STATUTORY INSTRUMENTS

2017 No. 1035 (L. 16)

MENTAL CAPACITY, ENGLAND AND WALES

The Court of Protection Rules 2017

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9.8.—(1) Where the application concerns the powers of the court under paragraphs 2(9), 4(5)(a) and (b), 7(2), 10(c), 13, or 16(2), (3), (4) and (6) of Schedule 4 to the Act, the applicant must serve a copy of the application form, together with copies of any documents filed in accordance with rule 9.4 and a form for acknowledging service—

(a) unless the applicant is the donor or attorney under the enduring power of attorney ("the power"), on the donor 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,

but only if the persons mentioned in sub-paragraphs (a) to (c) have not been served or notified under any other rule.

(2) Where the application is solely in respect of an objection to the registration of the power, the requirements of rules 9.6 and 9.10 do not apply to an application made under this rule by—

(a) an attorney under the power; or

(b) a person listed in paragraph 6(1) of Schedule 4 to the Act.

(3) The applicant must comply with paragraph (1) as soon as practicable and in any event within 14 days of the date on which the application form was issued.

(4) The applicant must file a certificate of service within 7 days beginning with the date on which the documents were served.

(5) 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 in accordance with Part 7.

Applicant to notify P of an application

9.9. P must be notified in accordance with Part 7 that an application form has been issued, unless the requirement to do so has been dispensed with under rule 7.11.

Applicant to notify other persons of an application

9.10.—(1) As soon as practicable and in any event within 14 days of the date on which the application form was issued, the applicant must notify the persons specified in the relevant practice direction—

(a) that an application 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 to both; and

(c) of the order or orders sought.

(2) Notification of the issue of the application form must be accompanied by a form for acknowledging notification.

(3) The applicant must file a certificate of notification within 7 days beginning with the date on which notification was given.

Requirements for certain applications

9.11. A practice direction may make additional or different provision in relation to specified applications.

Responding to an application

Responding to an application

9.12.—(1) A person who is served with or notified of an application form and who wishes to take part in proceedings must file an acknowledgment of service or notification in accordance with this rule.

(2) The acknowledgment of service or notification must be filed not more than 14 days after the application form was served or notification of the application was given.

(3) The court must serve the acknowledgment of service or notification on the applicant and on any other person who has filed such an acknowledgment.

(4) The acknowledgment of service or notification must—

(a) state whether the person acknowledging service or notification consents to the application;

(b) state whether that person opposes the application and, if so, set out the grounds for doing so;

(c) state whether that person seeks a different order from that set out in the application form and, if so, set out what that order is;

(d) provide an address for service, which must be within the jurisdiction of the court;; and

(e) be signed by that person or that person's legal representative.

(5) Subject to rules 15.2 and 15.5 (restriction on filing an expert's report and court's power to restrict expert evidence), unless the court directs otherwise, where a person who has been served in accordance with rule 9.6, 9.7 or 9.8 opposes the application or seeks a different order, that person must within 28 days of such service file a witness statement containing any evidence upon which that person intends to rely.

(6) In addition to complying with the other requirements of this rule, an acknowledgment of notification filed by a person notified of the application in accordance with rule 9.7(5), 9.8(5), 9.9 or 9.10 must—

(a) indicate whether the person wishes to be joined as a party to the proceedings; and

(b) state the person's interest in the proceedings.

(7) Subject to rules 15.2 and 15.5 (restriction on filing an expert's report and court's power to restrict expert evidence), unless the court directs otherwise, where a person has been notified in accordance with rule 9.7(5), 9.8(5), 9.9 or 9.10, that person must within 28 days of such notification file a witness statement containing any evidence of that person's interest in the proceedings and, if that person opposes the application or seeks a different order, any evidence upon which that person intends to rely.

(8) The court must consider whether to join a person mentioned in paragraph (6) as a party to the proceedings and, if it decides to do so, must make an order to that effect.

(9) Where a person who is notified in accordance with rule 9.7(5), 9.8(5), 9.9 or 9.10 complies with the requirements of this rule, that person need not comply with the requirements of rule 9.15 (application to be joined as a party).

(10) A practice direction may make provision about responding to applications.

The parties to the proceedings

Parties to the proceedings

9.13.—(1) Unless the court directs otherwise, the parties to any proceedings are—

(a) the applicant; and

(b) any person who is named as a respondent in the application form and who files an acknowledgment of service in respect of the application form.

(2) The court may order a person to be joined as a party if it considers that it is desirable to do so for the purpose of dealing with the application.

(3) The court may at any time direct that any person who is a party to the proceedings is to be removed as a party.

(4) Unless the court orders otherwise, P shall not be named as a respondent to any proceedings.

(5) A party to the proceedings is bound by any order or direction of the court made in the course of those proceedings.

Persons to be bound as if parties

9.14.—(1) The persons mentioned in paragraph (2) shall be bound by any order made or directions given by the court in the same way that a party to the proceedings is so bound.

(2) The persons referred to in paragraph (1) are—

(a) P; and

(b) any person who has been served with or notified of an application form in accordance with these Rules.

Application to be joined as a party

9.15.—(1) Any person with sufficient interest may apply to the court to be joined as a party to the proceedings.

(2) An application to be joined as a party must be made by filing an application notice in accordance with Part 10, which must—

(a) state the full name and address of the person seeking to be joined as a party to the proceedings;

(b) state that person's interest in the proceedings;

(c) state whether that person consents to the application;

(d) state whether that person opposes the application and, if so, set out the grounds for doing so;

(e) state whether that person proposes that an order different from that set out in the application form should be made and, if so, set out what that order is;

(f) provide an address for service, which must be within the jurisdiction of the court; and

(g) be signed by that person or that person's legal representative.

(3) Subject to rules 15.2 and 15.5 (restriction on filing an expert's report and court's power to restrict expert evidence), a person's application to be joined must be accompanied by—

(a) a witness statement containing evidence of that person's interest in the proceedings and, if that person proposes that an order different from that set out in the application form should be made, the evidence on which that person intends to rely; and

(b) a sufficient number of copies of the application notice to enable service of the application on every other party to the proceedings.

(4) The court must serve the application notice and any accompanying documents on all parties to the proceedings.

(5) The court must consider whether to join a person applying under this rule as a party to the proceedings and, if it decides to do so, must make an order to that effect.

Application for removal as a party to proceedings

9.16. A person who wishes to be removed as a party to the proceedings must apply to the court for an order to that effect in accordance with Part 10.

PART 10

APPLICATIONS WITHIN PROCEEDINGS

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Types of applications for which the Part 10 procedure may be used

10.1.—(1) The Part 10 procedure is the procedure set out in this Part.

(2) The Part 10 procedure may be used if the application is made by any person—

(a) in the course of existing proceedings; or

(b) as provided for in a rule or practice direction.

(3) The court may grant an interim remedy before an application form has been issued only if—

(a) the matter is urgent; or

(b) it is otherwise necessary to do so in the interests of justice.

(4) An application made during the course of existing proceedings includes an application made during appeal proceedings.

(5) Where the application seeks solely to withdraw an existing application—

(a) the applicant must file a written request for permission setting out succinctly the reasons for the request;

(b) the request must be in an application notice;

(c) the court may permit an application to be made orally at a hearing or in such alternative written form as it thinks fit.

(6) Where the court deals with a written request under paragraph (5) without a hearing, rule 13.4 applies to any order so made.

(Rule 13.2 requires the court's permission to withdraw proceedings.)

Application notice to be filed

10.2.—(1) Subject to paragraph (5), the applicant must file an application notice to make an application under this Part.

(2) The applicant must, when filing the application notice, file the evidence on which the applicant relies (unless such evidence has already been filed).

(3) The court must 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.

(4) Notice under paragraph (3) must 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 party to the proceedings; and

(d) any other person, as the court may direct.

(5) An applicant may make an application under this Part without filing an application notice if—

(a) this is permitted by any rule or practice direction; or

(b) the court dispenses with the requirement for an application notice.

(6) If the applicant makes an application without giving notice, the evidence in support of the application notice must state why notice has not been given.

What an application notice must include

10.3. An application notice must state—

(a) what order or direction the applicant is seeking;

(b) briefly, the grounds on which the applicant is seeking the order or direction; and

(c) such other information as may be required by any rule or practice direction.

Service of an application notice

10.4.—(1) Subject to paragraphs (4) and (5), the applicant must serve a copy of the application notice on—

(a) anyone who is named as a respondent in the application notice (if not otherwise a party to the proceedings);

(b) every party to the proceedings; and

(c) any other person, as the court may direct,

as soon as possible and in any event within 14 days of the date on which it was issued.

(2) The application notice must be accompanied by a copy of the evidence filed in support.

(3) The applicant must file a certificate of service within 7 days beginning with the date on which the documents were served.

(4) This rule does not require a copy of evidence to be served on a person on whom it has already been served, but the applicant must in such a case give to that person notice of the evidence on which the applicant intends to rely.

(5) An application may be made without serving a copy of the application notice if this is permitted by—

(a) a rule;

(b) a practice direction; or

(c) the court.

Applications without notice

10.5.—(1) This rule applies where the court has dealt with an application which was made without notice having been given to any person.

(2) Where the court makes an order, whether granting or dismissing the application, the applicant must, as soon as practicable or within such period as the court may direct, serve the documents mentioned in paragraph (3) on—

(a) anyone named as a respondent in the application notice (if not otherwise a party to the proceedings);

(b) every party to the proceedings; and

(c) any other person, as the court may direct.

(3) The documents referred to in paragraph (2) are—

(a) a copy of the application notice;

(b) the court's order; and

(c) any evidence filed in support of the application.

(Rule 13.4 provides for reconsideration of orders made without a hearing or without notice to a person.)

Security for costs

10.6.—(1) A respondent to any application may apply for security for the respondent's costs of the proceedings.

(2) An application for security for costs must be supported by written evidence.

(3) Where the court makes an order for security for costs, it must—

(a) determine the amount of security; and

(b) direct—

(i) the manner in which; and

(ii) the time within which,

the security must be given.

Conditions to be satisfied

10.7.—(1) The court may make an order for security for costs under rule 10.6—

(a) if it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and

(b) if—

(i) one or more of the conditions in paragraph (2) applies; or

(ii) an enactment permits the court to require security for costs.

(2) The conditions are—

(a) the applicant is—

(i) resident out of the jurisdiction; but

(ii) not resident in a Brussels Contracting State, a State bound by the Lugano Convention or a Regulation State, as defined in section 1(3) of the Civil Jurisdiction and Judgments Act 1982(**a**);

(b) the applicant is a company or other body (whether incorporated inside or outside Great Britain) and there is reason to believe that it will be unable to pay the respondent's costs if ordered to do so;

(c) the applicant has changed address since proceedings were commenced with a view to avoiding the consequences of the litigation;

(d) the applicant failed to give an address, or gave an incorrect address, in the application form commencing the proceedings;

(e) the applicant is acting as a nominal applicant and there is reason to believe that the applicant will be unable to pay the respondent's costs if ordered to do so;

(**a**) 1982 c. 27. Section 1(3) has been amended by S.I. 1990/2591, article 6, section 2(5) and (6) of the Civil Jurisdiction and Judgments Act 1991 (c. 12), S.I. 2007/1655, regulation 2(1), (3)(a), S.I. 2009/3131, regulations 2. 3(1), 4, S.I. 2011/1215, regulations 3 and 4, and S.I. 2012/1809, article 3(1), Schedule Part 1.

(f) the applicant has taken steps in relation to the applicant's assets that would make it difficult to enforce an order for costs against the applicant.

Security for costs other than from the applicant

10.8.—(1) The respondent may seek an order against a person other than the applicant, and the court may make an order for security for costs against that person, if—

(a) it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and

(b) one or more of the conditions in paragraph (2) applies.

(2) The conditions are that the person—

(a) has assigned the right to the substantive matter to the applicant with a view to avoiding the possibility of a costs order being made against the person; or

(b) has contributed or agreed to contribute to the applicant's costs in return for a share of any money or property which the applicant may recover or be awarded in the proceedings; and

is a person against whom a costs order may be made.

(Rule 19.12 makes provision about costs orders against non-parties.)

Security for costs of an appeal

10.9.—(1) The court may order security for costs of an appeal against—

(a) an appellant;

(b) a respondent who also appeals,

on the same grounds as it may order security for costs against an applicant under rule 10.6.

