PRACTICE DIRECTION AMENDMENTS

The Practice Directions supplementing the Court of Protection Rules 2007 are revoked, and the new Practice Directions supplementing the Court of Protection Rules 2017 are made by the President of the Court of Protection under the powers delegated to him by the Lord Chief Justice under section 52(3) of the Mental Capacity Act 2005 and Schedule 2, Part 1, paragraph 2(2) of the Constitutional Reform Act 2005, and are approved by Dr. Phillip Lee, Parliamentary Under-Secretary of State for Justice, by the authority of the Lord Chancellor.

The Practice Directions supplementing the Court of Protection Rules 2007 are revoked, and the new Practice Directions and amendments come into force, as follows—

Revocation of Practice Directions supplementing the Court of Protection Rules 2007	1 December 2017
Practice Direction 1A – Participation of P	1 December 2017
Practice Direction 2A – Levels of judiciary	1 December 2017
Practice Direction 2B – Authorised court officers	1 December 2017
Practice Direction 2C – Application of the Civil Procedure Rules 1998 and the Family Procedure Rules 2010	1 December 2017
Practice Direction 3A – Court's jurisdiction to be exercised by certain judges	1 December 2017
Practice Direction 3B – Case pathways	1 December 2017
Practice Direction 4A – Hearings (including reporting restrictions)	1 December 2017
Practice Direction 4B – Court bundles	1 December 2017
Practice Direction 4C – Transparency	1 December 2017
Practice Direction 5A – Court documents	1 December 2017

Practice Direction 5B – Statements of truth	1 December 2017
Practice Direction 6A – Service of documents	1 December 2017
Practice Direction 6B – Service out of the jurisdiction	1 December 2017
Practice Direction 7A – Notifying P	1 December 2017
Practice Direction 8A – Permission	1 December 2017
Practice Direction 9A – The application form	1 December 2017
Practice Direction 9B – Notification of other persons that an application form has been issued	1 December 2017
Practice Direction 9C – Responding to an application	1 December 2017
Practice Direction 9D – Applications by currently appointed deputies, attorneys and donees in relation to P's property and affairs	1 December 2017
Practice Direction 9E – Applications relating to statutory wills, codicils, settlements and other dealings with P's property	1 December 2017
Practice Direction 9F – Applications to appoint or discharge a trustee	1 December 2017
Practice Direction 9G – Applications relating to the registration of enduring powers of attorney	1 December 2017
Practice Direction 10A – Applications within proceedings	1 December 2017
Practice Direction 10B – Urgent and interim applications	1 December 2017
Practice Direction 11A – Deprivation of liberty applications	1 December 2017
Practice Direction 12A – Human Rights Act 1998	1 December 2017
Practice Direction 13A – Procedure for disputing the court's jurisdiction	1 December 2017
Practice Direction 14A – Written evidence	1 December 2017

Practice Direction 14B – Depositions	1 December 2017
Practice Direction 14C – Fees for examiners of the court	1 December 2017
Practice Direction 14D – Witness summons	1 December 2017
Practice Direction 14E – Section 49 reports	1 December 2017
Practice Direction 15A – Expert evidence	1 December 2017
Practice Direction 17A – Litigation friend	1 December 2017
Practice Direction 17B – Rule 1.2 representatives	1 December 2017
Practice Direction 18A – Change of solicitor	1 December 2017
Practice Direction 19A – Costs	1 December 2017
Practice Direction 19B – Fixed costs in the Court of Protection	1 December 2017
Practice Direction 20A – Appeals	1 December 2017
Practice Direction 20B – Allocation of appeals	1 December 2017
Practice Direction 21A – Contempt of court	1 December 2017
Practice Direction 22A – Civil restraint orders	1 December 2017
Practice Direction 23A – International protection of adults	1 December 2017
Practice Direction 24A – Request for directions where notice of objection prevents Public Guardian from registering enduring power of attorney	1 December 2017
Practice Direction 24B – Where P ceases to lack capacity or dies	1 December 2017
Practice Direction 24C – Transitional provisions	1 December

	2017

_____ Date:

Sir James Munby

The President of the Court of Protection

Signed by authority of the Lord Chancellor:

_____ Date:

Parliamentary Under-Secretary of State for Justice

REVOCATION OF PRACTICE DIRECTIONS SUPPLEMENTING THE COURT OF PROTECTION RULES 2007

Practice Directions 1A to 24A supplementing the Court of Protection Rules 2007 are revoked.

PRACTICE DIRECTIONS SUPPLEMENTING THE COURT OF PROTECTION RULES 2017

Practice Directions 1A to 24C supplementing the Court of Protection Rules 2017, as set out in the Schedule to this update, have effect.

SCHEDULE

PRACTICE DIRECTION 1A – PARTICIPATION OF P

This practice direction supplements Part 1 of the Court of Protection Rules 2017

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

2. To this end, rule 1.2 makes provision to—

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

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

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

3. The great majority of cases in terms of numbers before the Court of Protection relate to non-contentious matters concerning property and affairs, where there is a need to preserve P's resources and experience has shown that they can be dealt with on paper and without joining P as a party or appointing anyone to represent P. This is covered by rule 1.2(2)(e) which provides that none of the listed directions need be made.

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

5. Rule 1.2 accordingly requires the court in every case to consider whether it should make one, or more, of a number of possible directions for securing P's participation. These directions cover a range from the joining of P as a party securing P's participation by the appointment of an accredited legal representative; securing P's participation by the appointment of a representative; securing P's participation by giving P the opportunity to address the judge directly or indirectly; and securing P's participation in some other way which meets the overriding objective.

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

7. If the court concludes that P lacks capacity to conduct the proceedings and the circumstances require that P should be joined as a party, the order joining P as a party shall only take effect on the appointment of a litigation friend or, if the court so directs, on or after the appointment of an accredited legal representative. This enables steps to be taken and orders to be made before P becomes a party. During that period P's participation can be secured and the court can seek relevant information in any of the ways set out in rule 1.2(2)(b) to (e).

8. Provisions relating to the appointment of a litigation friend and rule 1.2 representatives (namely an accredited legal representative appointed pursuant to rule 1.2(2)(b) and a representative appointed pursuant to rule 1.2(2)(c)) are contained in Part 17. Rule 1.2 representatives can only be appointed with their consent.

9. An accredited legal representative is defined in rule 2.1. When such representatives exist one can be appointed whether or not P is joined as a party and this may be of assistance if urgent orders are needed, particularly if they are likely to have an impact on the final orders (e.g. an urgent order relating to residence).

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

11. When P lacks capacity to conduct the proceedings and an order that he or she is to be a party is made factors relevant to the choice between appointing a litigation friend and an accredited legal representative to represent him or her as a party will include—

Whether there will be a need for expert or other evidence to be obtained and filed, or other material gathered, on P's behalf;

The nature and complexity of the case;

The likely range of issues.

12. In other cases their nature and complexity, the issues raised or likely to be raised in them and the stage they have reached could mean that the assistance of an accredited legal representative is not required or is inappropriate and that P's participation is best secured and the court will be properly informed by the

appointment of a representative under rule 1.2(2)(c) (who could be a friend, an IMCA, an advocate appointed under the Care Act 2014, a family member or anyone with relevant knowledge) or by directions being made under rule 1.2(2)(d) or (e).

13. A rule 1.2 representative must be able to discharge his or her functions fairly and competently. It is possible that a rule 1.2 representative may be in, or find himself or herself in, a personal or professional position in which he or she cannot properly represent P, provide the court with information about P or carry out other functions directed by the court. In such a case, Section 2 of Part 17 allows for the court to vary the terms of the appointment with a view to resolving the difficulty, or to discharge the appointment altogether (in which case the court will consider afresh whether it should make one or more of the directions in paragraph (2) of rule 1.2).

PRACTICE DIRECTION 2A – LEVELS OF JUDICIARY

This practice direction supplements Part 2 of the Court of Protection Rules 2017

General

1.1. Rule 2.1 makes provision for a practice direction to set out which of the judges who have been nominated to act as a judge of the Court of Protection under section 46 of the Act are to be Tier 2 Judges and Tier 3 Judges.

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

1.3. Rule 13.4 makes provision as to which judges of the Court of Protection may reconsider decisions made by Tier 1 Judges, Tier 2 Judges and Tier 3 Judges.

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

Tier 2 Judges

2. The following judges are Tier 2 Judges for the purposes of the Court of Protection Rules 2017—

(a) The Senior Judge;

(b) a judge who has been nominated to act as a judge of the Court of Protection under section 46 of the Act by virtue of holding one of the following offices—

(i) a circuit judge;

(ii) a recorder;

(iii) a judge of the Upper Tribunal, by virtue of appointment under paragraph 1(1) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2007;

(iv) a transferred-in judge of the Upper Tribunal (see section 31(2) of the Tribunals, Courts and Enforcement Act 2007);

(v) a deputy judge of the Upper Tribunal (whether under paragraph 7 of Schedule 3 to, or section 31(2) of, the Tribunals, Courts and Enforcement Act 2007);

(vi) the Judge Advocate General;

(vii) a person appointed under section 30(1)(a) or (b) of the Courts-Martial

(Appeals) Act 1951 (assistants to the Judge Advocate General);

(viii) the Chamber President, or Deputy Chamber President, of a chamber of the

First-tier Tribunal or of a chamber of the Upper Tribunal.

Tier 3 Judges

3. The following judges are Tier 3 Judges for the purposes of the Court of Protection Rules 2017—

(a) The President;

(b) The Vice-President;

(c) a judge who has been nominated to act as a judge of the Court of Protection under section 46 of the Act by virtue of holding one of the following offices—

(i) The President of the Family Division;

(ii) The Chancellor;

(iii) The President of the Queen's Bench Division;

(iv) The Master of the Rolls;

(v) The Lord Chief Justice;

(vi) The Senior President of Tribunals;

(vii) a puisne judge of the High Court;

(viii) a deputy judge of the High Court;

(ix) an ordinary judge of the Court of Appeal (including the vice-president, if any, of either division of that court).

PRACTICE DIRECTION 2B – AUTHORISED COURT OFFICERS

This practice direction supplements Part 2 of the Court of Protection Rules 2017

General

1.1. Rule 2.3 enables a practice direction to specify the circumstances in which an authorised court officer is able to exercise the jurisdiction of the court.

1.2. A court officer is so authorised by the Senior Judge or the President or the Vice-President pursuant to rule 2.3(1).

Applications that may be dealt with by authorised court officers

2.1. Subject to paragraphs 2.2, 3 and 4.2 an authorised court officer may deal with any of the following applications—

(a) applications to appoint a deputy for property and affairs;

(b) applications to vary the powers of a deputy appointed for property and affairs under an existing order;

(c) applications to discharge a deputy for property and affairs and appoint a replacement deputy;

(d) applications to appoint and discharge a trustee;

(e) applications to sell or purchase real property on behalf of P;

(f) applications to vary the security in relation to a deputy for property and affairs;

(g) applications to discharge the security when the appointment of a deputy for property and affairs comes to an end;

(h) applications for the release of funds for the maintenance of P, or P's property, or to discharge any debts incurred by P;

(i) applications to sell or otherwise deal with P's investments;

(j) applications for authority to apply for a grant of probate or representation for the use and benefit of P;

(k) applications to let and manage property belonging to P;

(l) applications for a detailed assessment of costs;

(m) applications to obtain a copy of P's will;

(n) applications to inspect or obtain copy documents from the records of the court; and

(o) applications which relate to one or more of the preceding paragraphs and which a judge

has directed should be dealt with by an authorised court officer.

2.2. An authorised court officer may not conduct a hearing and must refer to a judge any application or any question arising in any application which is contentious or which, in the opinion of the officer—

(a) is complex;

(b) requires a hearing; or

(c) for any other reason ought to be considered by a judge.

Case management powers of authorised court officers

3. Authorised court officers may only exercise the following case management powers when dealing with any of the applications listed at paragraph 2.1—

(a) extend or shorten the time for compliance with any rule, practice direction, or court order or direction pursuant to rule 3.1(2)(a) (even if an application for extension is made after the time for compliance has expired);

(b) take any step or give any direction for the purpose of managing the case and furthering the overriding objective pursuant to rule 3.1(2)(n);

(c) make any order they consider appropriate pursuant to rule 3.1(5) even if a party has not sought that order; and

(d) vary or revoke an order pursuant to rule 3.1(6).

Reconsideration of decisions of authorised court officers

4.1. P, any party to the proceedings or any other person affected by an order made by an authorised court officer may apply to the court, pursuant to rule 13.4, to have the order reconsidered by a judge.

4.2. An authorised court officer may not in any circumstances deal with an application for reconsideration of an order made by him or her or made by another authorised court officer.

Appeals against decisions of authorised court officers

5.1. No appeal lies against a decision of an authorised court officer. If P, any party, or any other person affected by an order of an authorised court officer is dissatisfied with a decision made by that officer they should apply for it to be reconsidered by a judge pursuant to rule 13.4 and to paragraph 4 of this practice direction.

PRACTICE DIRECTION 2C – APPLICATION OF THE CIVIL PROCEDURE RULES 1998 AND THE FAMILY PROCEDURE RULES 2010

This practice direction supplements Part 2 of the Court of Protection Rules 2017

1. Rule 2.5(2) allows a practice direction to specify the date at which the relevant versions of the Civil Procedure Rules 1998 and the Family Procedure Rules 2010 were in force for the purposes of references to either body of those Rules in the Court of Protection Rules 2017.

2. A reference in these Rules to the Civil Procedure Rules 1998 is to that version of those Rules in force on the 6th April 2017.

3. A reference in these Rules to the Family Procedure Rules 2010 is to that version of those Rules in force on the 6th April 2017.

PRACTICE DIRECTION 3A – COURT'S JURISDICTION TO BE EXERCISED BY CERTAIN JUDGES

This practice direction supplements Part 3 of the Court of Protection Rules 2017

General

1. Rule 3.8 allows a practice direction to specify that certain categories of case must be dealt with by a specific judge or a specific class of judges.

Cases concerning an ethical dilemma in an untested area or declarations of incompatibility pursuant to section 4 of the Human Rights Act 1998

2. (a) Where an application is made to the court in relation to an ethical dilemma in an untested area, the proceedings must be conducted by a Tier 3 judge;

(b) Where an application is made to the court pursuant to rule 12.1, in which a declaration of incompatibility pursuant to section 4 of the Human Rights Act 1998 is sought, the proceedings (including permission, the giving of any directions, and any hearing) must be conducted by a judge of the court who has been nominated as such by virtue of section 46(2)(a) to (c) of the Act (i.e. the President of the Family Division, the Chancellor or a puisne judge of the High Court).

Court's general discretion as to allocation

3. The Senior Judge or a Tier 3 Judge may determine whether a matter is one that is to be allocated pursuant to this practice direction.

4. The judge to whom a matter is allocated in accordance with this practice direction may determine that the matter or parts of it may properly be heard by a judge of the court other than a Tier 3 Judge or one nominated by virtue of section 46(2)(a) to (c) of the Act; and may reallocate the matter or part of it accordingly.

PRACTICE DIRECTION 3B – CASE PATHWAYS

This practice direction supplements Part 3 of the Court of Protection Rules 2017

NOTE: Rule 9.12(5) and (7) do not apply where a case is allocated to a case pathway.

In applying this practice direction, the parties must have regard to any guidance issued in relation to allocation of Court of Protection cases to Tier 3 Judges.

