

## **PRATICE DIRECTION 9H – PROPERTY AND AFFAIRS DEPUTYSHIP APPLICATIONS**

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

1. This Practice Direction is made under rule 9.11. It provides a different procedure for making property and affairs deputyship applications such that P and people to be notified of the application are notified and invited to indicate their consent or objection before the application is issued.
2. Applications falling within this Practice Direction may be filed online through the portal for making property and affairs deputyship applications available on the Court of Protection.gov.uk website, where such use is agreed by the court as practicable.

### **General**

3. This Practice Direction applies only to applications for property and affairs deputyship orders. The rules and Practice Directions which apply to such applications continue to apply except where and to the extent that they are disapplied and different provision is made as set out in this Practice Direction. Where the provisions of this Practice Direction conflict with other provisions of the Rules or other Practice Directions, this Practice Direction will take precedence. Any application which has been started under the previous Practice Direction (Practice Direction 9H – Property and Affairs Deputyship Applications Pilot), shall continue under this Practice Direction, and any reference to COP14PADep and COP15PADep in this Practice Direction shall be read as including COP14Pilot and COP15Pilot for such applications.
4. In this Practice Direction the term “applicant” includes a person who intends to or has completed an application for a property and affairs deputyship order but has not yet issued it.

### **Notifying P that an application is going to be made**

5. In relation to notifying P that an application for a property and affairs deputyship order is going to be made Rules 7.4(1)(a), 7.4(2) (Application form), 7.8(3) (Manner of notification), 7.9 (acknowledgement of notification), 7.10 (Certificate of notification), and 9.9 (Applicant to notify P of an application) do not apply.

6. Rule 7.11 applies with the words “paragraphs 7 and 8 of Practice Direction 9H” substituted for “the provisions in this Part” in rule 7.11(1)(a) and (b).
  
7. Save where an application is made under rule 7.11, before filing a completed application for a property and affairs deputyship with the court the applicant must notify P that the application is going to be made using the notification form COP14PADep which provides the following information:
  - a. Who the applicant is;
  - b. That the application raises the question of whether P lacks capacity in relation to a matter or matters and what that means;
  - c. What will happen if the court makes an order or direction that has been applied for;
  - d. Details of the person it is proposed should be appointed to make decisions on behalf of P in relation to their property and affairs;
  - e. That P may seek advice and assistance in relation to the application;
  - f. That P may complete and return the form to the person notifying them to acknowledge notification and indicate their wishes and feelings about the application;
  - g. That the notification form must be returned to the applicant before the end of 14 days from the date P received it, and if it is not sent within this period the court will assume that P does not object;
  - h. That P may, in addition to sending the completed form back to the applicant, send a copy of it to the court;
  - i. That at the point the application is made, the applicant will be required to provide to the court a copy of the notification form if it has been completed and returned to the applicant; and

The COP14PADep also contains a section to be completed by the person who personally notifies P, to record the steps taken to explain the application to P, the extent to which they understood or appeared to understand and any response they gave and any wishes and feelings P expressed about the application.

8. P must be provided with the information set out in paragraph 7 in a way that is appropriate to P’s circumstances (for example using simple language, visual aids or any other appropriate means).

### **Persons to notify that an application is going to be made**

9. Rule 9.10 does not apply.
  
10. Before filing a completed application for a property and affairs deputyship order with the court, the applicant must give notice to any proposed respondent and to the persons to be notified (being those persons that are required to be notified of an issued application as specified in Practice Direction 9B) that an application is going to be made using the notification form COP15PADep which provides the following information:
  - a. Who the applicant is;
  - b. Details about the person to whom the application relates (P);
  - c. Details of the application being made and the order or orders sought;
  - d. The full name and address of the person being notified and their connection to P;
  - e. That the person notified is asked to complete the form and return it to the applicant no more than 14 days after receiving it, to acknowledge notification and to indicate whether they consent or object to the application;
  - f. That the person may, in addition to sending the completed form back to the applicant, send a copy of it to the court; and
  - g. That at the point an application is made, the applicant is required to provide to the court all completed notification forms where these have been returned to the applicant within the prescribed time.

### **Responding to notice that an application is going to be made**

11. (a) A person notified that an application is going to be made pursuant to paragraph 10 above should complete the notification form COP15PADep and return it to the applicant before the end of 14 days from the date of receipt, indicating whether they consent or object to the proposed application.  
  
(b) The person to whom the application relates may complete the COP14PADep and the applicant must return the form to the court if the person to whom the application relates completes it.

(c) If a person notified that an application is going to be made fails to return the completed notification form COP14PADep or COP15PADep to the applicant by the end of 14 days from receipt, the applicant can make the application with a declaration that no response has been received, and the court will infer that there is no objection to it.

(d) If a person notified that an application is going to be made objects to the application, the person notified may, in addition to sending the completed notification form COP14PADep or COP15PADep to the applicant, file a copy of the completed form directly with the court.