(2) The court may also make an order under paragraph (1) where the appellant or the respondent who also appeals is a limited company and there is reason to believe it will be unable to pay the costs of the other parties to the appeal should its appeal be unsuccessful.

Interim remedies

Orders for interim remedies

10.10.—(1) The court may grant the following interim remedies—

(a) an interim injunction;

(b) an interim declaration; or

(c) any other interim order it considers appropriate.

(2) Unless the court orders otherwise, a person on whom an application form is served under Part 9, or who is given notice of such an application, may not apply for an interim remedy before filing an acknowledgment of service or notification in accordance with Part 9.

(3) This rule does not limit any other power of the court to grant interim relief.

PART 11

DEPRIVATION OF LIBERTY

Contents of this Part

Deprivation of liberty Rule 11.1

Deprivation of liberty

11.1. The practice direction to this Part sets out procedure governing—

(a) applications to the court for orders relating to the deprivation, or proposed deprivation, of liberty of P; and

(b) proceedings (for example, relating to costs or appeals) connected with or consequent on such applications.

PART 12

HUMAN RIGHTS

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General

12.1.—(1) A party who seeks to rely upon any provision of or right arising under the Human Rights Act 1998(**a**) ("the 1998 Act") or who seeks a remedy available under that Act must inform the court in the manner set out in the relevant practice direction specifying—

(a) the Convention right (within the meaning of the 1998 Act) which it is alleged has been infringed and details of the alleged infringement; and

(b) the remedy sought and whether this includes a declaration of incompatibility under section 4 of the 1998 Act.

(2) The court may not make a declaration of incompatibility unless 21 days' notice, or such other period of notice as the court directs, has been given to the Crown.

(3) Where notice has been given to the Crown, a Minister or other person permitted by the 1998 Act shall be joined as a party on filing an application in accordance with rule 9.15 (application to be joined as a party).

PART 13

JURISDICTION, WITHDRAWAL OF PROCEEDINGS, PARTICIPATION AND RECONSIDERATION

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(**a**) 1998 c. 42.

Disputing the jurisdiction of the court

Procedure for disputing the court's jurisdiction

13.1.—(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 its jurisdiction,

may apply to the court at any time for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction that it may have.

(2) An application under this rule must be—

(a) made by using the form specified in the relevant practice direction; and

(b) supported by evidence.

(3) An order containing a declaration that the court has no jurisdiction or will not exercise its jurisdiction may also make further provision, including—

(a) setting aside the application;

(b) discharging any order made;

(c) staying the proceedings;

(d) discharging any litigation friend or rule 1.2 representative.

Withdrawal of proceedings

Permission required to withdraw proceedings

13.2.—(1) Proceedings may only be withdrawn with the permission of the court.

(2) An application to withdraw proceedings must be made in accordance with Part 10.

Participation in hearings

Participation in hearings

13.3.—(1) The court may hear P on the question of whether or not an order should be made, whether or not P is a party to the proceedings.

(2) The court may proceed with a hearing in the absence of P if it considers that it would be appropriate to do so.

(3) A person other than P who is served with or notified of the application may only take part in a hearing if—

(a) that person files an acknowledgment in accordance with these Rules and is made a party to the proceedings; or

(b) the court permits.

(Rule 1.2 deals with participation of P.)

Reconsideration of court orders

Orders made without a hearing or without notice to any person

13.4.—(1) This rule applies where the court makes an order—

(a) without a hearing; or

(b) without notice to any person who is affected by it.

(2) Where this rule applies—

(a) P;

(b) any party to the proceedings; or

(c) any other person affected by the order,

may apply to the court for reconsideration of the order made.

(3) An application under paragraph (2) must be made—

(a) within 21 days of the order being served or such other period as the court may direct; and

(b) in accordance with Part 10.

(4) The court shall—

(a) reconsider the order without directing a hearing; or

(b) fix a date for the matter to be heard and notify all parties to the proceedings, and such other persons as the court may direct, of that date.

(5) Where an application is made in accordance with this rule, the court may affirm, set aside or vary any order made.

(6) An order made by a court officer authorised under rule 2.3 may be reconsidered by any judge.

(7) An order made by a Tier 1 Judge may be reconsidered by any judge.

(8) An order made by a Tier 2 Judge may be reconsidered by any Tier 2 Judge or by a Tier 3 Judge.

(9) An order made by a Tier 3 Judge may be reconsidered by any Tier 3 Judge.

(10) In any case to which paragraphs (7) to (9) apply the reconsideration may be carried out by the judge who made the order being reconsidered.

(11) No application may be made seeking a reconsideration of—

(a) an order that has been made under paragraph (5); or

(b) an order granting or refusing permission to appeal.

(12) An appeal against an order made under paragraph (5) may be made in accordance with Part 20 (appeals).

(13) Any order made without a hearing or without notice to any person, other than one made under paragraph (5) or one granting or refusing permission to appeal, must contain a statement of the right to apply for a reconsideration of the decision in accordance with this rule.

(14) An application made under this rule may include a request that the court reconsider the matter at a hearing.

(Rule 2.3(2)(c) provides that a court officer authorised under that rule may not deal with an application for the reconsideration of an order made by that court officer or another court officer.)

PART 14

ADMISSIONS, EVIDENCE AND DEPOSITIONS

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Admissions

Making an admission

14.1.—(1) Without prejudice to the ability to make an admission in any other way, a party may admit the truth of the whole or part of another party's case by giving notice in writing.

(2) The court may allow a party to amend or withdraw an admission.

Evidence

Power of court to control evidence

14.2. The court may—

(a) control the evidence by giving directions as to—

(i) the issues on which it requires evidence;

(ii) the nature of the evidence which it requires to decide those issues; and

(iii) the way in which the evidence is to be placed before the court;

(b) use its power under this rule to exclude evidence that would otherwise be admissible;

(c) allow or limit cross-examination;

(d) admit such evidence, whether written or oral, as it thinks fit; and

(e) admit, accept and act upon such information, whether oral or written, from P, any protected party or any person who lacks competence to give evidence, as the court considers sufficient, although not given on oath and whether or not it would be admissible in a court of law apart from this rule.

Evidence of witnesses – general rule

14.3.—(1) The general rule is that any fact which needs to be proved by evidence of a witness is to be proved—

(a) where there is a final hearing, by the witness's oral evidence; or

(b) at any other hearing, or if there is no hearing, by the witness's evidence in writing.

(2) Where a witness is called to give oral evidence under paragraph (1)(a), the witness statement of that witness shall stand as his or her evidence in chief unless the court directs otherwise.

(3) A witness giving oral evidence at the final hearing may, if the court permits—

(a) amplify his or her witness statement; and

(b) give evidence in relation to new matters which have arisen since the witness statement was made.

(4) The court may so permit only if it considers that there is good reason not to confine the evidence of the witness to the contents of the witness statement.

(5) This rule is subject to—

(a) any provision to the contrary in these Rules or elsewhere; or

(b) any order or direction of the court.

Written evidence – general rule

14.4. A party may not rely on written evidence unless—

(a) it has been filed in accordance with these Rules or a practice direction;

(b) it is expressly permitted by these Rules or a practice direction; or

(c) the court gives permission.

Evidence by video link or other means

14.5. The court may allow a witness to give evidence through a video link or by other communication technology.

Service of witness statements for use at final hearing

14.6.—(1) A witness statement is a written statement by a person which contains the evidence which that person would be allowed to give orally.

(2) The court will give directions about the service of any witness statement upon which a party intends to rely at the final hearing.

(3) The court may give directions as to the order in which witness statements are to be served.

(Rules 5.2 and 14.7 require witness statements to be verified by a statement of truth.)

Form of witness statement

14.7. A witness statement must contain a statement of truth and comply with the requirements set out in the relevant practice direction.

Witness summaries

14.8.—(1) A party who wishes to file a witness statement for use at the final hearing, but is unable to do so, may apply without notice to be permitted to file a witness summary instead.

(2) A witness summary is a summary of—

(a) the evidence, if known, which would otherwise be included in a witness statement; or

(b) if the evidence is not known, the matters about which the party filing the witness summary proposes to question the witness.

(3) Unless the court directs otherwise, a witness summary must include the name and address of the intended witness.

(4) Unless the court directs otherwise, a witness summary must be filed within the period in which a witness statement would have had to be filed.

(5) Where a party files a witness summary, so far as practicable, rules 14.3(3)(a) (amplifying witness statements) and 14.6 (service of witness statements for use at final hearing) shall apply to the summary.

Affidavit evidence

14.9. Evidence must be given by affidavit instead of or in addition to a witness statement if this is required by the court, a provision contained in any rule, a practice direction or any other enactment.

Form of affidavit

14.10. An affidavit must comply with the requirements set out in the relevant practice direction.

Affidavit made outside the jurisdiction

14.11. A person may make an affidavit outside the jurisdiction in accordance with—

(a) this Part; or

(b) the law of the place where that person makes the affidavit.

Notarial acts and instruments

14.12. A notarial act or instrument may, without further proof, be received in evidence as duly authenticated in accordance with the requirements of law unless the contrary is proved.

Summoning of witnesses

14.13.—(1) The court may allow or direct any party to issue a witness summons requiring the person named in it to attend before the court and give oral evidence or produce any document to the court.

(2) An application by a party for the issue of a witness summons may be made by filing an application notice with includes—

(a) the name and address of the applicant and the applicant's solicitor, if any;

(b) the name, address and occupation of the proposed witness;

(c) particulars of any document which the proposed witness is to be required to produce; and

(d) the grounds on which the application is made.

(3) The general rule is that a witness summons is binding if it is served at least 7 days before the date on which the witness is required to attend before the court, and the requirements of paragraph (6) have been complied with.

(4) The court may direct that a witness summons shall be binding although it will be served less than 7 days before the date on which the witness is required to attend before the court.

(5) Unless the court directs otherwise, a witness summons is to be served by the person making the application.

(6) At the time of service the witness must be offered or paid—

(a) a sum reasonably sufficient to cover the witness's expenses in travelling to and from the court; and

(b) such sum by way of compensation for loss of time as may be specified in the relevant practice direction.

(7) The court may order that the witness is to be paid such general costs as it considers appropriate.

Power of court to direct a party to provide information

14.14.—(1) Where a party has access to information which is not reasonably available to the other party, the court may direct that party to prepare and file a document recording that information.

(2) The court shall give directions about serving a copy of that document on the other parties.

Depositions

Evidence by deposition

14.15.—(1) A party may apply for an order for a person to be examined before the hearing takes place.

(2) A person from whom evidence is to be obtained following an order under this rule is referred to as a "deponent" and the evidence is referred to as a "deposition".

(3) An order under this rule shall be for a deponent to be examined on oath before—

(a) a circuit judge or a district judge, whether or not nominated as a judge of the court;

(b) an examiner of the court; or

(c) such other person as the court appoints.

(4) The order may require the production of any document which the court considers is necessary for the purposes of the examination.

(5) The order will state the date, time and place of the examination.

(6) At the time of service of the order, the deponent must be offered or paid—

(a) a sum reasonably sufficient to cover the deponent's expenses in travelling to and from the place of examination; and

(b) such sum by way of compensation for loss of time as may be specified in the relevant practice direction.

(7) Where the court makes an order for a deposition to be taken, it may also order the party who obtained the order to file a witness statement or witness summary in relation to the evidence to be given by the person to be examined.

Conduct of examination

14.16.—(1) Subject to any directions contained in the order for examination, the examination must be conducted in the same way as if the witness were giving evidence at a final hearing.

(2) If all the parties are present, the examiner may conduct the examination of a person not named in the order for examination if all the parties and the person to be examined consent.

(3) The examiner must ensure that the evidence given by the witness is recorded in full.

(4) The examiner must send a copy of the deposition—

(a) to the person who obtained the order for the examination of the witness; and

(b) to the court.

(5) The court shall give directions as to the service of a copy of the deposition on the other parties.

Fees and expenses of examiners of the court

14.17.—(1) An examiner of the court may charge a fee for the examination and need not send the deposition to the court until the fee is paid, unless the court directs otherwise.

(2) The examiner's fees and expenses must be paid by the party who obtained the order for examination.

