

## PRACTICE DIRECTION UPDATE: No. 5 of 2021

The amendments to the existing Practice Directions, and the new 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 Wolfson QC, Parliamentary Under-Secretary of State, Ministry of Justice.

The provisions in this Practice Direction Update come into force as follows:

<b>Provision: amendment to</b>	<b>Coming into force date</b>
Practice Direction 3AA	On the day on which section 63 of the Domestic Abuse Act 2021 comes into force
Practice Direction 5A	30th July 2021
Practice Direction 5B	On the day after the date on which this Practice Direction Update is signed
Practice Direction 12J	On the day on which section 63 of the Domestic Abuse Act 2021 comes into force.
Practice Direction 17A	On the day after the date on which this Practice Direction Update is signed
Practice Direction 22A	On the day after the date on which this Practice Direction Update is signed
Practice Direction 27B	1st October 2021
New Practice Direction 29D	On the day after the date on which this Practice Direction Update is signed
Practice Direction 36G	On the day after the date on which this Practice Direction Update is signed
Practice Direction 36J	On the day after the date on which this Practice Direction Update is signed
Practice Direction 36K	On the day after the date on which this Practice Direction Update is signed
Practice Direction 36M	On the day after the date on which this Practice Direction Update is signed
Practice Direction 36N	On the day after the date on which this Practice Direction Update is signed
Practice Direction 36O	On the day after the date on which this Practice Direction Update is signed

Practice Direction 36P	On the day after the date on which this Practice Direction Update is signed
Practice Direction 36Q	1st October 2021
New Practice Direction 36X	13th September 2021
New Practice Direction 36Y	Immediately on the expiry of Practice Direction 36Q and Practice Direction 36R

Signed:

\_\_\_\_\_ Date: \_\_\_\_\_

Sir Andrew McFarlane  
The President of the Family Division

Signed:

\_\_\_\_\_ Date: \_\_\_\_\_

Lord Wolfson QC  
Parliamentary Under-Secretary of State, Ministry of Justice

**PRACTICE DIRECTION 3AA – VULNERABLE PERSONS: PARTICIPATION IN PROCEEDINGS AND GIVING EVIDENCE**

- (1) In paragraph 1.1-
  - (a) before the first indented sub-paragraph (which begins “Rule 3A.4 FPR”) insert-
    - “ - Rule 3A.2A FPR sets out the assumption that where it is stated that a party or witness is, or is at risk of being, a victim of domestic abuse carried out by a party, relative of another party, or a witness in the proceedings, they are vulnerable. Where the assumption applies, the court must consider whether it is necessary to make a participation direction.”;
  - (b) in the first indented sub-paragraph (which begins “Rule 3A.4 FPR”) after “protected party” insert “, or to those who fall within the assumption at rule 3A.2A FPR”; and
  - (c) in the second indented paragraph (which begins “Rule 3A.5 FPR”) after “protected party” insert “, or to those who fall within the assumption at rule 3A.2A FPR”.
- (2) After paragraph 1.1 insert-

**“1.1A** For the avoidance of doubt, it should be noted that the assumption that a person is vulnerable, as referred to in rule 3A.2A FPR and in paragraph 1.1 above, only applies for the purposes of the court considering whether it is necessary to make a participation direction and not for any other purpose.”.

(3) In paragraph 2.1(a) omit “, within the meaning given in Practice Direction 12J”.

(4) After paragraph 2.1 insert-

**“2.2** As provided by rule 3A.2A FPR, where it is stated that a party or witness is, or as at risk of being, a victim of domestic abuse carried out by certain third parties, it is to be automatically assumed for the purposes of Part 3A FPR that they are vulnerable. For such parties and witnesses, the court should proceed directly to a consideration of whether a participation direction is necessary.”.

(5) In paragraph 3.1 after “protected party” insert “or victim of domestic abuse”.

(6) In paragraph 4.1 after “applies where” insert “the assumption at rule 3A.2A FPR applies to a party, or where”.

(7) In paragraph 4.2 after “rule 3A.4” insert “and rule 3A.2A”.

