Applications not suitable for the streamlined procedure

46. If the judge considers that the application is not suitable for the streamlined process, case management directions shall be given.

Applicant to supply a copy of the order to each person consulted

47. The applicant must provide all persons consulted, including the person the application is about, with a copy of the order made pursuant to the streamlined procedure granting or refusing the authorisation of the deprivation of liberty.

Review of the authorisation

48. An application for a review of the authorisation of the deprivation of liberty must be made in accordance with the terms of the order.

PART 3

PROVISIONS COMMON TO APPLICATIONS UNDER PART 1 AND PART 2

Hearing in private

49. Part 4 of the Court of Protection Rules 2017 provides at rule 4.1, as supplemented by Practice Direction A to Part 4, that the general rule is that a hearing is held in private. Rule 4.3 allows the court to order that a hearing be in public if the criteria in rule 4.4 apply.

Costs

50. The general rule, in rule 19.3 of the Court of Protection Rules 2017, is that in a personal welfare case there will be no order as to costs of the proceedings. The general rule applies to DoL applications.

Appeals

51. Part 20 of the Court of Protection Rules 2017 applies to appeals. Permission is required to appeal (rules 20.5 and 20.6) and this will only be granted where the court considers that the appeal would have a real prospect of success or there is some other compelling reason why the appeal should be heard (rule 20.8).

PRACTICE DIRECTION 12A – HUMAN RIGHTS ACT 1998

This practice direction supplements Part 12 of the Court of Protection Rules 2017

Procedure for making claim

1. A claim made pursuant to rule 12.1 in relation to the Human Rights Act 1998 (‘the 1998 Act') should be included in the application form using Form COP1. If the claim forms part of a response by a person served with or notified of the application, it should be included in the acknowledgment of service using Form COP5.

2. If the claim in relation to the 1998 Act is made during the course of proceedings, it should be made by filing an application notice using Form COP9.

3. If the claim is raised in an appeal, the claim should be filed with the appellant's or the respondent's notice as appropriate, using Form COP35 or COP36.

Notice to the Crown

4. Where notice is served on the Crown in accordance with rule 12.1(2), notice of the claim must be served by the person making the claim on the person named in the list published under section 17 of the Crown Proceedings Act 1947.

5. The notice must be in the form directed by the court and will normally include the directions given by the court. The notice must also be served by the person making the claim on all the parties. The applicant must provide the Crown with a copy of the document in which the claim in relation to the 1998 Act is raised (for example, the application form).

6. The court may ask the parties to assist in the preparation of the notice.

Joining of the Crown

7. Unless the court orders otherwise, the Minister or other person permitted by the 1998 Act to be joined as a party must, if he or she wishes to be joined, file an application to be joined using Form COP10. (Section 5(2) of the 1998 Act entitles the Crown to be joined to proceedings where the court is considering whether to make a declaration of incompatibility, provided notice is given in accordance with rules of court. The Minister or other person will be regarded as having sufficient interest for the purpose of rule 9.15(1).)

8 Where the Minister has nominated a person to be joined as a party (as permitted by section 5(2) (a) of the 1998 Act) that person must (unless the court orders otherwise) file an application to be joined using Form COP10, which must also be accompanied by the Minister's written nomination.

(Paragraph 2(b) of Practice Direction 3A deals with allocation of an application for a declaration of incompatibility under section 4 of the Human Rights Act 1998.)

PRACTICE DIRECTION 13A – PROCEDURE FOR DISPUTING THE COURT'S JURISDICTION

This practice direction supplements Part 13 of the Court of Protection Rules 2017

Disputing the jurisdiction of the court – generally

1. A person who wishes to—

(a) dispute the court's jurisdiction to hear an application; or

(b) argue that the court should not exercise such jurisdiction as it may have,

may apply to the court for an order to that effect.[1]

2. Where a person who has been served with or notified of an application form wishes to dispute the court's jurisdiction, that person must state this in the acknowledgment of service or notification (as the case may be), using Form COP5 filed in accordance with rule 9.12.

3. In any other case (with the exception of those cases provided for in paragraphs 4 to 6), a person who wishes to dispute the court's jurisdiction must do so by filing an application notice using Form COP9 in accordance with Part 10.

Disputing the jurisdiction of the court – where P has or regains capacity

4. Where P has or regains capacity in relation to the matter or matters to which the application relates, an application may be made to the court for the proceedings to come to an end.

5. Applications in such circumstances may only be made by the following persons—

(a) P;

(b) P's litigation friend or rule 1.2 representative; or

(c) any other person who is a party to the proceedings.

6. The application must be made by filing an application notice using Form COP9 in accordance with Part 10. The application must be served on all other parties to the proceedings.

[1] Rule 13.1

PRACTICE DIRECTION 14A – WRITTEN EVIDENCE

This practice direction supplements Part 14 of the Court of Protection Rules 2017

Affidavits

Deponent

1. A deponent is a person who gives evidence by affidavit or affirmation.

Heading

2. The affidavit should be headed with the title of the proceedings, including the case number (if known) and the full name of the person to whom the proceedings relate (unless an order to the contrary pursuant to rule 5.11 has been made).

3. At the top right hand corner of the first page (and on the back-sheet) there should be clearly written—

(a) the party on whose behalf it is made (unless an order to the contrary pursuant to rule 5.11 has been made);

(b) the initials and surname of the deponent;

(c) the number of the affidavit in relation to that deponent; and

(d) the date sworn.

Body of affidavit

4. The affidavit must, if practicable, be in the deponent's own words. It should be expressed in the first person, and the deponent should—

(a) commence 'I (full name) of (address) state on oath …';

(b) if giving evidence in the deponent's professional, business or other occupational capacity, give the address at which the deponent works in (a) above, the position the deponent holds and the name of the deponent's firm or employer;

(c) give the deponent's occupation or, if none, the deponent's description; and

(d) state if the deponent is a party to the proceedings or employed by a party to the proceedings.

5. An affidavit must indicate—

(a) which of the statements in it are made from the deponent's own knowledge and which are matters of information or belief; and

(b) the source for any matters of information or belief.

6. Where a deponent—

(a) refers to an exhibit or exhibits, the deponent should state 'there is now produced and shown to me marked "…" the (*description of exhibit*)'; and

(b) makes more than one affidavit (to which there are exhibits) in the same proceedings, the numbering of the exhibits should run consecutively throughout and not start again with each affidavit.

Jurat

7. The jurat of an affidavit is a statement set out at the end of the document which authenticates the affidavit.

8. It must—

immediately on from the text and not be put on a separate page.

Format of affidavits

9. An affidavit should:

(a) be produced on durable quality A4 paper with a 3.5 centimetre margin;

(b) be fully legible and should normally be typed on one side of the paper only;

(c) where possible, be bound securely in a manner which would not hamper filing;

(d) have the pages numbered consecutively as a separate document;

(e) be divided into numbered paragraphs; and

(f) have all numbers, including dates, expressed in figures.

10. It is usually convenient for an affidavit to follow the chronological sequence of events or matters dealt with. Each paragraph of an affidavit should as far as possible be confined to a distinct portion of the subject.

11. An affidavit must be included in, or attached to, Form COP25.

Inability of deponent to read or sign affidavit

12. Where an affidavit is sworn by a person who is unable to read or sign it, the person before whom the affidavit is sworn must certify in the jurat that—

(a) he or she read the affidavit to the deponent;

(b) the deponent appeared to understand it; and

(c) the deponent signed, or made his or her mark, in the person's presence.

13. If that certificate is not included in the jurat, the affidavit may not be used in evidence unless the court is satisfied that it was read to the deponent and that the deponent appeared to understand it. Two versions of the form of the jurat with the certificate are set out in Annex 1 to this practice direction.

Alterations to affidavits

14. Any alteration to an affidavit must be initialled by both the deponent and the person before whom the affidavit was sworn.

15. An affidavit which contains an alteration that has not been initialled may be filed or used in evidence only with the permission of the court.

Who may administer oaths

16. Only the following may administer oaths—

(a) Commissioners for Oaths;[1]

(b) practising solicitors;[2]

(c) other persons specified by statute;[3]

(d) certain officials of the Senior Courts;[4]

(e) a circuit judge or district judge;[5]

(f) any justice of the peace; and[6]

(g) certain officials of the County Court appointed for the purpose.[7]

17. An affidavit must be sworn before a person independent of the parties or their representatives.

Filing of affidavits

18. If the court directs that an affidavit is to be filed, it must be filed in the court office.

19. Where an affidavit is in a foreign language—

(a) the party wishing to rely on it—

(i) must have it translated, and

(ii) must file the foreign language affidavit with the court; and

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[1] Commissioner for Oaths Act 1889 and 1891.

[2] Section 81 of the Solicitors Act 1974.

[3] Section 65 of the Administration of Justice Act 1985; s 113 of the Courts and Legal Services Act 1990 and the Commissioners for Oaths (Prescribed Bodies) Regulations 1994 and 1995.

[4] Section 2 of the Commissioners for Oaths Act 1889.

[5] Section 58 of the County Courts Act 1984.

[6] Section 58 as above

[7] Section 58 as above

(b) the translator must make and file with the court an affidavit verifying the translation and exhibiting both the translation and a copy of the foreign language affidavit.

Exhibits

Manner of exhibiting documents

20. A document used in conjunction with an affidavit should be—

(a) produced to and verified by the deponent, and remain separate from the affidavit; and

(b) identified by a declaration of the person before whom the affidavit was sworn.

21. The declaration should be headed with the name of the proceedings in the same way as the affidavit.

22. The first page of each exhibit should be marked—

(a) as in paragraph 3 above; and

(b) with the exhibit mark referred to in the affidavit.

Letters

23. Copies of individual letters should be collected together and exhibited in a bundle or bundles. The letters should be arranged in chronological order with the earliest at the top, and firmly secured.

24. When a bundle of correspondence is exhibited it should be arranged and secured as above and numbered consecutively.

Other documents

25. Photocopies instead of original documents may be exhibited provided the originals are made available for inspection by other parties before the hearing and by the judge at the hearing.

26. Court documents must not be exhibited (official copies of such documents prove themselves).

Exhibits other than documents

27. Items other than documents should be clearly marked with an exhibit number or letter in such a manner that the mark cannot become detached from the exhibit.

28. Small items may be placed in a container and the container appropriately marked.

General provisions

29. Where an exhibit contains more than one document—

(a) the bundle should not be stapled but should be securely fastened in a way that does not hinder the reading of the documents; and

(b) the pages should be numbered consecutively at the bottom centre.

30. Every page of an exhibit should be clearly legible. Typed copies of illegible documents should be included, paginated with ‘a' etc numbers.

31. Where on account of their bulk the service of copies of exhibits on the other parties would be difficult or impracticable, the directions of the court should be sought as to the arrangements for bringing the exhibits to the attention of the other parties and as to their custody pending the final hearing.

Affirmations

32. All provisions in this or any other practice direction relating to affidavits apply to affirmations with the following exceptions—

(a) the deponent should commence ‘I (*name*) of (*address*) do solemnly and sincerely affirm …'; and

(b) in the jurat the word ‘sworn' is replaced by the word ‘affirmed'.

Witness statements

Heading

33. The witness statements should be headed with the title of the proceedings; including the case number (if known) and the full name of the person to whom the proceedings relate (unless an order to the contrary pursuant to rule 5.11 has been made).

34. At the top right hand corner of the first page there should be clearly written—

(a) the party on whose behalf it is made (unless an order to the contrary pursuant to rule 5.11 has been made);

(b) the initials and surname of the witness;

(c) the number of the statement in relation to that witness; and

(d) the date the statement was made.

Body of witness statement

35. The witness statement must, if practicable, be in the intended witness's own words. The statement should be expressed in the first person and should also state—

(a) the intended witness’s place of residence or, if the intended witness is making the statement in his or her professional, business or other occupational capacity, the

address at which he or she works, the position he or she holds and the name of his or her firm or employer;

(b) the intended witness's occupation, or if none, the intended witness's description; and

(c) if the intended witness is a party to the proceedings or employed by a party to the proceedings.

36. A witness statement must indicate—

(a) which of the statements in it are made from the witness's own knowledge and which are matters of information or belief; and

(b) the source for any matters of information or belief.