Part 1 — Scope of the case management pathways

1.1

Rule 3.9 provides for each case which is started in the CoP to be allocated to one of three case management pathways on issue, unless the case falls within an excepted class of cases specified in a practice direction. The excepted classes of case which are specified for this purpose are—

(a) uncontested applications;

(b) applications for statutory wills and gifts;

(c) applications made by the Public Guardian;

(d) applications in Form COPDOL11;

(e) applications in Form DLA; and

(f) Schedule 3 applications (under Part 23 of the Rules).

1.2

The scope of the pathways is as follows—

THE PERSONAL WELFARE PATHWAY (Part 2 of this practice direction)

This will be the normal pathway for a case in which an application is made to the court to make or authorise one or more decisions and/or actions and/or declarations relating to P's personal welfare only.

THE PROPERTY AND AFFAIRS PATHWAY (Part 3 of this practice direction)

This will be the normal pathway for a case in which an application is made to the Court to make or authorise one or more decisions and/or actions and/or declarations relating to P's property and financial affairs only.

THE MIXED WELFARE AND PROPERTY PATHWAY (Part 4 of this practice direction)

This will be the normal pathway for a case in which the court is to be asked to make or authorise one or more decisions and/or actions and/or declarations relating not only to P's property and financial affairs but also P's personal welfare.

Part 2 — The Personal Welfare Pathway

2.1

The Personal Welfare Pathway comprises six stages—

(a) *The pre-issue stage* (see **paragraph 2.2**);

(b) *The point of issue of the application* (see **paragraph 2.3**);

(c) *Case management on issue* (see **paragraph 2.4**);

(d) *The Case Management Conference* (see **paragraph 2.5**);

(e) *The Final Management Hearing* (see **paragraph 2.6**);

(f) *The Final Hearing* (see **paragraph 2.7**).

2.2

THE PRE-ISSUE STAGE

(1) *In all cases*

The applicant must take all necessary steps to—

(a) identify all potential respondents to the proceedings which the applicant proposes to start, and any other interested parties;

(b) notify P (where possible) and the potential respondents and other interested parties identified in accordance with sub-paragraph (a) of the applicant's intention to start the proceedings unless the matters which the court would be asked to determine can be resolved without the need for proceedings;

(c) explain to those notified in accordance with sub-paragraph (b) the nature of the proceedings which the applicant proposes to start, and the matters which the court would be asked to determine in those proceedings;

(d) set out the applicant's proposals for resolving those matters without the need for proceedings;

(e) engage with those notified in accordance with sub-paragraph (b) to resolve those matters as far as possible;

(f) ensure, where it is not possible to resolve those matters without starting proceedings, that all the documents and information required by paragraph 2.3 will be ready to be included with the application.

(2) *Additionally, in urgent cases*

Where the applicant intends to make an urgent or interim application, the applicant must consider—

(a) why the case is urgent and what the consequences will be if the case is not treated as urgent;

(b) if any of the steps in paragraph 2.2(1) cannot be taken, why this is the case and what the consequences would be if those steps were taken;

(c) whether there is any specific deadline, and what that deadline is;

(d) whether there are issues which are not urgent and how those could be separated from those which are urgent.

2.3

THE POINT OF ISSUE OF THE APPLICATION

(1) *In all cases*

The applicant must include in the application, or refer in the application to and file with it, the following documents or information—

(a) a draft final order or explanation of the order that is sought;

(b) a clear explanation of why an order, and the specific order sought, is required;

(c) an explanation of the nature of the dispute;

(d) a statement of what is expected of P's family and/or other connected individuals;

(e) the names of the key people involved in the case, and the nature of their involvement;

(f) a list of the options for P;

(g) a needs assessment, including where appropriate a risk assessment;

(h) a support plan for P, with a time line, including where appropriate a transfer plan;

(i) evidence that the key individuals and agencies have been consulted;

(j) confirmation that a best interests meeting has taken place, and a copy of the minutes of that meeting;

(k) any relevant medical evidence;

(l) except in applications under section 21A of the Act, a report from a medical practitioner or other appropriately qualified professional on P's litigation capacity and capacity to make decisions on the issues in the case;

(m) an explanation of how P can be supported to maximise any decision-making capacity which P has (if possible);

(n) an indication of whether there is likely to be a public law challenge in the case, and if so, the nature of the challenge which is anticipated;

(o) a statement of how it is proposed that P will be involved in the case.

(2) *Additionally, in urgent cases*

Where the application is urgent, the applicant must include in the application, or refer in the application to and file with it, the following information or documents in addition to those in paragraph 2.3(1)—

(a) an explanation of why the case is urgent and what the consequences will be if the case is not treated as urgent;

(b) if any of the steps in paragraph 2.2(1) have not been taken, why this is the case and what the consequences would be if those steps were taken;

(c) confirmation of any specific deadline;

(d) information identifying and separating the issues which are urgent from those which are not urgent.

2.4

CASE MANAGEMENT ON ISSUE

(1) *In all cases*

Upon issue of the application, the papers will be placed before a judge for gatekeeping and initial case management directions. These will include—

(a) gatekeeping: allocating the case to the correct level of judge, having regard to any guidance issued in relation to allocation of Court of Protection cases to Tier 3 Judges;

(b) listing for a Case Management Conference within 28 days (unless the matter is urgent, in which case paragraph 2.4(2) applies);

(c) directions to ensure the Case Management Conference is utilised properly;

(d) considering whether it is necessary for P to be joined as a party, and whether any other persons should be invited to attend the Case Management Conference so that they may apply to be joined (but not making any order for any person other than P to be joined at this stage);

(e) directing the parties to consider who can act as litigation friend or rule 1.2 representative for P if necessary;

(f) considering what details of P's estate should be provided for the purposes of securing litigation funding or otherwise;

(g) considering whether an advocates' meeting should take place before the case management conference, and ordering such a meeting if appropriate;

(h) ordering the preparation of a core bundle (which must not exceed 150 pages, unless the court directs otherwise) for the Case Management Conference.

(2) *In urgent cases*

Where the application is urgent—

(a) if the case is within a category which must be heard by a Tier 3 Judge in accordance with any guidance issued in relation to allocation of Court of Protection cases to Tier 3 Judges, it must be transferred to a Tier 3 Judge;

(b) the case will be listed urgently in accordance with the judge's directions.

2.5

THE CASE MANAGEMENT CONFERENCE

At the Case Management Conference, the court will—

(a) record the issues in dispute;

(b) record what has been agreed between the parties;

(c) record which issues are not to be the subject of adjudication in the case;

(d) consider the appropriate judge for the case;

(e) allocate a judge to the case;

(f) actively consider and decide, having regard to rule 1.2, how P is to be involved in the case;

(g) consider whether a litigation friend is required for P, and if so, who is to be the litigation friend, and if the Official Solicitor is to be the litigation friend, declare that the appointment of the Official Solicitor is a last resort;

(h) determine who should be a party;

(i) set a timetable for the proceedings;

(j) fix a date for the Final Management Hearing, and set a target date for the Final Hearing or fix a trial window as appropriate;

(k) consider whether a further best interests meeting is required, and if so, give directions for that meeting;

(l) give directions for evidence, including disclosure and expert reports (if appropriate having regard to sub-paragraph (m));

(m) actively consider whether a section 49 report or the use of a rule 1.2 representative could achieve a better result than the use of an expert;

(n) consider whether there should be a public hearing;

(o) give any other directions as appropriate to further the overriding objective.

2.6

THE FINAL MANAGEMENT HEARING

(1) A Final Management Hearing will be listed to enable the court to determine whether the case can be resolved, and if not, to ensure that the trial is properly prepared, giving directions as necessary for that purpose.

(2) A meeting should take place at least five days before the Final Management Hearing between advocates and, so far as practicable, any unrepresented parties, with the purpose of resolving or narrowing the issues to be determined at the Final Management Hearing, addressing each of the matters required by Practice Direction 4B and preparing a draft order.

(3) The applicant (or, if the applicant is not represented but the respondent is represented, the respondent) must, not later than 3 days before the Final Management Hearing, file a core bundle, which must comply with the requirements of Practice Direction 4B and in particular include the documents specified in paragraphs 4.2 and 4.3 of that Practice Direction.

(4) If sub-paragraph (3) has not been complied with, or any other directions have not been complied with, the court will consider whether to adjourn the hearing, and if it does so, will consider making an order as to costs.

2.7

THE FINAL HEARING

(1) Unless otherwise directed by the court, a meeting should take place at least five days before the Final Hearing between advocates and, so far as practicable, any unrepresented parties, with the purpose of resolving or narrowing the issues to be determined at the Final Hearing.

(2) The applicant (or, if the applicant is not represented but the respondent is represented, the respondent) must, not later than 3 days before the Final Hearing, file a bundle, which must—

(a) comply with the requirements of Practice Direction 4B, with particular reference to paragraphs 4.6 and 4.7 of that Practice Direction; and

(b) not generally exceed 350 pages and in any event not contain more than one copy of the same document.

(3) If sub-paragraph (2) has not been complied with, or any other directions have not been complied with, the court will consider whether to adjourn the hearing, and if it does so, will consider making an order as to costs.

Part 3 — The Property and Affairs Pathway

3.1

(1) The Property and Affairs Pathway commences at a later stage than the Personal Welfare Pathway. It is recognised that contentious property and affairs applications tend to arise when a routine application is made, for example for the appointment of a deputy, and that application is opposed. The vast majority of applications, however, remain unopposed, and there is not the need for a pre-issue stage which there is in personal welfare cases.

(2) The Property and Affairs Pathway comprises four stages—

(a) *When the application becomes contested* (see **paragraph 3.2**);.

(b) *Case management on allocation to pathway* (see **paragraph 3.3**);

(c) *The Dispute Resolution Hearing* (see **paragraph 3.4**);

(d) *The Final Hearing* (see **paragraph 3.5**).

(3) *Urgent applications* are less likely in property and affairs cases; but **paragraph 3.6** contains provision for their management.

3.2

WHEN THE APPLICATION BECOMES CONTESTED

(1) When the court is notified in Form COP5 that a property and affairs application is opposed, or that the respondent wishes to seek a different order from that applied for, the case must be allocated to the Property and Affairs Pathway.

(2) A copy of the notification in Form COP5 must be served by the court on the applicant together with the order allocating the case to the Property and Affairs Pathway (see paragraph 3.3; and see also the opening paragraph of this practice direction which disapplies rule 9.12(5) and (7)).

3.3

CASE MANAGEMENT ON ALLOCATION TO PATHWAY

(1) Following notification in Form COP5 that the case is contested, the papers will be placed before a judge who will allocate the case to the Property and Affairs Pathway and either—

list the case for a Dispute Resolution Hearing; or

transfer the case to the most appropriate regional court outside the Central Office and Registry for listing of the Dispute Resolution Hearing and future case management.

(2) The judge will also order the respondent to file a summary of the reasons for opposing the application or for seeking a different order, if the reasons are not clear from Form COP5 submitted by the respondent.

3.4

THE DISPUTE RESOLUTION HEARING

(1) All parties must attend the Dispute Resolution Hearing, unless the court directs otherwise; but the Dispute Resolution Hearing is not an attended hearing for the purposes of Practice Direction 4C.

(2) The Dispute Resolution Hearing will normally take place before a District Judge.

(3) The purpose of the Dispute Resolution Hearing is to enable the court to determine whether the case can be resolved and avoid unnecessary litigation, and so—

(a) in order for the Dispute Resolution Hearing to be effective, parties must approach it openly and without reserve; and

(b) the content of the hearing is not to be disclosed and evidence of anything said or of any admission made in the course of the hearing will not be admissible in evidence, except at the trial of a person for an offence committed at the hearing.

(4) The court will give its view on the likely outcome of the proceedings.

(5) If the parties reach agreement to settle the case, the court will make a final order if it considers it in P’s best interests.

(6) If the parties do not reach agreement, the court will give directions for the management of the case and for a Final Hearing, having regard to the list of matters in paragraph 2.5, and the requirements of Practice Direction 4B in relation to the preparation of a bundle.

(7) The Final Hearing must be listed before a different judge, and the judge will mark the order accordingly.

3.5

THE FINAL HEARING

The final hearing will take place in accordance with the directions given at or following the Dispute Resolution Hearing.

3.6

URGENT APPLICATIONS

(1) Where a property and affairs application is urgent, the applicant should bear in mind the obligation on parties to co-operate in rule 1.4(2)(c).

(2) The applicant must include in the application, or refer in the application to and file with it, the following information or documents—

(a) an explanation of why the case is urgent and what the consequences will be if the case is not treated as urgent;

(b) if the application is made without notice, an explanation why it was not possible to make the application on notice, and what the consequences would be if the application were to proceed on notice and the order or an interim order were not made immediately;

(c) confirmation of any specific deadline;

(d) information identifying and separating the issues which are urgent from those which are not urgent.

(3) On issue, the case will be listed urgently in accordance with the judge's directions after considering the papers, which may, if the matter appears or is confirmed to be contentious, be that—

(a) the case will proceed to a Dispute Resolution Hearing but listed urgently; or

(b) the case may be listed for an interim hearing to decide the urgent matter or matters in the case, and the court can decide at that hearing whether any further hearing is necessary and if so, whether that further hearing should include a Dispute Resolution Hearing or not.

Part 4 — The Mixed Welfare and Property Pathway

4.1

(1) Where a case contains both personal welfare and property and affairs elements, the court has the power to use whichever of the personal welfare or the property and affairs

pathway it considers most suitable, or to direct the use of elements of both those pathways if it considers that appropriate.

(2) The Mixed Welfare and Property Pathway, therefore, comprises two stages before the court makes a decision about which pathway, or a mixture of elements of both pathways, is most appropriate—

The *pre-issue stage*, during which the prospective parties are expected to identify which pathway is most appropriate to the case and to comply with the requirements of that pathway and seek to resolve issues as far as possible;

The *point of issue of the application*, for which the parties must file a list of issues to allow the court to identify which pathway, or mixture of elements, is most appropriate.

(3) *Case management*: On issue of the application, the papers will be placed before a judge who will either—

(a) order the case to be allocated to a pathway and give directions accordingly; or

(b) give directions as to the elements of each pathway which are to apply and the procedure the case will follow.

PRACTICE DIRECTION 4A – HEARINGS (INCLUDING REPORTING RESTRICTIONS)

This practice direction supplements Part 4 of the Court of Protection Rules 2017

General

1. Under rules 4.1 to 4.3, the default position is that hearings before the court will be in private but the court may order that the whole or part of any hearing is to be held in public. Practice Direction 4C sets out the circumstances in which the court will ordinarily make such an order, and the terms of the order it will ordinarily make. The court also has power to—

(a) authorise the publication of information about a private hearing;

(b) authorise persons to attend a private hearing;

(c) exclude persons from attending either a private or public hearing; or

(d) restrict or prohibit the publication of information about a private or public hearing.

2. Part 1 of this practice direction applies to any application for an order under rules 4.1 to 4.3, but not to any case where the court makes an order pursuant to Practice Direction 4C.

3. Part 2 of this practice direction makes additional provision in relation to orders founded on Convention rights which would restrict the publication of information. Part 2 does not apply where the court makes an order pursuant to Practice Direction 4C, but will apply if different or additional restrictions on the publication of information relating to the proceedings are imposed in a subsequent order.

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

PART 1

Applications under rules 4.1 to 4.3

4. An application for an order under rule 4.1, 4.2 or 4.3 must be commenced by filing an application notice form using COP9 in accordance with Part 10.

