

## PRACTICE DIRECTION AMENDMENTS

The new Practice Directions, and amendments to the Practice Directions, supplementing the Court of Protection Rules 2007 are made by the President of the Court of Protection under the powers delegated to him by the Lord Chief Justice under section 52(3) of the Mental Capacity Act and Schedule 2, Part 1, paragraph 2(2) of the Constitutional Reform Act 2005, and are approved by Simon Hughes, Minister of State for Justice and Civil Liberties, by the authority of the Lord Chancellor.

The amendments and new Practice Directions come into force as follows, subject to the transitional provision made in this update—

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Sir James Munby  
The President of the Court of Protection

Signed by authority of the Lord Chancellor:

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Minister of State for Justice and Civil Liberties  
Ministry of Justice

**TRANSITIONAL PROVISION**

(1) The amendment to Practice Direction 3A applies only where the decision or order in relation to which reconsideration is sought was made on or after 6th April 2015.

(2) New Practice Direction 3B, new Practice Direction 20B and the amendments to Practice Direction 20A apply only where the decision or order against which it is sought to appeal was made on or after 6th April 2015.

(3) New Practice Direction 6B applies only where service is to be effected on or after 1st July 2015.

(4) The amendments to Practice Direction 7A apply only where the requirement for notification arises on or after 1st July 2015.

(5) The amendments to Practice Directions 8A, 9A, 9F, 9G and 10AA apply only in relation to—

(a) proceedings commenced on or after 1st July 2015; and

(b) applications made on or after 1st July 2015 in existing proceedings whenever commenced.

(6) The amendments to Practice Directions 9H and 10A apply only where the period in question starts on or after 1st July 2015.

## **PRACTICE DIRECTION 2A – PARTICIPATION OF P**

Before Practice Direction 3A, insert Practice Direction 2A as set out in Schedule 1 to this update.

## **PRACTICE DIRECTION 3A – AUTHORISED COURT OFFICERS**

After paragraph 4.2 of Practice Direction 3A insert—

**“Appeals against decisions of authorised court officers**

**5.1** No appeal lies against a decision of an authorised court officer. If P, any party, or any other person affected by an order of an authorised court officer is dissatisfied with a decision made by that officer they should apply for it to be reconsidered by a judge pursuant to rule 89 and to paragraph 4 of this Practice Direction.”

### **PRACTICE DIRECTION 3B – LEVELS OF JUDICIARY**

After Practice Direction 3A, insert Practice Direction 3B as set out in Schedule 2 to this update.

### **PRACTICE DIRECTION 3C – APPLICATION OF CIVIL PROCEDURE RULES AND FAMILY PROCEDURE RULES**

After Practice Direction 3B as inserted pursuant to this update, insert Practice Direction 3C as set out in Schedule 3 to this update.

### **PRACTICE DIRECTION 6A – SERVICE**

In paragraph 16 of Practice Direction 6A, for “Form COP20” substitute “Form COP20A”.

### **PRACTICE DIRECTION 6B – SERVICE OUT OF THE JURISDICTION**

After Practice Direction 6A, insert Practice Direction 6B as set out in Schedule 4 to this update.

### **PRACTICE DIRECTION 7A – NOTIFYING P**

Practice Direction 7A is amended as follows –

(1) in paragraph 1, after “does not apply” insert “(except for rule 41A)”;

(2) in paragraph 2 –

- (a) for “42” substitute “41A”,
- (b) in subparagraph (c) –
  - (i) for “that a final order has been made”, substitute “that the court has made a decision relating to him or her (other than a case management decision)”,
  - (ii) delete “and”;

(c) after subparagraph (c) insert –  
“(ca) of a direction under rule 3A and of the appointment of a litigation friend, accredited legal representative, or representative on his or her behalf; and”;

(3) in paragraph 6, for “42” substitute “41A”.

(4) In paragraph 7, for the final sentence substitute “Certificates of notification, or non-notification (as appropriate), must be filed using forms COP20A and COP20B.”.

#### **PRACTICE DIRECTION 8A – PERMISSION**

Practice Direction 8A is amended as follows –

(1) in paragraph 1, for “The application must be made using Form COP 2 (“the permission form”)” substitute “The applicant must apply for permission when making the application, in accordance with rule 54”;

(2) in paragraph 3, delete the final two sentences;

(3) delete paragraph 4;

(4) delete paragraphs 5 to 7;

(5) in paragraph 8 –

- (a) for “applicant” substitute “the parties”,
- (b) after “notified” insert “under rule 84(4)(a)”,
- (c) delete “If any such” to “form COP 5”.

(6) delete paragraph 9.

**PRACTICE DIRECTION 9A – THE APPLICATION FORM**

For the table in paragraph 12 of Practice Direction 9A, substitute the following –

<b>Type of document or instrument</b>	<b>When document is to be filed</b>
Assessment of capacity form (COP3)	All applications except those concerning the court’s powers under section 22 or 23 of, Schedule 4 of the Act, or applications made under practice direction 9D.
Annex A Supporting information for property and affairs applications (COP1A)	Where an order relating to P’s property and affairs is sought.
Annex B Supporting information for personal welfare applications (COP1B)	Where an order relating to P’s personal welfare is sought.
Deputy’s declaration (COP4)	Where the application is for the appointment of a deputy.
Annex C supporting information for statutory will, codicil, gift(s), deed of variation or settlement of property (COP1C)	Where an order relating to a statutory will, codicil, gift(s), deed of variation or settlement of property is sought
Annex D Supporting information for applications to appoint or discharge a trustee (COP1D)	Where an order relating to the appointment or discharge of a trustee is sought.
Annex E Supporting information for an application by an existing deputy or attorney (COP1E)	Where the application is made by a person appointed deputy, an attorney under a registered enduring power of attorney or a donee of a registered lasting power of attorney; and the application relates to the applicant’s powers and duties as deputy, attorney or donee in connection with P’s property and affairs.
Annex F Supporting information relating	Where an relating to the validity or

to the validity or operation of an enduring power of attorney or lasting power of attorney (COP1F)	operation of an enduring power of attorney or lasting power of attorney order is sought.
Lasting power of attorney or enduring power of attorney	Where the application concerns the court's power under section 22 or 23 of, or Schedule 4 to, the Act (where available).
Order appointing a deputy	Where the application relates to or is made by a deputy.
Order appointing a litigation friend	Where the application is made by, or where the application relates to the appointment of, a litigation friend.
Order of the Court of Protection	Where the application relates to the order.
Order of another court (and where the judgment is not in English, a translation of it into English: (i) certified by a notary public or other qualified person; or (ii) accompanied by written evidence confirming that the translation is accurate).	Where the application relates to an order made by another court.

**PRACTICE DIRECTION 9D – APPLICATIONS BY CURRENTLY APPOINTED DEPUTIES, ATTORNEYS AND DONEES IN RELATIONS TO P'S PROPERTY AND AFFAIRS**

In paragraph 8 of Practice Direction 9D, after “Annexes A and B to the application form” insert “(COP1A and COP1B)”.