(3) If the fees and expenses due to an examiner are not paid within a reasonable time, the examiner may report that fact to the court.

(4) The court may order the party who obtained the order for examination to deposit in the court office a specified sum in respect of the examiner's fees and, where it does so, the examiner shall not be asked to act until the sum has been deposited.

(5) An order under this rule does not affect any decision as to the person who is ultimately to bear the costs of the examination.

Examiners of the court

14.18.—(1) The Lord Chancellor shall appoint persons to be examiners of the court.

(2) The persons appointed shall be barristers or solicitor-advocates who have been practising for a period of not less than 3 years.

(3) The Lord Chancellor may revoke an appointment at any time.

(4) In addition to persons appointed in accordance with this rule, examiners appointed under rule 34.15 of the Civil Procedure Rules 1998 may act as examiners in the court.

Enforcing attendance of a witness

14.19.—(1) If a person served with an order to attend before an examiner—

(a) fails to attend; or

(b) refuses to be sworn for the purpose of the examination or to answer any lawful question or produce any document at the examination,

a certificate of that person's failure or refusal, signed by the examiner, must be filed by the party requiring the deposition.

(2) On the certificate being filed, the party requiring the deposition may apply to the court for an order requiring that person to attend or to be sworn or to answer any question or produce any document, as the case may be.

(3) An application for an order under this rule may be made without notice.

(4) The court may order the person against whom an order is sought or made under this rule to pay any costs resulting from that person's failure or refusal.

Use of deposition at a hearing

14.20.—(1) A deposition ordered under rule 14.15, 14.22 or 14.23 may be put in evidence at a hearing unless the court orders otherwise.

(2) A party intending to put a deposition in evidence at a hearing must file notice of intention to do so on the court and serve the notice on every other party.

(3) Unless the court directs otherwise, that party must file the notice at least 14 days before the day fixed for the hearing.

(4) The court may require a deponent to attend the hearing and give evidence orally.

Interpretation

14.21. In this rule and rules 14.22 and 14.23—

(a) "Regulation State" has the same meaning as "Member State" in the Taking of Evidence Regulation, that is, all Member States except Denmark; and

(b) "the Taking of Evidence Regulation" means Council Regulation (EC) No. 1206/2001 of 28 May 2001 on co-operation between the courts of Member States in the taking of evidence in civil and commercial matters(**a**).

Where a person to be examined is in another Regulation State

14.22.—(1) This rule applies where a party wishes to take a deposition from a person who is—

(a) outside the jurisdiction; and

(b) in a Regulation State.

(2) The court may order the issue of the request to a designated court ("the requested court") in the Regulation State in which the proposed deponent is.

(3) If the court makes an order for the issue of a request, the party who sought the order must file—

(a) a draft Form A, as set out in the Annex to the Taking of Evidence Regulation (request for the taking of evidence);

(b) except where paragraph (4) applies, a translation of the form;

(c) an undertaking to be responsible for the costs sought by the requested court in relation to—

  (i) fees paid to experts and interpreters; and

  (ii) where requested by that party, the use of special procedure or communications technology; and

(d) an undertaking to be responsible for the court's expenses.

(4) There is no need to file a translation if—

(a) English is one of the official languages of the Regulation State where the examination is to take place; or

(b) the Regulation State has indicated, in accordance with the Taking of Evidence Regulation, that English is a language which it will accept.

(5) Where article 17 of the Taking of Evidence Regulation (direct taking of evidence by the requested court) allows evidence to be taken directly in another Regulation State, the court may make an order for the submission of a request in accordance with that article.

(6) If the court makes an order for the submission of a request under paragraph (5), the party who sought the order must file—

(a) a draft Form I as set out in the Annex to the Taking of Evidence Regulation (request for direct taking of evidence);

(b) except where paragraph (4) applies, a translation of the form; and

(c) an undertaking to be responsible for the requested court's expenses.

Where a person to be examined is out of the jurisdiction – letter of request

14.23.—(1) This rule applies where a party wishes to take a deposition from a person who is—

(**a**) O.J. No. L 174/1, 27.6.2001.

(a) out of the jurisdiction; and

(b) not in a Regulation State within the meaning of rule 14.21.

(2) The court may order the issue of a letter of request to the judicial authorities of the country in which the proposed deponent is.

(3) A letter of request is a request to a judicial authority to take the evidence of that person, or arrange for it to be taken.

(4) If the government of a country permits a person appointed by the court to examine a person in that country, the court may make an order appointing a special examiner for that purpose.

(5) A person may be examined under this rule on oath or affirmation in accordance with any procedure permitted in the country in which the examination is to take place.

(6) If the court makes an order for the issue of a letter of request, the party who sought the order must file—

(a) the following documents and, except where paragraph (7) applies, a translation of them—

(i) a draft letter of request;

(ii) a statement of the issues relevant to the proceedings; and

(iii) a list of questions or the subject matter of questions to be put to the person to be examined; and

(b) an undertaking to be responsible for the Secretary of State's expenses.

(7) There is no need to file a translation if—

(a) English is one of the official languages of the country where the examination is to take place; or

(b) a practice direction has specified that country as a country where no translation is necessary.

Section 49 reports

Reports under section 49 of the Act

14.24.—(1) This rule applies where the court requires a report to be made to it under section 49 of the Act.

(2) It is the duty of the person who is required to make the report to help the court on the matters within that person's expertise.

(3) Unless the court directs otherwise, the person making the report must—

(a) contact or seek to interview such persons as the person making the report thinks appropriate or as the court directs;

(b) to the extent that it is practicable and appropriate to do so, ascertain what P's wishes and feelings are, and the beliefs and values that would be likely to influence P if P had the capacity to make a decision in relation to the matters to which the application relates;

(c) describe P's circumstances; and

(d) address such other matters as are required in a practice direction or as the court may direct.

(4) The court will send a copy of the report to the parties and to such persons as the court may direct.

(5) Subject to paragraphs (6) and (7), the person who is required to make the report may examine and take copies of any documents in the court records.

(6) The court may direct that the right to inspect documents under this rule does not apply in relation to such documents, or descriptions of documents, as the court may specify.

(7) The court may direct that any information is to be provided to the maker of the report on an edited basis.

Written questions to person making a report under section 49

14.25.—(1) Where a report is made under section 49 the court may, on the application of any party, permit written questions relevant to the issues before the court to be put to the person by whom the report was made.

(2) The questions sought to be put to the maker of the report shall be submitted to the court, and the court may put them to the maker of the report with such amendments (if any) as it thinks fit and the maker of the report shall give replies in writing to the questions so put.

(3) The court shall send a copy of the replies given by the maker of the report under this rule to the parties and to such other persons as the court may direct.

PART 15

EXPERTS

Contents of this Part

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Expert's right to ask court for directions	Rule 15.11
Court's power to direct that evidence is to be given by a single joint expert	Rule 15.12
Instructions to a single joint expert	Rule 15.13

References to expert

15.1. A reference to an expert in this Part—

(a) is to an expert who has been instructed to give or prepare evidence for the purpose of court proceedings; but

(b) does not include any person instructed to make a report under section 49 of the Act.

Restriction on filing an expert's report

15.2.—(1) No person may file expert evidence unless the court or a practice direction permits, or if it is filed with the application form and is evidence—

(a) that P is a person who lacks capacity to make a decision or decisions in relation to the matter or matters to which the application relates;

(b) as to P's best interests; or

(c) that is required by any rule or practice direction to be filed with the application form.

(2) An applicant may only rely on any expert evidence so filed in support of the application form to the extent and for the purposes that the court allows.

(Rule 9.4(a) requires the applicant to file any evidence upon which the applicant wishes to rely with the application form.)

Duty to restrict expert evidence

15.3.—(1) Expert evidence shall be restricted to that which is necessary to assist the court to resolve the issues in the proceedings.

(2) The court may give permission to file or adduce expert evidence as mentioned in rule 15.2(1) and 15.5(1) only if satisfied that the evidence—

(a) is necessary to assist the court to resolve the issues in the proceedings; and

(b) cannot otherwise be provided either—

(i) by a rule 1.2 representative; or

(ii) in a report under section 49 of the Act.

Experts – overriding duty to the court

15.4.—(1) It is the duty of the expert to help the court on the matters within the expert's expertise.

(2) This duty overrides any obligation to the person from whom the expert has received instructions or by whom the expert is paid.

Court's power to restrict expert evidence

15.5.—(1) Subject to rule 15.2, no party may file or adduce expert evidence unless the court or a practice direction permits.

(2) When a party applies for a direction under this rule, that party must—

(a) identify the field in respect of which that party wishes to rely upon expert evidence, and the issues to which the expert evidence is to relate;

(b) where practicable, identify the expert in that field upon whose evidence the party wishes to rely;

(c) provide any other material information about the expert;

(d) state whether the expert evidence could be obtained from a single joint expert;

(e) provide any other information or documents required by a practice direction; and

(f) provide a draft letter of instruction to the expert.

(3) When deciding whether to give permission as mentioned in paragraph (1), the court is to have regard in particular to—

(a) the issues to which the expert evidence would relate;

(b) the questions which the expert would answer;

(c) the impact which giving permission would be likely to have on the timetable, duration and conduct of the proceedings;

(d) any failure to comply with any direction of the court about expert evidence; and

(e) the cost of the expert evidence.

(4) Where a direction is given under this rule, the court shall specify—

(a) the field or fields in respect of which the expert evidence is to be provided;

(b) the questions which the expert is required to answer; and

(c) the date by which the expert is to provide the evidence.

(5) The court may specify the person who is to provide the evidence referred to in paragraph (3).

(6) Where a direction is given under this rule for a party to call an expert or put in evidence an expert's report, the court shall give directions for the service of the report on the parties and on such other persons as the court may direct.

(7) The court may limit the amount of the expert's fees and expenses that the party who wishes to rely upon the expert may recover from any other party.

General requirement for expert evidence to be given in a written report

15.6. Expert evidence is to be given in a written report unless the court directs otherwise.

Written questions to experts

15.7.—(1) A party may put written questions to—

(a) an expert instructed by another party; or

(b) a single joint expert appointed under rule 15.12,

about a report prepared by such a person.

(2) Written questions under paragraph (1)—

(a) may be put once only;

(b) must be put within 28 days beginning with the date on which the expert's report was served;

(c) must be for the purpose only of clarification of the report; and

(d) must be copied and sent to the other parties at the same time as they are sent to the expert.

(3) Paragraph (2) does not apply in any case where—

(a) the court permits it to be done on a further occasion;

(b) the other party or parties agree; or

(c) any practice direction provides otherwise.

(4) An expert's answers to questions put in accordance with paragraph (1) shall be treated as part of the expert's report.

(5) Paragraph (6) applies where—

(a) a party has put a written question to an expert instructed by another party in accordance with this rule; and

(b) the expert does not answer that question.

(6) The court may make one or both of the following orders in relation to the party who instructed the expert—

(a) that the party may not rely upon the evidence of that expert; or

(b) that the party may not recover the fees and expenses of that expert, or part of them, from any other party.

(7) Unless the court directs otherwise, and subject to any final costs order that may be made, the instructing party is responsible for the payment of the expert's fees and expenses, including the expert's costs of answering questions put by any other party.

Contents of expert's report

15.8.—(1) The court may give directions as to the matters to be covered in an expert's report.

(2) An expert's report must comply with the requirements set out in the relevant practice direction.

(3) At the end of an expert's report there must be a statement that the expert—

(a) understands his or her duty to the court; and

(b) has complied with that duty.

(4) The expert's report must state the substance of all material instructions, whether written or oral, on the basis of which the report was written.

(5) The instructions to the expert shall not be privileged against disclosure.

Use by one party of expert's report disclosed by another

15.9. Where a party has disclosed an expert's report, any party may use that expert's report as evidence at any hearing in the proceedings.

Discussions between experts

15.10.—(1) The court may, at any stage, direct a discussion between experts for the purpose of requiring the experts to—

(a) identify and discuss the expert issues in the proceedings; and

(b) where possible, reach an agreed opinion on those issues.

(2) The court may specify the issues which the experts must discuss.

(3) The court may direct that following a discussion between the experts they must prepare a statement for the court showing—

(a) those issues on which they agree; and

(b) those issues on which they disagree and a summary of their reasons for disagreeing.