5. For the purposes of rules 4.1 to 4.3, a statement of truth in an application notice may be made by a person who is not a party.

6. For an application commenced under rule 4.1, 4.2 or 4.3, the court should consider whether to direct that the application should be dealt with as a discrete issue.

PART 2

Powers of the court to impose reporting restrictions

Court sitting in private

7. Section 12(1) of the Administration of Justice Act 1960 provides that, in any proceedings brought under the Mental Capacity Act 2005 before a court which is sitting in private, publication of information about the proceedings will generally be contempt of court. However, rule 4.2(1) makes it clear that there will be no contempt where the court has

authorised the publication of the information under rule 4.2 or the publication is authorised in accordance with Part 3 of this Practice Direction. Where the court makes an order authorising publication, it may (at the same time or subsequently) restrict or prohibit the publication of information relating to a person's identity. Such restrictions may be imposed either on an application made by any person (usually a party to the proceedings) or of the court's own initiative.

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

Court sitting in public

9. Where a hearing is to be held in public as a result of a court order under rule 4.3, the court may restrict or prohibit the publication of information about the proceedings. Such restrictions may be imposed either on an application made by any person (usually a party to the proceedings) or of the court's own initiative.

Notification in relation to reporting restrictions

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

(a) that the applicant has taken all practicable steps to notify the respondent; or

(b) that there are compelling reasons why the respondent should not be notified.

11. The need to ensure that P's Convention rights are protected may be at issue when the court is considering whether to make an order that a public hearing should be held. Part 2 of this practice direction should therefore be complied with where the court is considering making an order under rule 4.3(2) of its own initiative.

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

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

(i) an application founded on P's Convention rights is made to the court for an order under rule 4.2(4) which would impose restrictions (or further restrictions) on the information that may be published, or

(ii) of its own initiative, the court is considering whether to impose such restrictions on the basis of P's Convention rights; or

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

(i) an application founded on Convention rights is made to the court for an order under rule 4.3(2) which would impose restrictions (or further restrictions) on the information that may be published, or

(ii) of its own initiative, the court is considering whether to vary or impose further such restrictions.

Notice of reporting restrictions to be given to national news media

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

14. CopyDirect will be responsible for notifying the individual media organisations. Where the order would affect the world at large this is sufficient service for the purposes of advance notice. The website: http://www.medialawyer.press.net/courtapplications gives details of the organisations represented and instructions for service of the application.

Notice of an application to be given by applicant

15. A person who has made an application founded on Convention rights should give advance notice of the application to the national media via the Press Association's CopyDirect service. He or she should first telephone CopyDirect (tel. no 0870 837 6429). Unless an order pursuant to rule 5.11 has been made, a copy of the following documents should be sent either by fax (fax no 0870 830 6949) or to the e-mail address provided by CopyDirect—

(a) the application form or application notice seeking the restriction order;

(b) the witness statement filed in support;

(c) any legal submissions in support; and

(d) an explanatory note setting out the nature of the proceedings.

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

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

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

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

Notice of own-initiative order to be given by court

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

Responding to a notice

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

22. The acknowledgment must be filed in accordance with rule 9.15.

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

The hearing

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

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

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

Scope of order

Persons protected

27. The aim should be to protect P rather than to confer anonymity on other individuals or organisations. However, the order may include restrictions on identifying or approaching specified family members, carers, doctors or organisations or other persons as the court directs in cases where the absence of such restriction is likely to prejudice their ability to care for P, or where identification of such persons might lead to identification of P and defeat the purpose of the order. In cases where the court receives expert evidence the identity of

the experts (as opposed to treating clinicians) is not normally subject to restriction, unless evidence in support is provided for such a restriction.

Information already in the public domain

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

Duration of order

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

PART 3

Communication of Information Relating to Proceedings Held in Private or Subject to Reporting Restrictions

Introduction

30. Rule 4.2 deals with the communication of information (whether or not contained in a document filed with the court) relating to proceedings in the Court of Protection which are held in private. Rule 4.3 permits the court to impose restrictions on the publication of information where proceedings are heard in public.

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

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

Communication of information – general

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

(a) a party;

(b) the legal representative of a party;

(c) an accredited legal representative or a representative within the meaning of rule 1.2;

(d) a professional legal adviser;

(e) the Director of Legal Aid Casework;

(f) an expert whose instruction by a party has been authorised by the court for the purposes of the proceedings;

(g) any person instructed to make a report under section 49 of the Mental Capacity Act 2005;

(h) the Official Solicitor (prior to the Official Solicitor becoming a litigation friend);

(i) the Public Guardian;

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

Communication of information for purposes connected with the proceedings

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

(a) by confidential discussion, to obtain support, advice or assistance in the conduct of the proceedings;

(b) to engage in mediation or other forms of non-court dispute resolution;

(c) to make and pursue a complaint against a person or body concerned in the proceedings; or

(d) to make and pursue a complaint regarding the law, policy or procedure relating to proceedings in the Court of Protection.

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

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

(a) the recipient may communicate that information to a further recipient, provided that—

(i) the party who initially communicated the information consents to that further communication; and

(ii) the further communication is made only for the purpose or purposes for which the party made the initial communication; and

(b) the information may be successively communicated to and by further recipients on as many occasions as may be necessary to fulfil the purpose for which the information was initially communicated, provided that on each such occasion the conditions in sub-paragraph (a) are met.

Communication of information by a party etc for other purposes

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

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

			representative or professional legal adviser to obtain advice in respect of that claim or complaint
A party, or the Public Guardian	A police officer	Any information relating to the proceedings	For the purpose of a criminal investigation
A party or any person lawfully in receipt of information	A member of the Crown Prosecution Service	Any information relating to the proceedings	To enable the Crown Prosecution Service to discharge its functions under any enactment
A party or any person lawfully in receipt of information	(a) an Independent Mental Capacity Advocate acting pursuant to section 35 of and Schedule A1 to the Mental Capacity Act 2005; (b) a relevant person's representative appointed in accordance with Part 10 of Schedule A1 to the Mental Capacity Act 2005; (c) an independent advocate acting pursuant to section 67(2) of the Care Act 2014 or a person exercising equivalent functions under the Social Services and Well-being (Wales) Act 2014; (d) a professional acting in furtherance of adult safeguarding or the protection of children	Any information relating to the proceedings	To enable the recipient to discharge their functions under any enactment
A legal representative or a professional legal adviser	An accreditation body	Any information relating to the proceedings providing that it	To enable the legal representative or professional legal adviser to obtain

		does not, or is not likely to, identify any person involved in the proceedings	accreditation

Communication to and by Ministers of the Crown and Welsh Ministers

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

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

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

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

(a) for which he or she received that information;

(b) of professional development or training, providing that any communication does not, or is not likely to, identify any person involved in the proceedings without that person's consent; or

(c) of fulfilling a statutory process.

38. In this Practice Direction—

“accreditation body” means—

(a) The Law Society, or

(b) the Lord Chancellor in exercise of the Lord Chancellor's functions in relation to legal aid;

“approved research project” means a project of research—

(a) approved in writing by a Secretary of State after consultation with the

President of the Court of Protection, or

(b) approved in writing by the President of the Court of Protection;

“body assessing quality assurance systems” includes—

(a) The Law Society,

(b) the Lord Chancellor in exercise of the Lord Chancellor's functions in

relation to legal aid, or

(c) The General Council of the Bar;

“body or person responsible for investigating or determining complaints in relation to legal representatives or professional legal advisers” means—

(a) The Law Society,

(b) The General Council of the Bar,

(c) The Institute of Legal Executives,

(d) The Legal Services Ombudsman; or

(e) The Office of Legal Complaints;

“criminal investigation” means an investigation conducted by police officers with a view to it being ascertained—

(a) whether a person should be charged with an offence, or

(b) whether a person charged with an offence is guilty of it;

“health care professional” means—

(a) a registered medical practitioner;

(b) a registered nurse or midwife; or

(c) a clinical psychologist;

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

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

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

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

(b) a police officer who is—

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

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

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

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

PRACTICE DIRECTION 4B – COURT BUNDLES

This practice direction supplements Part 4 of the Court of Protection Rules 2017

Introduction

1. This practice direction is issued to achieve consistency in the preparation of court bundles in the Court of Protection.

Application of the practice direction

2.1. Except as specified in paragraph 2.4, and subject to a direction under paragraph 2.5 or specific directions given in any particular case, this Practice Direction applies to all hearings in the Court of Protection—

(a) before the President of the Family Division, the Chancellor or a puisne judge of the High Court;

(b) relating in whole or in part to personal welfare, health or deprivation of liberty that are listed for a hearing of one hour or more before a judge other than a judge specified at sub-paragraph (a);

(c) relating solely to property and affairs that are listed before a judge other than a judge specified at sub-paragraph (a) for—

(i) a final hearing; or

(ii) an interim hearing of one hour or more.

2.2. "Hearings" includes all appearances before a judge whether with or without notice to other parties and whether for directions or for substantive relief.

2.3. This Practice Direction applies whether a bundle is being lodged for the first time or is being re-lodged for a further hearing.

2.4. This practice direction does not apply to the hearing of any urgent application if and to the extent that it is impractical to comply with it.

2.5. The President may, after such consultation as is appropriate, direct that this practice direction will apply to such other hearings as the President may specify irrespective of the length of hearing.

Responsibility for the preparation of the bundle

3.1. A bundle for the use of the court at the hearing must be provided by the party in the position of applicant at the hearing (or, if there are cross-applications, by the party whose application was first in time) or, if that person is a litigant in person, then (and subject to any direction by the court) by the first listed respondent who is not a litigant in person or P.

3.2. Where the first named respondent is P and he or she is represented by the Official Solicitor, the responsibility for preparing the bundle will fall to the next named respondent who is represented.

3.3. The party preparing the bundle must paginate it. If possible the contents of the bundle must be agreed by all parties.

Contents of the bundle

4.1. The bundle must contain copies of all documents relevant to the hearing, in chronological order from the front of the bundle, paginated (either in separate sections or sequentially), indexed and divided into separate sections as follows—

(a) preliminary documents (see paragraphs 4.2 to 4.7);

(b) any other case management documents required by any other practice direction;

(c) a time estimate (see paragraph 10.1);

(d) applications and orders including all Court of Protection forms filed with the application;

(e) any registered enduring or lasting power of attorney;

(f) any urgent or standard authorisation given under Schedule A1 of the Mental Capacity Act 2005;

(g) statements and affidavits (which must state on the top right corner of the front page the date when it was signed or sworn);

(h) any care or support plans (where appropriate);

(i) experts' reports and other reports; and

(j) other documents, divided into further sections as may be appropriate.

Preliminary Documents for Directions and Interim Hearings

4.2. At the start of the bundle there must be inserted a document or documents prepared by each party (‘the preliminary documents for a directions or interim hearing') which should set out (either within the preliminary documents themselves or by cross-reference to what is set out in another document that is in, or is to be put in the bundle)—

(a) a case summary;

(b) a chronology of relevant events;

(c) the issues for determination at the hearing;

(d) an outline of the likely factual and legal issues at the trial of the case;

(e) the relief sought at the hearing; and

(f) a list of essential reading.

4.3. Where appropriate, the preliminary documents for a directions or interim hearing should include—

(a) a description of relevant family members and other persons who may be affected by or interested in the relief sought;

(b) a particularised account of the issues in the case;

(c) the legal propositions relied on, and in particular whether it is asserted that any issue is not governed by the Mental Capacity Act 2005;

(d) any directions sought concerning the identification and determination of the facts that are agreed, the facts the court will be invited to find and the factors it will be invited to take into account based on such agreed facts or findings of facts;

(e) any directions sought concerning the alternatives the court will be invited to consider in determining what is in P's best interests;

(f) any directions sought relating to expert evidence;

(g) any other directions sought; and

(h) a skeleton argument.

Preliminary Documents for Fact Finding Hearings

4.4. At the start of the bundle there must be inserted a document or documents prepared by each party ("the preliminary documents for a fact finding hearing") which should set out (either within the preliminary documents themselves, or by cross-reference to what is set out in another document that is in, or is to be put in the bundle)—

(a) the findings of fact that the court is being asked to make; and

(b) cross references to the evidence relied on to found those findings.

4.5. Where appropriate, the preliminary documents for a fact finding hearing should include—

(a) a chronology;

(b) a skeleton argument; and

(c) a description of relevant family members and other persons who may be affected by or interested in the relief sought.

Preliminary Documents for Final Hearings

4.6. At the start of the bundle there must be inserted a document or documents prepared by each party ("the preliminary documents for a final hearing") which should set out (either within the preliminary documents themselves, or by cross-reference to what is set out in another document that is in, or is to be put in the bundle)—

(a) the relief sought;

(b) a skeleton argument.

4.7. Where appropriate, the preliminary documents for a final hearing should include—

(a) a chronology;

(b) the findings of fact that the court is being invited to make and the factors based on such findings or agreed facts that the court is being invited to take into account;

(c) an appropriately particularised description of the alternatives the court is being invited to consider; and

(d) a description of relevant family members and other persons who may be affected by or interested in the relief sought.

4.8. Each of the preliminary documents must state on the front page immediately below the heading the date when it was prepared and the date of the hearing for which it was prepared.

4.9. All case summaries, chronologies and skeleton arguments contained in the preliminary documents must be cross-referenced to the relevant pages of the bundle.

4.10. Where the nature of the hearing is such that a complete bundle of all documents is unnecessary, the bundle (which need not be repaginated) may comprise only those documents necessary for the hearing, but—

(a) the preliminary documents must state that the bundle is limited or incomplete; and

(b) the bundle must if reasonably practicable be in a form agreed by all parties.

4.9. Where the bundle is re-lodged in accordance with paragraph 9.2, before it is re-lodged—

(a) the bundle must be updated as appropriate; and

(b) all superseded documents must be removed from the bundle.

Format of the bundle

5.1. The bundle must be contained in one or more A4 size ring binders or lever arch files (each lever arch file being limited to 350 pages).

5.2. All ring binders and lever arch files must have clearly marked on the front and the spine—

(a) the title and number of the case;

(b) the court where the case has been listed;

(c) the hearing date and time;

(d) if known, the name of the judge hearing the case; and

(e) where there is more than one ring binder or lever arch file, a distinguishing letter (A, B, C etc.) or number and confirmation of the total number of binders or files (1 of 3 etc.).

Timetable for preparing and lodging the bundle

6.1. The party preparing the bundle must, whether or not the bundle has been agreed, provide a paginated index and, when practicable, paginated copies of updating material to all other parties not less than 5 working days before the hearing.

6.2. Where counsel is to be instructed at any hearing, a paginated bundle must (if not already in counsel's possession) be delivered to counsel by the person instructing that counsel not less than 4 working days before the hearing.

6.3. The bundle (with the exception of the preliminary documents, if and insofar as they are not then available) must be lodged with the court not less than 3 working days before the hearing, or at such other time as may be specified by the judge.

6.4. The preliminary documents (and where appropriate any documents referred to therein that are not in the bundle) must be lodged with the court no later than 11 am on the day before the hearing and, where the hearing is before a Tier 3 Judge and the name of the judge is known, must at the same time be sent by email to the judge's clerk.

Lodging the bundle

7.1. The bundle must be lodged at the appropriate office as detailed at paragraph 7.2. If the bundle is lodged in the wrong place the judge may—

(a) treat the bundle as having not been lodged; and

(b) take the steps referred to in paragraph 12.

