

FAMILY PROCEDURE RULES 2010

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FAMILY PROCEDURE RULES 2010

- 1 The Family Procedure Rules 2010 (SI 2955/2010) come into force on 6 April 2011.
- 2 The new rules set out the procedure for all family proceedings. There do remain some areas where practitioners will still need to cross-refer to the CPR / CCR and to other SIs. Most significantly:
 - a. Costs are still largely set out by reference to the CPR,
 - b. ToLATA claims still remain outside the scope of the FPR (but hybrid cases are likely to fall under FPR as per *Goldstone v goldstone* [2011] EWCA Civ 39),
 - c. There are several areas in which the rules are said not to apply to magistrates court and several where the magistrates powers are enhanced as compared with the old rules (e.g. appt of OS / private law guardian),
 - d. Transfer to and from Magistrates courts is still dealt with under the old allocation order,
 - e. Enforcement of maintenance in the magistrates court is outside the scope of the rules,
 - f. County court financial enforcement is still largely set out by reference to the CPR,
 - g. Committal is still dealt with by reference to the CPR / CCR Ord 29

STRUCTURE

- 3 The rules are divided into PARTS & CHAPTERS.
- 4 The majority of the rules are supplemented by Practice Directions (PDs), numbered by reference to the rule to which they relate.
- 5 Additionally, there will be a PD listing those existing PDs which will support the new Rules (with necessary modifications). This will include:
 - a. PD12A (Public Law Proceedings Guide to Case Management 2010),
 - b. PD12B (Private Law Programme 2010,
 - c. PD27A (Court Bundles 2006) and
 - d. PDs 14A-14F which are adopted from the PDs supporting the Family Procedure (Adoption) Rules 2005.
 - e. A number of other existing PDs are now incorporated under the auspices of the FPR, for example several of the PDs under part 12.

- 6 It is unclear which other existing PDs, President's Guidance etc may still be applicable.
- 7 Attached are:
 - a. A complete list of the rules, identifying each Part and those Chapters which are most likely to be commonly applicable. PDs associated with each rule are identified below the relevant chapter in *italics*.
 - b. A destinations table identifying where familiar items appear in the new rules.
- 8 The FPR 2010 and all 61 PDs are available as a preview on the Ministry of Justice website at:
http://www.justice.gov.uk/family/procrules/fpr_preview.htm
and will be available after implementation at:
<http://www.justice.gov.uk/procedure.htm>
(alongside the CPR) in due course.
- 9 This note does not represent a forensic analysis of each and every rule and its significance. By way of example only, there are a (comparatively few) areas in respect of which provisions remain different in the FPC, and this note does not deal with those.

Q: WHEN DO I NEED TO BE READY?

- 10 See Part 36 & PD36A - Transitional Arrangements. The ***general intention is to apply the FPR to existing proceedings as far as practicable***, and the old rules only where it is not:
- a. When an *initiating step has been taken before 6 April 2011 it will proceed under the previous rules* and any step that must be taken in response *must be in accordance with those rules*. However, where a *new step is taken in any existing proceedings on or after 6 April it must be done under the new rules*.
 - b. The *overriding objective applies in any event to all cases from 6 April onwards*.
 - c. Only application forms under the FPR will be issued on or after 6 April – *old forms will be returned unissued*, except in exceptional cases where the matter is urgent.
 - d. When a matter *first comes before the court (including on paper) after 6 April* the court may direct how the FPR apply, although there is a *general presumption that the FPR will apply*.
 - e. If an application is *issued prior to 6 April but listed after that date* the presumption is that the application will be decided *having regard to the FPR*.
 - f. And where the *first occasion on which existing proceedings* are before a court after 6 April is a hearing of a *substantive issue* the *general presumption* is that the hearing will be conducted *according to the FPR*.
 - g. An assessment of costs taking place after 6 April will be in accordance with FPR Part 28, but the *presumption is that no costs for work undertaken prior to 6 April will be disallowed if they would have been allowed if assessed prior to that date*. The question of whether to allow costs for work undertaken on or after 6 April will generally be taken in accordance with the FPR.
- 11 **Answer: Be ready by 6 April. As a rule of thumb the new rules will apply to most things.**

SOME NOTABLE CHANGES

- 12 This note cannot hope to identify all the changes in the new procedural regime, but attempts to highlight some of those which are most likely to impact on day to day practice.