37. An exhibit used in conjunction with a witness statement should be verified and identified by the witness and remain separate from the witness statement.

38. Where a witness refers to an exhibit or exhibits, the witness should state: 'I refer to the (*description of exhibit*) marked "…" '.

39. The provisions of paragraphs 22 to 31 apply similarly to witness statements as they do to affidavits, where appropriate.

40. Where a witness makes more than one witness statement to which there are exhibits, the numbering of the exhibits should run consecutively throughout and not start again with each witness statement.

Format of witness statement

41. A witness statement should adhere to the format specified in paragraph 9 for affidavits.

42. It is usually convenient for a witness statement to follow the chronological sequence of the events or matters dealt with and each paragraph of a witness statement should, as far as possible, be confined to a distinct portion of the subject.

43. A witness statement must be included in, or attached to, Form COP24.

Statement of truth

44. A witness statement is the equivalent of oral evidence which the witness would, if called, give in evidence. It must be verified by a statement of truth in the following terms—

'I believe that the facts stated in this witness statement are true.'

(Practice Direction B accompanying Part 5 sets out more detailed requirements for statements of truth.)

45. Attention is drawn to rule 5.6 which sets out the consequences of verifying a witness statement containing a false statement without an honest belief in its truth.

Alterations to witness statements

46. Any alteration to a witness statement must be initialled by the person making the statement or by the authorised person where appropriate.

47. A witness statement which contains an alteration that has not been initialled may only be used in evidence with the permission of the court.

Filing of witness statements

48. Where a witness statement is in a foreign language—

(a) the party wishing to rely on it must:

(i) have it translated, and

(ii) file the foreign language witness statement with the court; and

(b) the translator must make and file with the court an affidavit verifying the translation and exhibiting both the translation and a copy of the foreign language witness statement.

Defects in affidavits, witness statements and exhibits

49. Where—

(a) an affidavit ;

(b) a witness statement; or

(c) an exhibit to either an affidavit or a witness statement,

does not comply with Part 14 or this practice direction in relation to its form, the court may refuse to admit it as evidence and may refuse to allow the costs arising from its preparation.

50. However, the court may allow a person to file a defective affidavit or witness statement or to use a defective exhibit.

Agreed bundles for hearings

51. The court may give directions requiring the parties to use their best endeavours to agree a bundle or bundles of documents for use at any hearing.

52. All documents contained in bundles which have been agreed for use at a hearing shall be admissible at that hearing as evidence of their contents, unless—

(a) the court orders otherwise; or

(b) a party gives written notice of objection to the admissibility of particular documents.

Evidence by video link

53. Guidance on the use of video conferencing is set out at Annex 2 to this practice direction.

Information

54. The court may direct a party with access to information which is not reasonably available to another party to serve on that other party a document which records the information. The document served must include sufficient details of all the facts, tests, experiments and assumptions which underlie any part of the information to enable the party on whom it is served to make, or to obtain, a proper interpretation of the information and an assessment of its significance.

ANNEX 1

Certificate to be used where a deponent to an affidavit is unable to read or sign it

Sworn at …this …day of … Before me, I having first read over the contents of this affidavit to the deponent [if there are exhibits, add 'and explained the nature and effect of the exhibits referred to in it'] who appeared to understand it and approved its contents as accurate, and made [his] [her] mark on the affidavit in my presence.

Or (after, *Before me*) the witness to the mark of the deponent having first sworn that [he] [she] had read over etc. (*as above*) and that the witness saw the deponent make [his] [her] mark on the affidavit. (*Witness must sign*).

Certificate to be used where a deponent to an affirmation is unable to read or sign it

Affirmed at …this …day of … Before me, I having first read over the contents of this affirmation to the deponent [if there are exhibits, add 'and explained the nature and effect of the exhibits referred to in it'] who appeared to understand it and approved its content as accurate, and made [his] [her] mark on the affirmation in my presence.

Or (after, *Before me*) the witness to the mark of the deponent having been first sworn that [he] [she] had read over etc (*as above)* and that the witness saw the deponent make [his] [her] mark on the affirmation. (*Witness must sign*).

ANNEX 2

Guidance on the use of video conferencing

1. This guidance is for the use of video conferencing (VC) to provide evidence in the Court of Protection. It is in part based upon the VC guidance contained in the practice direction that supplements Part 32 of the Civil Procedure Rules 1998.

2. Rule 14.5 of the Court of Protection Rules 2017 provides that the court may allow a witness to give evidence through a video link or by other means. It is, however, inevitably not as ideal as having the witness physically present in court. Its convenience should not therefore be allowed to dictate its use. Consideration should be given in each case as to

whether its use is likely to be beneficial to the efficient, fair and economic disposal of the proceedings.

3. For VC purposes, the location at which the judge sits is referred to as the ‘local site'. The local site may be either a courtroom with VC equipment either permanently or temporarily installed, or another venue such as a studio or conference room set-up for VC. The other site or sites to and from which transmission is made are referred to as ‘the remote site'.

Preliminary arrangements

4. The court's permission is required for any part of any proceedings to be dealt with by means of VC. Before seeking a direction, the applicant should notify the appropriate court officer of the intention to seek it, and should enquire as to the availability of the court's VC equipment for the duration of the proposed VC. The application for a direction should be made to the court by filing a COP9 application notice in accordance with the Part 10 procedure.

5. If a witness at a remote site is to give evidence by an interpreter, consideration should be given at this stage as to whether the interpreter should be at the local site or the remote site.

6. Where the VC process is to be used to take evidence from a person in a foreign jurisdiction, the parties should consider whether that is permissible under local law.

7. If a VC direction is given, arrangements for the transmission will then need to be made. The court will ordinarily direct that the party seeking permission to use VC is to be responsible for this. That party is hereafter referred to as ‘the VC arranging party'.

VC arranging party's responsibilities

8. The VC arranging party must contact the appropriate court officer and make arrangements for the VC transmission.

9. The court has established procedures with Her Majesty's Court and Tribunal Service that enables the witness's nearest local court with VC facilities to be used as the remote site. The VC arranging party must advise the court whether the party wishes to make use of local court facilities for the remote site.

10. If the party is unable to make use of local court VC facilities, then the VC arranging party is responsible for arranging an alternative remote site. This may consist of a solicitor's office or a commercial VC facility, and in some circumstances may require portable VC equipment to be brought to the witness. Details of the remote site, and of the equipment to be used, together with all necessary contact names and telephone numbers, will have to be provided to the court.

11. The VC arranging party must arrange for recording equipment to be provided by the court so that the evidence can be recorded. A court officer will normally be present to operate the recording equipment when the local site is a courtroom. The equipment should be set up and tested before the VC transmission.

12. In rare instances, it may be necessary for the local site to be somewhere other than the courtroom (or other VC facility onsite at the court). If this is the case, the VC arranging party should ensure—

(a) that arrangements are made, if practicable, for the royal coat of arms to be placed above the judge's seat at the alternate venue;

(b) that the number of microphones is adequate for the speakers;

(c) that the panning of the camera for the practitioners' table encompasses all legal representatives so that the viewer can see everyone seated there; and

(d) that a court officer is present to operate the recording equipment.

Court of Protection responsibilities

13. If the VC arranging party has advised that the party wishes to utilise local court facilities for the remote site, a court officer will contact the nearest local court (with VC facilities) to the witness and—

(a) agree and book a mutually convenient date and time for the attendance;

(b) advise the local court as to the number and details of those parties attending to give evidence by VC;

(c) confirm with the local court the reporting arrangements for the parties attending to give their evidence; and

(d) advise the parties by letter of the date, time and arrangements for attending the designated local court to give their evidence by VC.

14. Provided the local site is to be the courtroom (or other VC facility on-site at the court), a court officer will also—

(a) set-up the courtroom for the VC;

(b) establish the VC link with the remote site at the date and time that has been booked; and

(c) be available in order to deal with any technical problems during the transmission should they develop.

Local court responsibilities

15. The local court will advise the court staff (London or regional court as applicable) of the number to be called to establish the VC link with the remote site. Where the local court is utilising a third party networked VC service (such as the *Martin Dawes* service utilised by the closed nation-wide prison network), it will be responsible for arranging a bridging link for the date and time agreed.

16. The local court will make arrangements to meet the witness on their arrival at the court, escort them to the room where they are to give evidence by VC, switch on the VC equipment and ensure a link is established with the local site.

The hearing

17. Those involved with VC need to be aware that due to varying technology standards, there may be delays between the receipt of the picture and that of the accompanying sound. If due allowance is not made for this, there may be a tendency to ‘speak over' the witness, whose voice will continue to be heard for a short period after he or she appears on the screen to have finished speaking.

18. Picture quality may also vary, and is generally enhanced if those appearing on VC monitors keep their movements to a minimum.

19. It is recommended that the practitioners and witness should arrive at their respective VC sites about 20 minutes prior to the scheduled commencement of the transmission.

20. Consideration will need to be given in advance to any documents to which the witness is likely to be referred. The parties should endeavour to agree on this. It will usually be most convenient for a bundle of the copy documents to be prepared in advance, which the VC arranging party should then send to the remote site.

21. Additional documents are sometimes quite properly introduced during the course of a witness's evidence. To cater for this, the VC arranging party should ensure that equipment is available to enable documents to be transmitted between sites during the course of the VC transmission. The procedure for conducting the transmission will be determined by the judge. The judge will also determine who is to control the cameras.

22. At the beginning of the transmission, the judge may wish to give directions as to the seating arrangements at the remote site so that those present are visible at the local site during the taking of the evidence.

23. The examination of the witness at the remote site should then follow as closely as possible the practice adopted when a witness is in the courtroom. During examination, cross-examination and re-examination, the witness must be able to see the legal representative asking the question and also any other person (whether another legal representative or the judge) making any statements in regard to the witness's evidence. It will in practice be most convenient if everyone remains seated throughout the transmission.

PRACTICE DIRECTION 14B – DEPOSITIONS

This practice direction supplements Part 14 of the Court of Protection Rules 2017

Depositions to be taken in England and Wales

1. A party may apply for an order for a person to be examined on oath before—

(a) a judge;

(b) an examiner of the court; or

(c) such other person as the court may appoint.[1]

2. The party who obtains an order for the examination of a deponent before an examiner of the court must—

(a) apply to the court for the allocation of an examiner;

(b) when allocated, provide the examiner with copies of all documents in the proceedings necessary to inform the examiner of the issues; and

(c) pay the deponent a sum to cover his or her travelling expenses to and from the examination and compensation for his or her loss of time.

3. In ensuring that the deponent's evidence is recorded in full, the court or the examiner may permit it to be recorded in full on audiotape or videotape, but the deposition must always be recorded in writing by the examiner or by a competent shorthand writer or stenographer.

4. If the deposition is not recorded word for word, it must contain, as nearly as may be, the statement of the deponent. The examiner may record word for word any particular questions or answers which appear to the examiner to have special importance.

5. If a deponent objects to answering any question or where any objection is taken to any question, the examiner must—

(a) record in the deposition or a document attached to it—

(i) the question,

(ii) the nature of and grounds for the objection, and

(iii) any answer given; and

(b) give his or her opinion as to the validity of the objection and must record it in the deposition or a document attached to it.

6. Documents and exhibits must—

(a) have an identifying number or letter marked on them by the examiner; and

(b) be preserved by the party or the party's legal representative who obtained the order for the examination, or as the court or the examiner may direct.

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[1] Rule 14.15

7. The examiner may put any question to the deponent as to—

(a) the meaning of any of the deponent's answers; or

(b) any matter arising in the course of the examination.

8. Where a deponent—

(a) fails to attend the examination; or

(b) refuses to—

(i) be sworn, or

(ii) answer any lawful question, or

(iii) produce any document,

the examiner will sign a certificate of such failure or refusal and may include in the certificate any comment as to the conduct of the deponent or of any person attending the examination.

9. The party who obtained the order for the examination must file the certificate with the court and may apply for an order that the deponent attend for examination or such other order as he or she considers appropriate.[2] The application must be made by filing a COP9 application notice, and may be made without notice.

10. The court will make such order on the application as it thinks fit including an order for the deponent to pay any costs resulting from the deponent's failure or refusal.

11. A deponent who wilfully refuses to obey an order made against him or her under Part 14 may be proceeded against for contempt of court.

