

PRACTICE DIRECTION 2A

FUNCTIONS OF THE COURT IN THE FAMILY PROCEDURE RULES 2010 AND PRACTICE DIRECTIONS WHICH MAY BE PERFORMED BY A SINGLE JUSTICE OF THE PEACE

This Practice Direction supplements FPR Part 2, rule 2.5(1)(c)(ii) (Power to perform functions conferred on the court by these rules and practice directions)

- 1.1** Where the FPR or a practice direction provide for the court to perform any function, that function may be performed by a single justice of the peace who is a member of a family panel except that such a justice cannot perform the functions listed in –
- (a) column 2 of Table 1 in accordance with the rules listed in column 1; and
 - (b) column 2 of Table 2 in accordance with the paragraph of the practice direction listed in column 1.
- 1.2** For the avoidance of doubt, unless a rule, practice direction or other enactment provides otherwise, a single justice cannot make the decision of a magistrates' court at the final hearing of an application for a substantive order. For example, a single justice cannot make a residence order on notice, placement order, adoption or care order. However, a single justice can discharge the functions of a family proceedings court under the statutory provisions listed in rule 2.6 of the FPR.

TABLE 1

<i>Rule</i>	<i>Nature of function</i>
4.1(3)(g)	Stay the whole or part of any proceedings or judgment either generally or until a specified date or event
4.1(3)(l)	Exclude an issue from consideration
4.1(3)(m)	Dismiss or give a decision on an application after a decision on a preliminary issue
4.1(4)(a)	When the court makes an order, making that order subject to conditions
4.1(6)	Varying and revoking an order (other than directions which the court has made)
4.3(1)	Ability of the court to make orders (other than directions) of its own initiative
4.4, 4.5 and 4.6	All the powers of a magistrates' court under these rules (power to strike out statement of case, sanctions have effect unless defaulting party obtains relief from sanctions)
8.20(4)	A direction that a child should be made a respondent to the application for a declaration of parentage under section 55A of the Family Law Act 1986, except where the parties consent to the child being made a respondent
9.11 (2)	Direction that a child be separately represented on an application

<i>Rule</i>	<i>Nature of function</i>
9.22	All the powers of a magistrates' court under this rule (relating to proceedings by or against a person outside England and Wales for variation or revocation of orders under section 20 of the 1978 Act or paragraphs 30 to 34 of Schedule 6 to the 2004 Act)
12.3(2)	Where the person with parental responsibility is a child, a direction for that child be made a party, except where the parties consent to that child being made a party
12.3(3)	Direction that a child be made a party to proceedings or that a child who is a party be removed, except where the parties consent to the child being made a party or to the removal of that party
12.3(4)	Consequential directions following the addition or removal of a party except where a single justice is able to make such a direction under rule 12.3(2) and (3)
12.61(1) and (2)	Considering the transfer of proceedings to the court of another member state, directions in relation to the manner in which parties may make representations and power to deal with question of transfer without a hearing with the consent of parties
12.64(1)	Exercising court's powers under Article 15 of the Council Regulation or Article 8 of the 1996 Hague Convention
12.68(1)	Staying the proceedings
12.68(3)	Giving reasons for the court's decision, making a finding of fact and stating a finding of fact where such a finding has been made
12.70(1)	Contemplating the placement of a child in another member state
12.70(3)	Sending request directly to the central authority or other authority having jurisdiction in the other Member State
12.70(4)	Sending request to Central Authority for England and Wales for onward transmission
12.70(5)	Considering the documents which should accompany the request
13.3(3)	Where the person with parental responsibility is a child, a direction for that child be made a party, except where the parties consent to that child being made a party
13.3(4)	Direction that a child be made a party to proceedings or that a child who is a party be removed, except where the parties consent to the child being made a party or to the removal of that party
13.3(5)	Consequential directions following the addition or removal of a party except where a single justice is able to make such a direction under rule 13.3(3) and (4)
13.9(7)	Variation or revocation of direction following transfer, except where a single justice would be able to make the direction in question under rule 13.9(1)
13.15(3)	Determination of the probable date of the child's birth
13.20(1)	Specifying a later date by which a parental order takes effect
14.3(2)	Direction that a child be made a respondent, except where the parties consent to the child being made a respondent
14.3(3)(b)	Direction that a child who is a party be removed, except where the parties consent to the child being made a respondent
14.3(4)	Consequential directions following the addition or removal of a party except where a single justice is able to make such a direction under rule 14.3(2) and (3)