OVERRIDING OBJECTIVE

- 13 The overriding objective is set out in Part 1 (attached) and is couched in broadly similar terms to that which has to date been contained in rule 2.51D FPR, but that duty to further the overriding objective is now extended from covering only ancillary relief (as was) to encompass all types of family proceedings.
- 14 In the section describing the court's case management powers (1.4) the wording is broadened to reflect the increasing pressure upon court time and resources and shifts in emphasis in recent years: encouragement to parties to engage in ADR, and matters of strategic case planning such as attention to who should be a party at an early stage, the order in which issues should be resolved, dealing with multiple issues at one hearing if possible, dealing with matters without the attendance of the parties where possible and a general cost benefit analysis on an issue by issue basis.

DEFINITIONS

- 15 There are a number of changes to the terminology in current use which practitioners will need to adapt to:
- a. Petitions become applications.
 - b. Decrees of divorce or dissolution orders (civil partnership) become matrimonial orders (Nisi and Absolute are replaced with Conditional and Final respectively).
 - c. Ancillary relief becomes an application for a financial order and all types of financial remedies (including Sch1 CA) are now described collectively as "financial remedies".

- 16 The terminology in primary legislation remains un-amended, and so references to these new terms must be “read as” a reference to the appropriate terminology in the relevant act.

ADR

- 17 Part 3 gives a general power to encourage ADR and to adjourn for that purpose.
- 18 PD3A introduces an expectation (by way of Pre Action Protocol) that parties in private law proceedings will have considered mediation by way of attendance at a mediation information and assessment meeting prior to issue of proceedings, and they must certify the same in form FM1 upon issue.
- 19 At the first hearing the court may adjourn for the parties to attend a mediation meeting if the Pre Application Protocol has not been complied with.
- 20 There are a number of exceptions where parties do not need to attend a mediation information and assessment meeting (e.g. mediator certifies as unsuitable, bankruptcy, domestic violence, lack of available mediator within specified distance and timeframe).

GENERAL CASE MANAGEMENT

- 21 Part 4 (attached) gives a far more comprehensive list of case management powers than previously specified (old r4.1), notable introductions being the ability to require a party’s legal representative to attend court, to hold a hearing or receive evidence by ‘phone or other method of direct oral communication, and to dismiss or give a decision on an application after a decision on a preliminary issue.
- 22 The court may make orders of its own motion, with or without taking written or oral representations from the parties, although if the parties have not been heard the order must contain a statement that the parties may apply to vary or set aside within 7 days of service.
- 23 The court may strike out a case or dismiss an application of its on motion for lack of reasonable grounds, abuse of process, failure to comply with

rules – all directly transposed from CPR 3.4. Additionally, the court may do so by consent in respect of decrees and dissolution orders.

- 24 As provided for in CPR 23.12 the court must record on the order if the application was totally without merit and consider the making of a civil restraint order. This power derives from 4.4 and does not apply to Children proceedings, where s91(14) Children Act 1989 is applicable. There may be costs consequences of a strike out under this rule.
- 25 As with the CPR, the court may make unless orders and there is provision for a party to apply for relief from sanctions. Provisions for relief from sanctions (4.5-4.6) mirror those in the CPR.

STARTING PROCEEDINGS

- 26 Part 5 and PD5A prescribes the correct form depending on the type of application. Some draft forms have been circulated informally and they appear broadly similar to existing old forms. C100, c2 form E etc all remain with some tweaks and modifications only.

SERVICE

- 27 In addition to the usual methods, rule 6.23(d) now makes provision for service by fax or electronically (not permitted in relation to applications for matrimonial orders (divorce petitions). PD6A sets out when this is permissible:
- a. The party to be served or their solicitor must have previously indicated in writing that they are willing to accept service electronically or by fax giving the number or email address to which any documents should be sent for service
 - b. A fax number or email address on the writing paper of the solicitor acting (providing that it states that the e-mail may be used for service) or on a statement of case or answer to a claim is sufficient
 - c. The party serving must first ask the party to be served whether there are any limitations on the agreement to be served by such means (e.g. size of attachments).
- 28 Once served by fax or email there is no need for a hard copy to be sent in addition.

- 29 Confirmation of date and time of completion of transmission and of sending an email are sufficient for a certificate of service (r6.37).

