

HEARINGS AND DIRECTIONS APPOINTMENTS

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27.1 Application of this Part

This Part is subject to any enactment, any provision in these rules or a practice direction.

(Rule 27.4(7) makes additional provision in relation to requirements to stay proceedings where the respondent does not appear and a relevant European regulation or international convention applies)

27.2 Reasons for a decision of the magistrates' courts

- (1) This rule applies to proceedings in a magistrates' court.
- (2) After a hearing, the court will make its decision as soon as is practicable.
- (3) The court must give written reasons for its decision.
- (4) Paragraphs (5) and (6) apply where the functions of the court are being performed by –
 - (a) two or three lay justices; or
 - (b) by a single lay justice in accordance with these rules and Practice Direction 2A.
- (5) The justices' clerk must, before the court makes an order or refuses an application or request, make notes of –
 - (a) the names of the justice or justices constituting the court by which the decision is made; and
 - (b) in consultation with the justice or justices, the reasons for the court's decision.
- (6) The justices' clerk must make a written record of the reasons for the court's decision.
- (7) When making an order or refusing an application, the court, or one of the justices constituting the court by which the decision is made, will announce its decision and –
 - (a) the reasons for that decision; or

- (b) a short explanation of that decision.
- (8)** Subject to any other rule or practice direction, the court officer will supply a copy of the order and the reasons for the court's decision to the persons referred to in paragraph (9) –
 - (a) by close of business on the day when the court announces its decision; or
 - (b) where that time is not practicable and the proceedings are on notice, no later than 72 hours from the time when the court announced its decision.
- (9)** The persons referred to in paragraph (8) are –
 - (a) the parties (unless the court directs otherwise);
 - (b) any person who has actual care of a child who is the subject of proceedings, or who had such care immediately prior to the making of the order;
 - (c) in the case of an emergency protection order and a recovery order, the local authority in whose area the child lives or is found;
 - (d) in proceedings to which Part 14 applies –
 - (i) an adoption agency or local authority which has prepared a report on the suitability of the applicant to adopt a child;
 - (ii) a local authority which has prepared a report on the placement of the child for adoption;
 - (e) any other person who has requested a copy if the court is satisfied that it is required in connection with an appeal or possible appeal.
- (10)** In this rule, 'lay justice' means a justice of the peace who is not a District Judge (Magistrates' Courts).–

(Rule 12.16(5) provides for the applicant to serve a section 8 order and an order in emergency proceedings made without notice within 48 hours after the making of the order. Rule 10.6(1) provides for the applicant to serve the order in proceedings under Part 4 of the 1996 Act. Rule 4.1(3)(a) permits the court to extend or shorten the time limit for compliance with any rule. Rule 6.33 provides for other persons to be supplied with copy documents under paragraph (8).)

27.3 Attendance at hearing or directions appointment

Unless the court directs otherwise, a party shall attend a hearing or directions appointment of which that party has been given notice.

27.4 Proceedings in the absence of a party

- (1)** Proceedings or any part of them shall take place in the absence of any party, including a party who is a child, if –
 - (a) the court considers it in the interests of the party, having regard to the matters to be discussed or the evidence likely to be given; and
 - (b) the party is represented by a children's guardian or solicitor, and when considering the interests of a child under sub-paragraph (a) the court shall give the children's guardian, the solicitor for the child and, if of sufficient understanding and the court thinks it appropriate, the child, an opportunity to make representations.
- (2)** Subject to paragraph (3), where at the time and place appointed for a hearing or directions appointment the applicant appears but one or more of the respondents do not, the court may proceed with the hearing or appointment.
- (3)** The court shall not begin to hear an application in the absence of a respondent unless –

- (a) it is proved to the satisfaction of the court that the respondent received reasonable notice of the date of the hearing; or
- (b) the court is satisfied that the circumstances of the case justify proceeding with the hearing.
- (4) Where, at the time and place appointed for a hearing or directions appointment, one or more of the respondents appear but the applicant does not, the court may refuse the application or, if sufficient evidence has previously been received, proceed in the absence of the applicant.
- (5) Where, at the time and place appointed for a hearing or directions appointment, neither the applicant nor any respondent appears, the court may refuse the application.
- (6) Paragraphs (2) to (5) do not apply to a hearing to which paragraphs (5) to (8) of rule 12.14 do not apply by virtue of paragraph (9) of that rule.
- (7) Nothing in this rule affects any provision of a European regulation or international convention by which the United Kingdom is bound which requires a court to stay proceedings where a respondent in another State has not been adequately served with proceedings in accordance with the requirements of that regulation or convention.

27.5 Application to set aside judgment or order following failure to attend

- (1) Where a party does not attend a hearing or directions appointment and the court gives judgment or makes an order against him, the party who failed to attend may apply for the judgment or order to be set aside^(GL).
- (2) An application under paragraph (1) must be supported by evidence.
- (3) Where an application is made under paragraph (1), the court may grant the application only if the applicant –
 - (a) acted promptly on finding out that the court had exercised its power to enter judgment or make an order against the applicant;
 - (b) had a good reason for not attending the hearing or directions appointment; and
 - (c) has a reasonable prospect of success at the hearing or directions appointment.
- (4) This rule does not apply to magistrates' courts.