**PRACTICE DIRECTION 9E – APPLICATIONS RELATING TO SERIOUS MEDICAL TREATMENT**

Paragraph 8 of Practice Direction 9E is amended as follows –

(a) for “a family and medical litigation lawyer” substitute “a senior healthcare lawyer”,

(b) for “81 Chancery Lane, London WC2A 1DD, ph: 020 7911 7127, fax: 020 7911 7105” substitute “Victory House, 30 to 34 Kingsway, London WC2B 6EX, telephone 020 3681 2751, fax 020 3681 2762”.

#### **PRACTICE DIRECTION 9F – APPLICATIONS RELATING TO STATUTORY WILLS, CODICILS, SETTLEMENTS AND OTHER DEALINGS WITH P’S PROPERTY**

In paragraph 5 of Practice Direction 9F, for “rules 51 and 52” substitute “rule 51”.

#### **PRACTICE DIRECTION 9G – APPLICATIONS TO APPOINT OR DISCHARGE A TRUSTEE**

In paragraph 4 of Practice Direction 9G, for “rules 51 and 52” substitute “rule 51”.

#### **PRACTICE DIRECTION 9H – APPLICATIONS RELATING TO THE REGISTRATION OF ENDURING POWERS OF ATTORNEY**

In paragraph 9 of Practice Direction 9H, for “21” substitute “14”.

#### **PRACTICE DIRECTION 10A – APPLICATIONS WITHIN PROCEEDINGS**

In paragraph 8 of Practice Direction 10A, for “21” substitute “14”.

#### **PRACTICE DIRECTION 10AA – DEPRIVATION OF LIBERTY APPLICATIONS**

Practice Direction 10AA is amended as follows—

(1) in paragraph 10—

- (a) omit sub-paragraph (c) and the two sentences which follow it; and
- (b) renumber sub-paragraphs (d) and (e) as sub-paragraphs (c) and (d) respectively;

(2) in paragraph 15—



- (a) omit sub-paragraph (c); and
  - (b) renumber sub-paragraph (d) as sub-paragraph (c);
- (3) in paragraph 16, for “forms DLA and DLC” substitute “form DLA”;
- (4) in paragraph 19, delete the second sentence;
- (5) paragraph 44 is deleted;
- (6) in paragraph 52, for “(rule 172)” substitute “(rules 171B and 172)”;
- (7) paragraph 53 is deleted.

#### **PRACTICE DIRECTION 10B – URGENT AND INTERIM APPLICATIONS**

In paragraph 2 of Practice Direction 10B, for “084 5330 2900” substitute “0300 456 4600”.

#### **PRACTICE DIRECTION 11A – HUMAN RIGHTS ACT 1998**

In Practice Direction 11A –

- (1) after paragraph 8, insert “(Paragraph 3(b) of Practice Direction 12A deals with allocation of an application for a declaration of incompatibility under section 4 of the Human Rights Act 1998.)”;
- (2) paragraph 9 is deleted.

#### **PRACTICE DIRECTION 12A – COURT’S JURISDICTION TO BE EXERCISED BY CERTAIN JUDGES**

Practice Direction 12A is amended as follows –

- (a) in paragraph 1, for “types of application which may be dealt with only by the President, the Vice-President or one of the other judges nominated by virtue of section 46(2)(a) to (c) of the Act.” substitute “that certain categories of case must be dealt with by a specific judge or a specific class of judges.”;

(b) for the subheading to paragraph 3, “Cases to be heard by a judge nominated by virtue of section 46(2)(a) to (c) of the Act” substitute “Cases concerning serious medical treatment or declarations of incompatibility pursuant to section 4 of the Human Rights Act 1998”;

(c) for paragraph 3, substitute –

“3(a) Where an application is made to the court in relation to serious medical treatment (other than that outlined in paragraph 2), the proceedings must be conducted by a tier 3 judge;

(b) Where an application is made to the court pursuant to rule 83, in which a declaration of incompatibility pursuant to section 4 of the Human Rights Act 1998 is sought, the proceedings (including permission, the giving of any directions, and any hearing) must be conducted by a judge of the court who has been nominated as such by virtue of section 46(2)(a) to (c) of the Act (i.e. the President of the Family Division, the Chancellor or a puisne judge of the High Court).”

## **PRACTICE DIRECTION 12B – PROCEDURE FOR DISPUTING THE COURT’S JURISDICTION**

Practice Direction 12B is amended as follows –

(a) paragraph 2 is deleted;

(b) for the subheading to paragraph 5, “Disputing the jurisdiction of the court – where P ceases to lack capacity” substitute “Disputing the jurisdiction of the court – where P has or regains capacity”;

(c) in paragraph 5, for “P ceases to lack” substitute “P has or regains”;

(d) paragraph 8 is deleted.

## **PRACTICE DIRECTION 13A – HEARINGS (INCLUDING REPORTING RESTRICTIONS)**

For Practice Direction 13A substitute new Practice Direction 13A as set out in Schedule 5 to this update.

## **PRACTICE DIRECTION 13B – COURT BUNDLES**

Practice Direction 13B is amended as follows –

(1) in paragraph 7.2 –

(a) in subparagraph (c), for “Royal Courts of Justice, Thomas More building, Strand, London WC2A 2LL (DX 44450 Strand)” substitute “PO Box 70185, First Avenue House, 42 to 49 High Holborn, London WC1A 9 JA (DX 160013 Kingsway 7)”;

(b) in subparagraph (d) –

(i) for “Principal Registry of the Family Division” substitute “Central Family Court”;

(ii) for “(DX 396 Chancery Lane)” substitute “(DX 160010 Kingsway)”;

(2) in paragraphs 8.1 and 10.2(c), and in the subheading above paragraph 8.1, for “Principal Registry of the Family Division” substitute “Central Family Court”;

(3) in paragraph 10.2(b), “Thomas More Building” is deleted;

(4) in paragraph 12, for “CPR Part 48.7” substitute “CPR Part 46.8”.

## **PRACTICE DIRECTION 14A – WRITTEN EVIDENCE**

Practice Direction 14A is amended as follows:

(1) in paragraph 16—

(a) in sub-paragraph (d), for “Supreme Court” substitute “Senior Courts”; and

(b) in sub-paragraph (g)—

- (i) for “any county court” substitute “the County Court”; and
- (ii) omit “by the judge of that court”;

(2) in annex 2, at paragraph 9, for “Her Majesty’s Court Service” substitute “Her Majesty’s Court and Tribunal Service”.

## **PRACTICE DIRECTION 14B – DEPOSITIONS**

Practice Direction 14B is amended as follows—

(1) in Annex A, paragraph 8, for the address of the Senior Judge at the end of the paragraph substitute—

“The Senior Judge,  
Court of Protection,  
First Avenue House,  
42 -49 High Holborn,  
London WC1V 6NP  
(DX 160013 Kingsway); and

(2) in Annex B, for the words and website address after “can be found” substitute “on the EU legislation website at <http://eur-lex.europa.eu>.”