WRITTEN EVIDENCE PD22A

- 30 Application forms and notices and answer (not matrimonial and civil partnership order documents) may be used as evidence as long as verified by a statement of truth.
- 31 Affidavits are still required in respect of contempt proceedings, and where otherwise specified.
- 32 There are now detailed provisions for the standard format of witness statements and affidavits, right down to the paper quality and margin width!
- 33 There is lengthy and precise provision made for the manner of exhibiting documents, the organization and collation of letters and the appropriate method of fastening documents together (securely but WITHOUT staples!), and the location of page numbers.
- 34 Fortunately where a witness statement, affidavit or exhibit does not comply with the rules or PD the court may give permission to file and use it. It seems unlikely that minor non-compliance will lead to the refusal to admit it as evidence, particularly where litigants in person are concerned.
- 35 There is a long annex containing detailed practical guidance on video conferencing which is not set out here, but which should be borne in mind in advance of arranging a video conference.

APPLICATIONS

- 36 In common with the Civil Procedure Rules Part 7 and 8 application processes, there are now two routes for the making of applications. These are set out in Parts 18 and 19 of the FPR.

- 37 Applications to start proceedings fall under part 18 only where there is no rule prescribing the procedure for the application. The procedure for the most common applications is set out in the relevant section, and the form will be prescribed in PD5A.
- 38 Matters which do fall under part 18 include:
- a. Applications made in the course of existing proceedings
 - b. Applications in respect of proceedings that have been concluded
 - c. Applications for permission to start proceedings
- 39 The wording is permissive “may use the Part 18 procedure where...”.
- 40 Other specific applications which fall under part 18 include:
- a. Applications under FLA PT IV by a child (PD10A)
 - b. All pre-action applications.
 - c. Applications to appoint a private law guardian (PD 16A)
 - d. Applications to strike out (PD 4A)
 - e. Applications for an order shortening the time before which decree nisi (or conditional order) may be made absolute (final). (PD7A)
 - f. Interim financial remedy applications (MPS, s37 MCA etc)
- 41 Part 18 applications are made by way of FP2 Application Notice (sample of draft attached) unless some other form is specified.
- 42 In the case of Children Act 1989 permission applications the MoJ have circulated a revised form C2 which is stated to be for use for permission to start proceedings, for an order in existing proceedings or for joinder in respect of CA 1989 proceedings – PD5A is therefore likely to specify the use of this form for CA 1989 permission applications rather than an FP2.
- 43 Under part 18 the court has the power to deal with the application on paper if the court thinks it appropriate, or if the parties agree to this, or if the terms of the order sought are agreed. There is provision for a person refused permission on paper to request an oral hearing.
- 44 The court may proceed in the absence of any person at the hearing of an application under this part, or may re-list.
- 45 Applications made under this part which are totally without merit may be dismissed and the rule adopts the provision in the CPR for the court to record that the application was totally without merit, as a precursor to a civil restraint order.

46 The following sections of PD18A are worth setting out in full:

Pa 4.8: The parties must anticipate that at any hearing (including any directions hearing) the court may wish to review the conduct of the case as a whole and give any necessary directions. They should be ready to assist the court in doing so and to answer questions the court may ask for this purpose.

Pa 4.9: Where a date for a hearing has been fixed, a party who wishes to make an application at that hearing but does not have sufficient time to file an application notice should as soon as possible inform the court (if possible in writing) and, if possible, the other parties of the nature of the application and the reason for it. That party should then make the application orally at the hearing.

47 Pa 5.1 provides that an application may be made without service of an application notice only

- a. where there is exceptional urgency
- b. where the overriding objective is best furthered by doing so
- c. by the consent of all parties
- d. with the permission of the court or
- e. where 4.9 applies
- f. or where a court order, rule or PD permits

48 Generally an application notice must be served as soon as possible and at least 7 days before the hearing date. Informal notice should be given if the full 7 days is not possible.

49 There is specific provision for hearing by telephone, usually only where all consent.

- a. If a hearing is to be conducted by telephone no advocate is to attend in person unless agreed with the other side.
- b. The applicant's legal adviser is responsible for arranging the conference call.
- c. Advocates are to be assembled on the telephone conference before the judge or bench is joined.