(8) In paragraph 5.1 after “protected party” insert “(including those deemed vulnerable by virtue of the assumption at rule 3A.2A FPR)”.

(9) In paragraph 6.1 before sub-paragraph (a) insert-

“(aa) whether the party or witness falls within the assumption at rule 3A.2A FPR;”.

#### **PRACTICE DIRECTION 5A – FORMS**

(1) In paragraph 3.1-

(a) in Table 1, after the row for Part 34 insert-

“Part 37 Applications and proceedings in relation to contempt of court	FC600”
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”; and

(b) in Table 2, after the entry for form number D651 insert –

“FC600	Contempt application”
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#### **PRACTICE DIRECTION 5B – COMMUNICATION AND FILING OF DOCUMENTS BY E-MAIL**

(1) In paragraph 2.2, for sub-paragraphs (a) and (b) substitute-

“(a) both-

(i) provide a Fee Account number which the person emailing the court has authority to charge for the applicable fee; and

(ii) authorise the court to charge the applicable fee to that Fee Account; or

(b) outline the preferred method of payment (credit or debit card) and provide the court with a contact number to take payment over the telephone.”.

(2) In paragraph 2.4(b) for paragraphs (i) and (ii) substitute-

“(i) the sender has not complied with paragraph 2.2;

(ii) the sender has complied with paragraph 2.2 but the court has not been able to charge or take the fee; or

(iii) in the case of an urgent application, the sender has not provided the undertaking specified in paragraph 2.3.”

(3) In paragraph 3.2, for sub-paragraphs (a) and (b) substitute-

“(a) both-

(i) provide a Fee Account number which the person has authority to charge for the applicable fee; and

(ii) authorise the court to charge the applicable fee to that Fee Account; or

(b) outline the preferred method of payment (credit or debit card) and provide the court with a contact number to take payment over the telephone.”.

(4) In paragraph 3.4 for sub-paragraph (b) substitute-

“(b) a fee is payable and-

(i) the sender has not complied with paragraph 3.2; or

(ii) the sender has complied with paragraph 3.2 but the court has not been able to charge or take the fee.”.

(5) At the end of paragraph 4.2 insert-

“Any notice given to the court under rule 29.1 (personal details not to be disclosed) must be sent as a separate attachment to the email and not as part of another attachment.”.

## **PRACTICE DIRECTION 12J – CHILD ARRANGEMENTS AND CONTACT ORDERS: DOMESTIC ABUSE AND HARM**

(1) After paragraph 2 insert-

### **“Interpretation**

**2A.** In this Practice Direction, “domestic abuse” has the same meaning as in the 2021 Act. Sections 1 and 2 of the 2021 Act provide that:

#### **“Definition of “domestic abuse”**

1.- (1) This section defines “domestic abuse” for the purposes of this Act.

(2) Behaviour of a person (“A”) towards another person (“B”) is “domestic abuse” if—

- (a) A and B are each aged 16 or over and are personally connected to each other, and
- (b) the behaviour is abusive.

(3) Behaviour is “abusive” if it consists of any of the following—

- (a) physical or sexual abuse;
- (b) violent or threatening behaviour;
- (c) controlling or coercive behaviour;
- (d) economic abuse (see subsection (4));
- (e) psychological, emotional or other abuse;

and it does not matter whether the behaviour consists of a single incident or a course of conduct.

(4) “Economic abuse” means any behaviour that has a substantial adverse effect on B’s ability to—

- (a) acquire, use or maintain money or other property, or
- (b) obtain goods or services.

(5) For the purposes of this Act A’s behaviour may be behaviour “towards” B despite the fact that it consists of conduct directed at another person (for example, B’s child).

(6) References in this Act to being abusive towards another person are to be read in accordance with this section.

(7) For the meaning of “personally connected”, see section 2.

### **Definition of “personally connected”**

**2.-** (1) For the purposes of this Act, two people are “personally connected” to each other if any of the following applies—

- (a) they are, or have been, married to each other;
- (b) they are, or have been, civil partners of each other;
- (c) they have agreed to marry one another (whether or not the agreement has been terminated);
- (d) they have entered into a civil partnership agreement (whether or not the agreement has been terminated);
- (e) they are, or have been, in an intimate personal relationship with each other;
- (f) they each have, or there has been a time when they each have had, a parental relationship in relation to the same child (see subsection (2));
- (g) they are relatives.