(4) Unless the court directs otherwise, the content of the discussions between experts may be referred to at any hearing or at any stage in the proceedings.

Expert's right to ask court for directions

15.11.—(1) An expert may file a written request for directions to assist in carrying out the expert's functions as an expert.

(2) An expert must, unless the court directs otherwise, provide a copy of any proposed request for directions under paragraph (1)—

(a) to the party instructing the expert, at least 7 days before filing the request; and

(b) to all other parties, at least 4 days before filing it.

(3) The court, when it gives directions, may also direct that a party be served with a copy of the directions.

Court's power to direct that evidence is to be given by a single joint expert

15.12.—(1) Where two or more parties wish to submit expert evidence on a particular issue, the court may direct that the evidence on that issue is to be given by one expert only.

(2) The parties wishing to submit the expert evidence are called "the instructing parties".

(3) Where the instructing parties cannot agree who should be the expert, the court may—

(a) select the expert from a list prepared or identified by the instructing parties; or

(b) direct the manner by which the expert is to be selected.

Instructions to a single joint expert

15.13.—(1) Where the court gives a direction under rule 15.12 for a single joint expert to be used, the instructions are to be contained in a jointly agreed letter unless the court directs otherwise.

(2) Where the instructions are to be contained in a jointly agreed letter, in default of agreement the instructions may be determined by the court on the written request of any instructing party copied to the other instructing parties.

(3) Where the court permits the instructing parties to give separate instructions to a single joint expert, unless the court directs otherwise, when an instructing party gives instructions to the expert, that party must at the same time send a copy of the instructions to the other instructing party or parties.

(4) The court may give directions about—

(a) the payment of the expert's fees and expenses; and

(b) any inspection, examination or experiments which the expert wishes to carry out.

(5) The court may, before an expert is instructed, limit the amount that can be paid by way of fees and expense to the expert.

(6) Unless the court directs otherwise, and subject to any final costs order that may be made, the instructing parties are jointly and severally liable for the payment of the expert's fees and expenses.

PART 16

DISCLOSURE

Contents of this Part

Meaning of disclosure	Rule 16.1
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Meaning of disclosure

16.1. A party discloses a document by stating that the document exists or has existed.

General or specific disclosure

16.2.—(1) The court may either on its own initiative or on the application of a party make an order to give general or specific disclosure.

(2) General disclosure requires a party to disclose—

(a) the documents on which that party relies; and

(b) the documents which—

(i) adversely affect that party's own case;

(ii) adversely affect another party's case; or

(iii) support another party's case.

(3) An order for specific disclosure is an order that a party must do one or more of the following things—

(a) disclose documents or classes of documents specified in the order;

(b) carry out a search to the extent stated in the order; or

(c) disclose any document located as a result of that search.

(4) A party's duty to disclose documents is limited to documents which are or have been in that party's control.

(5) For the purposes of paragraph (4) a party has or has had a document in that party's control if—

(a) it is or was in that party's physical possession;

(b) that party has or has had possession of it; or

(c) that party has or has had a right to inspect or take copies of it.

Procedure for general or specific disclosure

16.3.—(1) This rule applies where the court makes an order under rule 16.2 to give general or specific disclosure.

(2) Each party must make, and serve on every other party, a list of documents to be disclosed.

(3) A copy of each list must be filed within 7 days of the date on which it is served.

(4) The list must identify the documents in a convenient order and manner and as concisely as possible.

(5) The list must indicate—

(a) the documents in respect of which the party claims a right or duty to withhold inspection (see rule 16.7); and

(b) the documents that are no longer in the party's control, stating what has happened to them.

Ongoing duty of disclosure

16.4.—(1) Where the court makes an order to give general or specific disclosure under rule 16.2, any party to whom the order applies is under a continuing duty to provide such disclosure as is required by the order until the proceedings are concluded.

(2) If a document to which the duty of disclosure imposed by paragraph (1) extends comes to a party's notice at any time during the proceedings, that party must immediately notify every other party.

Right to inspect documents

16.5.—(1) A party to whom a document has been disclosed has a right to inspect any document disclosed to that party except where—

(a) the document is no longer in the control of the party who disclosed it; or

(b) the party disclosing the document has a right or duty to withhold inspection of it.

(2) The right to inspect disclosed documents extends to any document mentioned in—

(a) a document filed or served in the course of the proceedings by any other party; or

(b) correspondence sent by any other party.

Inspection and copying of documents

16.6.—(1) Where a party has a right to inspect a document, that party—

(a) must give the party who disclosed the document written notice of the wish to inspect it; and

(b) may request a copy of the document.

(2) Not more than 14 days after the date on which the party who disclosed the document received the notice under paragraph (1)(a), that party must permit inspection of the document at a convenient place and time.

(3) Where a party has requested a copy of the document, the party who disclosed the document must supply the requesting party with a copy not more than 14 days after the date on which the request was received.

(4) For the purposes of paragraph (2), the party who disclosed the document must give reasonable notice of the time and place for inspection.

(5) For the purposes of paragraph (3), the party requesting a copy of the document is responsible for the payment of reasonable copying costs, subject to any final costs order that may be made.

Claim to withhold inspection or disclosure of documents

16.7.—(1) A party who wishes to claim a right or duty to withhold inspection of a document, or part of a document, must state in writing—

(a) that that party has such a right or duty; and

(b) the grounds on which that party claims that right or duty.

(2) The statement must be made in the list in which the document is disclosed (see rule 16.3(2)).

(3) A party may, by filing an application notice in accordance with Part 10, apply to the court to decide whether the claim made under paragraph (1) should be upheld.

Consequence of failure to disclose documents or permit inspection

16.8. A party may not rely upon any document which that party fails to disclose or in respect of which that party fails to permit inspection, unless the court permits.

PART 17

LITIGATION FRIENDS AND RULE 1.2 REPRESENTATIVES

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SECTION 1 – LITIGATION FRIENDS

Who may act as a litigation friend

17.1.—(1) A person may act as a litigation friend on behalf of a person mentioned in paragraph (2) if that person—

(a) can fairly and competently conduct proceedings on behalf of that person; and

(b) has no interests adverse to those of that person.

(2) The persons for whom a litigation friend may act are—

(a) P;

(b) a child;

(c) a protected party.

Requirement for a litigation friend

17.2.—(1) This rule does not apply to P (whether P is an adult or a child).

(2) A protected party (if a party to the proceedings) must have a litigation friend.

(3) A child (if a party to the proceedings) must have a litigation friend to conduct those proceedings on that child's behalf unless the court makes an order under paragraph (4).

(4) The court may make an order permitting a child to conduct proceedings without a litigation friend.

(5) An application for an order under paragraph (4)—

(a) may be made by the child;

(b) if the child already has a litigation friend, must be made on notice to the litigation friend; and

(c) if the child has no litigation friend, may be made without notice.

(6) Where—

(a) the court has made an order under paragraph (4); and

(b) it subsequently appears to the court that it is desirable for a litigation friend to conduct the proceedings on behalf of the child,

the court may appoint a person to be the child's litigation friend.

Litigation friend without a court order

17.3.—(1) This rule does not apply—

(a) in relation to P;

(b) where the court has appointed a person under rule 17.4 or 17.5; or

(c) where the Official Solicitor is to act as a litigation friend.

(2) A deputy with the power to conduct legal proceedings in the name of a protected party or on the protected party's behalf is entitled to be a litigation friend of the protected party in any proceedings to which the deputy's power relates.

(3) If no-one has been appointed by the court or, in the case of a protected party, there is no deputy with the power to conduct proceedings, a person who wishes to act as a litigation friend must—

(a) file a certificate of suitability stating that they satisfy the conditions in rule 17.1(1); and

(b) serve the certificate of suitability on—

(i) the person on whom an application form is to be served in accordance with rule 6.4 (service on children and protected parties); and

(ii) every other person who is a party to the proceedings.

(4) If the person referred to in paragraph (2) wishes to act as a litigation friend for the protected party, that person must file and serve on the persons mentioned in paragraph (3)(b) a copy of the court order which appointed that person.

Litigation friend by court order

17.4.—(1) The court may make an order appointing—

(a) the Official Solicitor; or

(b) some other person,

to act as a litigation friend for a protected party, a child or P.

(2) The court may make an order under paragraph (1)—

(a) either on its own initiative or on the application of any person; but

(b) only with the consent of the person to be appointed.

(3) An application for an order under paragraph (1) must be supported by evidence.

(4) The court may not appoint a litigation friend under this rule unless it is satisfied that the person to be appointed satisfies the conditions in rule 17.1(1).

(5) The court may at any stage of the proceedings give directions as to the appointment of a litigation friend.

(Rule 1.2 requires the court to consider how P should participate in the proceedings, which may be by way of being made a party and the appointment of a litigation friend under this Part.)

Court's power to prevent a person from acting as a litigation friend or to bring an end to an appointment of a person as a litigation friend or to appoint another one

17.5.—(1) The court may either on its own initiative or on the application of any person—

(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.

(2) If an application for an order under paragraph (1) is based on the conduct of the litigation friend, it must be supported by evidence.

(3) The court may not appoint a litigation friend under this rule unless it is satisfied that the person to be appointed satisfies the conditions in rule 17.1(1).

(4) The appointment of a litigation friend continues until brought to an end by court order.

(Rule 13.1 (procedure for disputing the court's jurisdiction) applies if P has capacity in relation to the matter or matters to which the application relates.)

Appointment of litigation friend by court order – supplementary

17.6. The applicant must serve a copy of an application for an order under rule 17.4 or 17.5 on—

(a) the person on whom an application form is to be served in accordance with rule 6.4 (service on children and protected parties);

(b) every other person who is a party to the proceedings;

(c) any person who is the litigation friend, or who is purporting to act as the litigation friend, when the application is made; and

(d) unless that person is the applicant, the person who it is proposed should be the litigation friend,

as soon as practicable and in any event within 14 days of the date on which the application was issued.

Procedure where appointment of a litigation friend comes to an end for a child

17.7. When a child reaches 18, provided the child is neither—

(a) P; nor

(b) a protected party,

the litigation friend's appointment ends and the child must serve notice on every other party—

(i) stating that the child has reached full age;

(ii) stating that the appointment of the litigation friend has ended; and

(iii) providing an address for service.

Practice direction in relation to litigation friends

17.8. A practice direction may make additional or supplementary provision in relation to litigation friends.

SECTION 2 – RULE 1.2 REPRESENTATIVES

Who may act as a rule 1.2 representative for P

17.9. A person may act as an accredited legal representative, or a representative, for P, if that person can fairly and competently discharge his or her functions on behalf of P.

Rule 1.2 representative by court order

17.10.—(1) The court may make an order appointing a person to act as a representative, or an accredited legal representative, for P.

(2) The court may make an order under paragraph (1)—

(a) either of its own initiative or on the application of any person; but

(b) only with the consent of the person to be appointed.

(3) The court may not appoint a representative or an accredited legal representative under this rule unless it is satisfied that the person to be appointed satisfies the conditions in rule 17.9.

(4) The court may at any stage of the proceedings give directions as to the terms of appointment of a representative or an accredited legal representative.

(Rule 1.2 requires the court to consider how P should participate in the proceedings, which may be by way of the appointment of a representative or accredited legal representative under this Part.)

Application by rule 1.2 representative or by P for directions

17.11. A representative, an accredited legal representative or P may, at any time and without giving notice to the other parties, apply to the court for directions relating to the performance, terms of appointment or continuation of the appointment of the representative or accredited legal representative.

Court's power to prevent a person from acting as a rule 1.2 representative or to bring an end to an appointment of a person as a rule 1.2 representative or to appoint another one

17.12.—(1) The court may, either of its own initiative or on the application of any person—

(a) direct that a person may not act as a representative or accredited legal representative;

(b) bring to an end a representative's or accredited legal representative's appointment;

(c) appoint a new representative or accredited legal representative in place of an existing one; or

(d) vary the terms of a representative's or accredited legal representative's appointment.

(2) If an application for an order under paragraph (1) is based on the conduct of the representative or accredited legal representative, it must be supported by evidence.

(3) The court may not appoint a representative or accredited legal representative under this rule unless it is satisfied that the person to be appointed satisfies the conditions in rule 17.9.

(4) The appointment of a representative or accredited legal representative continues until brought to an end by court order.