PART 19 – ALTERNATIVE PROCEDURE

- 50 Part 19 is the alternative procedure and may be used in the following cases:
- a. where part 18 does not apply and there is no prescribed form for the application, or
 - b. the application concerns a question which is unlikely to involve a substantial dispute of fact.
 - c. Forced marriage applications and applications for permission to appeal always fall under this part.
- 51 Appropriate applications are where an order or direction is sought and is unopposed by all parties before the commencement of proceedings.
- 52 An FP1 Application Notice should be used (sample of draft attached).
- 53 Any evidence which is relied upon should be filed with the application and evidence in response should be filed with the acknowledgement of service, although an application for extension of time may be made. The parties may agree to extend time between themselves but must file an agreement at the same time as the acknowledgment of service and can permit no more than 17 further days for the filing of evidence. The parties may agree that the Applicant's evidence in reply can be filed not more than 28 days after service of the Respondent's own evidence.
- 54 Part 8 deals with procedure for miscellaneous applications, which must be brought under this part. Those most likely to arise are applications for permission to apply for financial remedy after overseas proceedings and transfer of tenancy applications under sch 7 Family Law Act 1996 (but r10 sets out the procedure for most PTIV FLA applications). Others are unlikely to arise very often at all.
- 55 Only matters not covered by PD18 and for which there is no prescribed form or procedure will fall under this alternative procedure.
- 56 A tabular comparison of the procedures described at Parts 18 and 19 follows overleaf.

DIFFERENCES BETWEEN PART 18 & PART 19

TOPIC	PART 18	PART 19
DEFAULT FORM	FP2 requires draft order to be attached, & provides for evidence in support. Statement of truth.	FP1 does not require draft order or evidence in support. "details of application" only. Statement of truth.
RESPONDENTS	<p>Parties to existing proceedings & the subject of any existing forced marriage application.</p> <p>If no existing proceedings:</p> <p>Any LA which has been given notice of intention to adopt / to apply (s44 ACA 2002)</p> <p>Any person who would be a party to proceedings if permission to apply is granted</p> <p>Anyone else as directed by court.</p>	<p>PD 19A provides that applications for:</p> <p>App to H Ct for directions on the need to give a father without PR notice of intention to place for adoption (r19.4) or</p> <p>Applications under s60(3) ACA 2002 (order to prevent disclosure of info to adopted person) need name no Respondent.</p> <p>Rule provides for PD to describe circumstances in which an application for permission must be made prior to issue of substantive application, and where as a consequence the permission application would not need to be served on any other person, but must be accompanied by the proposed substantive application. However PD19A does not in fact specify any such circumstances.</p>
NOTICE	<p>Service on:</p> <p>each respondent</p> <p>the subject of any (proposed) forced marriage application</p> <p>the children's guardian (if any)</p> <p>unless permitted by a rule or PD or the court.</p>	Respondents to the application – no specific provision
SERVICE	<p>ASAP after filing but in any event at least 7 days before the court is to deal with the application (14 if the application is for an interim financial order under rule 9.7 – MPS etc).</p> <p>If 7 days is not possible informal notification should be given (PD18A)</p>	No specific provision
SUBSEQUENT SERVICE OF WITHOUT NOTICE APPLICATIONS	Once disposed of service on all parties and the subject of any forced marriage application. Must include statement of right to set aside / vary.	No provision for without notice applications
EVIDENCE & RESPONSE	Evidence may be filed by respondent in accordance with directions of the court	Applicant must file all written evidence at time of filing application.

		<p>Acknowledgment of service (AoS) within 14 days of service, stating whether application is contested & any order sought in form FP5 or informal document such as letter (PD19A).</p> <p>If no AoS filed within time Respondent may attend but may not take part without permission.</p> <p>Any evidence from Respondent must be filed with AoS.</p> <p>Any objection to use of part 19 must be raised in AoS.</p> <p>Provision for reply within 14 days of service of respondents evidence.</p> <p>Any further evidence only with permission.</p>
ACTION ON ISSUE	<p>May be dealt with without hearing if not appropriate or parties agree terms of order sought or parties and court agree no need for a hearing.</p> <p>PD18A sets out provisions for telephone hearings, video conference and evidence.</p>	<p>Court may direct that matter should not proceed under Part 19 at any stage.</p> <p>Oral evidence may be permitted at a hearing under this part, court may direct attendance for xx.</p> <p>PD says “certain applications may not require a hearing” but drafting suggests expectation is that most will be disposed of by hearing. No specific provision for telephone hearings etc.</p>
SET ASIDE	<p>Power to set aside or vary orders made without notice providing application is made within 7 days of service of order on the set aside applicant. Application deemed made upon receipt of application by court.</p>	<p>No equivalent provision.</p>
PROCEDURAL POWERS	<p>Court may proceed in absence of any party.</p> <p>The court (not FPC) may make an order and at the same time relist the application.</p> <p>The court (not FPC) may dismiss an application totally without merit, and must record that fact and consider making CRO.</p>	<p>No equivalent provision.</p>