<i>Rule</i>	<i>Nature of function</i>
14.8(3)	<ul style="list-style-type: none"> Any of the directions listed in PD14B in proceedings for – (a) a Convention adoption order (b) a section 84 order (c) a section 88 direction (d) a section 89 order; or (e) an adoption order where section 83(1) of the 2002 Act applies (restriction on bringing children in)
14.16(8)	Making an adoption order under section 50 of the 2002 Act after personal attendance of one only of the applicants if there are special circumstances
14.16(9)	Not making a placement order unless the legal representative of the applicant attends the final hearing
14.17(4)	Determination of the probable date of the child's birth
14.25(1)	Specifying a later date by which an order takes effect
15.3(1)	Permission to a person to take steps before the protected party has a litigation friend
15.3(2)	Permission to a party to take steps (where during proceedings a person lacks capacity to continue to conduct proceedings) before the protected party has a litigation friend
15.3(3)	Making an order that a step taken before a protected party has a litigation friend has effect
15.6(1)	Making an order appointing a person as a litigation friend
15.6(6)	Court may not appoint a litigation friend unless it is satisfied that the person complies with the conditions in rule 15.4(3)
15.7	Direction that a person may not act as a litigation friend, termination of an appointment, appointment of a litigation friend in substitution for an existing one
16.2	Power of court to make a child a party to proceedings if it considers it is in the best interests of the child to do so
16.6(3)(a)	Permission to a child to conduct proceedings without a children's guardian or litigation friend
16.6(6)	Power of the court to grant an application under paragraph (3)(a) or (5) if the court considers that the child has sufficient understanding to conduct the proceedings
16.6(7)	Power of the court to require the litigation friend or children's guardian to take such part in proceedings (referred to in paragraph (6)) as the court directs
16.6(8)	Power of the court to revoke permission granted under paragraph (3) in specified circumstances
16.6(10)	Power of the court, in specified circumstances, to appoint a person to be the child's litigation friend or children's guardian
16.8(2)	Permission to a person to take steps before the child has a litigation friend
16.8(3)	Making an order that a step taken before the child has a litigation friend has effect
16.11(1)	Making an order appointing a person as a litigation friend
16.12	Direction that a person may not act as a litigation friend, termination of an appointment, appointment of a litigation friend in substitution for an existing one

<i>Rule</i>	<i>Nature of function</i>
16.23(2)	Permission to a person to take steps before the child has a children's guardian
18.3(1)(c)	Direction that a child be a respondent to an application under Part 18
18.9(1)(a)	Power of court to deal with a Part 18 application without a hearing
18.12	Power of the court to proceed in absence of a party, except where a single justice has the power to make the relevant order applied for
19.8(2)	The court's power to require or permit a party to give oral evidence at the hearing
21.3	Power of court relating to withholding inspection or disclosure of a document
22.1(2) to (4)	Power to exclude evidence that would otherwise be admissible, power to permit a party to adduce evidence, or to seek to rely on a document, in respect of which that party has failed to comply with requirements of Part 22 and power to limit cross examination
22.6	Court's powers relating to use at final hearing of witness statements which have been served
22.12	Power of court to require evidence by affidavit instead of or in addition to a witness statement
22.15(4)	Permission for a party to amend or withdraw any admission made by that party on such terms as the court thinks just
22.20(3)(a)	Permission for a witness statement in proceedings in the magistrates' court under Part 9 to be used for a purpose other than the proceedings in which it is served
24.16(2)	Ordering the issue of a request to a designated court
24.16(5)	Order for the submission of a request under article 17 of the Taking of Evidence Regulation
27.10(1)(b)	Direction that proceedings to which the Rules apply will not be held in private, except that a single justice may give such a direction in relation to a hearing which that single justice is conducting
27.11(2)(g)	Power of the court to permit any other person to be present during any hearing, except that a single justice may give such permission in relation to a hearing which that single justice is conducting
27.11(3)	Direction that persons within rule 27.11(2)(f) shall not attend the proceedings or any part of them
Part 28	Powers of the court to make costs orders including wasted costs orders under section 145A of the Magistrates' Courts Act 1980
29.8(1)	Court's opinion that it would be prevented by section 8 or 9 of the Child Support Act 1991 from making an order
29.8(2)	Court's consideration of the matter without a hearing
29.8(10)	Power of the court to determine that it would be prevented by sections 8 or 9 of the 1991 Act from making an order, and to dismiss the application
29.8(11)	The court must give written reasons for its decision