(5) The court must bring to an end the appointment of a representative or an accredited legal representative if P has capacity to appoint such a representative and does not wish the appointment by the court to continue.

Appointment of rule 1.2 representative by court order – supplementary

17.13. The applicant must serve a copy of an application for an order under rule 17.10 or rule 17.12 on—

(a) the person on whom an application form is to be served in accordance with rule 6.4 (service on children and protected parties);

(b) every other person who is a party to the proceedings;

(c) any person who is the representative, or accredited legal representative, or who is purporting to act as such representative, when the application is made; and

(d) unless that person is the applicant, the person who it is proposed should be the representative or accredited legal representative,

as soon as practicable and in any event within 14 days of the date on which the application was issued.

Practice direction in relation to rule 1.2 representatives

17.14. A practice direction may make additional or supplementary provision in relation to representatives or accredited legal representatives.

PART 18

CHANGE OF SOLICITOR

Contents of this Part

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Order that a solicitor has ceased to act	Rule 18.3
Removal of solicitor who has ceased to act on application of another party	Rule 18.4
Practice direction relating to change of solicitor	Rule 18.5

Change of solicitor

18.1.—(1) This rule applies where a party to proceedings—

(a) for whom a solicitor is acting wants to change solicitor or act in person; or

(b) after having conducted the proceedings in person, appoints a solicitor to act on his or her behalf (except where the solicitor is appointed only to act as an advocate for a hearing).

(2) The party proposing the change must—

(a) file a notice of the change with the court; and

(b) serve the notice of the change on every other party to the proceedings and, if there is one, on the solicitor who will cease to act.

(3) The notice must state the party's address for service.

(4) The notice filed at court must state that it has been served as required by paragraph (2)(b).

(5) Where there is a solicitor who will cease to act, that solicitor will continue to be considered the party's solicitor unless and until—

(a) the notice is filed and served in accordance with paragraphs (2), (3) and (4); or

(b) the court makes an order under rule 18.3 and the order is served in accordance with that rule.

Legally aided persons

18.2.—(1) Where the certificate of any person ("A") who is a legally aided person is revoked or withdrawn—

(a) the solicitor who acted for A will cease to be the solicitor acting in the case as soon as the solicitor's retainer is determined under regulation 24 or 41 of the Civil Legal Aid (Procedure) Regulations 2012(**a**); and

(b) if A wishes to continue and appoints a solicitor to act on his or her behalf, rule 18.1(2), (3) and (4) will apply as if A had previously conducted the proceedings in person.

(2) In this rule, "certificate" means a certificate issued under the Civil Legal Aid (Procedure) Regulations 2012.

Order that a solicitor has ceased to act

18.3.—(1) A solicitor may apply for an order declaring that he or she has ceased to be the solicitor acting for a party.

(2) Where an application is made under this rule—

(a) the solicitor must serve the application notice on the party for whom the solicitor is acting, unless the court directs otherwise; and

(b) the application must be supported by evidence.

(3) Where the court makes an order that a solicitor has ceased to act, the solicitor must—

(a) serve a copy of the order on every other party to the proceedings; and

(b) file a certificate of service.

Removal of solicitor who has ceased to act on application of another party

18.4.—(1) Where—

(a) a solicitor who has acted for a party—

(i) has died;

(ii) has become bankrupt;

(iii) has ceased to practice; or

(iv) cannot be found; and

(b) the party has not served a notice of change of solicitor or notice of intention to act in person as required by rule 18.1,

any other party may apply for an order declaring that the solicitor has ceased to be the solicitor acting for the other party in the case.

(**a**) S.I. 2012/3098.

(2) Where an application is made under this rule, the applicant must serve the application on the party to whose solicitor the application relates, unless the court directs otherwise.

(3) Where the court makes an order under this rule—

(a) the court shall give directions about serving a copy of the order on every other party to the proceedings; and

(b) where the order is served by a party, that party must file a certificate of service.

Practice direction relating to change of solicitor

18.5. A practice direction may make additional or different provision in relation to change of solicitor.

PART 19

COSTS

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Costs orders in favour of or against non-parties	Rule 19.12
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Interpretation

19.1.—(1) In this Part—

“authorised court officer” means any officer of the Senior Courts Costs Office whom the Lord Chancellor has authorised to assess costs;

“costs” include fees, charges, disbursements, expenses, remuneration and any reimbursement allowed to a litigant in person;

“costs judge” means a taxing Master of the Senior Courts;

“costs officer” means a costs judge or an authorised court officer;

“detailed assessment” means the procedure by which the amount of costs or remuneration is decided by a costs officer in accordance with Part 47 of the Civil Procedure Rules 1998 (which are applied to proceedings under these Rules, with modifications, by rule 19.6);

“fixed costs” are to be construed in accordance with the relevant practice direction;

“fund” includes any estate or property held for the benefit of any person or class of persons, and any fund to which a trustee or personal representative is entitled in that capacity;

“paying party” means a party liable to pay costs;

“pro bono representation” means representation provided free of charge;

"receiving party" means a party entitled to be paid costs;

"summary assessment" means the procedure by which the court, when making an order about costs, orders payment of a sum of money instead of fixed costs or detailed assessment.

(2) The costs to which rules in this Part apply include—

(a) where the costs may be assessed by the court, costs payable by a client to his or her legal representative; and

(b) costs which are payable by one party to another party under the terms of a contract, where the court makes an order for an assessment of those costs.

(3) Where advocacy or litigation services are provided to a client under a conditional fee agreement, costs are recoverable under this Part notwithstanding that the client is liable to pay his or her legal representative's fees and expenses only to the extent that sums are recovered in respect of the proceedings, whether by way of costs or otherwise.

(4) In paragraph (3), the reference to a conditional fee agreement means an agreement enforceable under section 58 of the Courts and Legal Services Act 1990(**a**).

Property and affairs – the general rule

19.2. Where the proceedings concern P's property and affairs the general rule is that the costs of the proceedings, or of that part of the proceedings that concerns P's property and affairs, shall be paid by P or charged to P's estate.

Personal welfare – the general rule

19.3. Where the proceedings concern P's personal welfare the general rule is that there will be no order as to the costs of the proceedings, or of that part of the proceedings that concerns P's personal welfare.

Apportioning costs – the general rule

19.4. Where the proceedings concern both property and affairs and personal welfare the court, in so far as practicable, shall apportion the costs as between the respective issues.

Departing from the general rule

19.5.—(1) The court may depart from rules 19.2 to 19.4 if the circumstances so justify, and in deciding whether departure is justified the court will have regard to all the circumstances including—

(a) the conduct of the parties;

(b) whether a party has succeeded on part of that party's case, even if not wholly successful; and

(c) the role of any public body involved in the proceedings.

(2) The conduct of the parties includes—

(a) conduct before, as well as during, the proceedings;

(b) whether it was reasonable for a party to raise, pursue or contest a particular matter;

(c) the manner in which a party has made or responded to an application or a particular issue;

(d) whether a party who has succeeded in that party's application or response to an application, in whole or in part, exaggerated any matter contained in the application or response; and

(e) any failure by a party to comply with a rule, practice direction or court order.

(**a**) 1990 c. 41. Section 58 was substituted by section 27(1) of the Access to Justice Act 1999 (c. 22).

(3) Without prejudice to rules 19.2 to 19.4 and the foregoing provisions of this rule, the court may permit a party to recover their fixed costs in accordance with the relevant practice direction.

Rules about costs in the Civil Procedure Rules to apply

19.6.—(1) Subject to the provisions of these Rules, Parts 44, 46 and 47 of the Civil Procedure Rules 1998(**a**) ("the 1998 Rules") apply with the modifications in this rule and such other modifications as may be appropriate, to costs incurred in relation to proceedings under these Rules as they apply to costs incurred in relation to proceedings in the High Court.

(2) Rules 3.12 to 3.18 of the 1998 Rules and Practice Direction 3E supporting those Rules do not apply in relation to proceedings under these Rules.

(3) The provisions of Part 47 of the 1998 Rules apply with the modifications in this rule and such other modifications as may be appropriate, to a detailed assessment of the remuneration of a deputy under these Rules as they apply to a detailed assessment of costs in proceedings to which the 1998 Rules apply.

(4) Where the definitions in Part 44 (referred to in Parts 44, 46 and 47) of the 1998 Rules are different from the definitions in rule 19.1 of these Rules, the latter definitions prevail.

(5) Rules 44.2(1) to (5), 44.4(3)(h), 44.5, 44.6, 44.9 and 44.13 to 44.18 of the 1998 Rules do not apply.

(6) For rule 46.1(1) of the 1998 Rules there is substituted—

> "(1) This paragraph applies where a person applies for an order for specific disclosure before the commencement of proceedings.".

(7) Rules 46.2, 46.5 and 46.10 to 46.19 of the 1998 Rules do not apply.

(8) In rule 47.3(1)(c) of the 1998 Rules, the words "unless the costs are being assessed under rule 46.4 (costs where money is payable to a child or protected party)" are omitted.

(9) In rule 47.3(2) of the 1998 Rules, the words "or a District Judge" are omitted.

(10) Rule 47.4(3) and (4) of the 1998 Rules do not apply.

(11) Rules 47.9(4), 47.10 and 47.11 of the 1998 Rules do not apply where the costs are to be paid by P or charged to P's estate.

Detailed assessment of costs

19.7.—(1) Where the court orders costs to be assessed by way of detailed assessment, the detailed assessment proceedings shall take place in the High Court.

(2) A fee is payable in respect of the detailed assessment of costs and on an appeal against a decision made in a detailed assessment of costs.

(3) Where a detailed assessment of costs has taken place, the amount payable by P is the amount which the court certifies as payable.

Employment of a solicitor by two or more persons

19.8. Where two or more persons having the same interest in relation to a matter act in relation to the proceedings by separate legal representatives, they shall not be permitted more than one set of costs of the representation unless and to the extent that the court certifies that the circumstances justify separate representation.

(**a**) S.I. 1998/3132. Parts 43 to 48 were replaced with amended provisions by S.I. 2013/262, rules 15 and 16 and the Schedule.

Costs of the Official Solicitor

19.9. Any costs incurred by the Official Solicitor in relation to proceedings under these Rules or in carrying out any directions given by the court and not provided for by remuneration under rule 19.13 shall be paid by such persons or out of such funds as the court may direct.

Procedure for assessing costs

19.10. Where the court orders a party, or P, to pay costs to another party it may either—

(a) make a summary assessment of the costs; or

(b) order a detailed assessment of the costs by a costs officer;

unless any rule, practice direction or other enactment provides otherwise.

Costs following P's death

19.11. An order or direction that costs incurred during P's lifetime be paid out of or charged on P's estate may be made within 6 years after P's death.

Costs orders in favour of or against non-parties

19.12.—(1) Where the court is considering whether to make a costs order in favour of or against a person who is not a party to proceedings, that person must be—

(a) added as a party to the proceedings for the purposes of costs only;

(b) served with such documents as the court may direct; and

(c) given a reasonable opportunity to attend any hearing at which the court will consider the matter further.

(2) This rule does not apply where the court is considering whether to make an order against the Lord Chancellor in proceedings in which the Lord Chancellor has provided legal aid to a party to the proceedings.

Remuneration of a deputy, donee or attorney

19.13.—(1) Where the court orders that a deputy, donee or attorney is entitled to remuneration out of P's estate for discharging functions as such, the court may make such order as it thinks fit including an order that—

(a) the deputy, donee or attorney be paid a fixed amount;

(b) the deputy, donee or attorney be paid at a specified rate; or

(c) the amount of the remuneration shall be determined in accordance with the schedule of fees set out in the relevant practice direction.

(2) Any amount permitted by the court under paragraph (1) shall constitute a debt due from P's estate.

(3) The court may order a detailed assessment of the remuneration by a costs officer in accordance with rule 19.10(b).

Practice direction as to costs

19.14. A practice direction may make further provision in respect of costs in proceedings.

PART 20

APPEALS

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Scope of this Part

20.1. This Part applies to an appeal against any decision of the court.

Interpretation

20.2.—(1) In the following provisions of this Part—

(a) "appeal judge" means a judge of the court to whom an appeal is made;

(b) "first instance judge" means the judge of the court from whose decision an appeal is brought;

(c) "appellant" means the person who brings or seeks to bring an appeal;

(d) "respondent" means—

(i) a person other than the appellant who was a party to the proceedings before the first instance judge and who is affected by the appeal; or

(ii) a person who is permitted or directed by the first instance judge or the appeal judge to be party to the appeal; and

(e) "a second appeal" means an appeal from a decision of a judge of the court which was itself made on appeal from a judge of the court.