OTHER NOVEL POINTS OF PROCEDURE

- 57 In addition to the power to strike out under part 4 noted above the court may proceed with a hearing or directions appointment in the absence of one or both parties, and may dispose of the application providing certain requirements are met (r27.4).
- 58 Where the court has given judgment or made an order against a party who has not attended a hearing or directions appointment, that party may apply for the judgment or order to be set aside. The application must be supported by evidence and made promptly. There must be a good reason for the non attendance and a reasonable prospect of success at the hearing or directions appointment.
- 59 NB Although the Magistrates court appears to have the power to proceed with hearings under r27.4 the party adversely affected CANNOT apply to set aside an order made in the Magistrates court (r27.5(4)).
- 60 In CHILDREN cases (not Hague) there is almost identical provision for proceedings in the absence of a party under r12.14. It is unclear what the purpose of the duplication is, but the drafting of r27.5 (set aside) applies to all types of proceedings where an order has been made on a failure to attend.
- 61 There is no power to proceed in the absence of a party when the court is considering whether to make a contact activity direction / condition or a financial compensation or enforcement order (or an enforcement of a broken enforcement order) and has yet to obtain sufficient information from or about the person who would be subject to it to determine the matter.

APPEALS

- 62 Part 30 & lengthy and detailed PD30A (which should be read in full prior to any appeal). The key points are:
- a. Permission is now required for all appeals from decisions of District Judges. Applications for permission to appeal fall under Part 19 generally, but the procedure for such applications is largely set out in Part 30.

- b. The time limit for all appeals is 21 days (except appeals against ICOs which are 7 days).
- c. There is no provision in Part 30 for applications to set aside for fraud or undue influence etc or barder type appeals. These should probably be treated as Part 19 applications in the first instance BUT see PD30A which says “An appeal is the only way in which a consent order can be challenged” (pa14.1) – what does this mean / what are the implications?
- d. The existing guidance re handling a material omission from a judgment is formalized.
- e. Care should be taken when preparing an appeal bundle not to automatically include everything in the trial bundle – EXTRANEIOUS material MUST be excluded, and this must be revisited if permission is only given in respect of certain parts of an appeal. Solicitors to sign saying the bundle complies with the PD – clear costs risk if it does not.
- f. Skeleton arguments relying on more than one authority for a given proposition must explicitly justify this. Costs of preparation of a non-compliant skeleton will not be awarded.
- g. Chronology is usually required.
- h. Advocates are duty bound to provide a note of judgment and provide it to any unrepresented party immediately, to agree it with the other side and present for approval to judge.

COSTS

- 63 Broadly speaking the costs provisions remain the same as in the old rules: elements of the CPR costs provisions apply, with the general rule (i.e. that costs follow the event) dis-applied.
- 64 It is now made express at r28.3(5) that the general rule in financial proceedings is that the court will not make an order for costs.
- 65 r28.3(6) and (7) set out circumstances wherein in financial proceedings it may be appropriate to make a costs order, which are based upon a party’s conduct before or during proceedings.
 - a. CPR PD on Costs does apply, with appropriate modifications,

- b. The PD makes clear that costs orders will arise only from litigation conduct, and without reference to without prejudice correspondence,
- c. Financial proceedings encompass not just ancillary relief, but also civil partnership dissolution and schedule 1 applications,
- d. ToLATA remains as before under the CPR as far as costs are concerned,
- e. Some complexity ref interim financial applications – most do not count as “financial remedy” for the purposes of costs rules (interim variation applications do),
- f. Pay particular regard to the duty to further the overriding objective in the context of the importance or complexity of a financial variation application, where (the PD warns) costs may be disproportionate,

66 An appeal against a wasted costs order in the Magistrates court by a legal representative lies to the Crown Court. It is unclear if this is a drafting error?