7.2. Unless the judge has given some other direction as to where the bundle in any particular case is to be lodged (for example a direction that the bundle is to be lodged with the judge's clerk) the bundle must be lodged—

(a) for hearings before a judge of the Family Division, in the office of the Clerk of the Rules, 1st Mezzanine, Queen's Building, Royal Courts of Justice, Strand, London WC2A 2LL (DX 44450 Strand);

(b) for hearings before a judge of the Chancery Division, in the office of the Chancery Judges' Listing Officer, 7 Rolls Building, Fetter Lane, London EC4 1NL (DX 160040 Strand 7);

(c) for hearings at the central registry of the Court of Protection in the office of the Listing & Appeals team, Court of Protection, PO Box 70185, First Avenue House, 42-49 High Holborn, London WC1A 9JA (DX 160013 Kingsway 7);

(d) for hearings in the Central Family Court at First Avenue House, at the List Office counter, 3rd floor, First Avenue House, 42-49 High Holborn, London, WC1V 6NP (DX 160010 Kingsway 7); and

(e) for hearings at any other court, including regional courts where a Court of Protection judge is sitting, at such place as may be designated and in default of any such designation, at the court office or Court of Protection section of the court where the hearing is to take place.

7.3. Any bundle sent to the court by post, DX or courier must be clearly addressed to the appropriate office and must show the date and place of the hearing on the outside of any packaging as well as on the bundle itself. It must in particular expressly and prominently state that it relates to Court of Protection business.

Lodging the bundle – additional requirements for cases being heard at the Central Family Court or before a Tier 3 Judge at the RCJ

8.1. In the case of hearings at the Central Family Court or before a Tier 3 Judge at the RCJ, parties must—

(a) if the bundle or preliminary and other documents are delivered personally, ensure that they obtain a receipt from the clerk accepting it or them; and

(b) if the bundle or preliminary and other documents are sent by post or DX, ensure that they obtain proof of posting or despatch.

8.2. The receipt (or proof of posting or despatch, as the case may be) must be brought to court on the day of the hearing and must be produced to the court if requested. If the receipt (or proof of posting or despatch) cannot be produced to the court the judge may—

(a) treat the bundle as having not been lodged; and

(b) take the steps referred to in paragraph 12.

8.3. For hearings at the RCJ before a Tier 3 Judge—

(a) bundles or preliminary and other documents delivered after 11 am on the day before the hearing will not be accepted by the Clerk of the Rules or Chancery Judges' Listing Officer and must be delivered directly to the clerk of the judge hearing the case;

(b) upon learning before which judge a hearing is to take place, the clerk to counsel, or other advocate, representing the party responsible for the bundle must, no later than 3 pm the day before the hearing, telephone the clerk of the judge hearing the case to ascertain whether the judge has received the bundle (including the preliminary and other documents), and, if not, must organise prompt delivery.

Removing and re-lodging the bundle

9.1. Following completion of the hearing the party responsible for the bundle must retrieve it from the court immediately or, if that is not practicable, must collect it from the court within five working days. Bundles which are not collected within the stipulated time may be destroyed.

9.2. The bundle must be re-lodged for the next (and for any further hearings of whatever type) in accordance with the provisions of this Practice Direction and in a form, which complies with paragraphs 5.1 and 5.2.

Time estimates

10.1. In every case a time estimate for the hearing must be prepared which must so far as practicable be agreed by all parties and must—

(a) specify separately—

(i) the time estimated to be required for judicial pre-reading;

(ii) the time required for hearing all evidence and submissions; and

(iii) the time estimated to be required for preparing and delivering judgment; and

(b) be prepared on the basis that before they give evidence all witnesses will have read all relevant filed statements and reports.

10.2. Once a case has been listed, any change in time estimates must be notified immediately by telephone (and then immediately confirmed in writing)—

(a) in the case of hearings in the RCJ, to the Clerk of the Rules or the Chancery Judges' Listing Officer as appropriate;

(b) in the case of hearings in the central Registry of the Court of Protection, to the Diary Manager in the Listing & Appeals team at the Court of Protection;

(c) in the case of hearings in the Central Family Court at First Avenue House, to the List Officer at First Avenue House; and

(d) in the case of hearings elsewhere, to the relevant listing officer.

Taking cases out of the list

11. As soon as it becomes known that a hearing will no longer be effective, whether as a result of the parties reaching agreement or for any other reason, the parties or their representatives must immediately notify the court by telephone and by letter. The letter, which must wherever possible be a joint letter sent on behalf of all parties with their signatures applied or appended, must include—

(a) a short background summary of the case;

(b) the written consent of each party who consents and, where a party does not consent, details of the steps which have been taken to obtain that party's consent and, where known, an explanation of why that consent has not been given;

(c) a draft of the order being sought; and

(d) enough information to enable the court to decide—

(i) whether to take the case out of the list; and

(ii) whether to make the proposed order.

Penalties for failure to comply with this practice direction

12. Failure to comply with any part of this practice direction may result in the judge removing the case from the list or putting the case further back in the list and may also result in a “wasted costs” order in accordance with CPR rule 46.8 or some other adverse costs order.

PRACTICE DIRECTION 4C – TRANSPARENCY

This practice direction supplements Part 4 of the Court of Protection Rules 2017

1.1. This practice direction is made under rule 4.3. It provides for the circumstances in which the court will ordinarily make an order under rule 4.3(1) and for the terms of the order under rule 4.3(2) which the court will ordinarily make in such circumstances.

1.2. This practice direction applies to hearings in all proceedings except applications for a committal order (for which rule 21.27 makes specific provision).

2.1. The court will ordinarily (and so without any application being made)—

(a) make an order under rule 4.3(1)(a) that any attended hearing shall be in public; and

(b) in the same order, impose restrictions under rule 4.3(2) in relation to the publication of information about the proceedings.

2.2. An "attended hearing", except where a practice direction provides otherwise, means a hearing where one or more of the parties to the proceedings have been invited to attend the court for the determination of the application. A Dispute Resolution Hearing is not an attended hearing for this purpose.

2.3. An order pursuant to paragraph 2.1 will ordinarily be in the terms of the standard order approved by the President of the Court of Protection and published on the judicial website at https://www.judiciary.gov.uk/publication-court/court-of-protection/.

2.4. The court may decide not to make an order pursuant to paragraph 2.1 if it appears to the court that there is good reason for not making the order, but will consider whether it would be appropriate instead to make an order (under rule 4.3(1)(b) or (c))—

(a) for a part only of the hearing to be held in public; or

(b) excluding any persons, or class of persons from the hearing, or from such part of the hearing as is held in public.

2.5. (1) In deciding whether there is good reason not to make an order pursuant to paragraph 2.1 and whether to make an order pursuant to paragraph 2.4 instead, the court will have regard in particular to—

(a) the need to protect P or another person involved in the proceedings;

(b) the nature of the evidence in the proceedings;

(c) whether earlier hearings in the proceedings have taken place in private;

(d) whether the court location where the hearing will be held has facilities appropriate to allowing general public access to the hearing, and whether it would be practicable or proportionate to move to another location or hearing room;

(e) whether there is any risk of disruption to the hearing if there is general public access to it;

(f) whether, if there is good reason for not allowing general public access, there also exists good reason to deny access to duly accredited representatives of news gathering and reporting organisations.

(2) In sub-paragraph (1)(f), "duly accredited" refers to accreditation in accordance with any administrative scheme for the time being approved for the purposes of this practice direction by the Lord Chancellor.

2.6. Where the court makes an order pursuant to paragraph 2.1 or 2.4 that an attended hearing or part of it is to be in public, the court will grant, to any person who would have been entitled under the Legal Services Act 2007 to exercise rights of audience at that hearing if such an order had not been made and the hearing was held in private (and who is not otherwise entitled to exercise such rights), the equivalent rights of audience at that attended hearing and any further attended hearing, unless the court is satisfied that there is good reason not to do so.

PRACTICE DIRECTION 5A – COURT DOCUMENTS

This practice direction supplements Part 5 of the Court of Protection Rules 2017

Signature of documents by mechanical means

1. Where, under rule 5.1(2), a replica signature is printed electronically or by other mechanical means on any document, the name of the person whose signature is printed must also be printed so that the person may be identified.

Form of documents

2. Documents drafted by a legal representative should bear his or her signature and if they are drafted by a legal representative as a member or employee of a firm, they should state the capacity in which he or she is signing, and the name of the firm by which he or she is employed.

3. Every document prepared by a party for filing or use at the court must—

(a) unless the nature of the document renders it impracticable, be on A4 paper of durable quality having a margin not less than 3.5 centimetres wide;

(b) be fully legible and should normally be typed;

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

(d) have the pages numbered consecutively;

(e) be divided into numbered paragraphs; and

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

4. A document which is a copy produced by a colour photostat machine or other similar device may be filed at the court office provided that the coloured date seal of the court is not reproduced on the copy.

Documents for filing at court

5. The date on which a document was filed at court must be recorded on the document. This may be done with a seal or a receipt stamp.

6. Particulars of the date of delivery at a court office of any document for filing and the title of the proceedings in which the document is filed shall be entered in court records, on the court file, or on a computer kept in the court office for that purpose. Except where a document has been delivered at the court office through the post, the time of delivery should also be recorded.

Filing by facsimile

7. In relation to the filing of documents by facsimile (‘fax')—

(a) subject to subparagraphs (h) and (i), a party may file a document at court by sending it by fax;

(b) where a party files a document by fax, that party must not send a hard copy in addition;

(c) a party filing a document by fax should be aware that the document is not filed at court until it is delivered by the court's fax machine, regardless of the time that is shown to have been transmitted from the party's machine;

(d) the time of delivery of the faxed document will be recorded on it in accordance with paragraph 6;

(e) it remains the responsibility of the party to ensure that the document is delivered to the court in time;

(f) if a fax is delivered after 4pm, it will be treated as filed on the next day the court office is open;

(g) if a fax relates to a hearing, the date and time of the hearing should be prominently displayed;

(h) fax should not be used to send letters or documents of a routine or non-urgent nature;

(i) fax should not be used, except in an unavoidable emergency, to deliver—

(i) a document which attracts a fee;

(ii) a document relating to a hearing less than 2 hours ahead of that hearing; or

(iii) skeleton arguments;

(j) where paragraph 7(i)(i) applies, the fax should give an explanation for the emergency and include an undertaking that the fee or money has been dispatched that day by post or will be paid at the court office counter the following business day; and

(k) where the court has several fax machines, each allocated to an individual section, fax messages should only be sent to the machine of the section for which the message is intended.

Editing information from court documents

8. An application made pursuant to rule 5.11 for an order that a specified part of a document is to be edited must be made in accordance with the Part 10 procedure, using a COP9 application notice.

9. The person making the application must provide the court with a draft copy of the document which is sought to be edited, with the part or parts which are sought to be deleted clearly marked.

Copies

10 Unless—

(a) a rule or practice direction provides otherwise; or

(b) the court directs otherwise,

when a document is to be filed at the court, the person filing the document must provide the original and one copy of the document.

PRACTICE DIRECTION 5B – STATEMENTS OF TRUTH

This practice direction supplements Part 5 of the Court of Protection Rules 2017

General

1. Rule 5.2 makes provision for certain documents to be verified by a statement of truth. These documents are specified in rule 5.2(1).

Form of the statement of truth

2. The form of the statement of truth verifying an application form is as follows—

> '[I believe] [The applicant believes] that the facts stated in this application form and its annex(es) are true.'[1]

3. The form of the statement of truth verifying a document for court proceedings is as follows—

> '[I believe] [The (applicant or as may be) believes] that the facts stated in this [name of document being verified] [and attachments] are true.'

4. The form of the statement of truth verifying a witness statement is as follows—

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

5. The form of the statement of truth verifying an expert's report or a report prepared pursuant to section 49 of the Act 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 expressed represent my true and complete professional opinion.'

6. Where the statement of truth is contained in a separate document, the document being verified should be identified in the statement of truth by including in the statement of truth—

[1] Rule 5.2(3) provides that where a party is conducting proceedings with a litigation friend, a statement of truth in an application form, application notice or respondent's notice is a statement that the litigation friend believes the facts stated in the document being verified are true.

(a) the name of the person to whom the proceedings relate (P) (unless an order to the contrary pursuant to rule 5.11 has been made);

(b) the case number as entered on the application form, if available;

(c) the date the application form was issued, if available; and

(d) the title of the document being verified.

Who may sign the statement of truth

7. A statement of truth verifying a witness statement must be signed by the witness.

8. A statement of truth verifying an expert's report must be signed by the expert.

9. A statement of truth verifying a report prepared pursuant to section 49 of the Act must be signed by the person who prepared the report.

10. The individual who signs a statement of truth must print his or her name clearly beneath the signature.

11. Where a document is to be verified on behalf of a company or other corporation the statement of truth must be signed by a person holding a senior position in the company or corporation. That person must state the office or position he or she holds.

12. For the purposes of paragraph 11, each of the following persons is a person holding a senior position—

(a) in respect of a registered company or corporation, a director, the treasurer, secretary, chief executive, manager or other officer of the company or corporation; and

(b) in respect of a corporation which is not registered, in addition to those persons set out in (a), the mayor, chairman, president, town clerk or similar officer of the corporation.

13. Where the document is to be verified on behalf of a partnership, those who may sign the statement of truth are—

(a) any of the partners; and

(b) a person having the control or management of the partnership business.

14. Where a party is legally represented, the legal representative may sign the statement of truth on behalf of the client. The statement signed by the legal representative will refer to the client's belief, not the belief of the legal representative. In signing the legal representative must state the capacity in which he or she signs and the name of the firm where appropriate.

15. A legal representative who signs a statement of truth must sign in his or her own name and not that of his or her firm or employer.

16. Where a legal representative has signed a statement of truth, his or her signature will be taken by the court as his or her statement—

(a) that the client on whose behalf the legal representative has signed had authorised him or her to do so;

(b) that before signing the legal representative had explained to the client that in signing the statement of truth the legal representative would be confirming the client's belief that the facts stated in the document were true; and

(c) that before signing the legal representative had informed the client of the possible consequences to the client if it should subsequently appear that the client did not have an honest belief in the truth of those facts.

(Rule 5.6 sets out the consequences of verifying a document containing a false statement without an honest belief in its truth.)

Persons unable to read or sign documents to be verified by a statement of truth

17. Where a document containing a statement of truth is to be signed by a person who is unable to read or sign the document, it must contain a certificate made by an authorised person.

18. An authorised person is a person able to administer oaths and take affidavits but need not be independent of the parties or their representatives.

19. The authorised person must certify—

(a) that the document has been read to the person signing it;

(b) that the person appeared to understand it and approved its content as accurate;

(c) that the declaration of truth has been read to that person;

(d) that the person appeared to understand the declaration and the consequences of making a false declaration (see rule 5.6); and

(e) that the person signed or made his or her mark in the presence of the authorised person.

Form of certificate of authorised person

20. ‘I certify that I [name and address of authorised person] have read over the contents of this document and the declaration of truth to the person signing the document [if there are exhibits, add ‘and explained the nature and effect of the exhibits referred to in it'] who appeared to understand (a) the document and approved its content as accurate and (b) the declaration of truth and the consequences of making a false declaration, and made [his] [her] mark in my presence.'