12. A deposition must—

(a) be signed by the examiner;

(b) have any amendments to it initialled by the examiner and the deponent; and

(c) be endorsed by the examiner with:

(i) a statement of the time occupied by the examination; and

(ii) a record of any refusal by the deponent to sign the deposition and of the deponent's reasons for not doing so; and

(d) be sent by the examiner to the court where the proceedings are taking place for filing on the court file.

13. Rule 14.17 deals with the fees and expenses of the examiner.

[2] Rule 14.19

Travelling expenses and compensation for loss of time

14. When a deponent is served with an order for examination the deponent must be offered a sum to cover his or her travelling expenses to and from the examination and compensation for his or her loss of time.[3]

15. The sum referred to in paragraph 14 is to be based on the sums payable to witnesses attending the Crown Court.[4]

Depositions to be taken abroad for use as evidence in proceedings before courts in England and Wales (where the Taking of Evidence Regulation does not apply)

16. Where a party wishes to take a deposition from a person outside the jurisdiction, the court may order the issue of a letter of request to the judicial authorities of the country in which the proposed deponent is.[5]

17. An application for an order referred to in paragraph 16 should be made by filing a COP9 application notice in accordance with Part 10. The documents which a party applying for an order for the issue of a letter of request must file with his application notice are set out in rule 14.23.

18. In addition, the party applying for the order must file a draft order.

19. The application will be dealt with by the Senior Judge or the Senior Judge's nominee who will, if appropriate, sign the letter of request.

20. If parties are in doubt as to whether a translation under rule 14.23(7) is required, they should seek guidance from the court office.

21. A special examiner appointed under rule 14.23(4) may be the British Consul or the Consul-General or his or her deputy in the country where the evidence is to be taken—

(a) if there is in respect of that country a Civil Procedure Convention providing for the taking of evidence in that country for the assistance of proceedings in the High Court or other court in this country; or

(b) with the consent of the Secretary of State.

22. The provisions of paragraphs 1 to 12 above apply to the depositions referred to in paragraphs 16 to 22.

Taking of evidence between EU Member States

Taking of Evidence Regulation

23. Where evidence is to be taken—

[3] Rule 14.15(6)

[4] These sums are fixed pursuant to the Prosecution of Offenders Act 1985 and the Costs in Criminal Cases (General) Regulations 1986.

[5] Rule 14.23

(a) from a person in another Member State of the European Union for use as evidence in proceedings before courts in England and Wales; or

(b) from a person in England and Wales for use as evidence in proceedings before a court in another Member State,

Council Regulation (EC) No 1206/2001 of 28 May 2001 on co-operation between the courts of the Member States in the taking of evidence in civil or commercial matters (‘the Taking of Evidence Regulation') applies.

24. The website link to the Taking of Evidence Regulation is annexed to this Practice Direction as Annex B.

25. The Taking of Evidence Regulation does not apply to Denmark. In relation to Denmark, therefore, rule 14.23 will continue to apply.

(Article 21(1) of the Taking of Evidence Regulation provides that the Regulation prevails over other provisions contained in bilateral or multilateral agreements or arrangements concluded by the Member States and in particular the Hague Convention of 1 March 1954 on Civil Procedure and the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters.)

Meaning of ‘designated court'

26. In accordance with the Taking of Evidence Regulation, each Regulation State has prepared a list of courts competent to take evidence in accordance with the Regulation indicating the territorial and, where appropriate, special jurisdiction of those courts.

27. Where rule 14.22 refers to a ‘designated court' in relation to another Regulation State, the reference is to the court, referred to in the list of competent courts of that State, which is appropriate to the application in hand.

Evidence to be taken in another Regulation State for use in England and Wales

28. Where a person wishes to take a deposition from a person in another Regulation State, the court where the proceedings are taking place may order the issue of a request as is prescribed as Form A in the Taking of Evidence Regulation.

29. An application to the court for an order under rule 14.22 should be made by filing a COP9 application notice in accordance with Part 10.

30. Rule 14.22 provides that the party applying for the order must file a draft form of request in the prescribed form. Where completion of the form requires attachments or documents to accompany the form, these must also be filed.

31. If the court grants an order under rule 14.22, it will send the form of request directly to the designated court.

32. Where the taking of evidence requires the use of an expert, the designated court may require a deposit in advance towards the costs of that expert. Subject to any final order in relation to costs, the party who obtained the order is responsible for the payment of any such deposit which should be deposited with the court for onward transmission. Under the

provisions of the Taking of Evidence Regulation, the designated court is not required to execute the request until such payment is received.

33. Article 17 permits the court where proceedings are taking place to take evidence directly from a deponent in another Regulation State if the conditions of the article are satisfied. Direct taking of evidence can only take place if evidence is given voluntarily without the need for coercive measures. Rule 14.22 provides for the court to make an order for the submission of a request to take evidence directly. The form of request is Form I annexed to the Taking of Evidence Regulation and rule 14.22 makes provision for a draft of this form to be filed by the party seeking the order.

An application for an order under rule 14.22 should be by filing a COP9 application notice in accordance with Part 10.

ANNEX A

Draft letter of request (where the Taking of Evidence Regulation does not apply)

To the Competent Judicial Authority of in the of

I [*name*] Senior Judge of the Court of Protection of England and Wales respectfully request the assistance of your court with regard to the following matters.

1. An application is now pending in the Court of Protection in England and Wales entitled as follows [*set out full title and case number*] in which [*name*] of [*address*] is the applicant and [*name*] of [*address*] is the respondent.

2. The names and addresses of the representatives or agents of [*set out names and addresses of representatives of the parties*].

3. The application by the applicant is for—

(a) [*set out the nature of the application*]

(b) [*the order sought, and*]

(c) [*a summary of the facts*.]

4. It is necessary for the purposes of justice and for the due determination of the matter in dispute between the parties that you cause the following witnesses, who are resident within your jurisdiction, to be examined. The names and addresses of the witnesses are as follows: [*set out names and addresses of witnesses*]

5 The witnesses should be examined on oath or if that is not possible within your laws or is impossible of performance by reason of the internal practice and procedure of your court or by reason of practical difficulties, they should be examined in accordance with whatever procedure your laws provide for in these matters.

6 Either

The witness should be examined in accordance with the list of questions annexed hereto.

Or

The witness should be examined regarding [*set out full details of evidence sought*].

N.B. Where the witness is required to produce documents, these should be clearly identified.

7. I would ask that you cause me, or the agents of the parties (if appointed), to be informed of the date and place where the examination is to take place.

8. Finally, I request that you will cause the evidence of the said witness to be reduced into writing and all documents produced on such examinations to be duly marked for identification and that you will further be pleased to authenticate such examinations by the seal of your court or in such other way as is in accordance with your procedure and return the written evidence and documents produced to me addressed as follows—

The Senior Judge,

Court of Protection,

First Avenue House,

42—49 High Holborn,

London WC1V 6NP

(DX 160013 Kingsway)

ANNEX B

Council Regulation (EC) NO 1206/2001

This regulation can be found on the EU legislation website at http://eur-lex.europa.eu.

PRACTICE DIRECTION 14C – FEES FOR EXAMINERS OF THE COURT

This practice direction supplements Part 14 of the Court of Protection Rules 2017

General

1. This practice direction sets out—

(a) how to calculate the fees an examiner of the court (‘an examiner') may charge; and

(b) the expenses the examiner may recover.

(Rule 14.15 provides that the court may make an order for evidence to be obtained by the examination of a witness before an examiner.)

2. Subject to any final order or direction of the court in relation to costs, the party who obtained the order for the examination must pay the fees and expenses of the examiner.

(Rule 14.17 permits an examiner to charge a fee for the examination and contains other provisions about the examiner’s fees and expenses, and rule 14.18 provides who may be appointed as an examiner.)

The examination fee

3. An examiner may charge an hourly rate for each hour (or part of an hour) that the examiner is engaged in examining the witness.

4. The hourly rate is to be calculated by reference to the formula set out in paragraph 6.

5. The examination fee will be the hourly rate multiplied by the number of hours the examination has taken. That is:

Examination fee = hourly rate x number of hours.

How to calculate the hourly rate – the formula

6. Divide the amount of the minimum annual salary of a post within Group 7 of the judicial salary structure as designated by the Review Body on Senior Salaries,[1] by 220 to give ‘**x**'; and then divide ‘**x**' by **6** to give **the hourly rate**.

[1] The Report of the Review Body on Senior Salaries is published annually by the Stationery Office.

That is:

$$\frac{\text{Minimum annual salary}}{220} = x$$

$$\frac{x}{6} = \text{hourly rate}$$

Single fee chargeable on making the appointment for examination

7. An examiner is also entitled to charge a single fee of twice the hourly rate (calculated in accordance with paragraph 6 above) as ‘the appointment fee' when the appointment for the examination is made.

8. The examiner is entitled to retain the appointment fee where the witness fails to attend on the date and time arranged.

9. Where the examiner fails to attend on the date and time arranged the examiner may not charge a further appointment fee for arranging a subsequent appointment.

(The examiner need not send the deposition to the court until the examiner’s fees are paid, unless the court directs otherwise – see rule 14.17(1).)

Examiner's expenses

10. An examiner is also entitled to recover the following expenses—

(a) all reasonable travelling expenses;

(b) any other expenses reasonably incurred; and

(c) subject to paragraph 11, any reasonable charge for the room where the examination takes place.

11. No expenses may be recovered under sub-paragraph 10(c) if the examination takes place at the examiner's usual business address.

(If the examiner's fees and expenses are not paid within a reasonable time the examiner may report the fact to the court – see rule 14.17(3).)

PRACTICE DIRECTION 14D – WITNESS SUMMONS

This practice direction supplements Part 14 of the Court of Protection Rules 2017

Issue of a witness summons

1. Rule 14.13 makes provision as to the taking out of a witness summons.

2. A witness summons may require a witness to—

(a) attend court to give evidence;

(b) produce documents to the court; or

(c) both (a) and (b),

on either a date fixed for a hearing or such date as the court may direct.

3. An application for a witness summons should be made by filing a COP9 application notice in accordance with the Part 10 procedure.

4. In the event the court grants the application, the witness summons will be prepared by the court.

5. A mistake in the name or address of a person named in the witness summons may be corrected if the summons has not been served.

6. If the mistake is a result of an error in the original application notice, an application to correct the mistake should be made by filing a further COP9 application notice in accordance with the Part 10 procedure. The application notice should set out the corrections that need to be made to the witness summons.

7. If the mistake is a result of a clerical mistake, the person taking out the summons should write to the court advising them of the mistake and seeking an amendment under rule 5.15 (clerical mistakes or slips).

8. The corrected summons must be re-sealed by the court and marked ‘Amended and Re-sealed'.

Travelling expenses and compensation for loss of time

9. When a witness is served with a witness summons the witness must be offered a sum to cover his or her travelling expenses to and from the court and compensation for his or her loss of time.[1]

10. The sum referred to in paragraph 9 is to be based on the sums payable to witnesses attending the Crown Court.[2]

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[1] Rule 14.13(6)(a) and (b)

[2] These sums are fixed pursuant to the Prosecution of Offenders Act 1985 and the Costs in Criminal Cases (General) Regulations 1986.

11. In addition, the witness must be paid such general or other costs as the court may allow.[3]

[3] Rule 14.13(7)

PRACTICE DIRECTION 14E – SECTION 49 REPORTS

This practice direction supplements Part 14 of the Court of Protection Rules 2017

General

1. Attention is drawn to—

   (a) section 49 of the Act – which makes provision for the court to require a report in proceedings brought in respect of P where the court is considering a question relating to P;

   (b) rule 3.7(2)(a) – which provides that the court, when giving directions, may require a section 49 report and give directions about any such report;

   (c) rule 14.24 – which sets out the duties of a person required to prepare a section 49 report and specifies to whom the report may be sent; and

   (d) rule 14.25 – which makes provision for the court to permit written questions to be put to a person who has made a section 49 report.

The court's direction for a report

2. The Annex to this Practice Direction contains the form of an order requiring a report under section 49 of the Act and the forms of directions relating to the report. When requiring a section 49 report, the court will as far as possible base its order and directions on those forms. For practical reasons, the order should be self-contained and not form part of other directions.