CHILDREN CASES

67 Points specific to children cases will be dealt with by the other speaker.

MONEY CASES

68 The procedure in relation to financial applications is broadly unchanged, although rule numbers are all new. The procedure is set out in Part 9 and will be familiar territory. Two points of note:

- a. The procedure for Schedule 1 Children Act applications is now harmonized and as per financial applications within matrimonial / CP proceedings, although PD5A suggests there will be a slightly different form (E1 – not yet available).
- b. There remains a separate procedure for cases proceeding in the FPC.

69 Aspects of the overarching procedural powers and framework are more likely to have practical impact on money cases. For example the power to proceed in the absence of a party is likely to be particularly helpful and effective in a case of a Respondent to an application for financial relief who is adopting the head in the sand approach to disclosure and to proceedings.

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19 March 2011

This note was believed to be accurate at the time of completion.

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(PDs greyed out are pre-existing material)

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9 APPLICATIONS FOR A FINANCIAL REMEDY

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PD 9A Application For A Financial Remedy

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DESTINATION TABLE

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1	PRELIMINARY (APPLICATION, INTERPRETATION, COMPUTATION OF TIME etc)	2	NEW TERMINOLOGY: DECREES BECOME MATRIMONIAL ORDERS, AR & SCH 1 CA ORDERS BECOME FINANCIAL REMEDIES (STATUTORY TERMINOLOGY REMAINS UNCHANGED)
2	DIVORCE / CIVIL PARTNERSHIP	7 6(CH2)	GENERAL PROCEDURE SERVICE
2.51A - 2.71	ANCILLARY RELIEF	9	NOW APPLICATION FOR FINANCIAL REMEDY PROCEDURE BROADLY SIMILAR
2.51D	OVERRIDING OBJECTIVE	1	OVERRIDING OBJECTIVE NOW APPLIES TO ALL FAMILY PROCEEDINGS, NOT JUST AR. CASE MGMT POWERS AT 1.4 BROADER.
2.61F & 2.71	COSTS (AR)	28.3 & 9(CH6)	
3	OTHER MATRIMONIAL	VARIOUS	SEE LIST OF CONTENTS
3.8- 31.10	PT IV FLA 1996 NON MOL, OCCUPATION &C	10	
3.25- 3.36	FORCED MARRIAGE PROTECTION ORDERS	11	
4	CHILDREN ACT	12 14 15 16	NO MAJOR CHANGE TO PROCEDURE, EXISTING CORE PDS APPLY. PD12A SETS OUT NOTICE REQUIREMENTS – THESE VARY FROM 1 – 14 DAYS.
4.10- 4.13B	DUTIES & POWERS OF GUARDIANS / CAFCASS / LA OFFICERS	16	
4.14	DIRECTIONS (CA 1989)	1.4 & 4	DUTY TO ACTIVELY CASE MANAGE & GENERAL CASE MANAGEMENT POWERS

		12	
4A	HUMAN FERTILISATION & EMBRYOLOGY ACT 08	13	
5	WARDSHIP	12 (CH5)	
6	CHILD ABDUCTION & CUSTODY	12 (CH6)	
7	ENFORCEMENT	31-35	
8	APPEALS	30	PERMISSION TO APPEAL REQUIRED FROM ALL DECISIONS OF A DJ
9	DISABILITY	15	NO MAJOR CHANGE
9.5	SEPARATE REPRESENTATION OF CHILDREN	16.4	RULE 9.5 GUARDIANS PRESUMABLY NOW TO BE DESCRIBED AS "RULE 16.4 GUARDIANS"
10	GENERAL PROCEDURE	VARIOUS	SEE TABLE OF CONTENTS
10.21	DISCLOSURE OF ADDRESS (C8)	29.1	NO SUBSTANTIVE CHANGE
10.27	COSTS (GENERAL)	28	SOME CHANGES
10.28	ATTENDANCE AT PRIVATE HEARINGS (PRESS & C)	27.11	NO CHANGE
11	COMMUNICATION OF INFORMATION	12 (CH7)	ALSO CONTAINED IN PD 12G. NO CHANGE TO SUBSTANCE.
11.9	INTERPRETATION	1	
APPX 2	CONTENTS OF PETITION	5 & 7 PD5A & PD7A	r5.1(3) requires a form to be fully completed. PD5A will specify the form. PD7A requires the form to be fully completed and gives guidance.