(2) In this Part, where the expression "permission" is used it means "permission to appeal" unless otherwise stated.

Dealing with appeals

20.3.—(1) The court may deal with an appeal or any part of an appeal at a hearing or without a hearing.

(2) In considering whether it is necessary to hold a hearing, the court shall have regard to the matters set out in rule 3.6(5).

(3) Any person bound by an order of the court by virtue of rule 9.14 (persons to be bound as if parties) may seek permission under this Part.

(4) All parties to an appeal must comply with any relevant practice direction.

(5) Where permission is required, it is to be granted or refused in accordance with this Part.

(Rule 13.4 provides for reconsideration of orders made without a hearing or without notice to a person.)

Destination of appeals

20.4.—(1) An appeal from a decision of a judge of the court shall lie to the Court of Appeal in the following cases—

(a) where it is an appeal from a decision of a Tier 3 Judge; or

(b) where it is a second appeal.

(2) Subject to paragraph (1) and to any alternative provision made by the relevant practice direction—

(a) where the first instance judge was a Tier 1 Judge, any appeal shall be heard by a Tier 2 Judge;

(b) where the first instance judge was a Tier 2 Judge, any appeal shall be heard by a Tier 3 Judge.

(3) No appeal may be made against a decision of a court officer authorised under rule 2.3.

(A decision of a court officer authorised under rule 2.3 can be reconsidered by a judge under rule 13.4.)

Permission to appeal – appeals to the Court of Appeal

20.5.—(1) Subject to rule 20.7, an appeal to the Court of Appeal against a decision of a judge of the court may not be made without permission.

(2) Where an appeal to the Court of Appeal is made from a decision of a Tier 3 Judge, permission may be granted by the first instance judge or by the Court of Appeal, unless the appeal is a second appeal.

(3) Where an appeal to the Court of Appeal is a second appeal, permission may only be granted by the Court of Appeal.

(4) No appeal shall lie against—

(a) the granting or refusal of permission under this rule; or

(b) an order allowing an extension of time for appealing from an order.

(The procedure for an appeal from a decision of a judge of the court to the Court of Appeal, including requirements for permission, is governed by the Civil Procedure Rules 1998.)

Permission to appeal – other cases

20.6.—(1) Subject to rules 20.5 and 20.7, an appeal against a decision of the court may not be made without permission.

(2) An application for permission to appeal may be made to—

(a) the first instance judge; or

(b) another judge who satisfies the relevant condition in paragraph (4) or (5).

(3) Where an application for permission is refused by the first instance judge, a further application for permission may be made to a judge who satisfies the relevant condition in paragraph (4) or (5).

(4) Where the decision sought to be appealed is a decision of a Tier 1 Judge, permission may also be granted or refused by—

(a) a Tier 2 Judge; or

(b) a Tier 3 Judge.

(5) Where the decision sought to be appealed is a decision of a Tier 2 Judge, permission may also be granted or refused by a Tier 3 Judge.

(6) Subject to paragraph (7) and except where another rule or a practice direction provides otherwise, where a judge who satisfies the relevant condition in paragraph (4) or (5), without a hearing, refuses permission to appeal against the decision of the first instance judge, the person seeking permission may request the decision to be reconsidered at a hearing.

(7) Where a Tier 3 Judge or the Senior Judge refuses permission to appeal without a hearing and considers that the application is totally without merit, that judge may order that the person seeking permission may not request the decision to be reconsidered at a hearing.

(8) Subject to paragraph (6), no appeal shall lie against—

(a) the granting or refusal of permission under this rule; or

(b) an order allowing an extension of time for appealing from an order.

Appeal against an order for committal to prison

20.7. Permission is not required to appeal against an order for committal to prison.

Matters to be taken into account when considering an application for permission

20.8.—(1) Permission to appeal shall be granted only where—

(a) the court considers that the appeal would have a real prospect of success; or

(b) there is some other compelling reason why the appeal should be heard.

(2) An order giving permission may—

(a) limit the issues to be heard; and

(b) be made subject to conditions.

(3) Paragraphs (1) and (2) do not apply to second appeals.

Power to treat application for permission to appeal as application for reconsideration under rule 13.4

20.9.—(1) Where a person seeking permission to appeal a decision would be entitled to seek reconsideration of that decision under rule 13.4 (or would have been so entitled had the application been made within 21 days of the date of that decision)—

(a) a practice direction may provide; or

(b) the court may direct,

that an application for permission shall be treated as an application for reconsideration under rule 13.4.

(2) In any case where paragraph (1) applies, the decision in question shall be reconsidered in accordance with the provisions of rule 13.4.

Appellant's notice

20.10.—(1) Where the appellant seeks permission from a judge other than the first instance judge, it must be requested in the appellant's notice.

(2) The appellant must file an appellant's notice at the court within—

(a) such period as may be directed or specified in the order of the first instance judge; or

(b) where that judge makes no such direction or order, 21 days after the date of the decision being appealed.

(3) The court shall issue the appellant's notice and unless it orders otherwise, the appellant must serve the appellant's notice on each respondent and on such other persons as the court may direct, as soon as practicable and in any event within 21 days of the date on which it was issued.

(4) The appellant must file a certificate of service within 7 days beginning with the date on which the appellant served the appellant's notice.

Respondent’s notice

20.11.—(1) A respondent who—

(a) is seeking permission from a judge other than the first instance judge; or

(b) 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.

(2) Where the respondent seeks permission from a judge other than the first instance judge, permission must be requested in the respondent’s notice.

(3) A respondent’s notice must be filed within—

(a) such period as may be directed by the first instance judge; or

(b) where the first instance judge makes no such direction, 21 days beginning with the date referred to in paragraph (4).

(4) The date is the soonest of—

(a) the date on which the respondent is served with the appellant’s notice where—

(i) permission was given by the first instance judge; or

(ii) permission is not required;

(b) the date on which the respondent is served with notification that a judge other than the first instance judge has given the appellant permission; or

(c) the date on which the respondent is served with the notification that the application for permission and the appeal itself are to be heard together.

(5) The court shall issue a respondent’s notice, and unless it orders otherwise, the respondent must serve the respondent’s notice on the appellant, any other respondent and on such other persons as the court may direct, as soon as practicable and in any event within 21 days of the date on which it was issued.

(6) The respondent must file a certificate of service within 7 days beginning with the date on which the copy of the respondent’s notice was served.

Variation of time

20.12. The parties may not agree to extend any date or time limit for or in respect of an appeal set by—

(a) these Rules;

(b) the relevant practice direction; or

(c) an order of the appeal judge or the first instance judge.

Power of appeal judge on appeal

20.13.—(1) In relation to an appeal, an appeal judge has all the powers of the first instance judge whose decision is being appealed.

(2) In particular, the appeal judge has the power to—

(a) affirm, set aside or vary any order made by the first instance judge;

(b) refer any claim or issue to that judge for determination;

(c) order a new hearing;

(d) make a costs order.

(3) The appeal judge’s powers may be exercised in relation to the whole or part of an order made by the first instance judge.

Determination of appeals

20.14.—(1) An appeal shall be limited to a review of the decision of the first instance judge unless—

(a) a practice direction makes different provision for a particular category of appeal; or

(b) the appeal judge considers that in the circumstances of the appeal it would be in the interests of justice to hold a re-hearing.

(2) Unless the appeal judge orders otherwise, the appeal judge shall not receive—

(a) oral evidence; or

(b) evidence that was not before the first instance judge.

(3) The appeal judge shall allow an appeal where the decision of the first instance judge was—

(a) wrong; or

(b) unjust, because of a serious procedural or other irregularity in the proceedings before the first instance judge.

(4) The appeal judge may draw any inference of fact that the appeal judge considers justified on the evidence.

(5) At the hearing of the appeal, a party may not rely on a matter not contained in the appellant's or respondent's notice unless the appeal judge gives permission.

PART 21

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Discharge of a person in custody where a writ of sequestration has been issued	Rule 21.32

SECTION 1 – SCOPE AND INTERPRETATION

Scope

21.1.—(1) This Part sets out the procedure in respect of—

(a) committal for any breach of a judgment, order or undertaking to do or abstain from doing an act;

(b) contempt in the face of the court;

(c) committal for interference with the due administration of justice;

(d) committal for making a false statement of truth; and

(e) sequestration to enforce a judgment, order or undertaking.

(2) So far as applicable, and with the necessary modifications, this Part applies in relation to an order requiring a person—

(a) guilty of contempt of court; or

(b) punishable by virtue of any enactment as if that person had been guilty of contempt of the High Court,

to pay a fine or to give security for good behaviour, as it applies in relation to an order of committal.

Saving for other powers

21.2.—(1) This Part is concerned only with procedure and does not itself confer upon the court the power to make an order for—

(a) committal;

(b) sequestration; or

(c) the imposition of a fine in respect of contempt.

(2) Nothing in this Part affects the power of the court to make an order requiring a person—

(a) guilty of contempt of court; or

(b) punishable by virtue of any enactment as if that person had been guilty of contempt of the High Court,

to pay a fine or to give security for good behaviour.

(3) Nothing in this Part affects any statutory or inherent power of the court to make a committal order on its own initiative against a person guilty of contempt of court.

Interpretation

21.3. In this Part—

(a) "applicant" means a person making—

(i) an application for permission to make a committal application;

(ii) a committal application; or

(iii) an application for a writ of sequestration;

(b) "committal application" means any application for an order committing a person to prison;

(c) "respondent" means a person—

(i) against whom a committal application is made or is intended to be made; or

(ii) against whose property it is sought to issue a writ of sequestration; and

(d) "undertaking" means an undertaking to the court.

SECTION 2 – COMMITTAL FOR BREACH OF A JUDGMENT, ORDER OR UNDERTAKING TO DO OR ABSTAIN FROM DOING AN ACT

Enforcement of judgment, order or undertaking to do or abstain from doing an act

21.4.—(1) If a person—

(a) required by a judgment or order of the court to do an act does not do it within the time fixed by the judgment or order; or

(b) disobeys a judgment or order not to do an act,

then, subject to the Debtors Acts 1869 and 1878 and to the provisions of these Rules, the judgment or order may be enforced by an order for committal.

(2) If the time fixed by the judgment or order for doing an act has been varied by a subsequent order, or agreement of the parties under rule 3.7(4), then references in paragraph (1)(a) to the time fixed are references to the time fixed by that subsequent order or agreement.

(3) If the person referred to in paragraph (1) is a company or other corporation, the committal order may be made against any director or other officer of that company or corporation.

(4) So far as applicable, and with the necessary modification, this Section applies to undertakings given by a party as it applies to judgments or orders.

Requirement for service of a copy judgment or order and time for service

21.5.—(1) Unless the court dispenses with service under rule 21.8 a judgment or order may not be enforced under rule 21.4 unless a copy of it has been served on the person required to do or not to do the act in question, and in the case of a judgment or order requiring a person to do an act—

(a) the copy has been served before the end of the time fixed for doing the act, together with a copy of any order fixing that time;

(b) where the time has been varied by a subsequent order or agreement, a copy of that subsequent order or agreement has also been served; and

(c) where the judgment or order was made pursuant to an earlier judgment or order requiring the act to be done, a copy of the earlier judgment or order has also been served.

(2) Where the person referred to in paragraph (1) is a company or other corporation, a copy of the judgment or order must also be served on a director or officer of the company or corporation before the end of the time fixed for doing the act.

(3) Copies of the judgment or order and any orders or agreements fixing or varying the time for doing an act must be served in accordance with rule 21.6 or 21.7, or in accordance with an order for alternative service made under rule 21.8(2)(b).

Method of service – copies of judgments or orders

21.6. Subject to rules 21.7 and 21.8, copies of judgments or orders and any orders or agreements fixing or varying the time for doing an act must be served personally.