3. The following are common factors which the court may consider when deciding whether to order a section 49 report—

   (a) where P objects to the substantive application or wishes to be heard by the court and does not qualify for legal aid;
   (b) where it has not been possible to appoint a litigation friend or rule 1.2 representative, including where the court has made a direction under rule 1.2(5);
   (c) where a party is a litigant in person and does not qualify for legal aid;
   (d) where the public body has recent knowledge of P; or it is reasonably expected that they have recent knowledge of P; or should have knowledge

due to their statutory responsibilities under housing, social and/or health care legislation;

(e) the role of the public body is likely to be relevant to the decisions which the court will be asked to make;

(f) the application relates to an attorney or deputy and involves the exercise of the functions of the Public Guardian;

(g) evidence before the court does not adequately confirm the position regarding P's capacity or where it is borderline; or if information is required to inform any best interests decision to be made in relation to P by the court.

Reports by Public Guardian or a Court of Protection Visitor

4. Where a report is to be prepared by either the Public Guardian or a Court of Protection Visitor[1], a copy of the approved order, the directions and the information described in paragraph 14 below will be sent by the Court to the Public Guardian.

5. In the case of a report which is to be made by a Court of Protection Visitor, the Public Guardian must ensure that a person is nominated from the panel of the General Visitors or the panel of Special Visitors, as appropriate.

6. The nomination of a Court of Protection Visitor should be made before the end of the period of 7 days beginning with the date on which the Public Guardian received a copy of the order.

Reports under arrangements made by a local authority or an NHS body

7. Wherever practicable, before making an application for an order requiring a report under section 49, a party to proceedings should use their best endeavours to:

(a) make contact with an appropriate person within the relevant local authority or NHS body so they are made aware that an application is to be made; its purpose; and the issues or questions which are hoped to be addressed within the report;

(b) identify a named person or by reference to their office ("the senior officer") within the relevant local authority or NHS body who will be able to receive the court order on its behalf; and

[1] See section 49(2) of the Act.

(c) enquire as to the reasonableness and time scales for providing the report should the court order it.

8. The party making the application must submit a draft letter of instructions for the purpose of accompanying the order.

9. The court will make enquiry of the party making the application as to what efforts have been made to comply with paragraph 7 above, and the response of the relevant local authority or NHS body, and will take this into consideration before making an order.

10. Where a report is to be prepared under arrangements made by a local authority or an NHS body[2], a copy of the approved order (which is binding, notwithstanding that it may not yet be sealed), the information described in paragraph 14 below and the accompanying letter of instruction will be served by either (i) the party who made the application for a section 49 report or (ii) in the event that no party made the application, by the party determined by the court to be the most appropriate party to arrange service on the senior officer as soon as is reasonably practicable but in any event within 48 hours of the making of the order.

11. Upon receipt of the order the senior officer must ensure that—

(a) a person with appropriate expertise/knowledge is nominated to make the report; and

(b) the parties are notified of the name and contact details of the nominated person as soon as practicable.

12. The nomination should be made before the end of the period of 7 days beginning with the date on which the senior officer received a copy of the order.

13. The order must follow the format as set out in the Annex to this Practice Direction and specify the matters required to be addressed in paragraphs 9 and 10 therein.

Access to Information and interview P

14. The court will generally provide, or give permission to the party applying for the section 49 order to provide, to the person who is to produce a report—

[2] See section 49(3) of the Act

(a) a copy of the application form, its annexes and any supporting evidence as may be redacted by direction of the court;

(b) the name and contact details of P;

(c) the name and contact details of the parties;

(d) the name and contact details of any legal representative of a person specified in (b) or (c); and

(e) name and contact details of such other persons who are reasonably likely to be able to provide assistance to the nominated person for the completion of the report.

15. The court order requiring the report, the directions relating to it and the information described in paragraph 14 will generally be sent when the order is served by the party who is required to do so, by first class mail, electronic mail or by facsimile. If the circumstances warrant a different form of communication, the documents and information will also be sent by first class mail, electronic mail or by facsimile at the first available opportunity.

16. Section 49(7) of the Act sets out other documents relating to P which the Public Guardian or a Court of Protection Visitor may examine or take copies of for the purpose of making the report. Where appropriate, the order may also allow the same documents to be examined and copied by the nominated person who is to prepare the section 49 report under arrangements made by the relevant local authority or NHS body.

17. Sections 49(8) and (9) of the Act sets out that the Public Guardian or a Court of Protection Visitor may interview P in private. Where appropriate, the order may also allow P to be interviewed in private by the nominated person who is to prepare the section 49 report under arrangements made by the relevant local authority or NHS body.

The contents of the report

18. The person required to prepare a section 49 report must—

(a) prepare it having regard to the provisions of rule 14.24;

(b) produce it in the manner specified in this Practice Direction (subject to any directions given by the court); and

(c) produce it in accordance with the timetable set out in the court's directions.

19. The report should contain four main sections. These are—

(a) the details of the person who prepared the report;

(b) the details of P;

(c) the matters and material considered in preparing the report; and

(d) the conclusions reached.

20. In the first section (details of the person who prepared the report), the report should—

(a) state the full name of the person who prepared the report;

(b) state whether that person was appointed under section 49(2) or (3) of the Act;

(c) state whether that person is—

(i) the Public Guardian;

(ii) a General Visitor;

(iii) a Special Visitor;

(iv) an officer, employee or other person nominated by a local authority; or

(v) an officer, employee, or other person nominated by an NHS body;

(d) state that person's occupation or employment (for example, social worker employed by a local authority or general practitioner in private practice); and

(e) list that person's qualifications and experience.

21. In the second section (P's details), the report should (unless an order to the contrary pursuant to rule 5.11 has been made)—

(a) state P's full name, date of birth and present place of residence;

(b) state P's nationality, racial origin, cultural background and religious persuasion (if appropriate);

(c) identify P's immediate family (specifying their relationship to P and contact details;

(d) identify any other person who has a significant role in P's life (for example, a close friend or a carer) specifying their role and contact details; and

(e) give a summary of P's medical history.

22. In the third section (matters and material considered), the report should—

(a) list any interview conducted with P (specifying time and place)[3];

(b) list any interview conducted with one or more persons other than P (specifying time and place)[4];

(c) state—

(i) whether any examination of P was conducted by a Special Visitor under section 49(9) of the Act; and

(ii) the name and qualifications of any person who assisted with any such examination;

(d) give a summary of any key events in P's life which appear to have a direct bearing on the matters to be dealt with in the report;

(e) set out the details of any of the following material which was relied on in the preparation of the report—

(i) any literature or other material;

(ii) any records obtained under section 49(7) of the Act;

(f) set out the details of facts and opinions relied on in the preparation of the report (ensuring that there is a clear distinction between the two);

(g) where there is a range of opinion on an issue addressed in the report—

[3] The person preparing the report should ensure that any notes made during the interview with P are kept so that the notes are available for production to the court if necessary.

[4] The person preparing the report should ensure that any notes made during the interview with any person other than P are kept so that the notes are available for production to the court if necessary.

(i) summarise the range of opinion,

(ii) state the views held by the person who prepared the report and give reasons for them; and

(h) indicate which of the facts are within the knowledge of the person who prepared the report.

23. In the fourth section (conclusions), the report should—

(a) identify any issues or questions which were specified in the directions given by the court as being matters in which the court had a particular interest;

(b) address clearly such issues or questions;

(c) state clearly all conclusions reached by the person who prepared the report;

(d) state clearly the recommendations made by the person who prepared the report; and

(e) contain a statement of truth in the following terms—

"I confirm that insofar as the facts stated in my report are within my own knowledge I have made clear which they are, and I believe them to be true, and that the opinions I have expressed represent my true and complete professional opinion."

ANNEX

Order for section 49 report

Requirement for section 49 report

1. A report is required pursuant to section 49 of the Mental Capacity Act 2005 in relation to [*insert name of P*], under Court of Protection case number [*insert case number*].

Person required to prepare the report (the author)

2. The report must be prepared by [the Public Guardian] [a Court of Protection Visitor who is a General Visitor] [a Court of Protection Visitor who is a Special Visitor] [a person nominated by the local authority] [XX, a person nominated by the local authority and considered by them to have the appropriate expertise/knowledge to provide the report][a person nominated by the NHS body][YY, a person nominated by the NHS body and considered by them to have the appropriate expertise/knowledge to provide the report].

3. [In the case of a report to be prepared by [a Special Visitor, the Visitor] [a medically qualified practitioner, the practitioner] may carry out in private a [medical] [psychiatric] [psychological] examination of P's capacity or condition].

Producing the report

4. [The report must be made to the court in writing]. [The report must be made orally to the court].

5. The report must be produced on or before [*insert date*].

6. [Where the report is made in writing, it must be delivered to the court by [first class post][electronic mail][facsimile].

Context of report

7. The court has received an application for the following [order/direction/ declaration]:

   [*insert brief details of application*, for example,

   (a) XY be [appointed][removed] as the [deputy][attorney] for property and affairs/personal welfare for [*insert the name of P*];

   (b) [*insert the name of P*] lacks mental capacity to [*insert decision, for example conduct the proceedings/ objects to…../ decide where to reside*];

   (a) it is in the best interests of [*insert the name of P*] that [*insert issue*];[1]

   (b) it is lawful in respect of [*insert name of P*] that [*insert issue*].[2]

8. [*insert case summary*].

[1] This is only appropriate where an order is being sought.

[2] See comments of the President in Re: MN [2015] EWCA 411 "it is to be noted that section 15(1)(c) does not confer any general power to make bare declarations as to best interests; it is very precise in defining the power in terms of declarations as to 'lawfulness'. "

Content of report

9. Subject to any directions given under paragraph 11, the report must contain all the material required by relevant practice direction and be prepared in the form there specified.

10. The court is particularly interested in the following issues or questions and these must also be addressed in the report:

[*for example*
(a) whether [*insert the name of P*] has capacity in accordance with sections 2 and 3 of the Mental Capacity Act 2005, to [*insert issue, for example, object to/conduct proceedings/decide where to live*];

(b)if [he/she] lacks capacity, ascertain to the extent it is practicable and appropriate [his/her] present wishes and feelings and the beliefs and values that would be likely to influence [him/her] with regard to [*insert the matter to which the application relates*];

(c) if [he/she] lacks capacity, ascertain [his/her] present wishes and feelings as to how [his /her] participation could be secured by the appointment of a representative pursuant to Rule 1.2 of the Court of Protection Rules 2017;

(d) whether [he/she] should have the opportunity to address (directly or indirectly) the judge determining the application and the circumstances in which that should occur;

(e) describe [*insert the name of P*]'s circumstances;

(f) what services and support would be provided to [*insert the name of P*]/funded for [*insert the name of P*] by [*insert the name of the public body*];

(g) whether what is sought by the application could be effectively achieved in a way which is less restrictive of [*insert name of P*]'s rights and freedom;

(h)the Public Guardian's views as to ….].

11. The report need not address the following:

[(a) ;

(b)].

Persons to whom report is likely to be disclosed

12. The report is to be prepared on the assumption that the court will pursuant to rule 14.24(4) of the Court of Protection Rules 2017 send a copy of it to the parties and such other persons as the court may direct. The court further directs that the report be sent to [*insert the name of P*][*members of P's family*][*XX County Council/ NHS Hospital Trust/ Clinical Commissioning Group/Local Health Board*][the parties only] [the parties and their legal representatives] [*such other persons as the court may direct*].]

Persons to contact

13. The author of the report is authorised to contact and seek to interview the following person(s) for the purpose of preparing the report, with their contact details provided with this order:

(a) [*insert the name of P*] [in private][in the presence of XX];

(b)[the parties];

(c)[their legal representatives];

(d) [*Others which may include* for example, *family, care and health providers*].

14. The author of the report [may interview [*insert the name of P*] in private] [may not interview [*insert the name of P*]].

Access to records

15. For the purpose of enabling the author to prepare the report, [he/she] is authorised to examine and have a copy of the following, which relate to [*insert the name of P*] and are relevant to the application:

[for example,
(a) a copy of the application form, its annexes and any supporting evidence [*such papers may be redacted as required by the court*];

(b) any health record;

(c) any record of, or held by, a local authority and compiled in connection with a social services function, and

(d) any record held by a person registered under Part 2 of the Care Standards Act 2000 or Chapter 2 of Part 1 of the Health and Social Care Act 2008.]