## **PRACTICE DIRECTION 17A – LITIGATION FRIEND**

Practice Direction 17A is amended as follows –

(1) in paragraph 1-

- (a) before “Part 17” insert “Section 1 of”, and
- (b) for “149” substitute “146”;

(2) in paragraph 15, in subparagraph (b), for “terminate” substitute “bring to an end”;

(3) in paragraph 16, delete “and must be supported by evidence”;

(4) paragraph 17 is deleted and paragraph 18 renumbered 17 accordingly;

(5) for paragraph 18 (as currently numbered), substitute “Rule 145A makes provision for where the need for a litigation friend comes to an end during proceedings, for a child who is not P nor a protected party”;

(6) paragraph 19 is renumbered 18, and for “146(6)” in that paragraph substitute “145A”;

(7) delete paragraphs 20 to 22.

### **PRACTICE DIRECTION 17B – RULE 3A REPRESENTATIVES**

After Practice Direction 17A, insert the new Practice Direction 17B as set out in Schedule 6 to this update.

### **PRACTICE DIRECTION 19A – COSTS**

For Practice Direction 19A substitute the new Practice Direction 19A as set out in Schedule 7 to this update.

### **PRACTICE DIRECTION 20A – APPEALS**

In Practice Direction 20A –

(1) in paragraph 2 of Practice Direction, for “Rules 172 and 173” substitute “Rules 171B, 172 and 173”;

(2) in the words in brackets at the end of paragraph 7, after “service” insert “, and Part 7 sets out the rules relating to notification of P, including the requirement to notify P that an appellant’s notice has been issued by the court”.

(3) in paragraph 28(b), for “not funded by the Community Legal Service” substitute “who is not in receipt of civil Legal Aid”;

(4) in paragraphs 30 and 31, for “rule 172” substitute “rules 171B and 172”.

#### **PRACTICE DIRECTION 20B – ALLOCATION OF APPEALS**

After Practice Direction 20A insert Practice Direction 20B as set out in Schedule 8 to this update.

#### **PRACTICE DIRECTION 23B – WHERE P CEASES TO LACK CAPACITY OR DIES**

Practice Direction 23 B is amended as follows –

- (1) in paragraph 4, delete “148 or”;
- (2) in paragraph 8, for “7” substitute “2”.

## **SCHEDULE 1**

### **“PRACTICE DIRECTION 2A – PARTICIPATION OF P**

*This Practice Direction supplements Part 2 of the Court of Protection Rules 2007*

1. Developments in the case law both of the European Court of Human Rights and domestic courts have highlighted the importance of ensuring that P takes an appropriate part in the proceedings and the court is properly informed about P; and the difficulties of securing this in a way which is proportionate to the issues involved and the nature of the decisions which need to be taken and avoids excessive delay and cost.

2. To this end, rule 3A makes provision to—

(a) ensure that in every case the question of what is required to ensure that P’s “voice” is properly before the court is addressed; and

(b) provide flexibility allowing for a range of different methods to achieve this,

with the purpose of ensuring that the court is in a position to make a properly informed decision at all relevant stages of a case.

3. The great majority of cases in terms of numbers before the Court of Protection relate to non-contentious matters concerning property and affairs, where there is a need to preserve P’s resources and experience has shown that they can be dealt with on paper and without joining P as a party or appointing anyone to represent P. This is covered by Rule 3A(2)(e) which provides that none of the listed directions need be made.

4. Other cases, involving a range of issues relating to both property and affairs and personal welfare do or may call for a higher level of participation by or on behalf of P at one or more stages of the case.

5. Rule 3A accordingly requires the court in every case to consider whether it should make one, or more, of a number of possible directions for securing P’s participation. These directions cover a range from the joining of P as a party securing P’s participation by the appointment of an accredited legal representative;

securing P's participation by the appointment of a representative ; securing P's participation by giving P the opportunity to address the judge directly or indirectly; and securing P's participation in some other way which meets the overriding objective.

6. In considering whether it should make any of these directions, and if so which of them, the court is required to have regard to a range of factors to determine the participation and representation needed. In this way the court is both required and enabled to tailor the provision it directs for P's participation and representation to the circumstances of the individual case.

7. If the court concludes that P lacks capacity to conduct the proceedings and the circumstances require that P should be joined as a party, the order joining P as a party shall only take effect on the appointment of a litigation friend or, if the court so directs, on or after the appointment of an accredited legal representative. This enables steps to be taken and orders to be made before P becomes a party. During that period P's participation can be secured and the court can seek relevant information in any of the ways set out Rule 3A(2)(b) to (e).

8. Provisions relating to the appointment of a litigation friend and Rule 3A representatives (namely an accredited legal representative appointed pursuant to Rule 3A(2)(b) and a representative appointed pursuant to Rule 3A(2)(c)) are contained in Part 17. Rule 3A representatives can only be appointed with their consent.

9. An accredited legal representative is defined in Rule 6. When such representatives exist one can be appointed whether or not P is joined as a party and this may be of assistance if urgent orders are needed, particularly if they are likely to have an impact on the final orders (e.g. an urgent order relating to residence).

10. When P lacks capacity to conduct the proceedings and is made a party an accredited legal representative is not intended as a substitute for a litigation friend, but as an alternative in a suitable case (or in the early stages of the case).

11. When P lacks capacity to conduct the proceedings and an order that he is to be a party is made factors relevant to the choice between appointing a litigation



friend and an accredited legal representative to represent him as a party will include—

- Whether there will be a need for expert or other evidence to be obtained and filed, or other material gathered, on P's behalf;
- The nature and complexity of the case;
- The likely range of issues.

12. In other cases their nature and complexity, the issues raised or likely to be raised in them and the stage they have reached could mean that the assistance of an accredited legal representative is not required or is inappropriate and that P's participation is best secured and the court will be properly informed by the appointment of a representative under Rule 3A(2)(c) (who could be a friend, an IMCA, an advocate appointed under the Care Act 2014, a family member or anyone with relevant knowledge) or by directions being made under Rule 3A (d) or (e).

13. A Rule 3A representative must be able to discharge his or her functions fairly and competently. It is possible that a Rule 3A representative may be in, or find himself or herself in, a personal or professional position in which he or she cannot properly represent P, provide the court with information about P or carry out other functions directed by the court. In such a case, Section 2 of Part 17 allows for the court to vary the terms of the appointment with a view to resolving the difficulty, or to discharge the appointment altogether (in which case the court will consider afresh whether it should make one or more of the directions in paragraph (2) of Rule 3A)."

## **SCHEDULE 2**

### **“PRACTICE DIRECTION 3B – LEVELS OF JUDICIARY**

*This Practice Direction supplements Part 3 of the Court of Protection Rules 2007*

#### **General**

1.1 Rule 6 makes provision for a practice direction to set out which of the judges who have been nominated to act as a judge of the Court of Protection under section 46 of the Act are to be Tier 2 Judges and Tier 3 Judges.

1.2 A judge who has been nominated to act as a judge of the Court of Protection under section 46 of the Act and who is neither a Tier 2 Judge nor a Tier 3 Judge is a Tier 1 Judge.

