

PRACTICE DIRECTION 23A – INTERNATIONAL PROTECTION OF ADULTS

This practice direction supplements Part 23 of the Court of Protection Rules 2017

General

1. This practice direction is made under rule 23.1(2) (which enables a practice direction to make additional or supplementary provision in respect of any of the matters set out in Part 23), and makes provision in relation to Schedule 3 applications.

The Convention

2. Schedule 3 of the Act makes reference to “the Convention”. This is defined by paragraph 2 of Schedule 3 and section 63 of the Act as the Convention on the International Protection of Adults signed at the Hague on 13 January 2000. The Convention was ratified by the United Kingdom on 5th November 2003, but only for Scotland: the Convention has not been ratified for England and Wales. Paragraphs 8, 9, 19(2) and (5), Part 5, and paragraph 30 of Schedule 3 to the Act have effect only if the Convention is in force in accordance with Article 57¹ and it has been held² that it is not: those provisions are accordingly treated as having no effect.

Definitions

3. Subject to paragraphs 4 to 6, words that are defined in the Act or the Rules have the same meaning in this practice direction.
4. “*Country*”: Paragraph 3(1) of Schedule 3 to the Act defines “country” as including a territory which has its own system of law. For the purposes of the Act, the Rules and this practice direction, Scotland and Northern Ireland are considered to be foreign countries, as are (amongst others) British Overseas Territories and Crown Dependencies.
5. “*Lasting power*”: Paragraph 13(6) of Schedule 3 to the Act defines “lasting power” as—
 - (a) a lasting power of attorney within the meaning of section 9 of the Act
 - (b) an enduring power of attorney within the meaning of Schedule 4, or

¹ Paragraph 35 of Schedule 3 to the Act.

² *Re PO* [2013] EWCOP 3932.

- (c) any other power of like effect.
6. For the purposes of Part 23 a power which would be a lasting power under paragraph 13(6) of Schedule 3 is excluded from the definition of “lasting power” if (a) it is a lasting power of attorney within the meaning of section 9 of the Act, or (b) it is an enduring power of attorney within the meaning of Schedule 4 of the Act (Rule 23.2(2) provides for the exclusion of such lasting powers from the scope of Part 23). In this practice direction “lasting power” has the same meaning as in Part 23.

Procedure for making a Schedule 3 application

7. A Schedule 3 application is to be made in accordance with Part 9 of the Rules subject to the modifications set out in this practice direction.
8. A Schedule 3 application is made by filing a COP 1 application form. The form shall be completed on the footing that the adult to whom the application relates is “P” for the purposes of the form. (Rule 23.3(1) provides for the provisions of the Rules to apply to Schedule 3 applications as if references therein to “P” were references to “the adult”).
9. Notwithstanding the terms of Practice Direction 9A, an applicant making a Schedule 3 application is not required to file—
- (1) a COP 3 assessment of capacity form
 - (2) any of the annexes listed in Practice Direction 9A
- unless the applicant is also asking the Court to make additional declarations and / or orders under sections 15 and / or 16 of the Act, in which case the applicant should also file a COP 3 assessment of capacity form and such annexes as the applicant would have been required to file had he or she been seeking only those declarations and / or orders under sections 15 and / or 16 of the Act.
10. An applicant making a Schedule 3 application should identify whether any person other than the adult has an interest in the application such that they should be named as a respondent to it. For example where a Schedule 3 application is being made in relation to a lasting power it will usually be appropriate to name the donees of the power as respondent (unless they are themselves the applicants).
11. Rule 9.10 and Practice Direction 9B (requirement to notify other individuals) shall not apply to a Schedule 3 application unless the applicant is also asking the Court to make additional declarations and / or orders under sections 15 and / or 16 of the Act, in which

case the applicant should also notify such persons as the applicant would have been required to notify had he or she been seeking only those declarations and / or orders under sections 15 and / or 16 of the Act.

12. A Schedule 3 application should be accompanied by a COP 24 witness statement by or on behalf of the applicant. The evidence filed in support of the application should include—

- (1) Where the application is made under rule 23.4 for recognition and / or enforcement of a protective measure under paragraph 20 or 22 of Schedule 3 to the Act:
 - (a) Evidence to demonstrate the basis upon which it is said that the person to whom the application relates is an adult for the purposes of Schedule 3 of the Act;
 - (b) An officially authenticated copy (and where necessary a certified translation) of the relevant court order or other document embodying the protective measure in respect of which recognition and / or enforcement is sought;
 - (c) Confirmation that the protective measure was taken on the basis that the adult was habitually resident in the other jurisdiction;
 - (d) Evidence to enable the Court to be satisfied—
 - (i) that the case in which the measure was taken was urgent; alternatively
 - (ii) that the adult to whom the protective measure related was given an opportunity to be heard by the foreign court or other body that took the protective measure.
 - (e) Evidence to enable the court to be satisfied that the steps leading to the protective measure being made complied with any relevant provisions of the European Convention on Human Rights.
 - (f) Details of any previous measures relating to the adult which have been the subject of a previous Schedule 3 application (whether or not such application was successful)

- (g) Where enforcement is sought of a protective measure that has already been recognised by the Court, a copy of the order giving effect to that recognition.
- (2) Where the application is made under rule 23.5 to disapply or modify a lasting power under Schedule 3 of the Act or under rule 23.6 for declarations as to the authority of the donee of a lasting power, a certified copy of the lasting power (and where necessary a certified translation thereof).

Procedure after Issue

- 13. A Schedule 3 application is an excepted application for purposes of Practice Direction 3B (Case Pathways – see Part 1, paragraph 1.1 of that practice direction).
- 14. When a Schedule 3 application is issued the application will be put before a judge to give directions. The judge will case manage the application and decide whether to allocate it to a pathway. Specifically the judge will consider whether to make one or more of the directions set out in rule 1.2(2) to enable the adult to whom it relates to participate in the application or to secure the adult's interests and position.
- 15. Where the judge considers that the adult should be joined as a party to the proceedings the judge will direct the filing of a COP 3 Assessment of Capacity form or other expert evidence directed at the issue of the adult's capacity to conduct the proceedings before the Court. (Rule 23.3(2) provides for the issue of the adult's capacity to conduct the proceedings before the Court to be determined by reference to Part 1 of the Act).
- 16. An application under rule 23.4 for recognition and / or enforcement of a protective measure should be dealt with rapidly, and in reviewing the papers the Court will consider whether the order sought can be made without holding a hearing.
- 17. A Schedule 3 application under rule 23.4 for recognition and / or enforcement of a protective measure which—
 - (1) purports to authorise a deprivation of liberty of the adult to which it relates (other than a temporary or transient deprivation of liberty associated with the transfer of the adult to or from a specified place); or
 - (2) purports to authorise medical treatmentwill usually—
 - (1) be determined after holding a hearing; and
 - (2) be allocated to the Senior Judge or a Tier 3 Judge.

Applications involving issues of habitual residence

18. An application in which the Court is being asked to make a declaration that a person is habitually resident in England and Wales for the purposes of exercising its jurisdiction under sections 15 and / or 16 of the Act is not a Schedule 3 application for the purposes of the Rules or this practice direction unless an order under rules 23.4 to 23.6 is being sought within the application.
19. No determination as to a person's habitual residence is required in order for the court to hear an application under section 21A of the Act, although a determination may be required if the court is then invited to exercise its jurisdiction under sections 15 and / or 16 of the Act.
20. Where an application (whether or not a Schedule 3 application) seeks declarations as to a person's habitual residence the Court will in case managing the application have regard to ensure that the application is allocated to an appropriate level of judge.