<i>Rule</i>	<i>Nature of function</i>
29.9(2)	Direction that the document will be treated as if it contained the application and directions as the court considers appropriate as to the subsequent conduct of the proceedings
29.13(1)	Direction for a court officer not to serve a copy of an order (other than directions that the single justice has made) to every party affected by it
29.15	Specifying alternative date for an order to take effect, except an order which the single justice has made
29.16	Correcting an accidental slip or omission in an order, except where that order was made by a single justice
Part 30	Any power of the magistrates' court (where it is the lower court) to grant or refuse permission to appeal, except where a single justice has the power to make the order which is subject to the appeal
31.9	Power for court to stay the proceedings

TABLE 2

Practice Direction: Family Assistance Orders dated 3 September 2007- Paragraphs 2, 3, and 5	<ul style="list-style-type: none"> Under paragraph 2 the court must have obtained the opinion of the appropriate officer about whether it would be in the best interests of the child in question for a family assistance order to be made and, if so, how the family assistance order could operate and for what period Under paragraph 3 the court decides on the category of officer required to be made available under the family assistance order Under paragraph 5 the court must give to the person it proposes to name in the order an opportunity to comment
Public Law Proceedings Guide to Case Management: 6 th April 2010- Paragraphs 8.1 to 8.5	<ul style="list-style-type: none"> Under paragraphs 8.1 to 8.5 determination by the court of issues as to whether an adult party or intended party to proceedings lacks capacity
Practice Direction: Residence and Contact Orders: Domestic Violence and Harm: 14 January 2009- Paragraphs 17, 18, 21 to 23, 28 and 29	<ul style="list-style-type: none"> Under paragraph 17 the court will consider whether a child who is the subject of an application should be made a party to proceedings Under paragraph 18 the court will consider whether an interim order for residence or contact is in the best interests of the child Under paragraphs 21-23, 27, 28 and 29 determinations of the court at fact finding hearings, in cases where a finding of domestic violence is made consideration of the conduct of the parents and where there has been a finding of domestic violence court directions or conditions on orders

Practice Direction: Attendance of Media Representatives at Hearings in Family Proceedings dated 6 April 2009

- Generally – court’s discretion to exclude media representatives from attending hearings or part of hearings for ‘relevant proceedings’ as defined in rule 1 of the Family Proceedings Courts (Children Act 1989) Rules 1991 (other than where a Single Justice or Justice’s Clerk is conducting the hearing)

PD 14B – The First Directions Hearing- adoptions with a Foreign Element- Paragraph 2