EXTRACTS FROM THE RULES

PART 1 OVERRIDING OBJECTIVE

The overriding objective 1.1.—

(1) These rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly, having regard to any welfare issues involved.

(2) Dealing with a case justly includes, so far as is practicable—

- (a) ensuring that it is dealt with expeditiously and fairly;
- (b) dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues;
- (c) ensuring that the parties are on an equal footing;
- (d) saving expense; and
- (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

Application by the court of the overriding objective 1.2.

The court must seek to give effect to the overriding objective when it—

- (a) exercises any power given to it by these rules; or
- (b) interprets any rule.

Duty of the parties 1.3.

The parties are required to help the court to further the overriding objective.

Court's duty to manage cases 1.4.—

(1) The court must further the overriding objective by actively managing cases.

(2) Active case management includes—

- (a) encouraging the parties to co-operate with each other in the conduct of the proceedings;
- (b) identifying at an early stage—
 - (i) the issues; and
 - (ii) who should be a party to the proceedings;
- (c) deciding promptly—
 - (i) which issues need full investigation and hearing and which do not;and

- (ii) the procedure to be followed in the case;
- (d) deciding the order in which issues are to be resolved;
- (e) encouraging the parties to use an alternative dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure;
- (f) helping the parties to settle the whole or part of the case;
- (g) fixing timetables or otherwise controlling the progress of the case;
- (h) considering whether the likely benefits of taking a particular step justify the cost of taking it;
- (i) dealing with as many aspects of the case as it can on the same occasion;
- (j) dealing with the case without the parties needing to attend at court;
- (k) making use of technology; and
- (l) giving directions to ensure that the case proceeds quickly and efficiently.

PART 4 GENERAL CASE MANAGEMENT POWERS

The court's general powers of management 4.1.—

- (1) In this Part, “statement of case” means the whole or part of, an application form or answer.
- (2) The list of powers in this rule is in addition to any powers given to the court by any other rule or practice direction or by any other enactment or any powers it may otherwise have.
- (3) Except where these rules provide otherwise, the court may—
 - (a) extend or shorten the time for compliance with any rule, practice direction or court order (even if an application for extension is made after the time for compliance has expired);
 - (b) make such order for disclosure and inspection, including specific disclosure of documents, as it thinks fit;
 - (c) adjourn or bring forward a hearing;
 - (d) require a party or a party's legal representative to attend the court;
 - (e) hold a hearing and receive evidence by telephone or by using any other method of direct oral communication;
 - (f) direct that part of any proceedings be dealt with as separate proceedings;
 - (g) stay the whole or part of any proceedings or judgment either generally or until a specified date or event;
 - (h) consolidate proceedings;
 - (i) hear two or more applications on the same occasion;
 - (j) direct a separate hearing of any issue;
 - (k) decide the order in which issues are to be heard;

- (l) exclude an issue from consideration;
 - (m) dismiss or give a decision on an application after a decision on a preliminary issue;
 - (n) direct any party to file and serve an estimate of costs; and
 - (o) take any other step or make any other order for the purpose of managing the case and furthering the overriding objective.
- (Rule 21.1 explains what is meant by disclosure and inspection.)

- (4) When the court makes an order, it may—
- (a) make it subject to conditions, including a condition to pay a sum of money into court; and
 - (b) specify the consequence of failure to comply with the order or a condition.
- (5) Where the court gives directions it will take into account whether or not a party has complied with any relevant pre-action protocol(GL).
- (6) A power of the court under these rules to make an order includes a power to vary or revoke the order.
- (7) Any provision in these rules—
- (a) requiring or permitting directions to be given by the court is to be taken as including provision for such directions to be varied or revoked; and
 - (b) requiring or permitting a date to be set is to be taken as including provision for that date to be changed or cancelled.
- (8) The court may not extend the period within which a section 89 order must be made.

Court officer's power to refer to the court 4.2.

Where a step is to be taken by a court officer—

- (a) the court officer may consult the court before taking that step;
- (b) the step may be taken by the court instead of the court officer.