PRACTICE DIRECTION 6A – SERVICE OF DOCUMENTS

This practice direction supplements Part 6 of the Court of Protection Rules 2017

Service by document exchange

1. Rule 6.3(6) allows documents to be served by document exchange in accordance with a practice direction.

2. Service by document exchange (DX) may take place only where—

(a) the party's address for service includes a numbered box at a DX; or

(b) the writing paper of the party who is to be served or of that party's legal representative sets out the DX box number; and

(c) the party or the party's legal representative has not indicated in writing that he or she is unwilling to accept service by DX.

3. Service by DX is effected by leaving the document addressed to the numbered box—

(a) at the DX of the party who is to be served; or

(b) at a DX which sends documents to the party's DX every business day.

Service by electronic means

4. Rule 6.3(6) allows documents to be served by electronic means in accordance with a practice direction.

5. Subject to the provisions of paragraph 7 below, where a document is to be served by electronic means—

(a) the party who is to be served or that party's legal representative must have previously expressly indicated in writing to the party serving—

(i) that he or she is willing to accept service by electronic means, and

(ii) the fax number, e-mail address, or electronic identification to which it should be sent; and

(b) the following shall be taken as sufficient written identification for the purposes of the preceding paragraph—

(i) a fax number set out on the writing paper of the legal representative of the party who is to be served, or

(ii) a fax number, e-mail address or electronic identification set out on an application form or a response to an application filed with the court.

6. Where a party seeks to serve a document by electronic means that party should first seek to clarify with the party who is to be served whether there are any limitations to the recipient's agreement to accept service by such means, including in relation to the format in which documents are to be sent and the maximum size of attachments that may be received.

7. An address for service given by a party must be within the jurisdiction and any fax number must be at the address for service. Where an email address or electronic identification is given in conjunction with an address for service, the email address or electronic identification will be deemed to be at the address for service.

8. Where a document is served by electronic means, the party serving the document need not in addition send a hard copy by post or document exchange.

Service on business partners

9. A document which is served by leaving it with a person at the principal or last known place of business of the partnership, must at the same time have served with it a notice as to whether the person is being served—

(a) as a partner;

(b) as a person having control or management of the partnership business; or

(c) as both.

Service on a company or other corporation

10. Personal service on a registered company or corporation in accordance with rule 6.3 is effected by leaving a document with a person holding a senior position in the company or corporation.

11. Each of the following persons is a person holding a senior position—

(a) in respect of a registered company or corporation, a director, the treasurer, secretary, chief executive, manager or other officer of the company or corporation; and

(b) in respect of a corporation which is not registered, in addition to those persons set out in (a), the mayor, chairman, president, town clerk or similar officer of the corporation.

Change of address

12. A party or that party’s legal representative who changes their address for service shall give notice in writing of the change as soon as it has taken place to the court and every other party.

Service by the court

13. Where the court effects service of a document, the method will normally be by first class post.

14. Where the court effects service of an acknowledgment of service, the court will also serve or deliver a copy of any notice of funding that has been filed provided—

(a) it was filed at the same time as the acknowledgment of service; and

(b) copies were provided for service.

Applications for service by an alternative method

15. An application for an order for service by an alternative method pursuant to rule 6.3(4) must be made by filing a COP9 application notice in accordance with Part 10, and supported by a witness statement containing evidence which states—

(a) the reason an order for an alternative method of service is sought;

(b) what steps have been taken to serve by other permitted means; and

(c) the alternative method of service that is proposed, and the reason/s why it is believed that service by such a method will come to the notice of the person to be served.

Certificate of service or non-service

16. Where a certificate of service or non-service is required to be filed, Forms COP20A and COP20B should be used.

Application to dispense with service

17. An application for an order to dispense with service pursuant to rule 6.10 should be made by filing a COP9 application notice in accordance with Part 10.

PRACTICE DIRECTION 6B – SERVICE OUT OF THE JURISDICTION

This Practice Direction supplements Part 6 of the Court of Protection Rules 2017

Scope of this Practice Direction

1.1. This Practice Direction supplements rules 6.11 to 6.19 (service out of the jurisdiction) of Part 6.

Documents to be filed under rule 6.17(2)(c)

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

(1) a copy of the application form and any other relevant documents;

(2) a duplicate of the application form, copies of any documents accompanying the application and copies of any other relevant documents;

(3) forms for responding to the application; and

(4) any translation required under rule 6.18 in duplicate.

2.2, Some countries require legalisation of the document to be served and some require a formal letter of request which must be signed by the Senior Master. Any queries on this should be addressed to the Foreign Process Section (Room E16) at the Royal Courts of Justice.

Service in a Commonwealth State or British overseas territory

3.1. The judicial authorities of certain Commonwealth States which are not a party to the Hague Convention require service to be in accordance with rule 6.16(1)(b)(i) and not 6.16(3). A list of such countries can be obtained from the Foreign Process Section (Room E02) at the Royal Courts of Justice.

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

(a) Anguilla;

(b) Bermuda;

(c) British Antarctic Territory;

(d) British Indian Ocean Territory;

(e) British Virgin Islands;

(f) Cayman Islands;

(g) Falkland Islands;

(h) Gibraltar;

(i) Montserrat;

(j) Pitcairn, Henderson, Ducie and Oeno;

(k) St. Helena and Dependencies;

(l) South Georgia and the South Sandwich Islands;

(m) Sovereign Base Areas of Akrotiri and Dhekelia; and

(n) Turks and Caicos Islands.

Period for responding to an application

4.1 Where rule 6.13(4) applies, the periods within which the respondent must file an acknowledgment of service or an answer to the application is the number of days listed in the Table after service of the application.

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

Protection Rules to accompany the application must specify the period prescribed under rule 6.13.

Period for responding to a document other than an application

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

Further information

5.2 Further information concerning service out of the jurisdiction can be obtained from the Foreign Process Section, Room E16, Royal Courts of Justice, Strand, London WC2A 2LL (telephone 020 7947 6691).

TABLE

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

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

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

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

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

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

Turks & Caicos Islands	31
Tuvalu	23
Uganda	22
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THE SERVICE REGULATION

The Service Regulation can be found on the Eur-Lex website at—

http://eur-lex.europa.eu/eli/reg/2007/1393/oj

PRACTICE DIRECTION 7A – NOTIFYING P

This practice direction supplements Part 7 of the Court of Protection Rules 2017

General

1. Part 7 sets out the procedure to be followed where P is to be given notice of any matter or document, or provided with any document.[1] Where P becomes a party, Part 7 does not apply (except for rule 7.3) and service is to be effected in accordance with Part 6 or as directed by the court.[2]

When P must be notified

2. P must be notified of the things specified in rules 7.3 to 7.7, unless the court directs otherwise. P must, therefore, be notified—

(a) that an application form has been issued by the court or withdrawn;[3]

(b) that an appellant's notice has been issued by the court or withdrawn;[4]

(c) that the court has made a decision relating to him or her (other than a case management decision);[5]

(d) of a direction under rule 1.2 and of the appointment of a litigation friend, accredited legal representative, or representative on his or her behalf;[6] and

(e) of any other matter as the court may direct.[7]

When P may be notified of an application notice

3. The applicant is not required to, but may notify P of an application notice that is issued in accordance with Part 10. This should be done if the applicant considers it appropriate to do so, and must be done if the court makes a direction to that effect.

4. Where P is to be notified of an application notice, unless the court directs otherwise, the person notifying P must explain to P—

(a) who the applicant is;

(b) what the application is about;

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[1] Rule 7.1.

[2] Rule 7.1(2)

[3] Rule 7.4

[4] Rule 7.5

[5] Rule 7.6

[6] Rule 7.3

[7] Rule 7.7

(c) what will happen if the court makes the order or direction that has been applied for; and

(d) that P may seek advice and assistance in relation to any matter of which P is notified.

5. The person effecting notification must provide P with the information referred to in paragraph 4 in the manner set out in rule 7.8, and must comply with rules 7.9 and 7.10.

How and of what P is to be notified

6. Rule 7.8 sets out the manner in which P is to be notified, and rules 7.3 to 7.7 set out the matters of which P is to be notified. Rule 7.9 provides that P must be provided with a COP5 form for acknowledging notification. P must also be provided with a COP14 form which explains the matter for which notification is being provided.

Certificates of notification and non-notification

7. Rule 7.10 requires the person notifying P to file a certificate within 7 days of providing notification. Where a person fails to notify P (or is unable to do so), the person must file a certificate of non-notification.[8] Certificates of notification, or non-notification (as appropriate), must be filed using forms COP20A and COP20B.

Dispensing with notification

8. The person required to notify P may apply to the court for an order either—

(a) dispensing with the requirement to notify P; or

(b) requiring some other person to effect the notification,[9]

using a COP9 application notice in accordance with Part 10.

9. Such an application would be appropriate where, for example, P is in a permanent vegetative state or a minimally conscious state; or where notification by the applicant is likely to cause significant and disproportionate distress to P.

[8] Rule 6.9

[9] Rule 7.11

PRACTICE DIRECTION 8A – PERMISSION

This practice direction supplements Part 8 of the Court of Protection Rules 2017

Where permission is required

1. An applicant must apply for permission in the application form to start proceedings under the Act, unless either section 50 of, paragraph 20(2) of Schedule 3 to, the Act or rule 8.2 applies. The applicant must apply for permission when making the application, in accordance with rule 8.4.

2. If part of the application is a matter for which permission is required and part of it is not, permission must be sought for the part that requires it.[1]

3. In such circumstances, the applicant may file a single application form seeking both orders.

Notice of hearing

4. Where the court decides to hold a hearing in order to make a decision as to permission, it will notify the parties and such other persons it requires to be notified under rule 3.6(6)(a).

[1] Rule 8.3

PRACTICE DIRECTION 9A – THE APPLICATION FORM

This practice direction supplements Part 9 of the Court of Protection Rules 2017

The application form

1. To begin proceedings, the applicant must file an application form using form COP1.

2. The application form must—

(a) state the matter which the applicant wants the court to decide;

(b) state the order which the applicant is seeking;

(c) name (unless an order to the contrary pursuant to rule 5.11 has been made):

(i) the applicant,

(ii) P,

(iii) as a respondent, any person (other than P) whom the applicant reasonably believes to have an interest which means that person ought to be heard in relation to the application (as opposed to being notified of it), and

(iv) any person whom the applicant intends to notify in accordance with rule 9.10; and

(d) if the applicant is applying in a representative capacity, state what that capacity is.[1]

3. The application form must include (unless an order to the contrary pursuant to rule 5.11 has been made):

(a) an address at which the applicant resides or carries on business;

(b) an address at which P resides or carries on business;

(c) an address at which each person named as a respondent to the proceedings resides or carries on business, and details of how each respondent is connected to P; and

(d) an address at which any person (other than P) whom the applicant intends to notify of the application resides or carries on business, and details of how each person is connected to P.

4. Paragraph 3 applies even though a solicitor or litigation friend has agreed, as the case may be, to accept service.

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[1] Rule 9.3

5. The application form must be headed with the name of the person to whom the application relates (unless an order to the contrary pursuant to rule 5.11 has been made).

Statement of truth

6. Rule 5.2 requires an application form to be verified by a statement of truth where the applicant seeks to rely on matters set out in it as evidence.

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

'[I believe] [The applicant believes] that the facts stated in this application form and its annex(es) are true.'

8. Attention is drawn to rule 5.6 which sets out the consequences of verifying an application form 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.)

Documents to be filed with the application form

9. The application form must be supported by evidence set out in either—

(a) a witness statement; or

(b) the application form provided it is verified by a statement of truth.

10. A witness statement must be verified by a statement of truth in the following terms—

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

11. The evidence must set out the facts on which the applicant relies, and all material facts known to the applicant of which the court should be made aware.

12. The documents or instruments, as the case may be, specified in the table below must be filed with the court along with the application form, unless this is impractical or the court has directed otherwise.

Type of document or instrument	**When document is to be filed**
Assessment of capacity form (COP3)	All applications except those concerning the court's powers under section 22 or 23 of, or Schedule 4 to, the Act, or applications made

	under practice direction 9D
Annex A Supporting information for property and affairs applications (COP1A)	Where an order relating to P's property and affairs is sought
Annex B Supporting information for personal welfare applications (COP1B)	Where an order relating to P's personal welfare is sought
Deputy's declaration (COP4)	Where the application is for the appointment of a deputy
Annex C supporting information for statutory will, codicil, gift(s), deed of variation or settlement of property (COP1C)	Where an order relating to a statutory will, codicil, gift(s), deed of variation or settlement of property is sought
Annex D Supporting information for applications to appoint or discharge a trustee (COP1D)	Where an order relating to the appointment or discharge of a trustee is sought
Annex E Supporting information for an application by an existing deputy or attorney (COP1E)	Where the application is made by a person appointed deputy, an attorney under a registered enduring power of attorney or a donee of a registered lasting power of attorney; and the application relates to the applicant's powers and duties as deputy, attorney or donee in connection with P's property and affairs
Annex F Supporting information relating to the validity or operation of an enduring power of attorney or lasting power of attorney (COP1F)	Where an order relating to the validity or operation of an enduring power of attorney or lasting power of attorney is sought
Lasting power of attorney or enduring power of attorney	Where the application concerns the court's power under section 22 or 23 of, or Schedule 4 to, the Act (where available)
Order appointing a deputy	Where the application relates to or is made by a deputy
Order appointing a litigation friend	Where the application is made by, or where the application relates to the appointment of, a litigation friend
Order of the Court of Protection	Where the application relates to the order
Order of another court (and where the judgment is not in English, a translation of it into English— (i) certified by a notary public or other qualified person; or (ii) accompanied by written evidence confirming that the translation is accurate).	Where the application relates to an order made by another court

13. Rule 5.1 and practice direction A accompanying Part 5 set out how documents are to be filed at court.

14. If the applicant is unable to complete an assessment of capacity form (as may be the case, for example, where P does not reside with the applicant and the applicant is unable to take P to a doctor, or where P refuses to undergo the assessment), the applicant should file a witness statement with the application form explaining—

(a) why the applicant has not been able to obtain an assessment of capacity;

(b) what attempts (if any) the applicant has made to obtain an assessment of capacity; and

(c) why the applicant knows or believes that P lacks capacity to make a decision or decisions in relation to any matter that is the subject of the proposed application.

Start of proceedings

15. The date on which the application form was received by the court will be recorded by a date stamp either on the application form held on the court file or on the letter that accompanied the application form when it was received by the court.

16. Any enquiry as to the date on which the court received an application form should be directed to a court officer.

PRACTICE DIRECTION 9B – NOTIFICATION OF OTHER PERSONS THAT AN APPLICATION FORM HAS BEEN ISSUED

This practice direction supplements Part 9 of the Court of Protection Rules 2017

General

1. Rule 9.10 requires the applicant to notify certain persons of the application in accordance with the relevant practice direction.[1]

Who is to be notified

2. The persons who should be notified will vary according to the nature of the application.

3. A person who has been named as respondent in the application form should not also be notified. Any reference in this practice direction to a person to be notified does not apply where the person has already been named as a respondent.

4. The applicant must seek to identify at least three persons who are likely to have an interest in being notified that an application form has been issued. The applicant should notify them—

(a) that an application form has been issued;

(b) whether it relates to the exercise of the court's jurisdiction in relation to P's property and affairs, or P's personal welfare, or both; and

(c) of the order or orders sought.