1.3 Rule 89 makes provision as to which judges of the Court of Protection may reconsider decisions made by Tier 1 Judges, Tier 2 Judges and Tier 3 Judges.

1.4 Part 20 makes provision as to the destination of appeals from Tier 1 Judges, Tier 2 Judges and Tier 3 Judges.

#### **Tier 2 Judges**

2. The following judges are Tier 2 Judges for the purposes of the Court of Protection Rules 2007:

- (a) The Senior Judge
- (b) a judge who has been nominated to act as a judge of the Court of Protection under section 46 of the Act by virtue of holding one of the following offices:
  - (i) a circuit judge;
  - (ii) a recorder
  - (iii) a judge of the Upper Tribunal, by virtue of appointment under paragraph 1(1) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2007,
  - (iv) a transferred-in judge of the Upper Tribunal (see section 31(2) of the Tribunals, Courts and Enforcement Act 2007),
  - (v) a deputy judge of the Upper Tribunal (whether under paragraph 7 of Schedule 3 to, or section 31(2) of, the Tribunals, Courts and Enforcement Act 2007),
  - (vi) the Judge Advocate General,

- (vii) a person appointed under section 30(1)(a) or (b) of the Courts-Martial (Appeals) Act 1951 (assistants to the Judge Advocate General),
- (viii) the Chamber President, or Deputy Chamber President, of a chamber of the First-tier Tribunal or of a chamber of the Upper Tribunal.

### **Tier 3 Judges**

3. The following judges are Tier 3 Judges for the purposes of the Court of Protection Rules 2007:

- (a) The President
- (b) The Vice-President
- (c) a judge who has been nominated to act as a judge of the Court of Protection under section 46 of the Act by virtue of holding one of the following offices:
  - (i) The President of the Family Division
  - (ii) The Chancellor
  - (iii) The President of the Queen's Bench Division
  - (iv) The Master of the Rolls
  - (v) The Lord Chief Justice
  - (vi) The Senior President of Tribunals
  - (vii) a puisne judge of the High Court
  - (viii) a deputy judge of the High Court
  - (ix) an ordinary judge of the Court of Appeal (including the vice-president, if any, of either division of that court)."

### **SCHEDULE 3**

#### **“PRACTICE DIRECTION 3C – APPLICATION OF THE CIVIL PROCEDURE RULES 1998 AND THE FAMILY PROCEDURE RULES 2010**

This Practice Direction supplements Part 3 of the Court of Protection Rules 2007.

1. Rule 9(2) allows a practice direction to specify the date at which the relevant versions of the Civil Procedure Rules 1998 and the Family Procedure Rules 2010 were in force for the purposes of references to either body of those Rules in the Court of Protection Rules 2007.
2. A reference in these Rules to the Civil Procedure Rules 1998 is to that version of those Rules in force on the 6th April 2015.
3. A reference in these Rules to the Family Procedure Rules 2010 is to that version of those Rules in force on the 6th April 2015.”

## **SCHEDULE 4**

### **“PRACTICE DIRECTION 6B – SERVICE OUT OF THE JURISDICTION**

*This Practice Direction supplements Part 6 of the Court of Protection Rules 2007*

#### **Scope of this Practice Direction**

**1.1** This Practice Direction supplements rules 39 to 39H (service out of the jurisdiction) of Part 6.

#### **Documents to be filed under rule 39F(2)(c)**

**2.1** A party must provide the following documents for each party to be served out of the jurisdiction—

- (1) a copy of the application form and any other relevant documents;
- (2) a duplicate of the application form, copies of any documents accompanying the application and copies of any other relevant documents;
- (3) forms for responding to the application; and
- (4) any translation required under rule 39G in duplicate.

**2.2** Some countries require legalisation of the document to be served and some require a formal letter of request which must be signed by the Senior Master. Any queries on this should be addressed to the Foreign Process Section (Room E02) at the Royal Courts of Justice.

#### **Service in a Commonwealth State or British overseas territory**

**3.1** The judicial authorities of certain Commonwealth States which are not a party to the Hague Convention require service to be in accordance with rule 39E(1)(b)(i) and not 39E(3). A list of such countries can be obtained from the Foreign Process Section (Room E02) at the Royal Courts of Justice.

**3.2** The list of British overseas territories is contained in Schedule 6 to the British Nationality Act 1981. For ease of reference, these are –

- (a) Anguilla;
- (b) Bermuda;
- (c) British Antarctic Territory;
- (d) British Indian Ocean Territory;
- (e) British Virgin Islands;
- (f) Cayman Islands;
- (g) Falkland Islands;
- (h) Gibraltar;
- (i) Montserrat;
- (j) Pitcairn, Henderson, Ducie and Oeno;
- (k) St. Helena and Dependencies;
- (l) South Georgia and the South Sandwich Islands;
- (m) Sovereign Base Areas of Akrotiri and Dhekelia; and
- (n) Turks and Caicos Islands.

### **Period for responding to an application**

**4.1** Where rule 39B(4) applies, the periods within which the respondent must file an acknowledgment of service or an answer to the application is the number of days listed in the Table after service of the application.

**4.2** Where an application is served out of the jurisdiction any statement as to the period for responding to the application contained in any of the forms required by the

Court of Protection Rules to accompany the application must specify the period prescribed under rule 39B.

### **Period for responding to a document other than an application**

**5.1** Where a document other than an application is served out of the jurisdiction, the period for responding is 7 days less than the number of days listed in the Table.

### **Further information**

**5.2** Further information concerning service out of the jurisdiction can be obtained from the Foreign Process Section, Room E02, Royal Courts of Justice, Strand, London WC2A 2LL (telephone 020 7947 6691).

### **TABLE**

<b>Place or country</b>	<b>number of days</b>
Afghanistan	23
Albania	25
Algeria	22
Andorra	21
Angola	22
Anguilla	31
Antigua and Barbuda	23
Antilles (Netherlands)	31
Argentina	22
Armenia	21
Ascension Island	31
Australia	25
Austria	21
Azerbaijan	22
Azores	23
Bahamas	22
Bahrain	22
Balearic Islands	21
Bangladesh	23
Barbados	23

Belarus	21
Belgium	21
Belize	23
Benin	25
Bermuda	31
Bhutan	28
Bolivia	23
Bosnia and Herzegovina	21
Botswana	23
Brazil	22
British Virgin Islands	31
Brunei	25
Bulgaria	23
Burkina Faso	23
Burma	23
Burundi	22
Cambodia	28
Cameroon	22
Canada	22
Canary Islands	22
Cape Verde	25
Caroline Islands	31
Cayman Islands	31
Central African Republic	25
Chad	25
Chile	22
China	24
China (Hong Kong)	31
China (Macau)	31
China (Taiwan)	23
China (Tibet)	34
Christmas Island	27
Cocos (Keeling) Islands	41
Colombia	22
Comoros	23
Congo (formerly Congo Brazzaville or French Congo)	25
Congo (Democratic Republic)	25
Corsica	21
Costa Rica	23
Croatia	21
Cuba	24
Cyprus	31