(2) For the purposes of subsection (1)(f) a person has a parental relationship in relation to a child if—

- (a) the person is a parent of the child, or
- (b) the person has parental responsibility for the child.

(3) In this section—

“child” means a person under the age of 18 years;

“civil partnership agreement” has the meaning given by section 73 of the Civil Partnership Act 2004;

“parental responsibility” has the same meaning as in the Children Act 1989 (see section 3 of that Act);

“relative” has the meaning given by section 63(1) of the Family Law Act 1996.

**2B.** For the avoidance of doubt, it should be noted that “domestic abuse” includes, but is not limited to, forced marriage, honour-based violence, dowry-related abuse and transnational marriage abandonment.”.

(2) In paragraph 3-

(a) after “For the purpose of this Practice Direction insert-

““the 2021 Act” means the Domestic Abuse Act 2021;”;

(b) omit the defined term “domestic abuse”;

(c) in the definition of “abandonment” after “residence rights” insert “and/or rights in relation to childcare”;

(d) in the definition of “harm” after “suffered from” insert “being a victim of domestic abuse or from”;

(e) in the definition of “ill-treatment” for “; and” substitute “;”;

(f) in the definition of “judge” for “.” substitute “; and”; and

(g) after the definition of judge insert-

““victim of domestic abuse” includes, but is not limited to, a child who is a victim of domestic abuse by virtue of section 3 of the 2021 Act, which provides that-

**“Children as victims of domestic abuse**

**3.-** (1) This section applies where behaviour of a person (“A”) towards another person (“B”) is domestic abuse.

(2) Any reference in this Act to a victim of domestic abuse includes a reference to a child who—

- (a) sees or hears, or experiences the effects of, the abuse, and
- (b) is related to A or B.

(3) A child is related to a person for the purposes of subsection (2) if—

(a) the person is a parent of, or has parental responsibility for, the child, or

(b) the child and the person are relatives.

(4) In this section—

“child” means a person under the age of 18 years;

“parental responsibility” has the same meaning as in the Children Act 1989 (see section 3 of that Act);

“relative” has the meaning given by section 63(1) of the Family Law Act 1996.”.

(3) After paragraph 3 insert-

**“3A** Reference is made at various points in this Practice Direction to making findings of fact in relation to domestic abuse. It should be noted that Part 3A FPR makes provision in relation to victims of domestic abuse in the specific context of participation in proceedings and giving evidence. In that context, it is not necessary for the court to make findings of fact in relation to domestic abuse before assuming that a party or witness is, or is at risk of being, a victim of domestic abuse carried out by a party, relative of another party, or a witness in the proceedings: see rule 3A.2A FPR.”.

(4) In paragraph 4-

(a) for “whether they are subjected to domestic abuse, or witness” substitute “including where they are victims of domestic abuse for example by witnessing”;

(b) for “live in” substitute “living in”; and

(c) after “living with” insert “and being victims of”.

(5) In paragraph 10 after “necessary.” insert “The court should consider Part 3A FPR, in particular the assumption at rule 3A.2A.”.

(6) In paragraph 19(k)-

(a) for “before the court.” substitute “before the court;”; and

(b) omit the final sentence.

(7) For paragraph 21 substitute-

**“21** (1) Subject to sub-paragraph (3), sub-paragraph (2) applies in any case where-

(a) a child being a victim of domestic abuse; or

(b) a risk of harm to a child resulting from domestic abuse,

is raised as an issue.

(2) In such a case, the court should consider directing that a report on the question of contact, or any other matters relating to the welfare of the child, be prepared under section 7 of the Children Act 1989 by an Officer of Cafcass or a Welsh family proceedings officer (or local authority officer if appropriate).

(3) Sub-paragraph (2) does not apply where the court is satisfied that it is not necessary to order the preparation of such a report in order to safeguard the child's interests.”.