Method of service – copies of undertakings

21.7.—(1) Subject to paragraph (2) and rule 21.8, a copy of any document recording an undertaking will be delivered by the court to the person who gave the undertaking by—

(a) handing to that person a copy of the document before that person leaves the court building;

(b) posting a copy to that person at the residence or place of business of that person where this is known; or

(c) posting a copy to that person’s solicitor.

(2) If delivery cannot be effected in accordance with paragraph (1), the court officer must deliver a copy of the document to the party for whose benefit the undertaking was given and that party must serve it personally on the person who gave the undertaking as soon as practicable.

(3) Where the person referred to in paragraph (1) is a company or other corporation, a copy of the document must also be served on a director or officer of the company or corporation.

Dispensation with personal service

21.8.—(1) In the case of a judgment or order requiring a person not to do an act, the court may dispense with service of a copy of the judgment or order in accordance with rules 21.5 to 21.7 if it is satisfied that the person has had notice of it by—

(a) being present when the judgment or order was given or made; or

(b) being in attendance at court where notice of the order or judgment was displayed; or

(c) being notified of its terms by telephone, email or otherwise.

(2) In the case of any judgment or order the court may—

(a) dispense with service under rules 21.5 to 21.7 if the court thinks it just to do so; or

(b) make an order in respect of service by an alternative method or at an alternative place.

Requirement for a penal notice on judgments and orders

21.9.—(1) Subject to paragraph (2), a judgment or order to do or not to do an act may not be enforced under rule 21.4 unless there is prominently displayed, on the front of the copy of the judgment or order served in accordance with this Section, a warning to the person required to do or not to do the act in question that disobedience to the order would be a contempt of court punishable by imprisonment, a fine or sequestration of assets.

(2) An undertaking to do or not to do an act which is contained in a judgment or order may be enforced under rule 21.4 notwithstanding that the judgment or order does not contain the warning described in paragraph (1).

(Paragraphs 2.1 to 2.3 of Practice Direction 21A contain provision about penal notices and warnings in relation to undertakings.)

How to make the committal application

21.10.—(1) A committal application is made by an application notice under Part 10 in the proceedings in which the judgment or order was made or the undertaking was given.

(2) Where the committal application is made against a person who is not an existing party to the proceedings, it is made against that person by an application notice under Part 10.

(3) The application notice must—

(a) set out in full the grounds on which the committal application is made and must identify, separately and numerically, each alleged act of contempt including, if known, the date of each of the alleged acts; and

(b) be supported by one or more affidavits containing all the evidence relied upon.

(4) Subject to paragraph (5), the application notice and the evidence in support must be served personally on the respondent.

(5) The court may—

(a) dispense with service under paragraph (4) if it considers it just to do so; or

(b) make an order in respect of service by an alternative method or at an alternative place.

Committal for breach of a solicitor's undertaking

21.11.—(1) This rule applies where an order for committal is sought in respect of a breach by a solicitor of an undertaking given by the solicitor to the court in connection with proceedings before the court.

(2) The applicant must obtain permission from the court before making a committal application under this rule.

(3) The application for permission must be made by filing an application notice under Part 10.

(4) The application for permission must be supported by an affidavit setting out—

(a) the name, description and address of the respondent; and

(b) the grounds on which the committal order is sought.

(5) The application for permission may be made without notice.

(6) Rules 10.5 and 13.4 do not apply.

(7) Unless the applicant makes the committal application within 14 days after permission has been granted under this rule, the permission will lapse.

SECTION 3 – CONTEMPT IN THE FACE OF THE COURT

Contempt in the face of the court

21.12. Where contempt has occurred in the face of the court, the court may deal with the matter on its own initiative and give such directions as it thinks fit for the disposal of the matter.

SECTION 4 – COMMITTAL FOR INTERFERENCE WITH THE DUE ADMINISTRATION OF JUSTICE

Scope

21.13.—(1) This Section regulates committal applications in relation to interference with the due administration of justice in connection with proceedings in the Court of Protection, except where the contempt is committed in the face of the court or consists of disobedience to an order of the court or a breach of an undertaking to the court.

(2) A committal application under this Section may not be made without the permission of the court.

(The procedure for applying for permission to make a committal application is set out in rule 21.15.)

(Rules 21.16(3) and (4) make provision for cases in which both this Section and Section 5 (Committal for making a false statement of truth) may be relevant.)

Court to which application for permission under this Section is to be made

21.14.—(1) Where contempt of court is committed in connection with any proceedings in the Court of Protection, the application for permission may only be made to a Tier 3 Judge.

(2) Where contempt of court is committed otherwise than in connection with any proceedings, Part 81 of the Civil Procedure Rules 1998 applies.

Application for permission

21.15.—(1) The application for permission to make a committal application must be made by an application notice under Part 10, and the application notice must include or be accompanied by—

(a) a detailed statement of the applicant's grounds for making the committal application; and

(b) an affidavit setting out the facts and exhibiting all documents relied upon.

(2) The application notice and the documents referred to in paragraph (1) must be served personally on the respondent unless the court otherwise directs.

(3) Within 14 days of service on the respondent of the application notice, the respondent—

(a) must file and serve an acknowledgment of service; and

(b) may file and serve evidence.

(4) The court will consider the application for permission at an oral hearing, unless it considers that such a hearing is not appropriate.

(5) If the respondent intends to appear at the oral hearing referred to in paragraph (4), the respondent must give 7 days' notice in writing of such intention to the court and any other party and at the same time provide a written summary of the submissions which the respondent proposes to make.

(6) Where permission to proceed is given, the court may give such directions as it thinks fit.

SECTION 5 – COMMITTAL FOR MAKING A FALSE STATEMENT OF TRUTH

Scope and interaction with other Sections of this Part

21.16.—(1) This Section contains rules about committal applications in relation to making, or causing to be made, a false statement in a document verified by a statement of truth, without an honest belief in its truth.

(2) Where the committal relates only to a false statement of truth, this Section applies.

(3) Where the committal application relates to both—

(a) a false statement of truth; and

(b) breach of a judgment, order or undertaking to do or abstain from doing an act,

then Section 2 (Committal for breach of a judgment, order or undertaking to do or abstain from doing an act) applies, but subject to paragraph (4).

(4) To the extent that a committal application referred to in paragraph (3) relates to a false statement of truth—

(a) the applicant must obtain the permission of the court in accordance with rule 21.17; or

(b) the court may direct that the matter be referred to the Attorney General with a request that the Attorney General consider whether to bring proceedings for contempt of court.

Committal application in relation to a false statement of truth

21.17.—(1) A committal application in relation to a false statement of truth in connection with proceedings in the Court of Protection may be made only—

(a) with the permission of a Tier 3 Judge; or

(b) by the Attorney General.

(2) Where permission is required under paragraph (1)(a), rule 21.15 applies.

(3) The court may direct that the matter be referred to the Attorney General with a request that the Attorney General consider whether to bring proceedings for contempt of court.

SECTION 6 – WRIT OF SEQUESTRATION TO ENFORCE A JUDGMENT, ORDER OR UNDERTAKING

Scope

21.18. This Section contains rules about applications for a writ of sequestration to enforce a judgment, order or undertaking.

Writ of sequestration to enforce a judgment, order or undertaking

21.19.—(1) If—

(a) a person required by a judgment or order to do an act does not do it within the time fixed by the judgment or order; or

(b) a person disobeys a judgment or order not to do an act,

then, subject to the provisions of these Rules and if the court permits, the judgment or order may be enforced by a writ of sequestration against the property of that person.

(2) If the time fixed by the judgment or order for doing an act has been varied by a subsequent order, or agreement of the parties under rule 3.7(4), references in paragraph (1)(a) to the time fixed are references to the time fixed by that subsequent order or agreement.

(3) If the person referred to in paragraph (1) is a company or other corporation, the writ of sequestration may in addition be issued against the property of any director or other officer of that company or corporation.

(4) So far as applicable, and with the necessary modifications, this Section applies to undertakings given by a party as it applies to judgments or orders.

Requirement for service of a copy of the judgment or order and time for service

21.20.—(1) Unless the court dispenses with service under rule 21.23, a judgment or order may not be enforced by writ of sequestration unless a copy of it has been served on the person required to do or not to do the act in question, and in the case of a judgment or order requiring a person to act—

(a) the copy has been served before the end of the time fixed for doing the act, together with a copy of any order fixing that time;

(b) where the time for doing the act has been varied by a subsequent order or agreement, a copy of that order or agreement has also been served; and

(c) where the judgment or order was made pursuant to an earlier judgment or order requiring the act to be done, a copy of the earlier judgment or order has also been served.

(2) Where the person referred to in paragraph (1) is a company or other corporation, a copy of the judgment or order must also be served on a director or other officer of the company or corporation before the end of the time fixed for doing the act.

(3) Copies of the judgment or order and any orders or agreements fixing or varying the time for doing an act must be served in accordance with rule 21.21 or 21.22, or in accordance with an order for alternative service made under rule 21.23(2)(b).

Method of service – copies of judgments or orders

21.21. Subject to rules 21.22 and 21.23, copies of judgments or orders and any orders or agreements fixing or varying the time for doing an act must be served personally.

Method of service – copies of undertakings

21.22.—(1) Subject to paragraph (2) and rule 21.23, a copy of any document recording an undertaking will be delivered by the court to the person who gave the undertaking by—

(a) handing to that person a copy of the document before that person leaves the court building;

(b) posting a copy to that person at the residence or place of business of that person where this is known; or

(c) posting a copy to that person's address.

(2) If delivery cannot be effected in accordance with paragraph (1), the court officer must deliver a copy of the document to the party for whose benefit the undertaking was given, and that party must serve it personally on the person who gave the undertaking as soon as practicable.

(3) Where the person referred to in paragraph (1) is a company or other corporation, a copy of the judgment or order must also be served on a director or officer of the company or corporation.

Dispensation with personal service

21.23.—(1) In the case of a judgment or order requiring a person to do or not to do an act, the court may dispense with service of a copy of the judgment or order in accordance with rules 21.20 to 21.22 if it is satisfied that the person has had notice of it by—

(a) being present when the judgment or order was made;

(b) being in attendance at court where notice of the order or judgment was displayed; or

(c) being notified of its terms by telephone, email or otherwise.

(2) In the case of any judgment or order the court may—

(a) dispense with service under rules 21.20 to 21.22 if the court thinks it just to do so; or

(b) make an order in respect of service by an alternative method or at an alternative place.

Requirement for a penal notice on judgments and orders

21.24.—(1) Subject to paragraph (2), a judgment or order to do or not to do an act may not be enforced by a writ of sequestration unless there is prominently displayed, on the front of the copy of the judgment or order served in accordance with this Section, a warning to the person required to do or not to do the act in question that disobedience to the order would be a contempt of court punishable by imprisonment, a fine or sequestration of assets.

(2) An undertaking to do or not to do an act which is contained in a judgment or order may be enforced by a writ of sequestration notwithstanding that the judgment or order does not contain the warning described in paragraph (1).

(Paragraphs 2.1 to 2.3 of Practice Direction 21A contain provision about penal notices and warnings in relation to undertakings.)

How to make an application for permission to issue a writ of sequestration

21.25.—(1) An application for permission to issue a writ of sequestration must be made to a Tier 3 Judge.

(2) An application for permission to issue a writ of sequestration must be made by filing an application notice under Part 10.

(3) The application notice must—

(a) set out in full the grounds on which the committal application is made and must identify, separately and numerically, each alleged act of contempt including, if known, the date of each of the alleged acts; and

(b) be supported by one or more affidavits containing all the evidence relied upon.

(4) Subject to paragraph (5), the application notice and the evidence in support must be served personally on the respondent.

(5) The court may—

(a) dispense with service under paragraph (4) if it considers it just to do so; or

(b) make an order in respect of service by an alternative method or at an alternative place.

Form of writ of sequestration

21.26. A writ of sequestration must be in Form No. 67 as set out in either Practice Direction 5A supporting the Family Procedure Rules 2010 or Practice Direction 4 supporting the Civil Procedure Rules 1998 (or in a form containing corresponding provision).

SECTION 7 – GENERAL RULES ABOUT COMMITTAL APPLICATIONS, ORDERS FOR COMMITTAL AND WRITS OF SEQUESTRATION

Hearing for committal order or writ of sequestration to be in public

21.27.—(1) Notwithstanding rule 4.1 (general rule – hearing to be in private), when determining an application for committal or application for sequestration the court will hold the hearing in public unless it directs otherwise.