Czech Republic	21
Denmark	21
Djibouti	22
Dominica	23
Dominican Republic	23
East Timor	25
Ecuador	22
Egypt	22
El Salvador	25
Equatorial Guinea	23
Eritrea	22
Estonia	21
Ethiopia	22
Falkland Islands and Dependencies	31
Faroe Islands	31
Fiji	23
Finland	24
France	21
French Guyana	31
French Polynesia	31
French West Indies	31
Gabon	25
Gambia	22
Georgia	21
Germany	21
Ghana	22
Gibraltar	31
Greece	21
Greenland	31
Grenada	24
Guatemala	24
Guernsey	21
Guinea	22
Guinea-Bissau	22
Guyana	22
Haiti	23
Holland (Netherlands)	21
Honduras	24
Hungary	22
Iceland	22
India	23
Indonesia	22

Iran	22
Iraq	22
Ireland (Republic of)	21
Ireland (Northern)	21
Isle of Man	21
Israel	22
Italy	21
Ivory Coast	22
Jamaica	22
Japan	23
Jersey	21
Jordan	23
Kazakhstan	21
Kenya	22
Kiribati	23
Korea (North)	28
Korea (South)	24
Kosovo	21
Kuwait	22
Kyrgyzstan	21
Laos	30
Latvia	21
Lebanon	22
Lesotho	23
Liberia	22
Libya	21
Liechtenstein	21
Lithuania	21
Luxembourg	21
Macedonia	21
Madagascar	23
Madeira	31
Malawi	23
Malaysia	24
Maldives	26
Mali	25
Malta	21
Mariana Islands	26
Marshall Islands	32
Mauritania	23
Mauritius	22
Mexico	23

Micronesia	23
Moldova	21
Monaco	21
Mongolia	24
Montenegro	21
Montserrat	31
Morocco	22
Mozambique	23
Namibia	23
Nauru	36
Nepal	23
Netherlands	21
Nevis	24
New Caledonia	31
New Zealand	26
New Zealand Island Territories	50
Nicaragua	24
Niger (Republic of)	25
Nigeria	22
Norfolk Island	31
Norway	21
Oman (Sultanate of)	22
Pakistan	23
Palau	23
Panama	26
Papua New Guinea	26
Paraguay	22
Peru	22
Philippines	23
Pitcairn, Henderson, Ducie and Oeno Islands	31
Poland	21
Portugal	21
Portuguese Timor	31
Puerto Rico	23
Qatar	23
Reunion	31
Romania	22
Russia	21
Rwanda	23
Sabah	23
St. Helena	31
St. Kitts and Nevis	24

St. Lucia	24
St. Pierre and Miquelon	31
St. Vincent and the Grenadines	24
Samoa (U.S.A. Territory) (See also Western Samoa)	30
San Marino	21
Sao Tome and Principe	25
Sarawak	28
Saudi Arabia	24
Scotland	21
Senegal	22
Serbia	21
Seychelles	22
Sierra Leone	22
Singapore	22
Slovakia	21
Slovenia	21
Society Islands (French Polynesia)	31
Solomon Islands	29
Somalia	22
South Africa	22
South Georgia (Falkland Island Dependencies)	31
South Orkneys	21
South Shetlands	21
Spain	21
Spanish Territories of North Africa	31
Sri Lanka	23
Sudan	22
Surinam	22
Swaziland	22
Sweden	21
Switzerland	21
Syria	23
Tajikistan	21
Tanzania	22
Thailand	23
Togo	22
Tonga	30
Trinidad and Tobago	23
Tristan Da Cunha	31
Tunisia	22
Turkey	21
Turkmenistan	21

Turks & Caicos Islands	31
Tuvalu	23
Uganda	22
Ukraine	21
United Arab Emirates	22
United States of America	22
Uruguay	22
Uzbekistan	21
Vanuatu	29
Vatican City State	21
Venezuela	22
Vietnam	28
Virgin Islands – U.S.A	24
Wake Island	25
Western Samoa	34
Yemen (Republic of)	30
Zaire	25
Zambia	23
Zimbabwe	22

ANNEX (SERVICE REGULATION)”

## **SCHEDULE 5**

### **“PRACTICE DIRECTION 13A – HEARINGS (INCLUDING REPORTING RESTRICTIONS)”**

*This Practice Direction supplements Part 13 of the Court of Protection Rules 2007*

#### **General**

1. Hearings before the court will generally be in private but the court may order that the whole or part of any hearing is to be held in public. The court also has power to:
  - (a) authorise the publication of information about a private hearing;
  - (b) authorise persons to attend a private hearing;
  - (c) exclude persons from attending either a private or public hearing; or
  - (d) restrict or prohibit the publication of information about a private or public hearing.
  
2. Part 1 of this practice direction applies to any application for an order under rules 90 to 92.
  
3. Part 2 of the practice direction makes additional provision in relation to orders founded on Convention rights which would restrict the publication of information. (Section 1 of the Human Rights Act 1998 defines “the Convention rights”.)

#### **PART 1**

##### **Applications under rules 90, 91 or 92**

4. An application for an order under rule 90, 91 or 92 must be commenced by filing an application notice form using COP9 in accordance with Part 10.
  
5. For the purposes of rules 90 to 92, a statement of truth in an application notice may be made by a person who is not a party.
  
6. For an application commenced under rules 90, 91 or 92, the court should consider whether to direct that the application should be dealt with as a discrete issue.

#### **PART 2**

##### **Powers of the court to impose reporting restrictions**

*Court sitting in private*

7. Section 12(1) of the Administration of Justice Act 1960 provides that, in any proceedings brought under the Mental Capacity Act 2005 before a court which is sitting in private, publication of information about the proceedings will generally be contempt of court. However, rule 91(1) makes it clear that there will be no contempt where the court has authorised the publication of the information under rule 91 or the publication is authorised in accordance with Part 3 of this Practice Direction. Where the court makes an order authorising publication, it may (at the same time or subsequently) restrict or prohibit the publication of information relating to a person's identity. Such restrictions may be imposed either on an application made by any person (usually a party to the proceedings) or of the court's own initiative.

8. The general rule is that hearings will be in private and that there can be no lawful publication of information unless the court has authorised it or the publication is authorised in accordance with Part 3 of this Practice Direction. Where reporting restrictions are imposed as part of the order authorising publication, they will simply set out what can be published and there will be no need to comply with the requirements as to notice which are set out in Part 2 of this practice direction. But if the restrictions are subsequent to the order authorising publication, then the requirements of Part 2 should be complied with.

#### *Court sitting in public*

9. Where a hearing is to be held in public as a result of a court order under rule 92, the court may restrict or prohibit the publication of information about the proceedings. Such restrictions may be imposed either on an application made by any person (usually a party to the proceedings) or of the court's own initiative.

#### **Notification in relation to reporting restrictions**

10. In connection with the imposition of reporting restrictions, attention is drawn to section 12(2) of the Human Rights Act 1998. This means that where an application has been made for an order restricting the exercise of the right to freedom of expression, the order must not be made where the person against whom the application is made is neither present nor represented unless the court is satisfied—

- (a) that the applicant has taken all practicable steps to notify the respondent;
- or
- (b) that there are compelling reasons why the respondent should not be notified.