(8) In paragraph 25-

(a) after “mind” insert “in particular the definition of “victim of domestic abuse” and”;  
and

(b) omit “including controlling or coercive behaviour”.

(9) For paragraph 36 substitute-

“**36** (1) In the light of-

(a) any findings of fact,

(b) admissions; or

(c) domestic abuse having otherwise been established,

the court should apply the individual matters in the welfare checklist with reference to the domestic abuse which has occurred and any expert risk assessment obtained.

(2) In particular, the court should in every case consider any harm-

(a) which the child as a victim of domestic abuse, and the parent with whom the child is living, has suffered as a consequence of that domestic abuse; and

(b) which the child and the parent with whom the child is living is at risk of suffering, if a child arrangements order is made.

(3) The court should make an order for contact only if it is satisfied-

(a) that the physical and emotional safety of the child and the parent with whom the child is living can, as far as possible, be secured before, during and after contact; and

(b) that the parent with whom the child is living will not be subjected to further domestic abuse by the other parent.”.

## **PRACTICE DIRECTION 17A – STATEMENTS OF TRUTH**

(1) In paragraph 2.1, in the wording of the statement of truth, at the beginning insert-

“[I understand] [the (applicant or as the case may be) understands] that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.”.

(2) In paragraph 2.2, in the wording of the statement of truth, at the beginning insert-

“I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.”.



## **PRACTICE DIRECTION 22A – WRITTEN EVIDENCE**

- (1) In paragraph 6.4, in the wording of the statement of truth, at the beginning insert-
- “I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.”.

## **PRACTICE DIRECTION 27B – ATTENDANCE OF MEDIA REPRESENTATIVES AT HEARINGS IN FAMILY PROCEEDINGS**

- (1) In the following provisions, after “media representatives”, each time those words occur, insert “or duly authorised lawyers”-

- (a) the title of Practice Direction 27B;
- (b) paragraphs 2.1, 2.2, 2.3, 2.4, 3.1, 5.1, 5.2, 5.3, 5.4, 5.5, 6.1, 6.2, 6.3 and
- (c) the heading to paragraph 6.

- (2) In paragraph 1.1-

- (a) after “(“media representatives”) insert “and of duly authorised lawyers”; and
- (b) after “such representatives” insert “or such lawyers”.

- (3) After paragraph 4 insert-

### **“Meaning of “duly authorised lawyer”**

#### **4A.1** In rule 27.11 FPR and in this practice direction-

“duly authorised lawyer” means-

- (a) a person who is authorised by a practising certificate to conduct litigation or exercise a right of audience in the family court;
- (b) a lawyer working for the Law School, Faculty or Department of a Higher Education Institution designated as a recognised body pursuant to section 216 of the Education Reform Act 1988; or
- (c) a lawyer attending on behalf of a registered educational charity the name, objects and registered charity number of which have been provided to the President of the Family Division; and

“lawyer” means a person who—

- (a) holds a qualifying law degree as defined by the Bar Standards Board or Solicitors Regulation Authority;
- (b) holds or has completed—
  - (i) the Common Professional Examination (CPE);
  - (ii) an approved Graduate Diploma in Law (GDL) course or the Solicitors Qualifying Examination (SQE);
  - (iii) a postgraduate legal qualification; or

(iv) the CILEx Level 6 Diploma in Law and Practice or the CILEx Graduate Fast Track Diploma.”.

### **Identification of lawyers as “authorised”**

**5A.1** Lawyers will be expected to carry with them identification sufficient to enable court staff, or if necessary the court itself, to verify that they are “authorised” lawyers within the meaning of the rule.

**5A.2** The following forms of identification provide sufficient information, and production of such identification will be both necessary and sufficient to demonstrate that the lawyer is “authorised” within the meaning of rule 27.11(7)(b)(i), (ii) and (iii) respectively-

(a) a current practising certificate accompanied by picture identification of the lawyer and a signed written statement by the lawyer which complies with paragraph 4A.3;

(b) confirmation on headed notepaper from the relevant Higher Education Institution (or Law School, Faculty or Department of that Institution) of the lawyer’s position and qualification, accompanied by picture identification of the lawyer and a signed written statement by the lawyer which complies with paragraph 4A.3;

(c) confirmation on headed notepaper from the relevant registered educational charity (specifying the registered charity number) of the lawyer’s position and qualification, accompanied by picture identification of the lawyer and a signed written statement by the lawyer which complies with paragraph 4A.3.

