

PRACTICE DIRECTION UPDATE: No. 4 of 2023

The amendments to existing Practice Directions supplementing the Family Procedure Rules 2010 are made by the President of the Family Division under the powers delegated to him by the Lord Chief Justice under Schedule 2, Part 1, paragraph 2(2) of the Constitutional Reform Act 2005, and are approved by Lord Bellamy KC, Parliamentary Under-Secretary of State, Ministry of Justice.

The provisions in this Practice Direction Update come into force on 31 July 2023.

Signed:

_____ Date: 13 July 2023 _____

Sir Andrew McFarlane

The President of the Family Division

Signed:

_____ Date: 19 July 2023 _____

Lord Bellamy KC

Parliamentary Under-Secretary of State, Ministry of Justice

PRACTICE DIRECTION 36G – PILOT SCHEME, PROCEDURE FOR USING AN ONLINE SYSTEM TO GENERATE APPLICATIONS IN CERTAIN PRIVATE LAW PROCEEDINGS RELATING TO CHILDREN

(1) In paragraph 1.2(d) for “31 October 2023” substitute “31 March 2024”.

PRACTICE DIRECTION 36ZD – PILOT SCHEME: ONLINE SYSTEM FOR CERTAIN PRIVATE LAW PROCEEDINGS RELATING TO CHILDREN AND FOR CERTAIN PROTECTIVE ORDERS

(1) In the title for “AND CERTAIN PROTECTIVE ORDERS” substitute “, CERTAIN PROTECTIVE ORDERS AND CERTAIN APPEALS”.

(2) In paragraph 1.2-

(a) for sub-paragraph (a) substitute-

“(a) the application is of a type to which paragraph 1.2A applies;” and

(b) in sub-paragraph (e) for “31 October 2023” substitute “31 March 2024”.

(3) After paragraph 1.2 insert-

“**1.2A** This paragraph applies to an application-

(a) for an order in private law proceedings, which for the purposes of this Practice Direction has the same meaning as in rule 12.2 FPR, except that it does not include an application for a warning notice to be attached to a child arrangements order;

(b) for an order under Part 4 of the 1996 Act;

(c) for a declaration of parentage under section 55A of the 1986 Act (but not an application to be joined as a party under rule 8.20(5) FPR);

(d) for a parental order under section 54 or section 54A of the 2008 Act (but not an application to be joined as a party under rule 13.4(5) FPR);

(e) for a forced marriage protection order under section 63A of the 1996 Act;

(f) for a FGM protection order under paragraph 1(1) of Part 1 of Schedule 2 to the 2003 Act (as defined in rule 11.1 FPR);

(g) made in the course of existing proceedings for-

(i) an order under section 33 of the 1986 Act (power to order disclosure of child's whereabouts); or

(ii) an order under section 34 of the 1986 Act (power to order recovery of child),

where those existing proceedings are progressing on the online system;

(h) which is a contempt application (within the meaning given in rule 37.2 FPR) which relates to an order which was made in proceedings which are progressing, or which progressed, on the online system; or

(i) to appeal, or to seek permission to appeal, in respect of an order or decision made in respect of an application of a type referred to in subparagraph (a) to (h) where-

(i) the appeal lies to the family court; and

(ii) the order or decision in question was made in proceedings which progressed on the online system.”.

(4) For paragraph 3.1 substitute-

“3.1 During the operation of the Pilot Scheme the FPR and the Practice Directions supporting the FPR will apply as follows to cases falling within the Pilot Scheme-

(a) as modified by Chapter 2, to all cases;

(b) as modified by Chapter 3, to applications for an order in private law proceedings;

(c) as modified by Chapter 4, to applications for an order under Part 4 of the 1996 Act;

(d) as modified by Chapter 5, to applications for a parental order under section 54 or section 54A of the 2008 Act; and

(e) as modified by Chapter 6, to applications to appeal, or to seek permission to appeal, in respect of an order or decision made in respect of an application of a type referred to in paragraph 1.2A(a) to (h) where-

- (i) the appeal lies to the family court; and
- (ii) the order or decision in question was made in proceedings which progressed on the online system.

3.2 For the avoidance of doubt, it is noted that no modifications to the FPR and supporting Practice Directions, beyond those made by Chapter 2, are required in respect of an application-

- (a) for a declaration of parentage under section 55A of the 1986 Act;
- (b) for a forced marriage protection order under section 63A of the 1996 Act;
- (c) for a FGM protection order under paragraph 1(1) of Part 1 of Schedule 2 to the 2003 Act;
- (d) made in the course of existing proceedings for-
 - (i) an order under section 33 of the 1986 Act (power to order disclosure of child's whereabouts); or
 - (ii) an order under section 34 of the 1986 Act (power to order recovery of child),

where those existing proceedings are progressing on the online system; or

(e) which is a contempt application (within the meaning given in rule 37.2 FPR) which relates to an order which was made in proceedings which are progressing, or which progressed, on the online system.”.

