

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 2005 and Schedule 2, Part 1, paragraph 2(2) of the Constitutional Reform Act 2005, and are approved by Dr. Phillip Lee, Parliamentary Under-Secretary of State for Justice, by the authority of the Lord Chancellor.

The new Practice Directions and amendments come into force as follows—

Practice Direction – Transparency pilot	1 March 2017
Practice Direction 9E – Applications relating to serious medical treatment	1 March 2017
Practice Direction 10AA – Deprivation of liberty applications	6 April 2017
Practice Direction 13A – Hearings (including reporting restrictions)	6 April 2017
Practice Direction 23C – Civil restraint orders	6 April 2017
Practice Direction 24A – International protection of adults	6 April 2017

Sir James Munby

The President of the Court of Protection

Signed by authority of the Lord Chancellor:

Parliamentary Under-Secretary of State for Justice

PRACTICE DIRECTION – TRANSPARENCY PILOT

In the *Practice Direction – Transparency Pilot*—

(1) In paragraph 1.3—

- (a) in sub-paragraph (b), omit “applications relating to serious medical treatment, (for which Practice Direction 9E makes separate provision) and”; and
- (b) in sub-paragraph (c), after “2015” insert “(or, for applications relating to serious medical treatment, on or after DATE 1)”.

(2) After paragraph 1.3 insert—

“1.4

Paragraph 16 of Practice Direction 9E (as amended¹) does not apply where the pilot scheme applies in relation to an application relating to serious medical treatment.”

PRACTICE DIRECTION 9E – APPLICATIONS RELATING TO SERIOUS MEDICAL TREATMENT

In Practice Direction 9E, in paragraph 16, at the end insert “, unless the *Practice Direction – Transparency Pilot* applies (see in particular paragraphs 1.3 and 1.4 of that Practice Direction as amended²), in which case the court will proceed in accordance with that Practice Direction”.

PRACTICE DIRECTION 10AA – DEPRIVATION OF LIBERTY APPLICATIONS

In Practice Direction 10AA—

(1) omit paragraph 3 and the heading before it;

(2) insert above paragraph 4 a heading “Urgent applications”;

(3) in paragraph 4—

- (a) omit the first sentence; and
- (b) for “Further brief details should be given which may include” substitute “In such cases the applicant must contact the DoL team and provide the following information”;

(4) for paragraph 5 substitute—

“5. Contact details for the DoLS team may be found on www.gov.uk as part of the information for the Court of Protection and for Deprivation of Liberty.”

PRACTICE DIRECTION 13A – HEARINGS (INCLUDING REPORTING RESTRICTIONS)

¹ Paragraph 16 of Practice Direction is amended with effect from [DATE 1].

² The Practice Direction – Transparency Pilot is amended with effect from [DATE 1].

In Practice Direction 13A—

(1) In the heading to Part 3, at the end insert “OR SUBJECT TO REPORTING RESTRICTIONS”.

(2) In paragraph 30, at the end insert “Rule 92 permits the court to impose restrictions on the publication of information where proceedings are heard in public.”

(3) in paragraph 33, at end insert—

“
,
(j) a Court of Protection Visitor appointed under section 61(4) of the Mental Capacity Act 2005.”

(4) in paragraph 35, for the table substitute the following table—

“

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	Any information relating to the proceedings	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	Any information relating to the proceedings	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	Any information relating to the proceedings	For the purpose of an approved research project
A legal representative	A person or body responsible for	Any information relating to the	For the purposes of the investigation or

or a professional legal adviser, and the Public Guardian	investigating or determining complaints in relation to legal representatives or professional legal advisers	proceedings	determination of a complaint in relation to a legal representative or a professional legal adviser
A legal representative or a professional legal adviser	A person or body assessing quality assurance systems	Any information relating to the proceedings	To enable the legal representative or professional legal adviser to obtain a quality assurance assessment
A legal representative or a professional legal adviser	A professional indemnity insurer	Any information relating to the proceedings	To enable the professional indemnity insurer to be notified of a claim or complaint, or potential claim or complaint, in relation to the legal representative or professional legal adviser, and the legal representative or professional legal adviser to obtain advice in respect of that claim or complaint
A party, or the Public Guardian	A police officer	Any information relating to 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	Any information relating to the proceedings	To enable the Crown Prosecution Service to discharge its functions under any enactment
A party or any person lawfully	(a) an Independent Mental Capacity	Any information relating to the	To enable the recipient to discharge their

<p>in receipt of information</p>	<p>Advocate acting pursuant to section 35 of and Schedule A1 to the Mental Capacity Act 2005;</p> <p>(b) a relevant person's representative appointed in accordance with Part 10 of Schedule A1 to the Mental Capacity Act 2005;</p> <p>(c) an independent advocate acting pursuant to section 67(2) of the Care Act 2014 or a person exercising equivalent functions under the Social Services and Well-being (Wales) Act 2014;</p> <p>(d) a professional acting in furtherance of adult safeguarding or the protection of children</p>	<p>proceedings</p>	<p>functions under any enactment</p>
<p>A legal representative or a professional legal adviser</p>	<p>An accreditation body</p>	<p>Any information relating to the proceedings providing that it does not, or is not likely to, identify any person involved in the</p>	<p>To enable the legal representative or professional legal adviser to obtain accreditation</p>

		proceedings	
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”; and

(5) in paragraph 38, at end insert—

“,

“professional acting in furtherance of adult safeguarding or the protection of children” includes—