**5A.3** The signed written statement required by paragraph 4A.2 must—

(a) confirm that the lawyer’s attendance is for journalistic, research or public legal educational purposes and that the lawyer has no personal interest in the proceedings and that he or she is not attending in the capacity of agent or instructed lawyer for any client; and

(b) confirm that the lawyer is aware of and will abide by any restrictions on publication, whether arising by operation of law (for example under section 97 of the Children Act 1989 and section 12 of the Administration of Justice Act 1960) or imposed by order of the court, which follow from the proceedings being in private.

**5A.4** The information about a registered educational charity required by rule 27.11(7)(b)(iii) is to be submitted using Form FP300 (Request by educational charity to attend family proceedings for authorisation by the President of the Family Division) by e-mail to pfd.office@judiciary.uk, or by post to: The Office of the President of the Family Division, Royal Courts of Justice, Strand, London WC2A 2LL. It will be entered on a list maintained by that office, and therefore need be submitted only once.”.

(4) In paragraph 5.2 after “media presence” insert “or the attendance of duly authorised lawyers”.

(5) In paragraph 5.3-

(a) after “media attendance” insert “or the attendance of duly authorised lawyers”;  
and

(b) after “media attention” insert “or the particular attention of duly authorised lawyers”.

(6) In paragraph 5.4 after “the media” insert “and duly authorised lawyers”.

(7) In paragraph 6.3-

(a) after “encouraging media” insert “or duly authorised lawyers”; and

(b) after “the media” insert “or of duly authorised lawyers”.

(8) In paragraph 6.4 after “media interests” insert “or to any duly authorised lawyers”.

### **NEW PRACTICE DIRECTION 29D – COURT OFFICERS MAKING CORRECTIONS TO ORDERS**

(1) After Practice Direction 29C insert new Practice Direction 29D as set out in Annex 1 to this document.

### **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 “30 September 2021” substitute “at the end of the day on 3 April 2022”.

### **PRACTICE DIRECTION 36J – PILOT SCHEME: TRANSPARENCY (ATTENDANCE AT HEARINGS IN PRIVATE)**

(1) In paragraph 1.3 for “31 December 2021” substitute “the end of the day on 30 September 2021”.

### **PRACTICE DIRECTION 36K – PILOT SCHEME: PROCEDURE FOR THE BULK SCANNING OF CERTAIN PRIVATE LAW APPLICATIONS**

(1) In paragraph 1.2(e) for “30 September 2021” substitute “at the end of the day on 3 April 2022”.

### **PRACTICE DIRECTION 36M - PILOT SCHEME: ONLINE SYSTEM FOR CERTAIN PUBLIC LAW PROCEEDINGS AND EMERGENCY PROCEEDINGS RELATING TO CHILDREN**

(1) In paragraph 1.3(e) for “1 August 2021” substitute “1 February 2022”.

(2) After paragraph 2.2 insert-

**2.2A.** Subject to paragraph 2.2C, a Local Authority which is a party to proceedings started-

(a) on or after a date specified in paragraph 2.2D; and

(b) in a court listed in paragraph 2.2D,

must use the procedure provided for by this Practice Direction to start, progress and participate in proceedings, to include taking any of the steps specified in paragraph 2.2(a) to (d).

**2.2B** Subject to paragraph 2.2C, where existing proceedings are progressing via the online system-

(a) on a date specified in paragraph 2.2D; and

(b) in a court listed in paragraph 2.2D,

a Local Authority which is a party to those proceedings must continue to use the procedure provided for by this Practice Direction to progress and participate in those proceedings.