Where a report is made under arrangements by a local authority or NHS Body

16. [The party who made the application for a section 49 report] [the party the court decides is the most appropriate] shall serve a copy of the order on [the senior officer who will accept this order on behalf of the [*insert name of public body*] and who will inform the court of the name of the person who will prepare the report] [XX being the person identified as having the appropriate expertise/knowledge to provide the report] within 7 days of service of this order, notwithstanding that in the event the order has not been sealed by the court, it shall be binding.

Record of lack of representation

17. Pursuant to rule 1.2(5) of the Court of Protection Rules 2017, the Court records that [*insert name of P*] has been directed to be joined as a party but such joinder has not occurred because no litigation friend or accredited legal representative has been appointed because [*insert reasons*].

Other directions

18. [(a) This order having been made without a hearing or without notice to any person affected by it; P, any party to the proceedings and any person affected by this order may apply to the court within 21 days of the order being served for reconsideration of this order pursuant to rule 13.4 of the Court of Protection Rules 2017 by filing an application notice (Form COP9) in accordance with Part 10 of those Rules]
[*or]*
[(a) This order having been made [at an attended hearing] (*or if urgent*) [at an urgent hearing] leave to any person adversely affected by this order to apply to the court within 7 days of the order being served, to set aside, vary or stay the relevant disputed provision of this order by filing an application notice (Form COP9) in accordance with Part 10 of the Court of Protection Rules 2017];

[(b)].

PRACTICE DIRECTION 15A – EXPERT EVIDENCE

This practice direction supplements Part 15 of the Court of Protection Rules 2017

General

1. Part 15 is intended to limit the use of expert evidence to that which is necessary to assist the court to resolve the issues in the proceedings. After an application form is issued, no person may file expert evidence unless the court or a practice direction permits.[1]

Expert evidence – general requirements

2. It is the duty of an expert to help the court on matters within the expert's own expertise.[2]

3. Expert evidence should be the independent product of the expert uninfluenced by the pressures of the proceedings.

4. An expert should assist the court by providing objective, unbiased opinion on matters within the expert's expertise, and should not assume the role of an advocate.

5. An expert should consider all material facts, including those which might detract from the expert's opinion.

6. An expert should make it clear—

(a) when a question or issue falls outside the expert's expertise; and

(b) when the expert is not able to reach a definite opinion, for example because the expert has insufficient information.

7. If, after producing a report, an expert changes his or her view on any material matter, such change of view should be communicated to all the parties without delay, and when appropriate to the court.

Form and content of expert's report

8. An expert's report should be addressed to the court and not to the party from whom the expert has received instructions.

9. An expert's report must—

(a) give details of the expert's qualifications;

(b) give details of any literature or other material which the expert has relied on in making the report;

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[1] Rule 15.2

[2] Rule 15.4

(c) contain a statement setting out the substance of all facts and instructions given to the expert which are material to the opinions expressed in the report or upon which those opinions are based (or annex the instructions insofar as they are in writing);

(d) make clear which of the facts stated in the report are within the expert's own knowledge;

(e) say who carried out any examination, measurement, test or experiment which the expert has used for the report, give the qualifications of that person, and say whether or not the test or experiment has been carried out under the expert's supervision;

(f) where there is a range of opinion on the matters dealt with in the report—

(i) summarise the range of opinion, and

(ii) give reasons for the expert's own opinion;

(g) contain a summary of the conclusions reached;

(h) if the expert is not able to give his or her opinion without qualification, state the qualification; and

(i) contain a statement that the expert understands the expert's duty to the court, and has complied and will continue to comply with that duty.

10. An expert's report must be verified by a statement of truth as well as containing the statements required in paragraph 9(h) and (i) above.

11. The form of the statement of truth is as follows—

'I confirm that insofar as the facts stated in my report are within my own knowledge I have made clear which they are and I believe them to be true and that the opinions I have expressed represent my true and complete professional opinion.'

12. Attention is drawn to rule 5.6 which sets out the consequences of verifying a document containing a false statement without an honest belief in its truth.

(Practice Direction B accompanying Part 5 sets out more detailed requirements for statements of truth.)

Questions to experts

13. Questions asked for the purpose of clarifying the expert's report should be put, in writing, to the expert not later than 28 days after service of the expert's report.[3]

14. Where a party sends a written question or questions direct to an expert, a copy of the questions should, at the same time, be sent to the other party or parties.

Orders

15. Where an order requires an act to be done by an expert, or otherwise affects an expert, the party instructing that expert must serve a copy of the order on the expert

[3] Rule 15.7

instructed by that party. In the case of a jointly instructed expert, the applicant must serve the order.

PRACTICE DIRECTION 17A – LITIGATION FRIEND

This practice direction supplements Part 17 of the Court of Protection Rules 2017

General

1. Section 1 of Part 17 contains rules about the appointment of a litigation friend to conduct proceedings on behalf of P, a child, or a protected party[1]. This practice direction is made under rule 17.8 and provides guidance in relation to the appointment and removal of a litigation friend pursuant to Part 17.

2. Rule 17.1 provides that a litigation friend may be appointed for—

(a) P;
(b) a child; or
(c) a protected party.

3. Where—

(a) P has a litigation friend, P should be referred to in the proceedings as 'P (by A.B., [his] [her] litigation friend)';
(b) the protected party has a litigation friend, the protected party should be referred to in the proceedings as 'E.F. (by A.B., [his] [her] litigation friend)';
(c) a child has a litigation friend, the child should be referred to in the proceedings as 'C.D. (a child by A.B., [his] [her] litigation friend)'; and
(d) a child is conducting proceedings on his or her own behalf, the child should be referred to in the proceedings as 'A.B. (a child)'.

Litigation friend without a court order

4. Rule 17.3 makes provision for the appointment of a litigation friend without a court order. The rule does not apply—

(a) in relation to P;
(b) where the court has appointed a litigation friend; or
(c) where the Official Solicitor is to act as litigation friend.

Deputy as a litigation friend

5. Rule 17.3(2) provides that where there is a deputy appointed with power to conduct legal proceedings in the name of the protected party or on the protected party's behalf, that deputy is entitled to be a litigation friend of the protected party in any proceedings to which the deputy's power relates. To be a litigation friend the deputy must file and serve a copy of the court order which appointed him or her on—

(a) every person on whom an application form in relation to a protected party must be served in accordance with rule 6.4; and
(b) every other person who is a party to the proceedings.

Litigation friend where there is no deputy

6. A person who wishes to become a litigation friend without a court order pursuant to rule 17.3 must file a certificate of suitability using Form COP22.

[1] "Protected party" means a party, or an intended party (other than P or a child) who lacks capacity to conduct the proceedings.

7. In addition to the matters listed in rule 17.1(1), the certificate of suitability referred to in rule 17.3(3) which the litigation friend files must also—

(a) state that he or she consents to act;
(b) state that he or she knows or believes that the child or the protected party lacks capacity to conduct the proceedings himself or herself; and
(c) state the grounds of his or her belief and, if that belief is based upon medical opinion, or the opinion of another suitably qualified expert, attach any relevant document to the certificate.

8. The certificate of suitability must contain a statement of truth.

9. The litigation friend must serve the certificate of suitability on—

(a) every person on whom an application form must be served in accordance with rule 6.4; and
(b) every other person who is a party to the proceedings.

10. The litigation friend is not required to serve the document referred to in paragraph 7(c) when the litigation friend serves a certificate of suitability under paragraph 9 (unless the court directs otherwise).

11. The litigation friend must file the certificate of suitability together with a certificate of service of it when the litigation friend first takes a step in the proceedings.

Litigation friend by court order

12. Rule 17.4 sets out when and how the court may appoint a litigation friend, either on application or on its own initiative.

13. An application for an order appointing a litigation friend must be made by filing a COP9 application notice in accordance with the Part 10 procedure. The application must be supported by evidence, as required by rule 17.4(3).

14. The evidence in support must satisfy the court that the proposed litigation friend—

(a) consents to act;
(b) can fairly and competently conduct proceedings on behalf of P, the child, or the protected party; and
(c) has no interest adverse to that of P, the child, or the protected party.

Change of litigation friend and prevention of person acting as litigation friend

15. Rule 17.5(1) provides that the court may, on application or on its own initiative—

(a) direct that a person may not act as a litigation friend;
(b) bring to an end a litigation friend's appointment; or
(c) appoint a new litigation friend in place of an existing one.

16. An application made pursuant to rule 17.5 should be made by filing a COP9 application notice in accordance with the Part 10 procedure.

Procedure where the need for a litigation friend has come to an end

17. Rule 17.7 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.

18. Where a child having reached full age files a notice under rule 17.7 and the notice states that the child intends to carry on with or continue to participate in the proceedings the child shall subsequently be described in the proceedings as:

‘A.B. (formerly a child but now of full age).'

PRACTICE DIRECTION 17B – RULE 1.2 REPRESENTATIVES

This practice direction supplements Part 17 of the Court of Protection Rules 2017

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 17.14 and provides guidance on the appointment and removal of an accredited legal representative or a representative pursuant to Part 17.

2. Rule 17.10 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 17.10;
> (b) directions pursuant to rule 17.11; or
> (c) for an order under rule 17.12

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 17.10 or for the substitution of an accredited legal representative or a representative in place of an existing one pursuant to rule 17.12, the evidence in support must satisfy the court that the conditions in rule 17.9 are met.

PRACTICE DIRECTION 18A – CHANGE OF SOLICITOR

This practice direction supplements Part 18 of the Court of Protection Rules 2017

General

1. Part 18 contains rules about a change of solicitor. This practice direction is made under rule 18.5 and specifies the forms and procedures to be used in relation to a change of solicitor in specified circumstances.

Where Form COP30 should be used

2. Form COP30 should be used where a party to proceedings—

(a) for whom a solicitor is acting, wishes to change his or her solicitor, or intends to act in person; or

(b) having conducted the proceedings in person, appoints a solicitor to act on his or her behalf (this requirement does not apply where a solicitor is appointed only to act as an advocate for a hearing).

Where Form COP9 should be used

3. Form COP9 should be used where—

(a) a solicitor applies for an order declaring that he or she has ceased to be the solicitor acting for a party; or

(b) another party applies for an order declaring that the solicitor has ceased to be the solicitor acting for another party in the proceedings.

PRACTICE DIRECTION 19A – COSTS

This practice direction supplements Part 19 of the Court of Protection Rules 2017

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, 7.1 – 9.12 and 10.1-10.2;

(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, 13.7, 13.8(3), 15, 16.6, 17.4 and 18.8 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 6.2 of the Court of Protection Rules 2017, 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. Section 23.1(a) of the Guide shall be read as if a reference to the Court of Protection Rules 2017 were substituted for the reference to the Court of Protection Rules 2007, and a reference to Practice Direction 19B read as a reference to the amended Practice Direction 19B supporting Part 19 of the Court of Protection Rules 2017.

15. 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.

PRACTICE DIRECTION 19B – FIXED COSTS IN THE COURT OF PROTECTION

This practice direction supplements Part 19 of the Court of Protection Rules 2017

General

1. This practice direction sets out the fixed costs that may be claimed by solicitors and public authorities acting in Court of Protection proceedings and the fixed amounts of remuneration that may be claimed by solicitors and office holders in public authorities appointed to act as a deputy for P. Rule 19.13 enables a practice direction to set out a schedule of fees to determine the amount of remuneration payable to deputies. Rule 19.14 enables a practice direction to make provision in respect of costs in proceedings.

2. The practice direction applies principally to solicitors or office holders in public authorities appointed to act as deputy. However, the court may direct that its provisions shall also apply to other professionals acting as deputy including accountants, case managers and not-for-profit organisations.[1]

3. This practice direction applies where the period covered by the category of fixed costs or remuneration ends on or after 1 April 2017 relating to fixed costs issued by the Court of Protection. However solicitors and office holders in public authorities should continue to claim the rates applicable in the previous Practice Directions and Practice Notes, where the period covered by the category of fixed costs or remuneration ended before 1 April 2017.

When does this practice direction apply?

