitration.   |
| Art.4.1.2  | Form ARB1CS has been extended to include a Safeguarding Questionnaire that must be completed and submitted by every party.  |
| Art.8.3    | <i>There has been no change to the provision that the arbitrator may not meet with the child concerned.</i>   |
| Art.16.2   | <i>There is a new provision enabling the arbitrator to direct limited disclosure of documentation to persons and/or for purposes outside the arbitration.</i>   |
| Art.17.1   | <i>The safeguarding and welfare provisions have been developed and extended, although they remain based on the principle of self-declaration.</i><br><br>The safeguarding and welfare provisions have been further defined as requiring every party to obtain and submit a Basic Disclosure from Disclosure Scotland, and to complete and submit a Safeguarding Questionnaire. They must also submit any relevant letter or report prepared by CAFCASS or a local authority children's department or similar agency, if there is one. |
| Art.17.2   | Where an arbitrator declines an appointment or terminates an arbitration on safeguarding or welfare grounds, the arbitrator may now inform IFLA of that decision, and such a step would not infringe confidentiality (Art.16.1(b)).   |

## **Revised ARB1CS**

Para.1 Parties are asked to confirm that all persons who have parental responsibility for the children concerned are parties to the arbitration.

*Paras.7, 8.3 There is corresponding guidance to the parties concerning safeguarding and welfare together with space for the disclosure of relevant matters.*

Para.7 now sets out the documentation parties are required to provide in order to comply with the revised safeguarding and welfare Rules, namely a Basic Disclosure from Disclosure Scotland; a completed Safeguarding Questionnaire in the form annexed to the ARB1CS; and any relevant letter or report prepared by CAFCASS or any local authority children's services department or similar agency in relation to the safeguarding or welfare of the children concerned, if there is one.

*Para.8.4(b) The provision allowing an arbitrator to direct the parties to refer a determination to the court for a corresponding order has been removed.*

*New box There is a prominent notice immediately before the space for signatures alerting the parties to the binding and final nature of arbitration.*

New form The Safeguarding Questionnaire is annexed to Form ARB1CS.

## **Financial Scheme Rules**

*In light of the introduction of the Children Scheme, a new edition of the original financial and property scheme (re-named the 'Financial Scheme') Rules and Form were also issued, similarly with effect from 18 July 2016.*

*The only changes to the Financial Scheme Rules were those occasioned by the new names.*

## **ARB1FS**

*There were similar consequential changes to ARB1, which became 'ARB1FS', as a result of the new names.*

*The only significant change was the introduction of a prominent notice immediately before the space for signatures alerting the parties to the binding and final nature of arbitration (in corresponding terms to the new box in ARB1CS).*

There have been no further changes to the Financial Scheme Rules or Form ARB1FS.

November 2016