5. Members of P's close family are, by virtue of their relationship to P, likely to have an interest in being notified that an application has been made to the court concerning P. It should be presumed, for example that a spouse or civil partner, any other partner, parents and children are likely to have an interest in the application.

6. This presumption may be displaced where the applicant is aware of circumstances which reasonably indicate that P's family should not be notified, but that others should be notified instead. For example, where the applicant knows that the relative in question has had little or no involvement in P's life and has shown no inclination to do so, the applicant may reasonably conclude that that relative need not be notified. In some cases, P may be closer to persons who are not relatives and if so, it will be appropriate to notify them instead of family members.

7. The following list of people is ordered according to the presumed closeness in terms of relationship to P. They should be notified in descending order (as appropriate to P's circumstances)—

[1] See rule 9.7(2) for certain applications relating to lasting powers of attorney, and rule 9.8(2) for certain applications relating to enduring powers of attorney, which do not require notification to be given in accordance with this practice direction.

(a) spouse or civil partner;

(b) person who is not a spouse or a civil partner but who has been living with P as if they were;

(c) parent or guardian;

(d) child;

(e) brother or sister;

(f) grandparent or grandchild;

(g) aunt or uncle;

(h) child of a person falling within sub-paragraph (e);

(i) step-parent; and

(j) half-brother or half-sister.

(If any of the people to be notified are children or protected parties, see rule 6.4.)

8. Where the applicant decides that a person listed in one of the categories in paragraph 7 ought to be notified, and there are other persons in that category (e.g. P has four siblings), the applicant should notify all persons falling within that category unless there is a good reason not to do so. For example, it may be a good reason not to notify every person in the category if one or more of them has had little or no involvement in P's life and has shown no inclination to do so.

9. Where the applicant chooses not to notify a person listed in paragraph 7 because the presumption has been displaced (see paragraphs 6 and 8 above) the evidence in support of the application form must also set out why that person was not notified.

10. In addition to the list in paragraph 7, the following persons must be notified where appropriate—

(a) where P is under 18, any person with parental responsibility for P within the meaning of the Children Act 1989;

(b) any legal or natural person who is likely to be affected by the outcome of any application. For example, where there is an organisation (including an NHS body) responsible for P's care (and the application is made by another person) the organisation should be notified where the application relates to the provision to, or withdrawal from, P of medical or other treatment or accommodation;

(c) any deputy appointed by the court, an attorney appointed under an enduring power of attorney or a donee of a lasting power of attorney (where that person has power to make decisions on behalf of P in regard to a matter to which the application relates). For example, where the application relates to P's property, and a deputy has been appointed to make decisions in relation to P's property, the deputy should be notified; and

(d) any other person not already mentioned whom the applicant reasonably considers has an interest in being notified that an application form has been issued. For example, P may have a close friend with an interest in being notified because he or she provides care to P on an informal basis.

11. Where the applicant chooses not to notify a person listed in paragraph 10 the evidence in support of the application form must also set out why that person was not notified.

Method of notification

12. Notification must be provided using a COP15 form.

13. The provisions of Part 6 and Practice Direction A accompanying Part 6 apply similarly to notification as they do to service.[2]

[2] See rule 6.1(1).

PRACTICE DIRECTION 9C – RESPONDING TO AN APPLICATION

This practice direction supplements Part 9 of the Court of Protection Rules 2017

General

1. Rule 9.12(10) enables a practice direction to make provision about responding to applications. Rule 9.12 sets out the procedure to be followed where a person who has been served with or notified of an application form wishes to become, or apply to become, a party to proceedings.

2. Rule 9.15 sets out the procedure to be followed where a person who has not been served with or notified of an application form in accordance with rules 9.6 to 9.10 wishes to apply to become a party to proceedings.

Responding to the application

Persons served with an application

3. Where a person is served with an application form pursuant to rule 9.6, 9.7 or 9.8 that person must, if he or she wishes to be a party to the proceedings, file an acknowledgment of service using Form COP5 in accordance with rule 9.12. By doing this, the person becomes a party.[1]

Persons notified of an application

4. Where a person has been notified of an application pursuant to rule 9.7(5), 9.8(5), 9.9 or 9.10, that person must, if he or she wishes to be a party to the proceedings, apply to the court to be joined as a party by filing an acknowledgment of notification using Form COP5 in accordance with rule 9.12.

Persons not served with or notified of an application

5. Where a person was not served with or notified of an application form, that person must, if he or she wishes to be a party to the proceedings, apply to the court to be joined as a party, by filing an application to be joined using Form COP10 in accordance with rule 9.15.

Signing the acknowledgment

6. An acknowledgment must be signed by the person acknowledging service or notification, or by that person's legal representative or litigation friend.

[1] Rule 9.13(1)(b)

7. Where the respondent is a company or other corporation, a person holding a senior position in the company or corporation may sign the acknowledgment on the respondent's behalf, but must state the position he or she holds.

8. Each of the following persons is a person holding a senior position—

(a) in respect of a registered company or corporation, a director, the treasurer, secretary, chief executive, manager or other officer of the company or corporation; and

(b) in respect of a corporation which is not a registered company, in addition to those persons set out at (a), the mayor, chairman, president, town clerk or similar officer of the corporation.

9. Where the respondent is a partnership, the acknowledgment may be signed by—

(a) any of the partners; or

(b) a person having the control or management of the partnership business.

10. The name of the person acknowledging service or notification should be set out in full on the acknowledgment.

11. If two or more persons acknowledge service or notification of an application through the same legal representative at the same time, only one acknowledgment of service need be used.

Address for service

12. The acknowledgment must include an address for the service of documents, which must be within the jurisdiction of the court.

13. When the person acknowledging service or notification is represented by a legal representative, and the legal representative has signed the acknowledgment, the address must be the legal representative's business address.

Corrections and amendments to the acknowledgment

14. Where the name of the person acknowledging service or notification has been set out incorrectly on the application form, it should be correctly set out in the acknowledgment followed by the words ‘described as' and the incorrect name.

15. An acknowledgment of service or notification may be amended only with the permission of the court.

16. An application under paragraph 15 must be made by filing a COP9 application notice in accordance with Part 10 and supported by evidence.

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

This practice direction supplements Part 9 of the Court of Protection Rules 2017

General

1. Rule 9.11 enables a practice direction to make additional or different provision in relation to specified applications.

Applications to which this practice direction applies

2. This practice direction applies to applications—

(a) which are made by a person who is appointed to act as a deputy for P, or by an attorney under a registered enduring power of attorney or a donee of a registered lasting power of attorney;

(b) which relate to the applicant's powers and duties as a deputy, attorney or donee, in connection with making decisions as to P's property and affairs;

(c) where the applicant reasonably considers that the order sought is not likely to be significant to P's estate or to any other of P's interests; and

(d) where the applicant knows, or reasonably believes, that there are unlikely to be any objections to the application the applicant proposes to make.

3. Applications may only be made using the procedure in this practice direction if the deputy, attorney or donee does not have the authority to make the decision or decisions in question.

Applications by deputies which may be suitable for the procedure set out in this practice direction

4. Examples of applications by deputies that may be suitable for the procedure in this practice direction include, but are not limited to—

(a) applications for regular payments from P's assets to the deputy in respect of remuneration;

(b) applications seeking minor variations only as to the expenses that can be paid from P's estate;

(c) applications to change an accounting period;

(d) applications to set or change the time by which an annual account may be submitted;

(e) applications in relation to the sale of property owned by P, where the sale is non-contentious;

(f) applications for authority to disclose information as to P's assets, state of health or other circumstances;

(g) applications to make a gift or loan from P's assets, provided that the sum in question is not disproportionately large when compared to the size of P's estate as a whole;

(h) applications to sell or otherwise deal with P's investments, provided that the sum in question is not disproportionately large when compared to the size of P's estate as a whole;

(i) applications for the receipt or discharge of a sum due to or by P;

(j) applications for authority to apply for a grant of probate or representation, where P would be the person entitled to the grant but for P's lack of capacity;

(k) applications relating to the lease or grant of a tenancy in relation to property owned by P;

(l) applications for release of funds to repair or improve P's property;

(m) applications to sell P's furniture or effects;

(n) applications for release of capital to meet expenses required for the care of P;

(o) applications to arrange an overdraft or bank loan on P's behalf;

(p) applications to open a bank account on behalf of P or for the purpose of the deputyship at a private bank, a bank that is not located in England and Wales, or at a bank which has unusual conditions attached to the operation of the account; and

(q) applications for the variation of an order for security made pursuant to rule 24.3.[1]

Applications by attorneys or donees which may be suitable for the procedure set out in this practice direction

5. Examples of applications by attorneys or donees that may be suitable for the procedure in this practice direction include, but are not limited to—

(a) applications for regular payments from P's assets to the attorney or donee in respect of remuneration;

(b) applications to make a gift from P's assets, provided that the sum in question is not disproportionately large when compared to the size of P's estate as a whole;

(c) applications to authorise a sale of P's property to the attorney or donee, or a family member of P, the attorney or donee, at proper market value, and provided that the market value of the property in question is not disproportionately large when compared to the size of P's estate as a whole;

(d) applications for authority to obtain a copy of P's will;

(e) applications for the approval of equity releases; and

[1] Notwithstanding paragraph 9 of this practice direction, the Public Guardian must be notified of such an application.

(f) applications for orders for sale pursuant to paragraphs 8 and 9 of Schedule 2 to the Act.

Applications which are not suitable for the procedure set out in this practice direction

6. Examples of applications which are not suitable for the procedure in this practice direction include, but are not limited to—

(a) applications for the removal of a deputy;

(b) applications seeking authorisation to commence, continue or defend litigation on behalf of P;

(c) applications for the settlement of P's property, whether for P's benefit or for the benefit of others;

(d) applications to vary the terms of a trust or estate in which P has an interest;

(e) applications for a statutory will or codicil; and

(f) applications to operate or cease to operate a business belonging to P, or to dissolve a partnership of which P is a member.

7. An application which is likely to be contested, or which involves large sums of money (when compared to the size of P's estate as a whole) is not suitable for the procedure set out in this practice direction.

Procedure for applications to which this practice direction applies

8. Applications must be made by filing a COP1 application form, together with any evidence in support of the application. However, Annexes A and B to the application form (COP1A and COP1B) are not required to be filed, nor is an assessment of capacity form.

9. Notwithstanding rules 9.6 to 9.10, applications to which this Practice Direction applies may be made, in the first instance, without serving the application form on anyone and without notifying anyone that the application has been made.

10 The court may decide, upon considering the application, that other persons ought to be notified of the application and given the opportunity to respond. In such a case, the court will give directions as to who should be served with or notified of the application and the manner in which they are to be served or notified, as the case may be.

11. The court may deal with the application without a hearing and will give directions as to who should be served with any order that it makes.

Right of reconsideration

12. Where the application is determined without notice having been given to any person or without a hearing, P, any party or any person affected by the order may apply to the court, within 21 days of having been served with the court's order, to have the order reconsidered.[2]

[2] Rule 13.4 sets out the procedure for applications for reconsideration.

An application to have an order reconsidered must be made by filing a COP9 application notice in accordance with Part 10.

PRACTICE DIRECTION 9E – APPLICATIONS RELATING TO STATUTORY WILLS, CODICILS, SETTLEMENTS AND OTHER DEALINGS WITH P's PROPERTY

This practice direction supplements Part 9 of the Court of Protection Rules 2017

General

1. Rule 9.11 enables a practice direction to make additional or different provision in relation to specified applications.

Applications to which this practice direction applies

2. This practice direction makes provision for applications that relate to—

(a) the execution of a will or codicil of P;

(b) the settlement of any of P's property; and

(c) the sale, exchange, charging, gift or other disposition of P's property.

3. A deputy may not be given powers with respect to—

(a) the settlement of any of P's property;

(b) the execution of a will of P; or

(c) the exercise of any power (including a power to consent) vested in P whether beneficially or as a trustee or otherwise.[1]

4. Hence, an application must be made to the court for a decision in relation to such matters. This practice direction is concerned with matters mentioned at paragraphs 3(a) and (b) above. Practice direction G accompanying Part 9 contains provisions as to applications falling with paragraph 3(c).

Permission to make applications to the court

5. Section 50(1) of, and paragraph 20(2) of Schedule 3 to, the Act and rule 8.2 set out the circumstances in which permission is or is not required to make an application to the court for the exercise of any of its powers under the Act.

Information to be provided with application form

6. In addition to the application Form COP1 (and its annexes) and any information or documents required to be provided by the Rules or another practice direction, the following information must be provided (in the form of a witness statement, attaching documents as exhibits where necessary) for any application to which this practice direction applies—

[1] Section 20(3) of the Act.

(a) where the application is for the execution of a statutory will or codicil, a copy of the draft will or codicil,[2] plus one copy;

(b) a copy of any existing will or codicil;

(c) any consents to act by proposed executors;

(d) details of P's family, preferably in the form of a family tree, including details of the full name and date of birth of each person included in the family tree;

(e) a schedule showing details of P's current assets, with up to date valuations;

(f) a schedule showing the estimated net yearly income and spending of P;

(g) a statement showing P's needs, both current and future estimates, and P's general circumstances;

(h) if P is living in National Health Service accommodation, information on whether P may be discharged to local authority accommodation, to other fee-paying accommodation or to P's own home;

(i) if the applicant considers it relevant, full details of the resources of any proposed beneficiary, and details of any likely changes if the application is successful;

(j) details of any capital gains tax, inheritance tax or income tax which may be chargeable in respect of the subject matter of the application;

(k) an explanation of the effect, if any, that the proposed changes will have on P's circumstances, preferably in the form of a 'before and after' schedule of assets and income;

(l) if appropriate, a statement of whether any land would be affected by the proposed will or settlement and if so, details of its location and title number, if applicable;

(m) where the application is for a settlement of property or for the variation of an existing settlement or trust, a draft of the proposed deed, plus one copy;

(n) a copy of any registered enduring power of attorney or lasting power of attorney;

(o) confirmation that P is a resident of England or Wales; and

(p) an up to date report of P's present medical condition, life expectancy, likelihood of requiring increased expenditure in the foreseeable future, and testamentary capacity.

7. The court may direct that other material is to be filed by the applicant, and if it does, the information will be set out in the form of a witness statement.

8. If any of the information mentioned above has been provided already (e.g. by way of inclusion in an annex to the application form) it need not be provided again.

Respondents and persons who must be notified of an application

9. The applicant must name as a respondent—

[2] The Annex to this practice direction contains an example of a will.

(a) any beneficiary under an existing will or codicil who is likely to be materially or adversely affected by the application;

(b) any beneficiary under a proposed will or codicil who is likely to be materially or adversely affected by the application; and

(c) any prospective beneficiary under P's intestacy where P has no existing will.

(Practice direction B accompanying Part 9 sets out the procedure for notifying others of an application.)

10. The court will consider at the earliest opportunity whether P should be joined as a party to the proceedings and, if P is so joined, the court will consider whether the Official Solicitor should be invited to act as a litigation friend, or whether some other person should be appointed as a litigation friend.

Procedure on execution of a will

11. Once a will of P has been executed, the applicant must send the original and two copies of the will to the court for sealing.

12. The court shall seal the original and the copy and return both documents to the applicant.

(Paragraph 3(2) of Schedule 2 to the Mental Capacity Act 2005 sets out the requirements for execution of a will on behalf of P, where the will is executed pursuant to an order or direction of the court.)

ANNEX

Example form of statutory will

(This only shows the manner in which the authorised person makes the will and executes the same.)