27.6 Court bundles and place of filing of documents and bundles

- (1) The provisions of Practice Direction 27A must be followed for the preparation of court bundles and for other related matters in respect of hearings and directions appointments.
- (2) Paragraph (3) applies where the file of any family proceedings has been sent from one designated county court or registry to another for the purpose of a hearing or for some other purpose.
- (3) A document needed for the purpose for which the proceedings have been sent to the other court or registry must be filed in that court or registry.

(Practice Direction 27A (Family Proceedings: Court Bundles (Universal Practice to be applied in All Courts other than the Family Proceedings Courts)) does not apply to magistrates' courts.)

27.7 Representation of companies or other corporations

A company or other corporation may be represented at a hearing or directions appointment by an employee if –

- (a) the employee has been authorised by the company or corporation to appear at the hearing or directions appointment on its behalf; and
- (b) the court gives permission.

27.8 Impounded documents

- (1) Documents impounded by order of the court must not be released from the custody of the court except in compliance with –
 - (a) a court order; or
 - (b) a written request made by a Law Officer or the Director of Public Prosecutions.
- (2) A document released from the custody of the court under paragraph (1)(b) must be released into the custody of the person who requested it.
- (3) Documents impounded by order of the court, while in the custody of the court, may not be inspected except by a person authorised to do so by a court order.

27.9 Official shorthand note etc of proceedings

- (1) Unless the judge directs otherwise, an official shorthand note will be taken at the hearing in open court of proceedings pending in the High Court.
- (2) An official shorthand note may be taken of any other proceedings before a judge if directions for the taking of such a note are given by the Lord Chancellor.
- (3) The shorthand writer will sign the note and certify it to be a correct shorthand note of the proceedings and will retain the note unless directed by the district judge to forward it to the court.
- (4) On being so directed, the shorthand writer will furnish the court with a transcript of the whole or such part of the shorthand note as may be directed.
- (5) Any party, any person who has intervened in the proceedings, the Queen's Proctor or, where a declaration of parentage has been made under section 55A of the 1986 Act, the Registrar General is entitled to require from the shorthand writer a transcript of the shorthand note, and the shorthand writer will, at the request of any person so entitled, supply that person with a transcript of the whole or any part of the note on payment of the shorthand writer's charges authorised by any scheme in force providing for the taking of official shorthand notes of legal proceedings.
- (6) Save as permitted by this rule, the shorthand writer will not, without the permission of the court, furnish the shorthand note or a transcript of the whole or any part of it to anyone.
- (7) In these rules, references to a shorthand note include references to a record of the proceedings made by mechanical means and in relation to such a record references to the shorthand writer include the person responsible for transcribing the record.

27.10 Hearings in private

- (1) Proceedings to which these rules apply will be held in private, except –

- (a) where these rules or any other enactment provide otherwise;
 - (b) subject to any enactment, where the court directs otherwise.
- (2) For the purposes of these rules, a reference to proceedings held ‘in private’ means proceedings at which the general public have no right to be present.

27.11 Attendance at private hearings

- (1) This rule applies when proceedings are held in private, except in relation to –
- (a) hearings conducted for the purpose of judicially assisted conciliation or negotiation;
 - (b) proceedings to which the following provisions apply –
 - (i) Part 13 (proceedings under section 54 of the Human Fertilisation and Embryology Act 2008);
 - (ii) Part 14 (procedure for applications in adoption, placement and related proceedings); and
 - (iii) any proceedings identified in a practice direction as being excepted from this rule.
- (2) When this rule applies, no person shall be present during any hearing other than –
- (a) an officer of the court;
 - (b) a party to the proceedings;
 - (c) a litigation friend for any party, or legal representative instructed to act on that party’s behalf;
 - (d) an officer of the service or Welsh family proceedings officer;
 - (e) a witness;
 - (f) duly accredited representatives of news gathering and reporting organisations; and
 - (g) any other person whom the court permits to be present.
- (3) At any stage of the proceedings the court may direct that persons within paragraph (2)(f) shall not attend the proceedings or any part of them, where satisfied that –
- (a) this is necessary –
 - (i) in the interests of any child concerned in, or connected with, the proceedings;
 - (ii) for the safety or protection of a party, a witness in the proceedings, or a person connected with such a party or witness; or
 - (iii) for the orderly conduct of the proceedings; or
 - (b) justice will otherwise be impeded or prejudiced.
- (4) The court may exercise the power in paragraph (3) of its own initiative or pursuant to representations made by any of the persons listed in paragraph (5), and in either case having given to any person within paragraph (2)(f) who is in attendance an opportunity to make representations.
- (5) At any stage of the proceedings, the following persons may make representations to the court regarding restricting the attendance of persons within paragraph (2)(f) in accordance with paragraph (3) –
- (a) a party to the proceedings;
 - (b) any witness in the proceedings;
 - (c) where appointed, any children’s guardian;
 - (d) where appointed, an officer of the service or Welsh family proceedings officer, on behalf of the child the subject of the proceedings;
 - (e) the child, if of sufficient age and understanding.
- (6) This rule does not affect any power of the court to direct that witnesses shall be excluded until they are called for examination.

- (7) In this rule 'duly accredited' refers to accreditation in accordance with any administrative scheme for the time being approved for the purposes of this rule by the Lord Chancellor.