**2.2C** Paragraph 2.2A or 2.2B does not apply-

(a) where proceedings are transferred from the family court to the High Court; or

(b) when the online system is not available for use because of-

(i) planned “down time” for system maintenance or upgrades; or

(ii) unplanned “down-time” because of, for example, a system failure or power outage or some other unplanned circumstance.

**2.2D** The dates and courts referred to in paragraph 2.2A and 2.2B are-

(a) from 26 July 2021, the family court sitting at-

(i) Worcester;

(ii) Coventry;

(iii) Swansea;

(b) from 20 September 2021, the family court sitting at-

(i) Cardiff;

(ii) Kingston Upon Hull;

(iii) Newcastle;

(iv) Kent.”.

**PRACTICE DIRECTION 36N - PILOT SCHEME: PROCEDURE FOR ONLINE FILING AND PROGRESSION OF CERTAIN APPLICATIONS FOR A FINANCIAL REMEDY IN CONNECTION WITH CERTAIN PROCEEDINGS FOR A MATRIMONIAL ORDER**

(1) In paragraph 1.3(e) for “on 30 September 2021” substitute “at the end of the day on 31 March 2022”.

**PRACTICE DIRECTION 36O – PILOT SCHEME: PROCEDURE FOR BULK SCANNING OF CERTAIN DOCUMENTS**

(1) In paragraph 1.3(c) for “on 30 September 2021” substitute “at the end of the day on 3 April 2022”.

**PRACTICE DIRECTION 36P – PILOT SCHEME: PLACEMENT PROCEEDINGS: PROCEDURE FOR SPECIFIED STEPS TO BE TAKEN VIA THE ONLINE SYSTEM**

(1) In paragraph 1.3(d) for “1 August 2021” substitute “at the end of the day on 1 September 2022”.

**PRACTICE DIRECTION 36Q – PILOT PROVISION: MODIFICATION OF PRACTICE DIRECTION 12B – CORONAVIRUS**

(1) In paragraph 1.3, in the inserted paragraph 7.3 of Practice Direction 12B, after “Cymru.” insert-

“7.4 Where any local practices and initiatives are put in place under paragraph 7.2 or 7.3, the local Designated Family Judge working with Her Majesty’s Courts and Tribunals Service must ensure that parties, their legal representatives, relevant local support organisations and Local Authorities are given information about the detail of those local practices and initiatives.”.

**NEW PRACTICE DIRECTION 36X- PILOT PROVISION: PROCEEDING BY ELECTRONIC MEANS: CERTAIN PROCEEDINGS FOR A MATRIMONIAL ORDER**

(1) After Practice Direction 36W insert new Practice Direction 36X as set out in Annex 2 to this document.

**NEW PRACTICE DIRECTION 36Y – PILOT PROVISION: TEMPORARY MODIFICATION OF PRACTICE DIRECTIONS 2C, 5B, 12A AND 12B: POST-CORONAVIRUS**

(1) After Practice Direction 36X insert new Practice Direction 36Y as set out in Annex 3 to this document.

ANNEX 1: NEW PRACTICE DIRECTION 29D TO BE INSERTED AFTER PRACTICE DIRECTION 29C

**PRACTICE DIRECTION 29D – COURT OFFICERS MAKING CORRECTIONS TO ORDERS**

*This practice direction supplements rule 29.16 FPR 2010*

**1.1** Rule 29.10 FPR provides that the court may correct an accidental slip or omission in a judgment or order. Corrections under that rule must be approved by a judge, or by a Justices' Legal Adviser where Practice Direction 2C so provides.

**1.2** A court officer may make an amendment to an order, without prior reference to a judge or Justices' Legal Adviser (as applicable), in the following circumstances-

- (a) where a court officer has wrongly transposed details in the draft order approved by the court;
- (b) where the error is obviously typographical such as-
  - (i) the spelling of a party's name, a date of birth, a place of birth or marriage, where that can be corrected by reference to the application or supporting evidence on the court file such as a birth or marriage certificate; or
  - (ii) a nonsensical word clearly included in error (but see paragraph 1.4);
- (c) changes to references in the order to the venue at which a hearing took place, where this can be verified from the court file, court diary or cause list;
- (d) the date of the order, where this can be verified from the court file, court diary or cause list;
- (e) details of a party's legal representatives at a hearing when this can be verified from the court file or other record of hearing;
- (f) the date of a hearing, where the court officer has listed a matter for hearing but transposed the details incorrectly into the order that notifies the parties of the hearing date;
- (g) to improve the formatting (but not the numbering) of an order.