This is the last will of me AB [the person who lacks capacity] of _____ acting by CD the person authorised in that behalf by an order dated the _____ day of _____ 20____ made under the Mental Capacity Act 2005.

I revoke all my former wills and codicils and declare this to be my last will.

1. I appoint EF and GH to be executors and trustees of this my will.

2. I give _____

In witness of which this will is signed by me AB acting by CD under the order mentioned above on (date).

SIGNED by the said AB [the person who lacks capacity]

by the said CD [authorised person]

and by the said CD with his (or her) own name AB [person who lacks capacity]
pursuant to the said order in our presence and

attested by us in the presence of the said CD CD [authorised person]

[Name and addresses of witness]

Sealed with the official seal of the Court of Protection the _____ day of _____ 20____

PRACTICE DIRECTION 9F – APPLICATIONS TO APPOINT OR DISCHARGE A TRUSTEE

This practice direction supplements Part 9 of the Court of Protection Rules 2017

General

1 Rule 9.11 enables a practice direction to make additional or different provision in relation to specified applications.

Applications to which this practice direction applies

2. This practice direction makes provision for applications—

(a) for the exercise of any power (including a power to consent) vested in P whether as a trustee or otherwise (section 18(1)(j) of the Act);

(b) under section 36(9) of the Trustee Act 1925 for leave to appoint a new trustee in place of P;

(c) under section 54 of the Trustee Act 1925 as to the court's jurisdiction;

(d) under section 20 of the Trusts of Land and Appointment of Trustees Act 1996; or

(e) for the court's approval of the appointment of a trustee in accordance with the terms of a trust.

3. A deputy may not be appointed to exercise any power vested in P, whether as a trustee or otherwise.[1] Hence, an application must be made to the court for the court to make such a decision.

Permission to make applications to the court

4. Section 50(1) of, and paragraph 20(2) of Schedule 3 to, the Act and rule 8.2 set out the circumstances in which permission is or is not required to make an application to the court for the exercise of any of its powers under the Act.

Information to be provided with the application form

5. In addition to the application Form COP1 (and its annexes) and any information or documents required to be provided by the Rules or another practice direction, the following information must be provided (in the form of a witness statement, attaching documents as exhibits where necessary) for any application to which this Practice Direction applies—

(a) a copy of the existing trust document;

(b) where relevant, a copy of any original conveyance, transfer, lease, assignment, settlement trust or will trust;

[1] Section 20(3) of the Act prevents a deputy being given power to exercise such powers on behalf of P.

(c) the names and addresses of any present trustees and details of any beneficial interest they have in the trust property. If the present trustees are not the original trustees, an explanation should be provided as to how they became trustees and copies of any deeds of appointment and retirement should be provided;

(d) the full name, address and date of birth of any person proposed to replace P as a trustee, and details of that person's relationship to P;

(e) confirmation that the trust is not under an order for administration in the Chancery Division;

(f) if there is only one continuing trustee, the applicant must confirm that both the trustee and the proposed new trustee have not made an enduring power of attorney or a lasting power of attorney in favour of the other party;

(g) if an enduring power of attorney or a lasting power of attorney has been executed by a continuing trustee, a certified copy of that document must be provided. If the power has not been registered, the applicant must confirm that the trustee is still capable of carrying out his or her duties as a trustee;

(h) the full name and address of any person who has an interest in any trust property as the beneficiary of a will, and whether any of them are children or persons who lack capacity;

(i) if the proposed new trustee is not a solicitor or a trust corporation (for example, a bank) and has not been appointed as a deputy for the trustee lacking capacity, the applicant must provide a witness statement from a person independent of the applicant, who has no interest in the trust property, attesting to the applicant's fitness to be appointed as trustee;

(j) if the application relates to a transfer of assets in a will trust or similar settlement into the names of new trustees, accurate details of the trust assets must be provided (including full details of any stocks and shares held);

(k) a copy of any notice of severance and evidence of service;

(l) a copy of the will and grant of probate to the deceased's estate (where relevant);

(m) confirmation of all relevant consents; and

(n) a copy of a signed trustee's special undertaking.

6. The court may direct that other material is to be filed by the applicant, and if it does, the information will be set out in the form of a witness statement.

7. If any of the information mentioned above has been provided already (e.g. by way of inclusion in an annex to the application form) it need not be provided again.

Additional information to be provided where the application relates to real property

8. In addition to the information specified in paragraph 5 above, where the application relates to real property, the information specified in paragraph 9 below must be provided. The information must be set out in the form of a witness statement.

9. The information which must be provided is—

(a) the address of the property concerned, and whether it is freehold or leasehold;

(b) the title number of the property and a copy of its entry in the Land Registry (if registered land). If the land is unregistered, the applicant should inform the court accordingly; and

(c) if the property is leasehold the applicant should advise the court as to whether the applicant has a licence or consent to the assignment, and provide a copy of the same (or advise if a licence or consent is not necessary and the reason why it is not needed).

10. If any of the information mentioned above has been provided already (e.g. by way of inclusion in an annex to the application form) it need not be provided again.

PRACTICE DIRECTION 9G – APPLICATIONS RELATING TO THE REGISTRATION OF ENDURING POWERS OF ATTORNEY

This practice direction supplements Part 9 of the Court of Protection Rules 2017

General

1 Rule 9.11 enables a practice direction to make additional or different provision in relation to specified applications.

Applications to which this practice direction applies

2. This practice direction applies where—

(a) an application has been made to the Public Guardian to register an instrument creating an enduring power of attorney; and

(b) the Public Guardian has received a notice of objection to registration which prevents the Public Guardian from registering the instrument except in accordance with the court's directions.

Objections to registration

3. A notice of objection will prevent the Public Guardian from registering the instrument if the objection is made on one of the following grounds—[1]

(a) that the power purported to have been created by the instrument was not valid as an enduring power of attorney;

(b) that the power created by the instrument no longer subsists;

(c) that the application is premature because the donor is not yet becoming mentally incapable;

(d) that fraud or undue pressure was used to induce the donor to create the power; or

(e) that, having regard to all the circumstances and in particular the attorney's relationship to or connection with the donor, the attorney is unsuitable to be the donor's attorney.

4. This practice direction sets out the procedure to be followed by a person entitled to be given notice of the application to register the instrument who wishes to apply to the court for—

(a) directions that the instrument should be registered; or

(b) directions that the instrument should not be registered.

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[1] The grounds are set out in paragraph 13(9) of Schedule 4 to the Act. The Public Guardian is prevented from registering the instrument by paragraph 13(4) and (5) of that Schedule.

5. The persons who are entitled to receive notice of an application are the donor, certain of the donor's relatives and any attorneys under the enduring power who are not making the application for registration.[2]

Procedure for applications to which this Practice Direction applies

6. An application must be made using Form COP8.

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

7. The application form must state—

(a) what directions the applicant is seeking; and

(b) if the applicant objects to registration, the grounds on which the applicant does so; or

(c) if the applicant is seeking registration, the applicant's reasons for doing so.

8. The application form must be supported by evidence set out in either—

(a) a witness statement; or

(b) if it is verified by a statement of truth, the application form.

9. As soon as practicable and in any event within 14 days of the application form being issued, the applicant must serve a copy of the application form, together with an acknowledgment of service using Form COP5—

(a) unless the applicant is the donor or an attorney, on the donor of the power and every attorney under the power;

(b) if the applicant is the donor, on every attorney under the power; or

(c) if the applicant is an attorney, on the donor and any other attorney under the power.

10. Where the applicant knows or has reasonable grounds to believe that the donor of the power lacks capacity to make a decision in relation to any matter that is the subject of the application, the applicant must notify the donor of the application in accordance with Part 7.

[2] Paragraphs 5 to 11 of Schedule 4 to the Act set out who is entitled to receive notice.

PRACTICE DIRECTION 10A – APPLICATIONS WITHIN PROCEEDINGS

This practice direction supplements Part 10 of the Court of Protection Rules 2017

Application notice

1. Rule 10.1 provides that an applicant may use the Part 10 procedure if the application is made—

(a) in the course of existing proceedings; or

(b) as provided for in a rule or relevant practice direction.

2. An application under Part 10 must be made by filing an application notice using Form COP9.

3. An application notice must, in addition to the matters set out in rule 10.3, be signed and include (unless an order to the contrary pursuant to rule 5.11 has been made)—

(a) the name of the person to whom the application relates (P);

(b) the case number (if available);

(c) the full name of the applicant;

(d) where the applicant is not already a party, the applicant's address; and

(e) a draft of the order sought.

4. If the order sought is unusually long or complex, a device containing the draft order sought should be made available to the court in a format compatible with the word processing software used by the court. (Queries in relation to software should be directed to a court officer.)

5. The application notice must be supported by evidence set out in either—

(a) a witness statement; or

(b) the application notice provided that it is verified by a statement of truth.

6. For the purposes of rules 4.1 to 4.3, a statement of truth in an application notice may be made by a person who is not a party.[1]

7. The evidence must set out the facts on which the applicant relies for the application, and all material facts known to the applicant of which the court should be made aware.

8. A copy of the application notice and evidence in support must be served by the person making the application as soon as practicable and in any event within 14 days of the application notice being issued.

9. An application may be made without service of an application notice only—

(a) where there is exceptional urgency;

(b) where the overriding objective is best furthered by doing so;

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[1] See rule 5.2(6)(a)

(c) by consent of all parties;

(d) with the permission of the court; or

(e) where a rule or other practice direction permits.

(Practice Direction B accompanying Part 10 sets out more detailed requirements for urgent applications.)

10. Where an application is made without service on the respondent, the evidence in support of the application must also set out why service was not effected.

11. The court may decide, upon considering the application, that other persons ought to be served with or notified of it and have the opportunity of responding. In such a case, the court will give directions as to who should be served with or notified of the application.

12. On receipt of an application notice, the court will issue the application notice and, if there is to be a hearing, give notice of the date on which the matter is to be heard by the court.

13. Notice will be given to—

(a) the applicant;

(b) anyone who is named as a respondent in the application notice (if not otherwise a party to the proceedings);

(c) every other party to the proceedings; and

(d) any other person, as the court may direct.

14. Any directions given by the court may specify the form that the evidence is to take and when it is to be served.

15. Applications should wherever possible be made so that they can be considered at a directions hearing or other hearing for which a date has already been fixed or for which a date is about to be fixed.

16. Where a date for a hearing has been fixed and a party wishes to make an application at that hearing but does not have sufficient time to file an application notice, that party should inform the court (if possible in writing) and, if possible, the other parties as soon as he or she can of the nature of the application and the reason for it. The applying party should then make the application orally at the hearing.

Type of case may be indicated in the application notice

17. The applicant may indicated in the application notice that the application—

(a) is urgent;

(b) should be dealt with by a particular judge or level of judge within the court;

(c) requires a hearing; or

(d) any combination of the above.

Telephone hearings

18. The court may direct that an application or part of an application will be dealt with by a telephone hearing.

19. The applicant should indicate in the application notice if the applicant seeks a direction pursuant to paragraph 17. Where the applicant has not done so but nevertheless wishes to seek such a direction the request should be made as early as possible.

20. A direction under paragraph 17 will not normally be given unless every party entitled to be given notice of the application and to be heard at the hearing has consented to the direction.

Video conferencing

21. Where the parties to a matter wish to use video conferencing facilities, and those facilities are available, they should apply to the court for such a direction.

(Practice Direction A accompanying Part 14 contains guidance on the use of video conferencing.)

Consent orders

22. The parties to an application for a consent order must ensure that they provide the court with any material it needs to be satisfied that it is appropriate to make the order. Subject to any rule or practice direction, a letter signed by all parties will generally be acceptable for this purpose.

23. Where an order has been agreed in relation to an application for which a hearing date has been fixed, the parties must inform the court immediately.

PRACTICE DIRECTION 10B – URGENT AND INTERIM APPLICATIONS

This practice direction supplements Part 10 of the Court of Protection Rules 2017

Urgent applications and applications without notice

1. These fall into two categories—

(a) applications where an application form has already been issued; and

(b) applications where an application form has not yet been issued,

and, in both cases, where notice of the application has not been given to the respondent(s).

2. Wherever possible, urgent applications should be made within court hours. These applications will normally be dealt with at court but cases of extreme urgency may be dealt with by telephone. Telephone contact may be made with the court during business hours on 0300 456 4600.

3. When it is not possible to apply within court hours, contact should be made with the security office at the Royal Courts of Justice on 020 7947 6260. The security officer should be informed of the nature of the case.

4. In some cases, urgent applications arise because applications to the court have not been pursued sufficiently promptly. This is undesirable, and should be avoided. A judge who has concerns that the facility for urgent applications may have been abused may require the applicant or the applicant's representative to attend at a subsequent hearing to provide an explanation for the delay.

Applications without notice

5. The applicant should take steps to advise the respondent(s) by telephone or in writing of the application, unless justice would be defeated if notice were given.

6. If an order is made without notice to any other party, the order will ordinarily contain—

(a) an undertaking by the applicant to the court to serve the application notice, evidence in support and any order made on the respondent and any other person the court may direct as soon as practicable or as ordered by the court; and

(b) a return date for a further hearing at which the other parties can be present.

Applications where an application form has already been issued

7 An application notice using Form COP9, evidence in support and a draft order should be filed with the court in advance of the hearing wherever possible. If the order sought is unusually long or complex, a device containing the draft order sought should be made available to the court in a format compatible with the word processing software used by the court. (Queries in relation to software should be directed to a court officer.)

(Practice direction A accompanying Part 10 sets out more detailed requirements in relation to an application notice.)

8. If an application is made before the application notice has been filed, a draft order should be provided at the hearing, and the application notice and evidence in support must be filed with the court on the next working day or as ordered by the court.

Applications made before the issue of an application form

9. Where the exceptional urgency of the matter requires, an application may be started without filing an application form if the court allows it (but where time permits an application should be made in writing). In such a case, an application may be made to the court orally. The court will require an undertaking that the application form in the terms of the oral application be filed on the next working day, or as required by the court.

10. An order made before the issue of the application form should state in the title after the names of the applicant and the respondent, ‘the Applicant and Respondent in an Intended Application'.

Applications made by telephone

11. Where it is not possible to file an application form or notice, applications can be made by telephone in accordance with the contact details set out in paragraphs 2 and 3 of this practice direction.

Hearings conducted by telephone

12. When a hearing is to take place by telephone, if practical it should be conducted by tape-recorded conference call, and arranged (and paid for in the first instance) by the applicant. All parties and the judge should be informed that the call is being recorded by the service provider. The applicant should order a transcript of the hearing from the service provider.

Type of case may be indicated in the application notice

13. The applicant may indicate in the application notice that the application—

(a) is urgent;

(b) should be dealt with by a particular judge or level of judge within the court;

(c) requires a hearing; or

(d) any combination of the above.

Interim injunction applications

14. Rule 10.10 enables the court to grant an interim injunction.

15. Any judge of the court may vary or discharge an interim injunction granted by any judge of the court.

16. Any order for an interim injunction must set out clearly what the respondent or any other person must or must not do. The order may contain an undertaking by the applicant to pay any damages which the respondent(s) sustains which the court considers the applicant should pay.