Court's power to make order of its own initiative 4.3.—

(1) Except where an enactment provides otherwise, the court may exercise its powers on an application or of its own initiative. (Part 18 sets out the procedure for making an application.)

- (2) Where the court proposes to make an order of its own initiative—
- (a) it may give any person likely to be affected by the order an opportunity to make representations; and
 - (b) where it does so it must specify the time by and the manner in which the representations must be made.
- (3) Where the court proposes—
- (a) to make an order of its own initiative; and
 - (b) to hold a hearing to decide whether to make the order,

it must give each party likely to be affected by the order at least 5 days' notice of the hearing.

- (4) The court may make an order of its own initiative without hearing the parties or giving them an opportunity to make representations.
- (5) Where the court has made an order under paragraph (4)—
 - (a) a party affected by the order may apply to have it set aside, varied or stayed; and
 - (b) the order must contain a statement of the right to make such an application.
- (6) An application under paragraph (5)(a) must be made—
 - (a) within such period as may be specified by the court; or
 - (b) if the court does not specify a period, within 7 days beginning with the date on which the order was served on the party making the application.
- (7) If the High Court or a county court of its own initiative strikes out a statement of case or dismisses an application (including an application for permission to appeal) and it 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.

Power to strike out a statement of case 4.4.—

- (1) Except in proceedings to which Parts 12 to 14 apply, the court may strike out a statement of case if it appears to the court—
 - (a) that the statement of case discloses no reasonable grounds for bringing or defending the application;
 - (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings;
 - (c) that there has been a failure to comply with a rule, practice direction or court order; or
 - (d) in relation to applications for matrimonial and civil partnership orders and answers to such applications, that the parties to the proceedings consent.
- (2) When the court strikes out a statement of case it may make any consequential order it considers appropriate.
- (3) Where—
 - (a) the court has struck out an applicant's statement of case;
 - (b) the applicant has been ordered to pay costs to the respondent; and
 - (c) before paying those costs, the applicant starts another application against the same respondent, arising out of facts which are the same or

substantially the same as those relating to the application in which the statement of case was struck out,
the court may, on the application of the respondent, stay(GL) that other application until the costs of the first application have been paid.

- (4) Paragraph (1) does not limit any other power of the court to strike out (GL) a statement of case.
- (5) If the High Court or a county court strikes out an applicant's statement of case and it considers that the application is totally without merit—
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 - (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.

Sanctions have effect unless defaulting party obtains relief

4.5.—

- (1) Where a party has failed to comply with a rule, practice direction or court order, any sanction for failure to comply imposed by the rule, practice direction or court order has effect unless the party in default applies for and obtains relief from the sanction.

(Rule 4.6 sets out the circumstances which the court may consider on an application to grant relief from a sanction.)

- (2) Where the sanction is the payment of costs, the party in default may only obtain relief by appealing against the order for costs.
- (3) Where a rule, practice direction or court order—
 - (a) requires a party to do something within a specified time; and
 - (b) specifies the consequence of failure to comply,the time for doing the act in question may not be extended by agreement between the parties.

Relief from sanctions 4.6.—

- (1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order the court will consider all the circumstances including—

- (a) the interests of the administration of justice;
- (b) whether the application for relief has been made promptly;
- (c) whether the failure to comply was intentional;
- (d) whether there is a good explanation for the failure;

- (e) the extent to which the party in default has complied with other rules, practice directions, court orders and any relevant pre-action protocol(GL) ;
- (f) whether the failure to comply was caused by the party or the party's legal representative;
- (g) whether the hearing date or the likely hearing date can still be met if relief is granted;
- (h) the effect which the failure to comply had on each party; and
- (i) the effect which the granting of relief would have on each party or a child whose interest the court considers relevant.

(2) An application for relief must be supported by evidence.

General power of the court to rectify matters where there has been an error of procedure 4.7.

Where there has been an error of procedure such as a failure to comply with a rule or practice direction—

- (a) the error does not invalidate any step taken in the proceedings unless the court so orders; and
- (b) the court may make an order to remedy the error.

Power of the court to make civil restraint orders 4.8.

Practice Direction 4B sets out—

- (a) the circumstances in which the High Court or a county 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.

DRAFT FORMS

FP1 & notes

FP2 & notes