**1.3** If a court officer concludes that-

- (a) it would be inappropriate to make an amendment to an order even where they consider that a case falls within paragraph 1.2; or
- (b) they are not certain whether or not a case falls within paragraph 1.2 (for example whether an error is obviously typographical),

the court officer must refer the matter to a judge to determine whether to make the amendment.

**1.4** Save as specified in paragraph 1.2, a court officer must never make linguistic, grammatical or textual amendments to an order, or alter its numbering, without reference to a judge or, where Practice Direction 2C applies, to a Justices' Legal Adviser.

**1.5** A court officer must never make an amendment to a judgment or written ruling without reference to a judge or, where Practice Direction 2C applies, to a Justices' Legal Adviser.

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ANNEX 2: NEW PRACTICE DIRECTION 36X TO BE INSERTED AFTER PRACTICE DIRECTION 36W

**PRACTICE DIRECTION 36X – PILOT PROVISION: PROCEEDING BY ELECTRONIC MEANS: CERTAIN PROCEEDINGS FOR A MATRIMONIAL ORDER**

*This practice direction supplements rule 36.2 FPR (transitional arrangements and pilot schemes)*

**1.1** This practice direction is made under rule 36.2 FPR. It is intended to assess modifications to Practice Direction 41A to make the use of electronic means via the online system referred to in Practice Direction 41A mandatory for an applicant who is legally represented.

**1.2** This practice direction comes into force on 13th September 2021 and expires at the end of the day on 5th April 2022.

**1.3** While this practice direction is in force, Practice Direction 41A is modified as follows-

(a) in the heading to paragraph 2.1 after “may” insert “or must”;

(b) in paragraph 2.1, for “An application” substitute “Subject to paragraph 2.1A, an application”;

(c) after paragraph 2.1 insert-

**2.1A** Subject to paragraph 2.1B, an application must proceed by electronic means where-

(a) all of the conditions in paragraph 2.1(a), (b), (d) and (e) are met; and

(b) the applicant is legally represented.

**2.1B** Paragraph 2.1A does not apply when the online system is not available for use because of-

(a) planned “down time” for system maintenance or upgrades; or

(b) unplanned “down-time” because of, for example, a system failure or power outage or some other unplanned circumstance.”;

(d) in paragraph 3.1 after “enables” insert “(or, where paragraph 2.1A applies, this practice direction requires)”;

(e) after paragraph 7.1 insert-

**7.1A** Where paragraph 2.1A applies, an application for a matrimonial order must be created via the online system.”;

(f) at the end of paragraph 10.4 insert-

“Where paragraph 2.1A applies, the applicant must use the online system to take further steps in the proceedings.”;

(g) after paragraph 13.1 insert-



**“13.1A** Where paragraph 2.1A applies, any application made by the applicant for the court to consider the making of a decree nisi in the proceedings must be made-

(a) using the online system; and

(b) at a point in time specified in paragraph 13.1(a) or (b).”; and

(h) after paragraph 15.1 insert-

**“15.1A** Where paragraph 2.1A and 15.1 both apply, the applicant must give the notice referred to in paragraph 15.1 using the online system.”.

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ANNEX 3: NEW PRACTICE DIRECTION 36Y TO INSERT AFTER PRACTICE DIRECTION 36X:

**PRACTICE DIRECTION 36Y – PILOT PROVISION: TEMPORARY MODIFICATION OF PRACTICE DIRECTIONS 2C, 5B, 12A AND 12B- POST-CORONAVIRUS**

*This practice direction supplements rule 36.2 FPR (transitional arrangements and pilot schemes)*

**1.1** This practice direction is made under rule 36.2 of the Family Procedure Rules. It is intended to assess modifications to Practice Directions 2C, 5B, 12A and 12B following the coronavirus pandemic to ensure that the administration of justice is carried out and so as to take account of available resources.