4. Rule 19.2 provides that, where the proceedings concern P's property and affairs, the general rule is that costs of the proceedings shall be paid by P or charged to P's estate. The provisions of this practice direction apply where the professional or deputy is entitled to be paid costs out of P's estate. They do not apply where the court order provides for one party to receive costs from another.

Claims generally

5. The court order or direction will state whether fixed costs or remuneration applies, or whether there is to be a detailed assessment by a costs officer. Where a court order or direction provides for a detailed assessment of costs, professionals may elect to take fixed costs or remuneration in lieu of a detailed assessment.

Payments on account

6. Where professional deputies elect for detailed assessment of annual management charges, they may take payments on account for the first three quarters of the year, which are proportionate and reasonable taking into account the size of the estate and the functions they have performed. Interim quarterly bills must not exceed 25% of the estimated annual management charges - that is up to 75% for the whole year.

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[1] Not for profit organisations are also referred to the following judgment:
The Friendly Trust's Bulk Application 29 July2016*http://www.bailii.org/ew/cases/EWCOP/2016/40.*

Interim bills of account must not be submitted to the Senior Courts Costs Office (SCCO). At the end of the annual management year, the deputy must submit their annual bill to the SCCO for detailed assessment and adjust the final total due to reflect payments on account already received.

The Office of the Public Guardian

7. As part of its supervisory procedure, the Office of the Public Guardian (OPG) will ask professional deputies to estimate the amount of activity they anticipate being required on a case in the coming period, and the costs attendant on that. The professional deputy will share this estimate with the SCCO at the same time as they submit their costs for assessment.

Solicitors' costs in court proceedings

8. The fixed costs are as follows:

Category I

Work up to and including the date upon which the court makes an order appointing a deputy for property and affairs.

An amount not exceeding £950 (plus VAT)

Category II

Applications under sections 36 (9) or 54 of the Trustee Act 1925 or section 20 of the Trusts of Land and Appointment of Trustees Act 1996 for the appointment of a new trustee in the place of 'P' and applications under section 18(1)(j) of the Mental Capacity Act 2005 for authority to exercise any power vested in P, whether beneficially, or as trustee, or otherwise

An amount not exceeding £500 (plus VAT)

9. The categories of fixed costs, above will apply as follows:

- Category I to all orders appointing a deputy for property and affairs made on or after 1 April 2017.
- Category II to all applications for the appointment of a new trustee made on or after 1 April 2017.

Remuneration of solicitors appointed as deputy for P

10. The following fixed rates of remuneration will apply where the court appoints a solicitor to act as deputy (but not where an office holder of a public authority is appointed and employs a solicitor, or a solicitor employed by a public authority is appointed as an office holder of a public authority):

Category III – Maximum Amounts

Annual management fee where the court appoints a professional deputy for property and affairs, payable on the anniversary of the court order

a) For the first year: An amount not exceeding £1670 (plus VAT)

b) For the second and subsequent years**:** An amount not exceeding £1320 (plus VAT)

c) Where the net assets of P are below £16,000, the professional deputy for property and affairs may take an annual management fee not exceeding 4.5% of P's net assets on the anniversary of the court order appointing the professional as deputy.

Category IV

Where the court appoints a professional deputy for health and welfare, the deputy may take an annual management fee not exceeding 2.5% of P's net assets on the anniversary of the court order appointing the professional as deputy for health and welfare up to a maximum of £555.

Category V

Preparation and lodgement of a report or an account to the Public Guardian

An amount not exceeding £265 (plus VAT)

Category VI

a) Preparation of a Basic HMRC income tax return (bank or NS&I interest and taxable benefits, discretionary trust or estate income) on behalf of P. An amount not exceeding £250 (plus VAT)

b) Preparation of a Complex HMRC income tax return (bank or NS&I interest, multiple investment portfolios, taxable benefits, one or more rental properties) on behalf of P. An amount not exceeding £600 (plus VAT)

11. The categories of remuneration, above will apply as follows:

- Category III and IV to all annual management fees for anniversaries falling on or after 1 January 2017
- Category V to reports or accounts lodged on or after 1 April 2017
- Category VI to all HMRC returns made on or after 1 April 2017

12. In cases where fixed costs are not appropriate, professionals may, if preferred, apply to the SCCO for a detailed assessment of costs. However, this does not apply if P's net assets are below £16,000 where the option for detailed assessment will only arise if the court makes a specific order for detailed assessment in relation to an estate with net assets of a value of less than £16,000.

13. Where the period for which an annual management fee claimed is less than one year, for example where the deputyship comes to an end before the anniversary of appointment, then the amount claimed must be the same proportion of the applicable fee as the period bears to one year.

Conveyancing costs

14. Where a deputy or other person authorised by the court is selling or purchasing a property on behalf of P, the following fixed rates will apply for the legal cost of conveying the property except where the sale or purchase is by trustees in which case, the costs should be agreed with the trustees:

Category VII

A value element of 0.15% of the consideration with a minimum sum of £400 and a maximum sum of £1,670 plus disbursements.

15. Category VII applies to any conveyancing transaction where contracts are exchanged on or after 1 April 2017.

Remuneration of public authority deputies

16. The following fixed rates of remuneration will apply where the court appoints a holder of an office in a public authority to act as deputy. These rates should be applied **regardless** of who carries out the function within the public authority.

Category I

Work up to and including the date upon which the court makes an order appointing a deputy for property and affairs.

An amount not exceeding £745

Category II

Annual management fee where the court appoints a local authority deputy for property and affairs, payable on the anniversary of the court order. Management costs are assumed to cover any incidental costs incurred in management of P's affairs with the exception of those mentioned under paragraph 20 below

a) For the first year: An amount not exceeding £775

b) For the second and subsequent years**:** An amount not exceeding £650

c) Where the net assets of P are below £16,000, the local authority deputy for property and affairs may take an annual management fee not exceeding 3.5% of P's net assets on the anniversary of the court order appointing the local authority as deputy

d) Where the court appoints a local authority deputy for health and welfare, the local authority may take an annual management fee not exceeding 2.5% of P's net assets on the anniversary of the court order appointing the local authority as deputy for health and welfare up to a maximum of £555

Category III

Annual property management fee to include work involved in preparing property for sale, instructing agents, conveyancers, etc. or the ongoing maintenance of property including management and letting of a rental property or properties where P is a tenant.

An amount not exceeding £300

Category IV

Preparation and lodgement of a report or account to the Public Guardian

An amount not exceeding £216

Category V

Preparation of a Basic HMRC income tax return (bank or NS&I interest and taxable benefits) on behalf of P

An amount not exceeding £70

Preparation of a Complex HMRC income tax return (bank or NS&I interest, taxable benefits, small investment portfolio) on behalf of P

An amount not exceeding £140

17. The categories of remuneration, above will apply as follows:

- Category I to all orders appointing a deputy for property and affairs made on or after 1 April 2017.

- Category II to all annual management fees for anniversaries falling on or after 1 April 2017.

- Category III on the anniversary of appointment as deputy where the anniversary falls on or after or upon completion of the sale of a property, where the transaction was concluded on or after 1 April 2017.

- Category V to reports or accounts lodged on or after 1 April 2017.

18. Where the period for which the annual management fee ends before an anniversary, for example where the deputyship comes to an end before the anniversary of appointment, then the amount claimed must be the same proportion of the applicable fee as the period bears to one year.

Outsourcing of work by public authorities.

19. Where public authorities outsource deputyship work, it is expected that the rates charged will be no more than that which would have been charged to the client if the public authority had remained as deputy.

Disbursements

20. Public Authorities are allowed to use P's funds to pay for specialist services that P would have normally be expected to pay if P had retained capacity such as conveyancing, obtaining expert valuations and obtaining investment advice.

Travel Rates

21. Public authority and other third sector deputies are allowed the fixed rate of £40 per hour for travel costs.

PRACTICE DIRECTION 20A – APPEALS

This practice direction supplements Part 20 of the Court of Protection Rules 2017

1. This practice direction applies to appeal proceedings within the Court of Protection pursuant to Part 20. Where an appeal lies to the Court of Appeal, the Civil Procedure Rules 1998 apply to such an appeal.

Permission

2. Rules 20.5, 20.6 and 20.8 set out the procedure for seeking the court's permission to appeal.

3. Unless the appeal is against an order of committal to prison, the court's permission is required to appeal. An application for permission may be made either to the judge at the hearing at which the decision being appealed was made (the first instance judge), or to an appeal judge.

APPELLANT

Appellant's Notice

4. Rule 20.10 sets out the procedure and time limits for filing and serving an appellant's notice. This is summarised in the following table:

Permission given by the first instance judge	**Permission not given by a first instance judge**	**Permission not needed**
Appellant's notice to be filed within the time directed by the first instance judge; OR Where no time directed, within 21 days of the decision being appealed/ permission decision.	Appellant's notice including application for permission to be filed within 21 days of the decision being appealed.	Appellant's notice to be filed within 21 days of the decision being appealed.
Appellant's notice to be served on all respondents as soon as practicable, and no later than 21 days after it is issued.	Appellant's notice to be served on all respondents as soon as practicable, and no later than 21 days after it is issued.	Appellant's notice to be served on all respondents as soon as practicable, and no later than 21 days after it is issued.

5. Where the first instance judge announces his or her decision and reserves the reasons for judgment until a later date, the judge should, in the exercise of the powers under rule 20.10(2)(a), fix a period for filing the appellant's notice that takes this into account.

6. Except where the appeal judge orders otherwise, a sealed copy of the appellant's notice must be served on all respondents in accordance with the time limits prescribed by

rule 20.10(3). At this time the appellant should also serve a skeleton argument on all respondents if permission was granted by the first instance judge.

7. The appellant must, within 7 days beginning on the date on which the copy of the appellant's notice was served, file a certificate of service in relation to service of the appellant's notice.[1]

(Part 6 sets out the rules relating to service 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.)

Extension of time for filing appellant's notice

8. Where the time for filing an appellant's notice has expired, the appellant must—

(a) file an appellant's notice; and

(b) include in that appellant's notice an application for an extension of time.

9. The appellant's notice should state the reason(s) for the delay and the steps taken prior to the application being made.

10. Where the appellant's notice includes an application for an extension of time and permission to appeal has been given or is not required, the respondent has the right to be heard on that application.

Documents to be filed and served with appellant's notice

11. The appellant must file the following documents with the appellant's notice—

(a) one additional copy of the appellant's notice for the court;

(b) one copy of the appellant’s skeleton argument;

(c) a sealed copy of the order being appealed;

(d) a copy of any order giving or refusing permission to appeal, together with a copy of the judge's reasons for allowing or refusing permission to appeal;

(e) any witness statements or affidavits in support of any application included in the appellant's notice;

(f) the application form and any application notice or response (where relevant to the subject of the appeal);

(g) any other documents which the appellant reasonably considers necessary to enable the court to reach its decision on the hearing of the application or appeal;

(h) a suitable record of the judgment of the first instance judge; and

(i) such other documents as the court may direct.

[1] Rule 20.10(4)

12. Where it is not possible to file all of the above documents with the appellant's notice, the appellant must indicate which documents have not yet been filed and the reasons why they are not currently available. The appellant must then provide a reasonable estimate of when the missing document or documents can be filed and file and serve them as soon as reasonably practicable.

13. Notice of an application to be made to the court for a remedy incidental to the appeal (e.g. an interim remedy under rule 10.10) may be included in the appellant's notice, or in an application notice using Form COP9 (which is to be attached to the appellant's notice).

14. The appellant should consider what other information the court will need. This may include a list of persons who feature in the case or glossaries of technical terms. A chronology of relevant events will be necessary in most appeals.

15. The information set out in paragraph 11 must be served on each respondent when the appellant's notice is served.

Skeleton arguments

16. The appellant's notice must, subject to paragraph 17, be accompanied by a skeleton argument using, or attached to, a skeleton argument in Form COP37.

17. Where the appellant is unable to provide a skeleton argument to accompany the appellant's notice it must be filed and served on all respondents within 21 days of filing the notice.

18. A skeleton argument must contain a numbered list of the points which the party wishes to make. These should both define and confine the areas of controversy. Each point should be stated as concisely as the nature of the case allows.