(a) a social worker or any other officer of a local authority exercising adult safeguarding or child protection functions;

(b) a police officer who is—

(i) exercising powers under section 46 of the Children Act 1989; or

(ii) serving in a child protection unit or a paedophile unit of a police force;

(c) an officer of the National Society for the Prevention of Cruelty to Children; or

(d) a member or employee of the Disclosure and Barring Service, being the body established under section 87(1) of the Protection of Freedoms Act 2012.”.

PRACTICE DIRECTION 23C – CIVIL RESTRAINT ORDERS

After Practice Direction 23B, insert Practice Direction 23C as set out in Schedule 1 to this update.

PRACTICE DIRECTION 24A – INTERNATIONAL PROTECTION OF ADULTS

After Practice Direction 23C (as inserted by Schedule 1 to this update), insert Practice Direction 24A as set out in Schedule 2 to this update.

SCHEDULE 1

“PRACTICE DIRECTION 23C – CIVIL RESTRAINT ORDERS

This practice direction supplements Part 23 of the Court of Protection Rules 2007

Introduction

1. This practice direction applies where the court is considering whether to make—
 - (a) a limited civil restraint order;
 - (b) an extended civil restraint order; or
 - (c) a general civil restraint order,against a party who has made applications which are totally without merit.
2. Rule 25³ (General case management powers), rule 84⁴(2) – (5) (Dealing with the application), rule 95 (Power of the court to control evidence), and rule 123 (Power of the court to restrict expert evidence) provide powers to the court to case manage and control the preparation, presentation and the conduct of any case before the court.
3. Rule 203 provides that where an application (including an application for permission) is dismissed, whether or not on the court’s own initiative, and is totally without merit, the court order must specify that fact and the court must consider whether to make a civil restraint order.

Limited civil restraint orders

4. A limited civil restraint order may be made where a party has made 2 or more applications which are totally without merit.
5. Where the court makes a limited civil restraint order, the party against whom the order is made—
 - (a) will be restrained from making any further applications in the proceedings in which the order is made without first obtaining the permission of a judge identified in the order;
 - (b) may apply for amendment or discharge of the order, but only with the permission of a judge identified in the order; and
 - (c) may apply for permission to appeal the order and if permission is granted, may appeal the order.

³ Numbered as rule 3.1 where the *Practice Direction – Case Management Pilot* applies.

⁴ Numbered as rule 3.6 where the *Practice Direction – Case Management Pilot* applies.

6. Where a party who is subject to a limited civil restraint order—
 - (a) makes a further application in the proceedings in which the order is made without first obtaining the permission of a judge identified in the order, such application will automatically be dismissed—
 - (i) without the judge having to make any further order; and
 - (ii) without the need for the other party to respond to it; and
 - (b) repeatedly makes applications for permission pursuant to that order which are totally without merit, the court may direct that if the party makes any further application for permission which is totally without merit, the decision to dismiss the application will be final and there will be no right of appeal, unless the judge who refused permission grants permission to appeal.
7. A party who is subject to a limited civil restraint order may not make an application for permission under paragraphs 5(a) or (b) without first serving notice of the application on the other party in accordance with paragraph 8.
8. A notice under paragraph 7 must—
 - (a) set out the nature and grounds of the application; and
 - (b) provide the other party with at least 7 days within which to respond.
9. An application for permission under paragraphs 5(a) or (b)—
 - (a) must be made in writing;
 - (b) must include the other party's written response, if any, to the notice served under paragraph 7; and
 - (c) will be determined without a hearing.
10. Where a party makes an application for permission under paragraphs 5(a) or (b) and permission is refused, any application for permission to appeal—
 - (a) must be made in writing; and
 - (b) will be determined without a hearing.
11. A limited civil restraint order—
 - (a) is limited to the particular proceedings in which it is made;
 - (b) will remain in effect for the duration of the proceedings in which it is made, unless the court orders otherwise; and
 - (c) must identify the judge or judges to whom an application for permission under paragraphs 5(a), 5(b) or 10 should be made.

Extended civil restraint orders

12. An extended civil restraint order may be made where a party has persistently made applications which are totally without merit.