(5) In paragraph 5.1, in the substituted rule 5.1 FPR-

(a) for “5.1” substitute “5.1(1)”;

(b) after the substituted paragraph (a) insert-

“(aa) complete the relevant form referred to in Practice Direction 5A, in cases where the online system indicates that an application must be made by uploading a form;”;

(c) in sub-paragraph (b) after “application” insert “by filing it”; and

(d) after sub-paragraph (c) insert-

“(2) Where paragraph (1)(aa) applies, a form may be varied by the court or a party if the variation is required by the circumstances of the particular case, but must not be varied so as to leave out any information or guidance which the form gives to the recipient.”.

(6) In paragraph 6.2, in the inserted rule 17.2(6A) FPR, after “applies” insert “, if the statement of truth is not verified by a wet-ink signature,”.

(7) In paragraph 7.1 after “read” insert “, as necessary,”.

(8) In the heading to Chapter 3, for “**UNDER SECTION 8 OF THE 1989 ACT**” substitute “**IN PRIVATE LAW PROCEEDINGS**”.

(9) In paragraph 8.1, in the substituted rule 3.7 FPR, for “in Rule 3.8 must” substitute “in Rule 3.6 must”.

(10) In paragraph 10.1, for the substituted paragraph 8.2 of Practice Direction 12B substitute-

“8.2(1) Subject to paragraph (2), where the pilot scheme referred to in Practice Direction 36ZD applies, an application for an order in private law proceedings must be made on the relevant prescribed form and be uploaded on the online system referred to in Practice Direction 36ZD.

(2) An application for a section 8 order (as defined in rule 2.3(1) FPR) must be created and submitted on the online system referred to in Practice Direction 36ZD, and for the purposes of such applications and that pilot scheme, references in this Practice Direction to forms “C100”, “C7” or “C1A” are to be read as including the versions of those forms generated by the online system.”.

(11) In paragraph 11.1, for the substituted paragraph 8.2 of Practice Direction 12B (Pilot) substitute-

“8.2 Where the pilot scheme referred to in Practice Direction 36ZD applies-

(a) an application for an enforcement order must be made on the relevant prescribed form and be uploaded on the online system referred to in Practice Direction 36ZD; and

(b) an application for a section 8 order must be created and submitted on the online system referred to in Practice Direction 36ZD and, for the purposes of that pilot scheme, references in this Practice Direction to forms “C100”, “C7”, “C8” or “C1A” are to be read as including the versions of those forms generated by the online system.”.

(12) In paragraph 11.10, in the inserted paragraph 8.14 of Practice Direction 12B (Pilot) for “paragraph 8.8” substitute “paragraph 8.7”.

(13) After paragraph 12.1 insert-

“CHAPTER 5: MODIFICATIONS APPLICABLE TO APPLICATIONS FOR A PARENTAL ORDER UNDER SECTION 54 OR SECTION 54A OF THE 2008 ACT

13.1 In rule 13.5(1)(b)(ii) after “send” insert “,via the online system,”.

13.2 In rule 13.18(2) after “special security” insert-

“(2A) Where any information or document is held electronically by the court, such as on the online system referred to in Practice Direction 36ZD, special security arrangements must be in place, in particular in relation to restrictions on access to any such information or document by the court, court staff or others.”.

CHAPTER 6: MODIFICATIONS APPLICABLE TO CERTAIN APPLICATIONS TO APPEAL, OR TO SEEK PERMISSION TO APPEAL

14.1 The modifications to Practice Direction 30A set out in this Chapter apply in respect of applications to appeal, or to seek permission to appeal, in respect of an order or decision made in respect of an application of a type referred to in paragraph 1.2A(a) to (h) where-

- (i) the appeal lies to the family court; and
- (ii) the order or decision in question was made in proceedings which progressed on the online system referred to in Practice Direction 36ZD.

Modifications of Practice Direction 30A

14.2 In paragraph 5.8 omit sub-paragraphs (b) and (c).

14.3 In paragraph 5.23 in the first sentence, after “notice” insert “this may be uploaded to the online system in a case to which Practice Direction 36ZD applies”.

14.4 Omit paragraph 7.14.

14.5 Omit paragraph 7.15(a).

14.6 In paragraph 7.18 omit “, together with the requisite number of copies for the appeal court,”.