11. The need to ensure that P's Convention rights are protected may be at issue when the court is considering whether to make an order that a public hearing should be held. Part 2 of this practice direction should therefore be complied with where the court is considering making an order under rule 92(2) of its own initiative.

12. In summary, the requirements to notify in accordance with the requirements of Part 2 of this practice direction will apply in any case where—

(a) the court has made an order for the publication of information about proceedings which are conducted in private and, after the order has been made:

- (i) an application founded on P's Convention rights is made to the court for an order under rule 91(3) which would impose restrictions (or further restrictions) on the information that may be published, or
- (ii) of its own initiative, the court is considering whether to impose such restrictions on the basis of P's Convention rights; or

(b) the court has already made an order for a hearing to be held in public and:

- (i) an application founded on Convention rights is made to the court for an order under rule 92(2) which would impose restrictions (or further restrictions) on the information that may be published, or
- (ii) of its own initiative, the court is considering whether to vary or impose further such restrictions.

### **Notice of reporting restrictions to be given to national news media**

13. Notice of the possibility that reporting restrictions may be imposed can be effected via the Press Association's CopyDirect service, to which national newspapers and broadcasters subscribe as a means of receiving notice of such applications. Such service should be the norm. The court retains the power to make orders without notice (whether in response to an application or of its own initiative) but such cases will be exceptional.

14. CopyDirect will be responsible for notifying the individual media organisations.

Where the order would affect the world at large this is sufficient service for the purposes of advance notice. The website:

<http://www.medialawyer.press.net/courtapplications> gives details of the organisations represented and instructions for service of the application.

### **Notice of an application to be given by applicant**



15. A person who has made an application founded on Convention rights should give advance notice of the application to the national media via the Press Association's CopyDirect service. He should first telephone CopyDirect (tel. no 0870 837 6429). Unless an order pursuant to rule 19 has been made, a copy of the following documents should be sent either by fax (fax no 0870 830 6949) or to the e-mail address provided by CopyDirect—

- (a) the application form or application notice seeking the restriction order;
- (b) the witness statement filed in support;
- (c) any legal submissions in support; and
- (d) an explanatory note setting out the nature of the proceedings in the form set out in the Annex to this practice direction.

16. It is helpful if applications are accompanied by an explanatory note from which persons served can readily understand the nature of the case (though care should be taken that the information does not breach any rule or order of the court in relation to the use or publication of information). In any case where notice of an application has not been given, the explanatory note should explain why.

17. Unless there is a particular reason not to do so, copies of all the documents referred to above should be served. If there is a reason for not serving some or all of the documents (or parts of them), the applicant should ensure sufficient detail is given to enable the media to make an informed decision as to whether it wishes to attend a hearing or be legally represented.

18. The CopyDirect service does not extend to local or regional media or magazines. If service of the application on any specific organisation or person not covered is required, it should be effected directly.

19. The court may dispense with any of the requirements set out in paragraphs 15 to 18.

#### **Notice of own-initiative order to be given by court**

20. In any case where the court gives advance notice of an own-initiative order to the national media, it will send such of the information listed in paragraph 15 as it considers necessary.

#### **Responding to a notice**

21. Where a media organisation or any other person has been notified of an application or own-initiative order, they may decide that they wish to participate in any hearing to determine whether reporting restrictions should be imposed. In order to take part, the person must file an acknowledgment of service (“the acknowledgment”) using form COP5 within 14 days beginning with the date on which the notice of the reporting restrictions was given to him by CopyDirect.

22. The acknowledgment must be filed in accordance with rule 75.

23. A person who has filed an acknowledgment will not become a party to the substantive proceedings (ie. the proceedings in relation to which an application form was filed) except to such extent (if any) as the court may direct.

### **The hearing**

24. Any application or own-initiative order which invokes Convention rights will involve a balancing of rights under Article 8 (right to respect for private and family life) and Article 10 (freedom of expression). There is no automatic precedence as between these Articles, and both are subject to qualification where (among other considerations) the rights of others are engaged.

25. In the case of an application, section 12(4) of the Human Rights Act 1998 requires the court to have particular regard to the importance of freedom of expression. It must also have regard to the extent to which material has or is about to become available to the public, the extent of the public interest in such material being published and the terms of any relevant privacy code (such as the Editor’s Code of Practice enforced by the Independent Press Standards Organisation).

26. The same approach will be taken where the court is considering an own-initiative order imposing reporting restrictions.

### **Scope of order**

#### *Persons protected*

27. The aim should be to protect P rather than to confer anonymity on other individuals or organisations. However, the order may include restrictions on identifying or approaching specified family members, carers, doctors or organisations or other persons as the court directs in cases where the absence of such restriction

is likely to prejudice their ability to care for P, or where identification of such persons might lead to identification of P and defeat the purpose of the order. In cases where the court receives expert evidence the identity of the experts (as opposed to treating clinicians) is not normally subject to restriction, unless evidence in support is provided for such a restriction.

*Information already in the public domain*

28. Orders will not usually be made prohibiting publication of material which is already in the public domain, other than in exceptional cases.

*Duration of order*

29. Orders should last for no longer than is necessary to achieve the purpose for which they are made. The order may need to last until P's death. In some cases a later date may be necessary, for example to maintain the anonymity of doctors or carers after the death of a patient.

### **PART 3: COMMUNICATION OF INFORMATION RELATING TO PROCEEDINGS HELD IN PRIVATE**

#### **Introduction**

30. Rule 91 deals with the communication of information (whether or not contained in a document filed with the court) relating to proceedings in the Court of Protection which are held in private.

31. Subject to any direction of the court, information may be communicated for the purposes of the law relating to contempt in accordance with paragraphs 33 to 37.

32. Nothing in this Part of this Practice Direction permits the communication to the public at large or any section of the public of any information relating to the proceedings.

#### **Communication of information – general**

33. Information may be communicated where the communication is to—

- (a) a party;
- (b) the legal representative of a party;

- (c) an accredited legal representative or a representative within the meaning of rule 3A;
- (d) a professional legal adviser;
- (e) the Director of Legal Aid Casework;
- (f) an expert whose instruction by a party has been authorised by the court for the purposes of the proceedings;
- (g) any person instructed to make a report under section 49 of the Mental Capacity Act 2005;
- (h) the Official Solicitor (prior to the Official Solicitor becoming a litigation friend);
- (i) the Public Guardian.

### **Communication of information for purposes connected with the proceedings**

34. (1) A party or the legal representative of a party, on behalf of and upon the instructions of that party, may communicate information relating to the proceedings to any person where necessary to enable that party—

- (a) by confidential discussion, to obtain support, advice or assistance in the conduct of the proceedings;
- (b) to engage in mediation or other forms of non-court dispute resolution;
- (c) to make and pursue a complaint against a person or body concerned in the proceedings; or
- (d) to make and pursue a complaint regarding the law, policy or procedure relating to proceedings in the Court of Protection.

(2) Where information is communicated to any person in accordance with sub-paragraph (1)(a), no further communication by that person is permitted.