13. Unless the court orders otherwise, where the court makes an extended civil restraint order, the party against whom the order is made—
 - (a) will be restrained from making applications in the Court of Protection concerning any matter involving or relating to or touching upon or leading to the proceedings in which the order is made without first obtaining the permission of a judge identified in the order;
 - (b) may apply for amendment or discharge of the order, but only with the permission of a judge identified in the order; and
 - (c) may apply for permission to appeal the order and if permission is granted, may appeal the order.
14. Where a party who is subject to an extended civil restraint order—
 - (a) makes an application in the Court of Protection concerning any matter involving or relating to or touching upon or leading to the proceedings in which the order is made without first obtaining the permission of a judge identified in the order, the application will automatically be struck out or dismissed—
 - (i) without the judge having to make any further order; and
 - (ii) without the need for the other party to respond to it; and
 - (b) repeatedly makes applications for permission pursuant to that order which are totally without merit, the court may direct that if the party makes any further application for permission which is totally without merit, the decision to dismiss the application will be final and there will be no right of appeal, unless the judge who refused permission grants permission to appeal.
15. A party who is subject to an extended civil restraint order may not make an application for permission under paragraphs 13(a) or (b) without first serving notice of the application on the other party in accordance with paragraph 16.
16. A notice under paragraph 15 must—
 - (a) set out the nature and grounds of the application; and
 - (b) provide the other party with at least 7 days within which to respond.
17. An application for permission under paragraphs 13(a) or (b)—
 - (a) must be made in writing;
 - (b) must include the other party's written response, if any, to the notice served under paragraph 15; and
 - (c) will be determined without a hearing.
18. Where a party makes an application for permission under paragraphs 13(a) or (b) and permission is refused, any application for permission to appeal—

- (a) must be made in writing; and
 - (b) will be determined without a hearing.
19. An extended civil restraint order—
- (a) will be made for a specified period not exceeding 2 years; and
 - (b) must identify the judge or judges to whom an application for permission under paragraphs 13(a), 13(b) or 18 should be made.
20. The court may extend the duration of an extended civil restraint order, if it considers it appropriate to do so, but the duration of the order must not be extended for a period greater than 2 years on any given occasion.

General civil restraint orders

21. A general civil restraint order may be made where the party against whom the order is made persists in making applications which are totally without merit, in circumstances where an extended civil restraint order would not be sufficient or appropriate.
22. Unless the court otherwise orders, where the court makes a general civil restraint order, the party against whom the order is made—
- (a) will be restrained from making any application in the Court of Protection without first obtaining the permission of a judge identified in the order;
 - (b) may apply for amendment or discharge of the order, but only with the permission of a judge identified in the order; and
 - (c) may apply for permission to appeal the order and if permission is granted, may appeal the order.
23. Where a party who is subject to a general civil restraint order—
- (a) makes an application in the Court of Protection without first obtaining the permission of a judge identified in the order, the application will automatically be struck out or dismissed—
 - (i) without the judge having to make any further order; and
 - (ii) without the need for the other party to respond to it; and
 - (b) repeatedly makes applications for permission pursuant to that order which are totally without merit, the court may direct that if the party makes any further application for permission which is totally without merit, the decision to dismiss that application will be final and there will be no right of appeal, unless the judge who refused permission grants permission to appeal.

24. A party who is subject to a general civil restraint order may not make an application for permission under paragraphs 22(a) or (b) without first serving notice of the application on the other party in accordance with paragraph 25.
25. A notice under paragraph 24 must—
- (a) set out the nature and grounds of the application; and
 - (b) provide the other party with at least 7 days within which to respond.
26. An application for permission under paragraphs 22 (a) or (b)—
- (a) must be made in writing;
 - (b) must include the other party's written response, if any, to the notice served under paragraph 24; and
 - (c) will be determined without a hearing.
27. Where a party makes an application for permission under paragraphs 22(a) or (b) and permission is refused, any application for permission to appeal—
- (a) must be made in writing; and
 - (b) will be determined without a hearing.
28. A general civil restraint order—
- (a) will be made for a specified period not exceeding 2 years; and
 - (b) must identify the judge or judges to whom an application for permission under paragraphs 22(a), 22(b) or 27 should be made.
29. The court may extend the duration of a general civil restraint order, if it considers it appropriate to do so, but the duration of the order must not be extended for a period greater than 2 years on any given occasion.

General

30. The other party or parties to the proceedings may apply for any civil restraint order.
31. An application under paragraph 30 must be made using the procedure in Part 9 unless the court otherwise directs and the application must specify which type of civil restraint order is sought.”

SCHEDULE 2

“PRACTICE DIRECTION 24A – INTERNATIONAL PROTECTION OF ADULTS

This practice direction supplements Part 24 of the Court of Protection Rules 2007

General

1. This practice direction is made under rule 204(2) (which enables a practice direction to make additional or supplementary provision in respect of any of the matters set out in Part 24), 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 57⁵ and it has been held⁶ 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 Paragraph 35 of Schedule 3 to the Act.

⁶ *Re PO* [2013] EWCOP 3932.

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
 - (c) any other power of like effect.

6. For the purposes of Part 24 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 205(2) provides for the exclusion of such lasting powers from the scope of Part 24). In this practice direction “lasting power” has the same meaning as in Part 24.

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 206(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 9Aunless 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 70 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 207 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 208 to disapply or modify a lasting power under Schedule 3 of the Act or under rule 209 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 the Practice Direction - Case Management Pilot.
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 3A(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 206(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 207 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 207 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 treatment
- will usually—
- (1) be determined after holding a hearing; and
 - (2) be allocated to the Senior Judge or a Tier 3 Judge. A case purporting to authorise serious medical treatment as defined in practice direction 9E will always be allocated to 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 207 to 209 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."