19. A numbered point must be followed by a reference to any document on which the appellant wishes to rely.

20. A skeleton argument must state, in respect of each authority cited—

(a) the proposition of law that the authority demonstrates; and

(b) the parts of the authority (identified by page or paragraph references) that support the proposition.

21. If more than one authority is cited in support of a given proposition, the skeleton argument must briefly state the reason for taking that course. This statement should not materially add to the length of the skeleton argument but should be sufficient to demonstrate, in the context of the argument—

(a) the relevance of the authority or authorities to that argument; and

(b) that the citation is necessary for a proper presentation of that argument.

Suitable record of the judgment

22. Where the judgment to be appealed has been officially recorded by the court, an approved transcript of that record should accompany the appellant's notice. Photocopies will

not be accepted for this purpose. However, where there is no officially recorded judgment, the forms of record of the judgment set out in paragraphs 23 to 25 will be acceptable.

Written judgments

23. Where the judgment was given in writing, a copy of that judgment endorsed with the judge's signature.

Note of judgment

24. When the judgment was not officially recorded or given in writing, a note of the judgment (agreed between the appellant's and respondent's advocates) should be submitted for approval to the first instance judge. If the parties cannot agree on a single note of the judgment, both versions should be provided to that judge with an explanatory letter. For the purpose of an application for permission to appeal the note need not be approved by the respondent or the first instance judge.

Advocates' notes of judgments where appellant is unrepresented

25. When the appellant was unrepresented before the first instance judge it is the duty of any advocate for the respondent to make his or her note of the judgment promptly available, free of charge, to the appellant where there is no officially recorded judgment or if the court so directs. Where the appellant was represented before the first instance judge, it is the duty of the appellant's own former advocate to make his or her note available in these circumstances. The appellant should submit the note of the judgment to the appeal judge.

Transcripts or notes of evidence

26. When the evidence is relevant to the appeal an official transcript of the relevant evidence must be obtained. Transcripts or notes of evidence are generally not needed for the purpose of determining an application for permission to appeal.

27. If evidence relevant to the appeal was not officially recorded, a typed version of the judge's notes of evidence must be obtained.

28. Where the first instance judge or the appeal judge is satisfied that—

(a) an unrepresented appellant; or

(b) an appellant whose legal representation is provided free of charge to the appellant and who is not in receipt of civil Legal Aid,

is in such poor financial circumstances that the cost of a transcript would be an excessive burden, the court may certify that the cost of obtaining one official transcript should be borne at public expense.

29. In the case of a request for an official transcript of evidence or proceedings to be paid for at public expense, the court must also be satisfied that there are reasonable grounds for appeal. Whenever possible a request for a transcript at public expense should be made to the first instance judge when asking for permission to appeal.

RESPONDENT

30. A person who has been named as a respondent in appeal proceedings and who wishes only to request that the appeal judge upholds the judgment or order of the first instance judge, whether for the reasons given by the first instance judge or otherwise, does not make an appeal and does not therefore require permission to appeal in accordance with rules 20.5 and 20.6.

31. A person who has been named as a respondent in appeal proceedings, and who also wishes to seek permission to appeal must do so in accordance with rules 20.5 and 20.6.

32. Unless the court otherwise directs, a respondent need not take any action when served with an appellant's notice until such time as notification is given to the respondent that permission to appeal has been granted (unless paragraph 31 applies).

Respondent's notice

33. A respondent who wishes to appeal or who wishes to ask the appeal judge to uphold the order of the first instance judge for reasons different from or additional to those given by the first instance judge must file a respondent's notice.

34. If the respondent does not file a respondent's notice, the respondent will not be entitled, except with the permission of the court, to rely on any reasons for upholding the decision which are different from or additional to those relied on by the first instance judge.

35. Rule 20.11 sets out the procedure and time limits for filing and serving a respondent's notice.

36. Where the first instance judge announces his or her decision and reserves the reasons for judgment until a later date, the judge should, in the exercise of the powers under rule 20.11(3)(a), fix a period for filing the respondent's notice that takes this into account.

37. Except where the appeal judge orders otherwise, a sealed copy of the respondent's notice must be served on all parties to the appeal proceedings in accordance with the time limits prescribed by rule 20.11(5), along with any other material required to be served in accordance with paragraphs 40 to 43 below.

38. The respondent must, within 7 days beginning with the date on which the copy of the respondent's notice was served, file a certificate of service in relation to service of the respondent's notice.

(Part 6 sets out the rules relating to service.)

39. Paragraphs 8 to 10 apply in respect of a respondent's notice as they apply to an appellant's notice.

Documents to be filed and served with respondent's notice

40. The respondent must file the following documents with the respondent's notice—

(a) one additional copy of the respondent's notice for the court;

(b) one copy of the respondent’s skeleton argument;

(c) a sealed copy of the order being appealed;

(d) a copy of any order giving or refusing permission to appeal, together with a copy of the judge's reasons for allowing or refusing permission to appeal; and

(e) any witness statements or affidavits in support of any application included in the respondent's notice.

(f) any other documents which the respondent reasonably considers necessary to enable the court to reach its decision on the hearing of the application or appeal; and

(g) such other documents as the court may direct.

41. A respondent may include an application for a remedy incidental to the appeal as set out in paragraph 13.

42. The respondent should consider what other information the appeal judge will need. This may include a list of persons who feature in the case or glossaries of technical terms. A chronology of relevant events will be necessary in most appeals.

43. The information set out in paragraph 40 must be served on the appellant and any other respondent when the respondent's notice is served.

Skeleton argument

44. The respondent must file and serve a skeleton argument in all cases where he proposes to address arguments to the court.

45. The respondent's notice must, subject to paragraph 46, be accompanied by a skeleton argument using, or attached to, a skeleton argument in Form COP37.

46. Where the respondent is unable to provide a skeleton argument to accompany the respondent's notice it must be filed and served on all respondents within 21 days of filing the notice.

47. A respondent who does not file a respondent's notice but who files a skeleton argument must file and serve that skeleton argument at least 7 days before the appeal hearing.

48. A respondent's skeleton argument must conform to the requirements at paragraphs 18 to 21 with any necessary modifications. It should, where appropriate, answer the arguments set out in the appellant's skeleton argument.

49. Where a respondent's skeleton argument is not served with the respondent's notice, the respondent must serve the respondent’s skeleton argument on all parties to the proceedings at the same time as filing it at the court, and must file a certificate of service.

APPEAL HEARING

50. The court will send the parties notification of the date of the hearing of the appeal, together with any other directions given by the court.

PRACTICE DIRECTION 20B – ALLOCATION OF APPEALS

This practice direction supplements Part 20 of the Court of Protection Rules 2017

General

1.1 Rule 20.4 provides for a practice direction to set out the destination of appeals from decisions of judges of the Court of Protection.

1.2 Rule 2.1 and Practice Direction 2A 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 20.4(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 20.4(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 20.4(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

Appeal lies to	**In the following circumstances**	**Permission to appeal may be granted by**
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

Appeal lies to	**In the following circumstances**	**Permission to appeal may be granted by**
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

PRACTICE DIRECTION 21A – CONTEMPT OF COURT

This practice direction supplements Part 21 of the Court of Protection Rules 2017

Section 2 of Part 21 – Committal for breach of a judgment, order or undertaking to do or abstain from doing an act

Requirement for a penal notice on judgments and orders – form of penal notice (Rule 21.9)

1. A judgment or order which restrains a party from doing an act or requires an act to be done must, if disobedience is to be dealt with by proceedings for contempt of court, have a penal notice endorsed on it as follows (or in words to substantially the same effect)—

> "If you the within-named [ ] do not comply with this order you may be held to be in contempt of court and imprisoned or fined, or your assets may be seized."

Requirement for a penal notice on judgments and orders – undertakings (Rule 21.9)

2.1. Subject to rule 21.9(2) (which covers the case where the undertaking is contained in an order or judgment), the form of an undertaking to do or abstain from doing any act must be endorsed with a notice setting out the consequences of disobedience as follows (or in words to substantially the same effect)—

> "You may be held to be in contempt of court and imprisoned or fined, or your assets may be seized, if you break the promises you have given to the court."

2.2. The court may decline to—

(a) accept an undertaking; or

(b) deal with disobedience in respect of an undertaking by contempt of court proceedings.

unless the party giving the undertaking has made a signed statement to the effect that the party understands the terms of the undertaking and the consequences of failure to comply with it, as follows (or in words to substantially the same effect)—

> "I understand the undertaking that I have given and that if I break any of my promises to the court I may be sent to prison, or fined, or my assets may be seized, for contempt of court."

2.3. The statement need not be made before the court in person. It may be endorsed on the court copy of the undertaking or may be filed in a separate document such as a letter.

Section 3 of Part 21 – Contempt in the face of the court

Committal for contempt in the face of the court (Rule 21.12)

3.1. Where the committal proceedings relate to a contempt in the face of the court the matters referred to in paragraph 3.3 should be given particular attention. Normally it will be appropriate to defer consideration of the respondent's actions and behaviour to allow the

respondent time to reflect on what has occurred. The time needed for the following procedures should allow such a period of reflection.

3.2. The use of the Part 10 procedure is not required for contempt in the face of the court, but other provisions of this practice direction should be applied, as necessary, or adapted to the circumstances.

3.3. The judge should—

(a) tell the respondent of the possible penalty that the respondent faces;

(b) inform the respondent in detail, and preferably in writing, of the actions and behaviour of the respondent which have given rise to the committal application;

(c) if the judge considers that an apology would remove the need for the committal application, tell the respondent;

(d) have regard to the need for the respondent to be—

(i) allowed a reasonable time for responding to the committal application, including, if necessary, preparing a defence;

(ii) made aware of the possible availability of criminal legal aid and how to contact the Legal Aid Agency;

(iii) given the opportunity, if unrepresented, to obtain legal advice;

(iv) if unable to understand English, allowed to make arrangements, seeking the court's assistance if necessary, for an interpreter to attend the hearing; and

(v) brought back before the court for the committal application to be heard within a reasonable time;

(e) allow the respondent an opportunity to—

(i) apologise to the court;

(ii) explain the respondent's actions and behaviour; and

(iii) if the contempt is proved, to address the court on the penalty to be imposed on the respondent; and

(f) where appropriate, nominate a suitable person to give the respondent the information. (It is likely to be appropriate to nominate a person where the effective communication of information by the judge to the respondent was not possible when the incident occurred.)

3.4. If there is a risk of the appearance of bias, the judge should ask another judge to hear the committal application.

3.5. Where the committal application is to be heard by another judge, a written statement by the judge before whom the actions and behaviour of the respondent which have given rise to the committal application took place may be admitted as evidence of those actions and behaviour.

Section 5 of Part 21 – Committal for making a false statement of truth

Committal application in relation to a false statement of truth (Rule 21.17)

4.1. Rule 21.17(1)(b) provides that a committal application may be made by the Attorney General. However the Attorney General prefers a request that comes from the court to one made direct by a party to the proceedings in which the alleged contempt occurred without prior consideration by the court. A request to the Attorney General is not a way of appealing against, or reviewing, the decision of the judge.

4.2. Where the permission of the court is sought under rule 21.17(1)(a), the affidavit evidence in support of the application must—

(a) identify the statement said to be false;

(b) explain—

(i) why it is false; and

(ii) why the maker knew the statement to be false at the time it was made; and

(c) explain why contempt proceedings would be appropriate in the light of the overriding objective in Part 1 of the Rules.

4.3. The court may—

(a) exercise any of its powers under the Rules (including the power to give directions under rule 21.15(6));

(b) initiate steps to consider if there is a contempt of court and, where there is, to punish it; or

(c) as provided by rule 21.17(3), direct that the matter be referred to the Attorney General with a request to consider whether to bring proceedings for contempt of court.

4.4. A request to the Attorney General to consider whether to bring proceedings for contempt of court must be made in writing and sent to the Attorney General's Office at 5-8 The Sanctuary, London SW1P 3JS.

4.5. A request to the Attorney General must be accompanied by a copy of any order directing that the matter be referred to the Attorney General and must—

(a) identify the statement said to be false;

(b) explain—

(i) why it is false; and

(ii) why the maker knew the statement to be false at the time it was made; and

(c) explain why contempt proceedings would be appropriate in the light of the overriding objective in Part 1 of the Rules.