- Under paragraph 2 the court’s consideration of –
- (a) whether the requirements of the Adoption and Children Act 2002 and the Adoptions with a Foreign Element Regulations 2005 (S.I. 2005/392) appear to have been complied with and, if not, consider whether or not it is appropriate to transfer the case to the High Court;
- (b) whether all relevant documents are translated into English and, if not, fix a timetable for translating any outstanding documents;
- (c) whether the applicant needs to file an affidavit setting out the full details of the circumstances in which the child was brought to the United Kingdom, of the attitude of the parents to the application and confirming compliance with the requirements of The Adoptions with a Foreign Element Regulations 2005; and
- (d) give directions about –
- (i) the production of the child’s passport and visa;
- (ii) the need for the Official Solicitor and a representative of the Home office to attend future hearings; and
- (iii) personal service on the parents (via the Central Authority in the case of an application for a Convention Adoption Order) including information about the role of the Official Solicitor and availability of legal aid to be represented within the proceedings; and
- (e) consider fixing a further directions appointment no later than 6 weeks after the date of the first directions appointment and timetable a date by which the Official Solicitor should file an interim report in advance of that further appointment

PD 15A – Protected Parties- Paragraph 4.2(b)

- Under paragraph 4.2 (b) court directions on service on protected party
-

PD16A – Representation of Children- Paragraphs 6.8 and 7.5

- Under paragraph 6.8 the children’s guardian must –
 - (a) unless the court otherwise directs, file a written report advising on the interests of the child in accordance with the timetable set by the court; and
 - (b) in proceedings to which Part 14 applies, where practicable, notify any person the joining of whom as a party to those proceedings would be likely, in the opinion of the children’s guardian, to safeguard the interests of the child, of the court’s power to join that person as a party under rule 14.3 and must inform the court
 - (i) of any notification;
 - (ii) of anyone whom the child’s guardian attempted to notify under this paragraph but was unable to contact; and
 - (iii) of anyone whom the children’s guardian believes may wish to be joined to the proceedings
- Under paragraph 7.5 the court may, at the same time as deciding whether to join the child as a party, consider whether the proceedings should be transferred to another court taking into account the provisions of Part 3 of the Allocation and Transfer of Proceedings Order 2008

PD18A – Other Applications in Proceedings
Paragraphs 4.1 to 4.4(a)

- Under paragraph 4.1 on receipt of an application notice containing a request for a hearing, unless the court considers that the application is suitable for consideration without a hearing, the court officer will, if serving a copy of the application notice, notify the applicant of the time and date fixed for the hearing of the application
- Under paragraph 4.2 on receipt of an application notice containing a request that the application be dealt with without a hearing, the court will decide whether the application is suitable for consideration without a hearing
- Under paragraph 4.3 where the court considers that the application is suitable for consideration without a hearing but is not satisfied that it has sufficient material to decide the application immediately it may give directions for the filing of evidence and will inform the applicant and the respondent(s) of its decision
- Under paragraph 4.4 (a) where the court does not consider that the application is suitable for consideration without a hearing it may give directions as to the filing of evidence
-

- Under paragraph 1.6 the court may give a direction under rule 22.12 that evidence shall be given by affidavit instead of or in addition to a witness statement on its own initiative; or after any party has applied to the court for such a direction

Under paragraph 14.1 where an affidavit, a witness statement or an exhibit to either an affidavit or a witness statement does not comply with Part 22 or PD 22A in relation to its form, the court may refuse to admit it as evidence and may refuse to allow the costs arising from its preparation

Under paragraph 14.2 permission to file a defective affidavit or witness statement or to use a defective exhibit may be obtained from the court where the case is proceeding

- Under paragraph 9.1 where a person wishes to take a deposition from a person in another Regulation State, the court where proceedings are taking place may order the issue of a request to the designated court in the Regulation State (rule 24.16(2)). The form of request is prescribed as Form A in the Taking of Evidence Regulation

Under paragraph 9.6 Article 17 permits the court where proceedings are taking place to take evidence directly from a deponent in another Regulation State if the conditions of the article are satisfied. Direct taking of evidence can only take place if evidence is given voluntarily without the need for coercive measures. Rule 24.16(5) provides for the court to make an order for the submission of a request to take evidence directly

The form of request is Form I annexed to the Taking of Evidence Regulation and rule 24.16(6) makes provision for a draft of this form to be filed by the party seeking the order. An application for an order under rule 24.16(5) should be by application notice in accordance with Part 18