(3) When information relating to the proceedings is communicated to any person in accordance with sub-paragraphs (1)(b),(c) or (d)—

- (a) the recipient may communicate that information to a further recipient, provided that –
  - (i) the party who initially communicated the information consents to that further communication; and
  - (ii) the further communication is made only for the purpose or purposes for which the party made the initial communication; and
- (b) the information may be successively communicated to and by further recipients on as many occasions as may be necessary to fulfil the purpose for which the information was initially communicated, provided that on each such occasion the conditions in sub-paragraph (a) are met.

**Communication of information by a party etc. for other purposes**

35. A person specified in the first column of the following table may communicate to a person listed in the second column such information as is specified in the third column for the purpose or purposes specified in the fourth column –

A party	A lay adviser, a McKenzie Friend, or a person arranging or providing pro bono legal services	Any information relating to the proceedings	To enable the party to obtain advice or assistance in relation to the proceedings
A party	A health care professional or a person or body providing counselling services for persons lacking capacity or their families		To enable the party or a member of the party's family to obtain health care or counselling
A party	The European Court of Human Rights		For the purpose of making an application to the European Court of Human Rights
A party, any person lawfully in receipt of information or a court officer	A person or body conducting an approved research project		For the purpose of an approved research project
A legal representative or a professional legal adviser, and the Public Guardian	A person or body responsible for investigating or determining complaints in relation to legal representatives or		For the purposes of the investigation or determination of a complaint in relation to a legal representative or a professional legal

	professional legal advisers		adviser
A legal representative or a professional legal adviser	A person or body assessing quality assurance systems		To enable the legal representative or professional legal adviser to obtain a quality assurance assessment
A legal representative or a professional legal adviser	An accreditation body	Any information relating to the proceedings providing that it does not, or is not likely to, identify any person involved in the proceedings	To enable the legal representative or professional legal adviser to obtain accreditation
A party, or the Public Guardian	A police officer	The text or summary of the whole or part of a judgment given in the proceedings	For the purpose of a criminal investigation
A party or any person lawfully in receipt of information	A member of the Crown Prosecution Service		To enable the Crown Prosecution Service to discharge its functions under any enactment

**Communication to and by Ministers of the Crown and Welsh Ministers**

36. A person specified in the first column of the following table may communicate to a person listed in the second column such information as is specified in the third column for the purpose or purposes specified in the fourth column –

A party or any	A Minister of the Crown	Any information	To provide the
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person lawfully in receipt of information relating to the proceedings	with responsibility for a government department engaged, or potentially engaged, in an application before the European Court of Human Rights relating to the proceedings	relating to the proceedings of which he or she is in lawful possession	department with information relevant, or potentially relevant, to the proceedings before the European Court of Human Rights
A Minister of the Crown	The European Court of Human Rights		For the purpose of engagement in an application before the European Court of Human Rights relating to the proceedings
A Minister of the Crown	Lawyers advising or representing the United Kingdom in an application before the European Court of Human Rights relating to the proceedings		For the purpose of receiving advice or for effective representation in relation to the application before the European Court of Human Rights
A Minister of the Crown or a Welsh Minister	Another Minister, or Ministers, of the Crown or a Welsh Minister		For the purpose of notification, discussion and the giving or receiving of advice regarding issues raised by the information in which the relevant departments have, or may have, an interest

37. (1) This paragraph applies to communications made in accordance with paragraphs 35 and 36 and the reference in this paragraph to ‘the table’ means the table in the relevant paragraph.

(2) A person in the second column of the table may only communicate information relating to the proceedings received from a person in the first column for the purpose or purposes –

- (a) for which he or she received that information;
- (b) of professional development or training, providing that any communication does not, or is not likely to, identify any person involved in the proceedings without that person's consent; or
- (c) of fulfilling a statutory process.

38. In this Practice Direction –

'accreditation body' means –

- (a) The Law Society, or
- (b) the Lord Chancellor in exercise of the Lord Chancellor's functions in relation to legal aid;

'approved research project' means a project of research-

- (a) approved in writing by a Secretary of State after consultation with the President of the Court of Protection, or
- (b) approved in writing by the President of the Court of Protection.

'body assessing quality assurance systems' includes –

- (a) The Law Society,
- (b) the Lord Chancellor in exercise of the Lord Chancellor's functions in relation to legal aid, or
- (c) The General Council of the Bar;

'body or person responsible for investigating or determining complaints in relation to legal representatives or professional legal advisers' means –

- (a) The Law Society,
- (b) The General Council of the Bar,
- (c) The Institute of Legal Executives,
- (d) The Legal Services Ombudsman; or
- (e) The Office of Legal Complaints.

'criminal investigation' means an investigation conducted by police officers with a view to it being ascertained –

- (a) whether a person should be charged with an offence, or
- (b) whether a person charged with an offence is guilty of it;

'health care professional' means –

- (a) a registered medical practitioner,
- (b) a registered nurse or midwife, or



(c) a clinical psychologist.

'lay adviser' means a non-professional person who gives lay advice on behalf of an organisation in the lay advice sector;

'McKenzie Friend' means any person permitted by the court to sit beside an unrepresented litigant in court to assist that litigant by prompting, taking notes and giving advice.

## **ANNEX**

### **Application for a Reporting Restriction Order**

#### EXPLANATORY NOTE

1 AB is in a permanent vegetative state. An application has been made by the NHS Hospital Trust responsible for his care for the Court of Protection to make a decision on the question of withdrawing artificial nutrition and hydration. This course is supported by AB's family.

2 On [date] the application will be heard by the Court of Protection [in public].

3 A Reporting Restriction Order has been [made/applied for] to protect AB's right to confidentiality in respect of his medical treatment. This does not restrict publication of information or discussion about the treatment of patients in a permanent vegetative state, provided that such publication is not likely to lead to the identification of AB, those caring for him, the NHS Trust concerned or the establishment at which he is being cared for."

## **SCHEDULE 6**

### **“PRACTICE DIRECTION 17B – RULE 3A REPRESENTATIVES**

*This Practice Direction supplements Part 17 of the Court of Protection Rules 2007*

1. Section 2 of Part 17 contains rules about the appointment of an accredited legal representative or a representative for P. This Practice Direction is made under rule 149 and provides guidance on the appointment and removal of an accredited legal representative or a representative pursuant to Part 17.

2. Rule 147 provides that an accredited legal representative or representative may be appointed for P.

3. An application for –

(a) the appointment of an accredited legal representative, or a representative pursuant to rule 148;

(b) directions pursuant to rule 148A; or

(c) for an order under rule 148B

should be made by filing an application in form COP 9 under the procedure in Part 10.

4. In respect of an application pursuant to rule 148, or for the substitution of an accredited legal representative or a representative in place of an existing one pursuant to rule 148B, the evidence in support must satisfy the court that the conditions in rule 147 are met.”