PRACTICE DIRECTION 11A – DEPRIVATION OF LIBERTY APPLICATIONS

This practice direction supplements Part 11 of the Court of Protection Rules 2017

Introduction

1. This Practice Direction is in three parts. Part 1 addresses the procedure to be followed in applications to the court for orders under section 21A of the Mental Capacity Act 2005 relating to a standard or urgent authorisation under Schedule A1 of that Act to deprive a person of his or her liberty; or proceedings (for example, relating to costs or appeals) connected with or consequent upon such applications. Part 2 addresses the procedure to be followed in applications under s 16(2)(a) of that Act to authorise deprivation of liberty under section 4A(3) and (4) pursuant to a streamlined procedure. Part 3 makes provision common to applications under both Parts 1 and 2.

PART 1

APPLICATIONS UNDER SECTION 21A RELATING TO A STANDARD OR URGENT AUTHORISATION UNDER SCHEDULE A1

2. This Part sets out the procedure to be followed in applications to the court for orders under section 21A of the Mental Capacity Act 2005 relating to a standard or urgent authorisation under Schedule A1 of that Act to deprive a person of his or her liberty. By their nature, such applications are of special urgency and therefore will be dealt with by the court according to the special procedure described here. Other applications may, while not being DoL applications within the meaning of the term explained above, raise issues relating to deprivation of liberty and require similarly urgent attention; and while the special DoL procedure will not apply to such applications, they should be raised with the DoL team at the earliest possible stage so that they can be handled appropriately. The key features of the special DoL procedure are—

(a) special DoL court forms ensure that DoL court papers stand out as such and receive special handling by the court office;

(b) the application is placed before a judge of the court as soon as possible – if necessary, before issue of the application – for judicial directions to be given as to the steps to be taken in the application, and who is to take each step and by when;

(c) the usual Court of Protection Rules (for example, as to method and timing of service of the application) will apply only so far as consistent with the judicial directions given for the particular case;

(d) a dedicated team in the court office (‘the DoL team') will deal with DoL applications at all stages, including liaison with would-be applicants/other parties;

(e) the progress of each DoL case will be monitored by a judge assigned to that case, assisted by the DoL team.

Urgent applications

4. In extremely urgent cases, the DoL team can arrange for a telephone application to be made to the judge for directions and/or an interim order even before the application has been issued. In such cases the applicant must contact the DoL team and provide the following information—

(a) the parties' details;

(b) where the parties live;

(c) the issue to be decided;

(d) the date of urgent or standard authorisation;

(e) the date of effective detention;

(f) the parties' legal representatives;

(g) any family members or others who are involved;

(h) whether there have been any other court proceedings involving the parties and if so, where.

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

6. The public counter is open between 9.30 am to 4.30 am on working days. The DoL team can receive telephone calls and faxes between 9.00 am and 5.00 pm. Faxes transmitted after 4.30 pm will be dealt with the next working day.

7. When in an emergency it is necessary to make a telephone application to a judge outside normal court hours, the security office at the Royal Courts of Justice should be contacted on 020 7947 6260. The security officer should be informed of the nature of the case. In the Family Division, the out-of-hours application procedure involves the judge being contacted through a Family Division duty officer, and the RCJ security officer will need to contact the duty officer and not the judge's clerk or the judge.

8. Intending applicants/other parties may find it helpful to refer to—

(a) the Code of Practice Deprivation of Liberty Safeguards (June 2008), ISBN 978-0113228157, supplementing the main Mental Capacity Act 2005 Code of Practice: in particular Chapter 10, What is the Court of Protection and who can apply to it?; and

(b) the judgment of Mr Justice Munby in *Salford City Council v GJ, NJ and BJ (Incapacitated Adults)* [2008] EWHC 1097 (Fam); [2008] 2 FLR 1295. Although this case was decided before the coming into force of the DoL amendments to the Mental Capacity Act 2005, it sets out helpful guidance on the appropriate court procedures for cases relating to the deprivation of liberty of adults.

9. The DoL team will be pleased to explain the court's procedures for handling DoL cases. Please note that the team (as with all court staff) is not permitted to give advice on matters of law. Please do not contact the DoL team unless your inquiry concerns a deprivation of liberty question (whether relating to a potential application, or a case which is already lodged with the Court).

DoL court forms

10. The special DoL court forms are as follows—

(a) DLA: Deprivation of Liberty Application Form: to be used for all DoL applications;

(b) DLB: Deprivation of Liberty Request for Urgent Consideration: this short form allows applicants to set out the reasons why the case is urgent, the timetable they wish the case to follow, and any interim relief sought. A draft of any order sought should be attached. Ideally, the DLB (plus any draft order) should be placed at the top of the draft application and both issued and served together;

(c) DLD: Deprivation of Liberty Certificate of Service/non-service and Certificate of notification/non-notification;

(d) DLE: Deprivation of Liberty Acknowledgement of service/notification.

These forms can be obtained from the Court of Protection office or downloaded from the court's website:

http://hmctsformfinder.justice.gov.uk/HMCTS/GetForms.do?court_forms_category=court%20of%20protection

11. To ensure that papers relating to DoL applications are promptly directed to the DoL team at the court, it is essential that the appropriate DoL court forms are used.

12. The DoL court forms should be used for, and only for, DoL applications. If in such a case it is anticipated that other issues may arise, the DoL forms should identify and describe briefly those issues and any relief which may be sought in respect of them: sections 3.5 and 5 of form DLA, the Deprivation of Liberty Application Form, offer an opportunity to do this. 'Other issues' are perhaps most likely to arise in the event that the court decides the DoL application in the applicant's favour. In such a case, if the applicant has already identified the 'other issues' in his or her form DLA, the court will be able to address these, either by dealing with them immediately or by giving directions for their future handling.

13. Accordingly, unless the court expressly directs, applicants should not issue a second and separate application (using the standard court forms) relating to any 'other issues'.

14. Where an application seeks relief concerning a deprivation of P's liberty other than under section 21A in respect of a standard or urgent authorisation (for example, where the application is for an order under section 16(2)(a)), the dedicated DoL court forms should not be used. Rather the standard court forms should be used for such an application, but it should be made clear on them that relief relating to a deprivation of P's liberty is being sought, and the proposed applicant should contact the DoL team to discuss handling at the earliest possible stage before issuing the application.

How to issue a DoL application

15. To issue a DoL application, the following forms should be filed at court—

(a) form DLA;

(b) form DLB (plus draft order);

(c) the appropriate court fee.

Where a draft order is lodged with the court, it would be helpful – although not compulsory – if an electronic version of the order could also be lodged on a device, if possible.

16. In cases of extreme emergency or where it is not possible to attend at the court office, for example during weekends, the court will expect an applicant to undertake to file form DLA and to pay the court fee unless an exemption applies.

Inviting the court to make judicial directions for the handling of the application

17. The following is a sample list of possible issues which the court is likely to wish to consider in judicial directions in a DoL case. It is intended as a prompt, not as a definitive list of the issues that may need to be covered—

(a) upon whom, by when and how service of the application should be effected;

(b) dispensing with acknowledgement of service of the application or allowing a short period of time for so doing, which in some cases may amount to a few hours only;

(c) whether further lay or expert evidence should be obtained;

(d) whether P/the detained person should be a party and represented by the Official Solicitor and whether any other person should be a party;

(e) whether any family members should be formally notified of the application and of any hearing and joined as parties;

(f) fixing a date for a First Hearing and giving a time estimate;

(g) fixing a trial window for any final hearing and giving a time estimate;

(h) the level of judge appropriate to hear the case;

(i) whether the case is such that it should be immediately transferred to the High Court for a Tier 3 Judge to give directions;

(j) provision for a bundle for the judge at the First Hearing.

18. If you are an applicant without legal representation, and you are not sure exactly what directions you should ask for, you may prefer simply to invite the judge to make appropriate directions in light of the nature and urgency of the case as you have explained it on the DLB form. In exceptionally urgent cases, there may not be time to formulate draft directions: the court will understand if applicants in such cases (whether or not legally represented) simply ask the judge for appropriate directions.

After issue of the application

19. The DoL team will immediately take steps to ensure that the application is placed before a judge nominated to hear Court of Protection cases and DoL applications.

20. As soon as the court office is put on notice of a DoL application, the DoL team will notify a judge to put the judge on stand-by to deal with the application. The judge will consider the application on the papers and make a first order.

Steps after the judge's first order

21. The DoL team will—

(a) action every point in the judge's note or instruction;

(b) refer any query that arises to the judge immediately or, if not available, to another judge;

(c) make all arrangements for any transfer of the case to another court and/or for a hearing.

22. The applicant or his/her legal representative should follow all steps in the judge's order and—

(a) form DLD should be filed with the court if appropriate; and

(b) form DLE should be included in any documents served unless ordered otherwise.

The First Hearing

23. The First Hearing will be listed for the court to fix a date for any subsequent hearing(s), give directions and/or to make an interim or final order if appropriate. The court will make such orders and give such directions as are appropriate in the case.

24. The court will aim to have the First Hearing before a judge of every DoL application within 5 working days of the date of issue of the application.

25. Applicants can indicate on the DLB form if they think that the application needs to be considered within a shorter timetable, and set out proposals for such a timetable. On the first paper consideration the court will consider when the First Hearing should be listed.

26. If time allows and no specific direction has been made by the court, an indexed and paginated bundle should be prepared for the judge and any skeleton arguments and draft orders given to the court as soon as they are available. A copy of the index should be provided to all parties and, where another party appears in person, a copy of the bundle should be provided.

PART 2

APPLICATIONS UNDER SECTION 16(2)(A) FOR AN ORDER AUTHORISING DEPRIVATION OF LIBERTY UNDER SECTION 4A(3) AND (4) PURSUANT TO A STREAMLINED PROCEDURE

27. This Part sets out the procedure to be followed in applications to the court under section 16(2)(a) to authorise deprivation of liberty under section 4A(3) of the Act pursuant to a streamlined procedure and applies only to such applications. Reference should be made generally to the decision of the Supreme Court in *P (by his litigation friend the Official Solicitor) v Cheshire West and Chester Council and another; P and Q (by their litigation friend the Official Solicitor) v Surrey County Council* [2014] UKSC 19, and in relation to the procedure in these cases, to the judgments of the President of the Court of Protection in *Re*

X and Others (Deprivation of Liberty) [2014] EWCOP 25 and in *Re X and Others (Deprivation of Liberty) (Number 2)* [2014] EWCOP 37.

Making the application

28. To bring proceedings, the applicant must file an application using Form COPDOL 11, verified by a statement of truth and accompanied by all attachments and evidence required by that form and its annexes.

29. The application form and accompanying annexes and attachments are specifically designed to ensure that the applicant provides the court with essential information and evidence as to the proposed measures, on the basis of which the court may adjudicate as to the appropriateness of authorising a deprivation of liberty, and in particular to identify whether a case is suitable for consideration without an oral hearing. The use of the form and its annexes is mandatory and they must be provided fully completed and verified by the required statements of truth.

30. The applicant must ensure that the evidence in the application form, accompanying annexes and attachments is succinct and focussed.

31. A separate application must be made for every individual for whom the applicant requests an authorisation of deprivation of liberty. However, where there are matters in relation to which the facts are identical for a number of individuals, such as common care arrangements, the applicant may, in addition to addressing the specific issues relating to each individual, attach a generic statement dealing with the common care arrangements or other matters common to those individuals.

Deponent

32. The applicant must consider carefully who should complete the form and each annex with regard to the nature of the evidence required by each. There is no requirement that the same individual should complete and verify by statement of truth the form and each annex and indeed it might be inappropriate for this to be the case, where different people are best placed to provide evidence on different matters.

Applicant's duty of full and frank disclosure

33. The applicant has a duty of full and frank disclosure to the court of all facts and matters that may have an impact on the court's decision whether to authorise the deprivation of liberty. The applicant should therefore scrutinise the circumstances of the case and clearly identify in the evidence in support (in Annex A to Form COPDOL 11) factors—

(a) needing particular judicial scrutiny;

(b) suggesting that the arrangements in relation to which authorisation is sought may not in fact be in the best interests of the person the application is about, or the least restrictive option; or

(c) otherwise tending to indicate that the order should not be made.

Pursuant to this duty, the applicant should also identify those persons, not consulted by the applicant, who are in the same category under paragraph 39 as persons with whom the applicant has consulted. Those persons must be listed in Annex B to Form COPDOL 11 together with an explanation in that Annex of why they have not been consulted.

Draft order

34. The application must be accompanied by a draft of the order which the applicant seeks, including the duration of the authorisation sought, appropriate directions for review, and liberty to apply for its reconsideration.

Consultation with the person the application is about

35. Consultation with the person the application is about must take place before the application form is lodged with the court. The applicant must arrange for that person to be informed of the following matters—

(a) that the applicant is making an application to court;

(b) that the application is to consider whether the person lacks capacity to make decisions in relation to his or her residence and care, and whether to authorise a deprivation of their liberty in connection with the arrangements set out in the care plan;

(c) what the proposed arrangements under the order sought are;

(d) that the person is entitled to express his or her views, wishes and feelings in relation to the proposed arrangements and the application, and that the person undertaking the consultation will ensure that these are communicated to the court;

(e) that the person is entitled to seek to take part in the proceedings by being joined as a party or otherwise, what that means, and that the person undertaking the consultation will ensure that any such request is communicated to the court;

(f) that the person undertaking the consultation can help him or her to obtain advice and assistance if he or she does not agree with the proposed arrangements in the application.

36. The person undertaking the consultation must complete Annex C to Form COPDOL 11.

37. The applicant must confirm that the person the application is about has been supported and assisted to express his or her views, wishes and feelings in relation to the application and the arrangements proposed in it, and encouraged to take part in the proceedings to the extent that he or she wishes, in accordance with section 4(4) of the Act.

Consultation with other persons regarding the making of the application

38. The consultation required by paragraph 39 below must take place before the application is lodged with the court.

39. The applicant must ensure that the following people are consulted about the intention to make the application—

(a) any donee of a lasting power of attorney granted by the person;

(b) any deputy appointed for the person by the court;

together with, if possible, at least three people in the following categories—

(c) anyone named by the person the application is about as someone to be consulted on the matters raised by the application; and

(d) anyone engaged in caring for the person or interested in his or her welfare.

40. When consulting such people, the applicant must inform them of the following matters—

(a) that the applicant is making an application to court;

(b) that the application is to consider whether the person the application is about lacks capacity to make decisions in relation to his or her residence and care and whether he or she should be deprived of liberty in connection with the arrangements set out in the care plan;

(c) what the proposed arrangements under the order are; and

(d) that the applicant is under an obligation to inform the person the application is about of the matters listed in paragraph 35 above, unless in the circumstances it is inappropriate for the applicant to give that person such information.

Dispensing with notification or service of the application form

41. Provided that the court is satisfied as to the adequacy of consultation with the person the application is about in accordance with paragraphs 35 to 37, and with other persons with whom consultation should take place in accordance with paragraphs 38 to 40, the court may dispense with notification of the issue of the application under rules 7.4, 9.9 and 9.10.

Court fees

42. An application fee is payable for all applications, and if the court decides to hold a hearing before making a decision, a hearing fee will be payable.

43. If an application is received without a fee it will be treated as incomplete and returned.

Applications suitable for the streamlined procedure

44. As soon as practicable after receipt the court officers will consider the suitability of the application to be the subject of paper determination, or to be considered at an oral hearing.

45. All applications considered suitable for the streamlined procedure will be referred to a judge for consideration without an oral hearing, as soon as practicable after receipt.

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—

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[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:

Minimum annual salary

_____ = x

220

x

__ = hourly rate

6

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.

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[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.