(2) If the court hearing an application in private decides to make a committal order against the respondent, it must in public state—

(a) the name of the respondent;

(b) in general terms, the nature of the contempt of court in respect of which the committal order is being made; and

(c) the length of the period of the committal order.

(3) Where a committal order is made in the absence of the respondent, the court may on its own initiative fix a date and time when the respondent is to be brought before the court.

The hearing

21.28.—(1) Unless the court hearing the committal application or application for sequestration otherwise permits, the applicant may not rely on—

(a) any grounds other than—

(i) those set out in the application notice; or

(ii) in relation to committal applications under Section 4, the statement of grounds required by rule 21.15(1)(a) (where not included in the application notice);

(b) any evidence unless it has been served in accordance with the relevant Section of this Part or a practice direction supplementing this Part.

(2) At the hearing, the respondent is entitled—

(a) to give oral evidence, whether or not the respondent has filed or served written evidence, and, if doing so, may be cross-examined; and

(b) with the permission of the court, to call a witness to give evidence whether or not the witness has made an affidavit or witness statement.

(3) The court may require or permit any party or other person (other than the respondent) to give oral evidence at the hearing.

(4) The court may give directions requiring the attendance for cross-examination of a witness who has given written evidence.

Power to suspend execution of a committal order

21.29.—(1) The court making the committal order may also order that the execution of the order will be suspended for such period or on such terms and conditions as the court may specify.

(2) Unless the court otherwise directs, the applicant must serve on the respondent a copy of any order made under paragraph (1).

Warrant of committal

21.30.—(1) If a committal order is made, the order will be for the issue of a warrant of committal.

(2) Unless the court orders otherwise—

(a) a copy of the committal order must be served on the respondent either before or at the time of the execution of the warrant of committal; or

(b) where the warrant of committal has been signed by the judge, the committal order may be served on the respondent at any time within 36 hours after the execution of the warrant.

(3) Without further order of the court, a warrant of committal must not be enforced more than 2 years after the date on which the warrant is issued.

Discharge of a person in custody

21.31.—(1) A person committed to prison for contempt of court may apply to the court to be discharged.

(2) The application must—

(a) be in writing and attested by the governor of the prison (or any other officer of the prison not below the rank of principal officer);

(b) show that the person committed to prison for contempt has purged, or wishes to purge, the contempt; and

(c) be served on the person (if any) at whose instance the warrant of committal was issued at least one day before the application is made.

(3) Paragraph (2) does not apply to an application made by the Official Solicitor acting with official authority for the discharge of a person in custody.

Discharge of a person in custody where a writ of sequestration has been issued

21.32. Where—

(a) a writ of sequestration has been issued to enforce a judgment or order;

(b) the property is in the custody or power of the respondent;

(c) the respondent has been committed for failing to deliver up any property or deposit it in court or elsewhere; and

(d) the commissioners appointed by the writ of sequestration take possession of the property as if it belonged to the respondent,

then, without prejudice to rule 21.31(1) (discharge of a person in custody), the court may discharge the respondent and give such directions for dealing with the property taken by the commissioners as it thinks fit.

PART 22

CIVIL RESTRAINT ORDERS

Contents of this Part

Powers of the court to make civil restraint orders	Rule 22.1

Powers of the court to make civil restraint orders

22.1.—(1) If the court, whether or not on its own initiative, dismisses an application (including an application for permission) and considers that the application is totally without merit—

(a) the court's order must record that fact; and

(b) the court must at the same time consider whether it is appropriate to make a civil restraint order.

(2) Practice Direction 22A sets out—

(a) the circumstances in which the court has the power to make a civil restraint order against a party to proceedings;

(b) the procedure where a party applies for a civil restraint order against another party; and

(c) the consequences of the court making a civil restraint order.

PART 23

INTERNATIONAL PROTECTION OF ADULTS

Contents of this Part

Applications in connection with Schedule 3 to the Act – general	Rule 23.1
Interpretation	Rule 23.2
Application of these Rules in relation to Schedule 3 applications	Rule 23.3
Applications for recognition and enforcement	Rule 23.4

Applications in relation to lasting powers – disapplication or modification	Rule 23.5
Applications in relation to lasting powers – declaration as to authority of donee of lasting power	Rule 23.6

Applications in connection with Schedule 3 to the Act – general

23.1.—(1) This Part applies to applications made in connection with Schedule 3 to the Act.

(2) A practice direction may make additional or supplementary provision in respect of any of the matters in this Part.

Interpretation

23.2.—(1) Unless otherwise provided in a practice direction made under rule 23.1(2), and subject to paragraph (2), an expression which appears both in this Part and in Schedule 3 to the Act is to be construed in accordance with Schedule 3 to the Act, including, where required by paragraph 2(4) of Schedule 3, construing it in accordance with the Convention.

(2) Notwithstanding the provisions of paragraph 13(6) of Schedule 3 to the Act, "lasting power" does not include—

(a) a lasting power of attorney within the meaning of section 9 of the Act; or

(b) an enduring power of attorney within the meaning of Schedule 4 to the Act.

(3) In this Part, "Schedule 3 application" means an application made under this Part (whether or not additional declarations or orders under sections 15 and 16 of the Act are sought as part of such application).

Application of these Rules in relation to Schedule 3 applications

23.3.—(1) These Rules and accompanying practice directions apply in relation to Schedule 3 applications as if for "P" there were substituted "the adult".

(2) For the purposes of rule 1.2(4) and Part 17, the question of whether the adult has capacity to conduct proceedings in relation to a Schedule 3 application is to be determined in accordance with Part 1 of the Act.

(3) The permission of the court is not required for a Schedule 3 application.

Applications for recognition and enforcement

23.4.—(1) An application for a declaration under paragraph 20 (recognition) or paragraph 22 (enforcement) of Schedule 3 to the Act is to be made in accordance with Part 9 and any practice direction made under rule 23.1(2).

(2) Without prejudice to its powers under Parts 6 (service) and 7 (notice), the court may dispense with service and notice where it thinks just to do so, having regard in particular to—

(a) whether the adult or (as the case may be) any respondent to the application is within the jurisdiction; and

(b) the need for applications for declarations of enforceability to be determined rapidly.

Applications in relation to lasting powers – disapplication or modification

23.5. An application under paragraph 14(1) of Schedule 3 to the Act for the court to disapply or modify a lasting power is to be made in accordance with Part 9 and any practice direction made under rule 23.1(2).

Applications in relation to lasting powers – declaration as to authority of donee of lasting power

23.6. An application for a declaration under section 15(1)(c) of the Act that a donee of a lasting power is acting lawfully when exercising authority under that lasting power is to be made in accordance with Part 9 and any practice direction made under rule 23.1(2).

PART 24

MISCELLANEOUS

Contents of this Part

Enforcement methods – general	Rule 24.1
Enforcement methods – application of the Civil Procedure Rules 1998	Rule 24.2
Order or directions requiring a person to give security for discharge of functions	Rule 24.3
Objections to registration of an enduring power of attorney – request for directions	Rule 24.4
Disposal of property where P ceases to lack capacity	Rule 24.5
Citation and commencement, revocations and transitional provision	Rule 24.6

Enforcement methods – general

24.1.—(1) The relevant practice direction may set out methods of enforcing judgments or orders.

(2) An application for an order for enforcement may be made on application by any person in accordance with Part 10.

Enforcement methods – application of the Civil Procedure Rules 1998

24.2. The following provisions of the Civil Procedure Rules 1998 apply, as far as they are relevant and with such modifications as may be necessary, to the enforcement of orders made in proceedings under these Rules—

(a) Part 70 (General Rules about Enforcement of Judgments and Orders);

(b) Part 71 (Orders to Obtain Information from Judgment Debtors);

(c) Part 72 (Third Party Debt Orders);

(d) Part 73 (Charging Orders, Stop Orders and Stop Notices);

(e) Part 83 (Writs and Warrants – General Provisions); and

(f) Part 84 (Enforcement by Taking Control of Goods).

Order or directions requiring a person to give security for discharge of functions

24.3.—(1) This rule applies where the court makes an order or gives a direction—

(a) conferring functions on any person (whether as deputy or otherwise); and

(b) requiring that person to give security for the discharge of those functions.

(2) The person on whom functions are conferred must give the security before undertaking to discharge those functions, unless the court permits the security to be given subsequently.

(3) Paragraphs (4) to (6) apply where the security is required to be given before any action can be taken.

(4) Subject to paragraph (5), the security must be given in accordance with the requirements of regulation 33(2)(a) of the Public Guardian Regulations (which makes provision about the giving of security by means of a bond that is endorsed by an authorised insurance company or an authorised deposit-taker).

(5) The court may impose such other requirements in relation to the giving of the security as it considers appropriate (whether in addition to, or instead of, those specified in paragraph (4)).

(6) In specifying the date from which the order or directions referred to in paragraph (1) are to take effect, the court will have regard to the need to postpone that date for such reasonable period as would enable the Public Guardian to be satisfied that—

(a) if paragraph (4) applies, the requirements of regulation 34 of the Public Guardian Regulations have been met in relation to the security; and

(b) any other requirements imposed by the court under paragraph (5) have been met.

(7) "The Public Guardian Regulations" means the Lasting Power of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007(**a**).

Objections to registration of an enduring power of attorney – request for directions

24.4.—(1) This rule applies in any case where—

(a) the Public Guardian (having received a notice of objection to the registration of an instrument creating an enduring power of attorney) is prevented by paragraph 13(5) of Schedule 4 to the Act from registering the instrument except in accordance with the court's directions; and

(b) on or before the relevant day, no application for the court to give such directions has been made under Part 9 (how to start proceedings).

(2) In paragraph (1)(b) the relevant day is the later of—

(a) the final day of the period specified in paragraph 13(4) of Schedule 4 to the Act; or

(b) the final day of the period of 14 days beginning with the date on which the Public Guardian receives the notice of objection.

(3) The Public Guardian may seek the court's directions about registering the instrument, by filing a request in accordance with the relevant practice direction.

(4) As soon as practicable and in any event within 21 days of the date on which the request was made, the court shall notify—

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

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

(5) As soon as practicable and in any event within 21 days of the date on which the request is filed, the Public Guardian must notify the donor of the power that the request has been so filed.

(6) The notice under paragraph (4) must—

(a) state that the Public Guardian has requested the court's directions about registration;

(b) state that the court will give directions in response to the request unless an application under Part 9 is made to it before the end of the period of 21 days commencing with the date on which the notice is issued; and

(c) set out the steps required to make such an application.

(7) "Notice of objection" means a notice of objection which is made in accordance with paragraph 13(4) of Schedule 4 to the Act.

Disposal of property where P ceases to lack capacity

24.5.—(1) This rule applies where P ceases to lack capacity.

(**a**) S.I. 2007/1253

(2) In this rule, "relevant property" means any property belonging to P and forming part of P's estate, and which—

(a) remains under the control of anyone appointed by order of the court; or

(b) is held under the direction of the court.

(3) The court may at any time make an order for any relevant property to be transferred to P, or at P's direction, provided that it is satisfied that P has the capacity to make decisions in relation to that property.

(4) An application for an order under this rule is to be made in accordance with Part 10.

Citation and commencement, revocations and transitional provision

24.6.—(1) These Rules may be cited as the Court of Protection Rules 2017 and shall come into force on 1st December 2017.

(2) The rules in the Schedule are revoked as set out in the Schedule.

(3) A practice direction may make provision for the extent to which and manner in which these Rules shall apply to proceedings started before the day on which they come into force.

James Munby, P.
President of the Family Division

I allow these Rules

Signed by authority of the Lord Chancellor

Phillip Lee
Parliamentary Under Secretary of State
Ministry of Justice

26th October 2017

SCHEDULE

Rule 24.6

Revocations

Instrument revoked	*Reference*	*Extent of revocation*
The Court of Protection Rules 2007	S.I. 2007/1744	The whole Rules
The Court of Protection (Amendment) Rules 2009	S.I. 2009/582	The whole Rules
The Court of Protection (Amendment) Rules 2011	S.I. 2011/2753	The whole Rules
The Court of Protection	S.I. 2015/548	The whole Rules

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http://www.legislation.gov.uk/id/uksi/2017/1035