**1.2** This Practice Direction-

(a) comes into force immediately on the expiry of Practice Directions 36Q and 36R; and

(b) expires at the end of the day 12 months after the date on which it comes into force.

**Modification of Practice Directions**

**2.1** During the period in which this Practice Direction is in force, the Practice Directions supporting the FPR will apply as modified by paragraphs 3.1 to 6.1.

**Modification of Practice Direction 2C**

**3.1** Practice Direction 2C (justices’ legal adviser) is modified as follows-

(a) in the table, in the row where the first column reads FPR 12.3(2), delete the wording in the second column; and

(b) at the end of the table, insert the following new rows-

“FPR rule 3A.4, 3A.5 and 3A.6	Only where:  1. the proceedings are allocated within the family court to lay justices or when the justices’ legal adviser is acting as a gatekeeper at the allocation stage; and  2. the measure specified is under rule 3A.8(1)(a) to 3A.8(1)(c).
Practice Direction 6C	Only where the proceedings are allocated within the family court to lay justices or when the justices’ legal adviser is acting as a gatekeeper at the allocation stage.
the 1989 Act, section 10(1)(a)	Only where:  1. the proceedings are allocated within the family court to lay justices or when the justices’ legal adviser is acting as

	<p>a gatekeeper at the allocation stage;</p> <p>2. all parties consent to the order being made;</p> <p>3. CAFCASS has confirmed that no safeguarding issues have been identified which require further enquiry or would preclude the parties agreeing a consent order; and</p> <p>4. the principles of PD12J have been applied and the justices' legal adviser determines it is consistent with PD12J and the child's welfare to make the order in the terms sought.</p>
<p>the 1989 Act, sections 11A(2), 11A(2B), 11C(2), 11E(7), 11G(2), 11H(2), 11H(5) and 11H(8)</p>	<p>Only where the proceedings are allocated within the family court to lay justices or when the justices' legal adviser is acting as a gatekeeper at the allocation stage."</p>

### Modification of Practice Direction 5B

**4.1** Practice Direction 5B (communication and filing of documents by email) is modified as follows-

(a) for the heading to Chapter 2 substitute-

**"Specified organisations and adoption agencies"**; and

(b) after paragraph 2.1 insert-

**"2.1A** Subject to this Chapter-

(a) a specified organisation;

(b) an adoption agency (other than a local authority) which has taken part at any stage in the arrangements for the adoption of the child; or

(c) a legal representative of a specified organisation or of an adoption agency referred to in sub-paragraph (b),

may email a court at the court's specified email address and attach or include one or more documents related to adoption proceedings.

**2.1B** Paragraph 2.1A does not apply to an application for an adoption order (section 46 of the 2002 Act)."

### Modification of Practice Direction 12A

**5.1** Practice Direction 12A (care, supervision and other Part 4 proceedings: guide to case management) is modified by substituting the second sentence in paragraph 4.1 with the following-

"The justices' legal adviser (with responsibility for gatekeeping and allocation of proceedings) and/or a district judge (with responsibility for allocation and gatekeeping of proceedings) will consider initial allocation as provided for in any Guidance issued by the President on distribution of business of the family court."

## **Modification of Practice Direction 12B**

**6.1** Practice Direction 12B (child arrangements programme) is modified by inserting after paragraph 7.2-

**“7.3** Local practices and initiatives can be operated differently to the framework where such practices or initiatives are-

(a) operated to ensure the administration of justice is carried out and so as to take account of available resources;

(b) approved by the local Designated Family Judge, after consultation with Her Majesty’s Courts and Tribunals Service and with Cafcass or Cafcass Cymru.

**7.4** Where any local practices and initiatives are put in place under paragraph 7.2 or 7.3, the local Designated Family Judge working with Her Majesty’s Courts and Tribunals Service must ensure that parties, their legal representatives, relevant local support organisations and Local Authorities are given information about the detail of those local practices and initiatives.”.

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