### **Timing of the application**

12. The applicant must not file the application with the court until either:
- a. they have received acknowledgment of notification from all persons notified, or
  - b. the end of 14 days after the latest notification was provided pursuant to paragraphs 7 and 10 above,

whichever is the earlier.

13. Where the applicant has not filed the application with the court by the end of three months after first notifying any person that an application is going to be made, the applicant must provide new notification in accordance with paragraphs 7 and 10 above before filing the application with the court.

### **Filing the application: using the online portal or other method permitted by the Rules**

14. To file an application with the court using the online portal the applicant must:
- a. complete the form in the online portal, providing the following information which is signed with a statement of truth and an acknowledgement that the court may contact any of the persons listed:
    - (i) the date on which P was notified and steps taken to enable P to understand the information;
    - (ii) Details of any wishes and feelings expressed by P about the application;

- (iii) Details of the people notified that the application was going to be made, and their relationship to P;
    - (iv) the dates on which each person was notified or an explanation as to why they have not been notified;
    - (v) whether the persons notified consent or object to the application or have not responded; and
  - b. upload all completed acknowledgement of notification forms received;
  - c. upload all supporting documents as required by Rule 9.4 and Practice Direction 9A; and
  - d. Pay the appropriate court fee (with professional users using Payment by Account where possible).
- 15. To file an application otherwise than using the online portal, the applicant must file with the court:
  - a. the completed COP1 which is signed with a statement of truth and an acknowledgement that the court may contact any of the persons listed:
    - (i) Details of the people notified that the application was going to be made, and their relationship to P;
    - (ii) the dates on which each person was notified or an explanation as to why they have not been notified;
    - (iii) whether the persons notified consent or object to the application or have not responded; and
  - b. the completed COP14PA Dep providing the date on which P was notified, steps taken to enable P to understand the information, and any wishes and feelings expressed by P about the application;
  - c. all completed acknowledgement of notification forms received;
  - d. all supporting documents as required by Rule 9.4 and Practice Direction 9A; and
  - e. Pay the appropriate court fee (with professional users using Payment by Account where possible).

### **Online Portal**

- 16. If there are technical difficulties with the online portal such that court receives an incomplete form or application or there are difficulties accessing some or all of the uploaded documents, the court will contact the applicant and invite them to rectify the errors.

### **Issue of application**

17. When the court receives a complete form and application in accordance with paragraphs 14-16 above, it must issue the application, and notify the applicant of the date of issue.

**After the application has been issued**

18. Rule 9.6 does not apply.
19. As soon as practicable after issue of the application an Authorised Court Officer will consider the application, including the following matters:
  - a. whether the applicant has complied with the requirements of this practice direction and in particular whether further consideration of the application needs to be deferred in accordance with paragraph 20 below;
  - b. whether the court requires any additional information regarding notification that the application was going to be made;
  - c. whether the application contains any request under rule 7.11 or otherwise in relation to dispensing with the requirement to serve or notify any person of the application prior to issue; and
  - d. whether any person served or notified of the application has indicated that they object or has failed to respond (which will include consideration of any completed notification forms COP14PADep or COP15PADep received by the court direct from a person notified).

and may as appropriate, request additional information, defer further consideration, issue case management directions and/or refer the matter to a judge under paragraph 22, or make the order requested in accordance with paragraph 21.

20. Applications which do not attach completed acknowledgement of notification forms from all persons notified, and which have been filed before the end of the 14 day period following the latest notification provided pursuant to paragraphs 7 and 10 above, will not be further considered by an Authorised Court Officer before 14 days from the date of issue of the application.
21. Applications in which all persons notified that the application was going to be made have indicated their consent to the order sought or have failed to respond within the prescribed time and such time having now expired, will be treated as uncontested applications and considered on the papers by an Authorised Court Officer.

22. Paragraph 2.2 of Practice Direction 2B applies with the following modifications:
- a. where any person notified that an application is going to be made has indicated that they object to it, or seek a different or additional order, an Authorised Court Officer may make standard directions to:
    - (i) allocate the application to the Property and Affairs pathway set out in Part 3 of Practice Direction 3B – Case Pathways;
    - (ii) join any person objecting to the proposed order as a respondent to the matter, and join any other person as a party where appropriate;
    - (iii) provide for service of the application, supporting documents and the directions order on any respondent;
    - (iv) provide for any respondent to file reasons for the objection;
    - (v) provide for the listing of a dispute resolution hearing; and
    - (vi) require costs details of each party to be available at the dispute resolution hearing.
  - b. where the court officer considers that the application is complex or contentious for any reason beyond the notification of an objection, that additional or alternative directions should be made or that for any other reason it is appropriate, they must refer the matter to a judge for consideration and for directions to be made which may include (but are not limited to) all of those listed in subparagraphs (i) to (vi) above.