4.6. Once the applicant receives the result of the request to the Attorney General, the applicant must send a copy of it to the court that will deal with the committal application, and the court will give such directions as it sees fit.

4.7. The rules do not change the law of contempt or introduce new categories of contempt. A person applying to commence such proceedings should consider whether the incident complained of does amount to contempt of court and whether such proceedings would further the overriding objective in Part 1 of the Rules.

Section 6 of Part 21 – Writ of sequestration to enforce a judgment, order or undertaking

Requirement for a penal notice on judgments and orders (Rule 21.24)

5. Paragraphs 1 and 2.1 to 2.3 apply to judgments or orders to be enforced by a writ of sequestration (subject in the case of undertakings to rule 21.24(2), which covers the case where the undertaking is contained in an order or judgment).

Levying execution on certain days

6. Unless the court orders otherwise, a writ of sequestration to enforce a judgment, order or undertaking must not be executed on a Sunday, Good Friday or Christmas Day.

Section 7 of Part 21 – General rules about committal applications, orders for committal and writs of sequestration

Human rights

7. In all cases the Convention rights of those involved should particularly be borne in mind. It should be noted that the standard of proof, having regard to the possibility that a person may be sent to prison, is that allegation be proved beyond reasonable doubt.

(Section 1 of the Human Rights Act 1998 defines “the Convention rights”.)

Applications for committal after permission granted or where permission not needed

8.1. An application for an order of committal must be commenced by filing a COP9 application notice in accordance with Part 21.

8.2. The applicant must file the original and one copy of the application notice, together with the original and one copy of the affidavit that is required by rule 21.10.

8.3. The affidavit must contain—

(a) the name and description of the person making the application;

(b) the name, address and description of the person sought to be committed;

(c) the grounds on which committal is sought;

(d) a description of each alleged act of contempt, identifying:

(i) each act separately and numerically, and

(ii) if known, the date of each act; and

(e) any additional information required by paragraphs 8.4 and 8.5.

8.4. Where the allegation of contempt relates to prior proceedings before the court, the affidavit must also state:

(a) the case number of those prior proceedings;

(b) the date of the proceedings; and

(c) the name of P.

8.5. The affidavit must also set out in full any order, judgment or undertaking which it is alleged has been disobeyed or broken by the person sought to be committed. This will apply where the allegation of contempt is made on the grounds that—

(a) a person is required by a judgment or order to do an act, and has refused or neglected to do it within the time fixed by the judgment or order or any subsequent order;

(b) a person has disobeyed a judgment or order requiring that person to abstain from doing an act; or

(c) a person has breached the terms of an undertaking which that person gave to the court.

(Practice Direction A accompanying Part 14 sets out further details in relation to affidavits.)

Evidence

9.1. Written evidence in support of or in opposition to a committal application must be given by affidavit.

9.2. Written evidence served in support of or in opposition to a committal application must, unless the court directs otherwise, be filed.

9.3. The following rules do not apply to committal applications—

(a) rule 15.12 (Court's power to direct that evidence is to be given by a single joint expert); and

(b) rule 15.13 (Instructions to single joint expert).

Hearing of application (Rule 21.28)

10.1. When filing the application notice, the applicant must obtain from the court a date for the hearing of the committal application.

10.2. Unless the court otherwise directs, the hearing date of a committal application must not be less than 14 days after service of the application notice on the respondent. The hearing date must be specified in the application notice or in a Notice of Hearing attached to and served with the application notice.

10.3. The court may at any time give case management directions (including directions for the service of evidence by the person sought to be committed and evidence in reply by the applicant) or may hold a directions hearing.

10.4. The court may on the hearing date—

(a) give case management directions with a view to a hearing of the committal application on a future date; or

(b) if the committal application is ready to be heard, proceed forthwith to hear it.

10.5. Where the person sought to be committed gives oral evidence at the hearing (in accordance with rule 21.28(2)), he or she may be cross-examined.

10.6. In dealing with any committal application, the court will have regard to the need for the respondent to have details of the alleged acts of contempt and the opportunity to respond to the committal application.

10.7. The court will also have regard to the need for the respondent to be—

(a) allowed a reasonable time for responding to the committal application including, if necessary, preparing a defence;

(b) made aware of the possible availability of criminal legal aid and how to contact the Legal Aid Agency;

(c) given the opportunity, if unrepresented, to obtain legal advice; and

(d) if unable to understand English, allowed to make arrangements, seeking the assistance of the court if necessary, for an interpreter to attend the hearing.

Striking out, procedural defects and discontinuance

11.1. On application by the respondent or on its own initiative, the court may strike out a committal application if it appears to the court—

(a) that the application and the evidence served in support of it disclose no reasonable ground for alleging that the respondent is guilty of a contempt of court;

(b) that the application is an abuse of the court's process or, if made in existing proceedings, is otherwise likely to obstruct the just disposal of those proceedings; or

(c) that there has been a failure to comply with a rule, practice direction or court order.

11.2. The court may waive any procedural defect in the commencement or conduct of a committal application if satisfied that no injustice has been caused to the respondent by the defect.

11.3. A committal application may not be discontinued without the permission of the court.

PRACTICE DIRECTION 22A – CIVIL RESTRAINT ORDERS

This practice direction supplements Part 22 of the Court of Protection Rules 2017

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 3.1 (General case management powers), rule 3.6(2) – (5) (Dealing with the application), rule 14.2 (Power of the court to control evidence), and rule 15.5 (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 22.1 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.

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.

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 57[1] and it has been held[2] 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 treatment

will 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.

PRACTICE DIRECTION 24A – REQUEST FOR DIRECTIONS WHERE NOTICE OF OBJECTION PREVENTS PUBLIC GUARDIAN FROM REGISTERING ENDURING POWER OF ATTORNEY

This practice direction supplements Part 24 of the Court of Protection Rules 2017

1. Rule 24.4 provides for the Public Guardian to request the court's directions where a notice of objection prevents the registering of an instrument creating an enduring power of attorney. This practice direction makes provision about such requests.

(Practice Direction 9G deals with applications made by persons other than the Public Guardian who are seeking the court's directions about registration.)

2. Time limits apply before the Public Guardian can request directions.[1] These are measured from the date (or the latest date) on which the attorney gave notice[2] to the donor's relatives of the attorney's intention to make an application for the registration of the instrument creating the enduring power. The Public Guardian cannot request directions until 5 weeks have expired beginning with the date of notification.

3. However, this period is extended if it would otherwise expire less than 14 days after the Public Guardian receives the notice of objection which prevents the registering of the instrument. In this case, the Public Guardian may not request directions from the court until the end of the 14 day period which begins with the date on which the notice of objection was received.

4. The request for directions must be made using Form COP17. The Public Guardian must file the form and any document considered to assist the court to give directions about the registration of the instrument.

5. The Public Guardian will notify the donor in accordance with Part 7 that the Public Guardian has made a request within 21 days of the date on which the Public Guardian makes it. However, the Public Guardian is not required to serve the request on any other person or otherwise to notify them that a request has been made. The Public Guardian will participate in the proceedings only if the court so requests.

6. As soon as practicable after a request has been filed, notice of that fact[3] will be given by a court officer to—

(a) the person (or persons) who gave the notice of objection; and

(b) the attorney under the enduring power or, if more than one, each of them.

7. Any person wishing to participate in the proceedings then has 21 days to file an application using Form COP8. The application must be made in accordance with the detailed requirements for applications relating to the registration of enduring powers of attorney, which are set out in Practice Direction 9G. If no such application is received, the court will proceed to consider the matter in response to the Public Guardian's request and will give directions to the Public Guardian.

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[1] These time limits are imposed by r 24.4(1)(b) and (2).

[2] See para 5 of Sch 4 to the Act.

[3] Rule 24.4(6) sets out what the notice must contain.

PRACTICE DIRECTION 24B – WHERE P CEASES TO LACK CAPACITY OR DIES

This practice direction supplements Part 24 of the Court of Protection Rules 2017

General

1. An order of the Court of Protection will continue until it is discharged or, if made for a specified period, will cease to have effect when that period comes to an end.

2. Where P ceases to lack capacity or dies, steps may need to be taken to finalise the court's involvement in P's affairs.

Application to end proceedings

3. Where P ceases to lack capacity in relation to the matter or matters to which the proceedings relate, an application may be made by any of the following people to the court to end the proceedings and discharge any orders made in respect of that person—

(a) P;

(b) P's litigation friend; or

(c) any other person who is a party to the proceedings.

4. An application under rule 24.5 should be made by filing a COP9 application notice in accordance with the Part 10 procedure, together with any evidence in support of the application. The application should in particular be supported by evidence that P no longer lacks capacity to make decisions in relation to the matter or matters to which the proceedings relate.

Applications where proceedings have concluded

5. Where P ceases to lack capacity after proceedings have concluded, an application may be made to the court to discharge any orders made (including an order appointing a deputy or an order in relation to a security bond) by filing a COP9 application notice in accordance with the Part 10 procedure, together with any evidence in support of the application. The application notice should set out details of the order or orders the applicant seeks to have discharged, and should in particular be supported by evidence that P no longer lacks capacity to make decisions in relation to the matter or matters to which the proceedings relate.

6. If the Court Funds Office is holding funds or assets on behalf of P, it will require an order of the court to the effect that P no longer lacks capacity to make decisions with regard to the use and disposition of those funds or assets before any funds or assets can be transferred to P.

Procedure to be followed when P dies

7. An application for any final directions needed following P's death (including to discharge an order appointing a deputy or to discharge a security bond) should be made by

filing a COP9 application notice in accordance with the Part 10 procedure. An application should attach the original or a certified copy of P's death certificate.

8. Any security bond taken out by the deputy will remain in force until the end of the period of 2 years commencing with the date of P's death, or until it is discharged by the court.[1]

9. The Public Guardian may require a deputy to submit a final report upon P's death.[2] Before it will discharge a security bond, the court must be satisfied that the Public Guardian either—

(a) does not require a final report; or

(b) is satisfied with the final report provided by the deputy.

Personal representatives and administrators

10. Where there are solicitor's costs outstanding which would be due from P's estate, the personal representative or administrator may agree any of these costs without an order from the court. If these costs cannot be agreed, the personal representative, administrator or the solicitor may apply to the court for costs to be assessed,[3] using a COP9 application notice in accordance with the Part 10 procedure.

11. If there are funds or other assets held in the Court Funds Office on behalf of P, P's personal representative or administrator will need to contact the Court Funds Office directly regarding those funds.

[1] Regulation 37 of the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007.

[2] Regulation 40 of the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007.

[3] Rule 19.11 provides that an order or directions that costs incurred during P's lifetime be paid out of or charged on his estate may be made within 6 years after P's death.

PRACTICE DIRECTION 24C – TRANSITIONAL PROVISIONS

This practice direction supplements Part 24 of the Court of Protection Rules 2017

Introductory

1. In this practice direction—

(a) "the Rules" means the Court of Protection Rules 2017;

(b) 'commencement' means 1 December 2017;

(c) "the Previous Rules" means the Court of Protection Rules 2007, as in force immediately before commencement; and

(d) "the pilot Practice Directions" means—

(i) Practice Direction – Transparency;

(ii) Practice Direction – Case Management Pilot; and

(iii) Practice Direction – Section 49 Reports Pilot,

as those practice directions were in force immediately before commencement.

Applications received after commencement

2. If an application under the Previous Rules or the pilot Practice Directions is received at the court on or after commencement, it will be returned.

3. However, an application made under the Rules using the version of the relevant form which was current immediately before commencement will be accepted until close of business on 12 January 2018, or such later date as the Senior Judge may direct.

Applications received before commencement

4. The general presumption will be that any step in proceedings which were started (in accordance with rule 62 of the Previous Rules) before commencement which is to be taken on or after commencement is to be taken under the Rules.

(Rule 62 of the Previous Rules provides that proceedings are started when the court issues an application form at the request of the applicant.)

5. However, the general presumption is subject to any directions given by the court, which may at any time direct how the Rules are to apply to the proceedings.

6. Any step already taken in the proceedings before commencement in accordance with the Previous Rules or the pilot Practice Directions will remain valid on or after commencement.

Orders made before commencement

7. Where a court order has been made before commencement under the Previous Rules or the pilot Practice Directions, the order must still be complied with on or after commencement.