## SCHEDULE 7

### **“PRACTICE DIRECTION 19A – COSTS**

*This Practice Direction supplements Part 19 of the Court of Protection Rules 2007*

#### **Modifications to the Civil Procedure Rules 1998**

1. The Practice Directions which supplement Parts 44 to 48 of the Civil Procedure Rules 1998 (“CPR Practice Directions 44 to 48”) apply, insofar as those Parts apply to proceedings in the Court of Protection, with such modifications as are appropriate together with the modifications specified in this practice direction.

#### *Provisions which do not apply*

2. The following provisions of CPR Practice Directions 44 to 48 do not apply—
- (a) in CPR Practice Direction 44: paragraphs 3.1 – 3.7, 4.1, 7.1 – 7.3, 9.2(a), 9.3, 9.4, 9.9, 9.10 and 12.1 – 12.7;
  - (b) the whole of CPR Practice Direction 45;
  - (c) in CPR Practice Direction 46: paragraphs 1.1 – 2.1 and 7.1 – 9.12;
  - (d) in CPR Practice Direction 47: paragraphs 4.1 – 4.3;
  - (e) in CPR Practice Direction 48: paragraphs 2.1 – 4.2.

#### *Modifications of provisions which do apply*

3. In paragraph 9.5(4) of CPR Practice Direction 44, the words “any party against whom an order for payment of those costs is intended to be sought” are replaced with “all parties to the proceedings and any other person that the court may direct.”
4. In paragraphs 5.4 and 5.9 of CPR Practice Direction 46 and paragraphs 3.3, 9.2, 15 and 16.6 of CPR Practice Direction 47, the words “Part 23” are removed and replaced with “Part 10 (Applications within proceedings)”.
5. In paragraph 1.2 of CPR Practice Direction 47, the words “or the parties may agree in writing” are removed.
6. Paragraphs 1.3, 1.4, 3.2, 3.3, 10.5(a), 11.1, 11.3, 16.11(a), 20.4 and 20.6 of CPR Practice Direction 47 are to be read as if the references in those paragraphs to a district judge were removed.

7. In paragraph 6.1 of CPR Practice Direction 47, the words “(rule 2.11)” and “(rule 3.1(2)(a))” are omitted.

8. Paragraph 8.1 of CPR Practice Direction 47 is replaced with the following: “A party may apply to the appropriate officer for an order to shorten or extend the time for service of points of dispute”.

9. In paragraph 10.3 of CPR Practice Direction 47, the words “Rules 40.3” to “default costs certificate” are replaced with the words “rule 30 of the Court of Protection Rules 2007, which applies to the service of court orders”.

10. In paragraph 11.1 of CPR Practice Direction 47, the words “A court officer” are replaced with “An authorised court officer”.

11. In rule 11.3 of CPR Practice Direction 47, the following words are removed: “rule 3.1(3) (which enables the court when making an order to make it subject to conditions) and to”.

12. References in CPR Practice Directions 44 to 48 to “claimant” and “defendant” shall be read, in proceedings to which this Practice Direction applies, as references to “applicant” and “respondent” respectively.

### **Other provisions**

13. The Senior Courts Costs Office Guide of October 2013 gives practical information and guidance on dealing with costs, and contains, in Section 23 of the Guide, provision relating specifically to Court of Protection cases. Regard should accordingly be had to Section 23 and to those matters of good practice, guidance and procedure referred to in the Guide as are directly applicable to costs arising under Court of Protection Rules.

14. The appropriate venue for detailed assessment of costs proceedings is the Senior Court Costs Office, Thomas More Building, Royal Courts of Justice, Strand, London WC2A 2LL (DX 44454 (Strand)). Details of how to contact the Senior Courts Costs Office are provided in Section 1 (Introduction) of the Senior Courts Costs Office Guide of October 2013.”

## **SCHEDULE 8**

### **“PRACTICE DIRECTION 20B – ALLOCATION OF APPEALS**

*This Practice Direction supplements Part 20 of the Court of Protection Rules 2007*

#### **General**

1.1 Rule 171A provides for a practice direction to set out the destination of appeals from decisions of judges of the Court of Protection.

1.2 Rule 6 and Practice Direction 3B set out which judges of the Court of Protection are Tier 1 Judges, Tier 2 Judges and Tier 3 Judges

#### **Appeals to the Court of Appeal**

2.1 Rule 171A(1) provides that an appeal from a judge of the Court of Protection lies to the Court of Appeal where:

- (1) the appeal is from a decision of a Tier 3 Judge; or
- (2) where the appeal is from a decision which was itself made on appeal (“a second appeal”).

#### **Other Appeals**

3.1 Rule 171A(2) provides that the general rule in relation to other appeals is that:

- (1) an appeal from a decision of a Tier 1 Judge lies to a Tier 2 Judge; and
- (2) an appeal from a decision of a Tier 2 Judge lies to a Tier 3 Judge.

3.2 Notwithstanding rule 171A(2), an appeal from a Tier 1 Judge may be heard by a Tier 3 Judge where:

- (1) the Tier 1 Judge whose decision is being appealed; or
- (2) a Tier 2 Judge; or
- (3) a Tier 3 Judge

has directed that the appeal should be heard by a Tier 3 Judge. The judge making a direction under this paragraph need not be:

- (a) the same judge who grants permission to appeal; or
- (b) the judge who hears the appeal.

3.3 A direction under paragraph 3.2 may only be made if:

- (1) the appeal would raise an important point of principle or practice; or
- (2) there is some other compelling reason for a Tier 3 Judge to hear the appeal.

3.4 No appeal shall lie against a refusal by a judge to make a direction under paragraph 3.2.

### Tables

4.1 The following tables set out the destination of appeals from decisions of judges of the Court of Protection

**Table 1 Appeals from a decision of a Tier 1 Judge**

<b>Appeal lies to</b>	<b>In the following circumstances</b>	<b>Permission to appeal may be granted by</b>
Tier 2 Judge	This is the usual destination for appeals from a Tier 1 Judge	(1) The Tier 1 Judge whose decision is being appealed (2) A Tier 2 Judge (3) A Tier 3 Judge
Tier 3 Judge	It is certified by a judge listed in column 3 that (a) the appeal would raise an important point of principle or practice; or (b) there is some other compelling reason for a Tier 3 Judge to hear the appeal	(1) The Tier 1 Judge whose decision is being appealed (2) A Tier 2 Judge (3) A Tier 3 Judge

**Table 2 Appeals from a decision of a Tier 2 Judge**

<b>Appeal lies to</b>	<b>In the following circumstances</b>	<b>Permission to appeal may be granted by</b>
Tier 3 Judge	This is the usual destination for appeals from a Tier 2 Judge (other than second appeals)	(1) The Tier 2 Judge whose decision is being appealed (2) A Tier 3 Judge
Court of Appeal	The appeal is a second appeal.	The Court of Appeal

**Table 3 Appeals from a decision of a Tier 3 Judge**

Appeal lies to	In the following circumstances	Permission to appeal may be granted by
Court of Appeal	This is the usual destination for appeals from a Tier 3 Judge (other than second appeals)	(1) The Tier 3 Judge whose decision is being appealed (2) The Court of Appeal
Court of Appeal	The appeal is a second appeal.	The Court of Appeal

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