

## PRACTICE DIRECTION AMENDMENT AND NEW PRACTICE DIRECTION

The amendment to the existing Practice Direction 28A and the new Practice Direction 36N 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 \_\_\_\_\_ Parliamentary Under Secretary of State, Ministry of Justice.

The amendment to the existing Practice Direction and the new Practice Direction come into force on 27th May 2019.

Signed:

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

Sir Andrew McFarlane

The President of the Family Division

Signed:

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

Name:

Parliamentary Under Secretary of State

Ministry of Justice

### PRACTICE DIRECTION 28A – COSTS

(1) In paragraph 4.4, after “the amounts in dispute.” insert-

“The court will take a broad view of conduct for the purposes of this rule and will generally conclude that to refuse openly to negotiate reasonably and responsibly will amount to conduct in respect of which the court will consider making an order for costs. This includes in a ‘needs’ case where the applicant litigates unreasonably resulting in the costs incurred by each party becoming disproportionate to the award made by the court. Where an order for costs is made at an interim stage the court will not usually allow any resulting liability to be reckoned as a debt in the computation of the assets.”.

### 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) After Practice Direction 36M, insert the new Practice Direction 36N, as set out in the Schedule to this document.

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## SCHEDULE

### 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

This Practice Direction supplements rule 36.2 FPR (Transitional arrangements and pilot schemes).

#### Scope and interpretation

**1.1** This Practice Direction is made under rule 36.2 FPR and sets up a Pilot Scheme to allow for certain applications for a financial remedy in connection with certain proceedings for a matrimonial order to be filed and progressed via a HMCTS online application system.

**1.2** This Practice Direction comes into force on 27th May 2019.

**1.3** This Pilot Scheme applies to applications where all of the following conditions are met:

(a) subject to the exception in paragraph 1.4, the application is-

(i) for a financial remedy in connection with an application for a matrimonial order which is a decree of divorce made under section 1 of the 1973 Act; or

(ii) a notice of intention to proceed with an application for a financial remedy that was made in an application for a matrimonial order which is a decree of divorce made under section 1 of the 1973 Act;

(b) the application is not for a consent order;

(c) the applicant is legally represented;

(d) access to the online system for making and progressing such applications is permitted;

(e) the application is started in the family court; and

(e) the application is made in the period commencing on 27th May 2019 and ending on 31st March 2020.

**1.4** The exception referred to in paragraph 1.3 is where the application is for a variation order.

**1.5** In this Practice Direction, “the online system” means Her Majesty’s Courts and Tribunal Service’s online system to allow for specified stages in financial remedy proceedings to be dealt with online.

#### Purpose of this Pilot Scheme

**2.1** The purpose of this Pilot Scheme is to assess new practices and procedures to allow for certain applications for a financial remedy, made in connection with certain applications for a matrimonial order, to be completed, made and progressed via an online system.

**2.2** It is intended that future Practice Directions will establish other Pilot Schemes which will allow for other specified stages in specified financial remedy proceedings to take place via the online system.

### **Modification or disapplication of the FPR and Practice Directions during the operation of the Pilot Scheme**

**3.1** During the operation of the Pilot Scheme, the FPR and the Practice Directions supporting the FPR will apply in respect of the applicant to cases falling within the Pilot Scheme as modified, or disapplied, by paragraphs 4.1 to 11.2.

#### **Modification of Part 3 FPR**

**4.1** For rule 3.7 substitute-

“3.7 Where the Pilot Scheme referred to in Practice Direction 36N applies, the application must include from the prospective applicant -

- (a) confirmation that the prospective applicant has attended a MIAM;
- (b) a claim that one of the MIAM exemptions applies; or
- (c) confirmation that a mediator’s exemption applies.”.

**4.2** In rule 3.8(2) for “confirms in the relevant form” substitute “has provided signed confirmation”.

#### **Modification of Part 5 FPR**

**5.1** For rule 5.1, substitute-

“5.1 Where the Pilot Scheme referred to in Practice Direction 36N applies, the applicant must-

- (a) complete all sections of the online application; and
- (b) provide all the information, including any additional documents, that the online application system referred to in that Practice Direction requires, or that the court requires, in a manner specified by the online application system, or required by the court. ”.

**5.2** Omit rule 5.2.

#### **Modification of Part 9 FPR**

**6.1** After rule 9.9B insert-

##### **“Pilot Scheme cases: filing of documents by the Applicant**

9.9C(1) In this rule, “document” means anything in which information of any description is recorded.

(2) Where-

- (a) the Pilot Scheme referred to in Practice Direction 36N applies;

(b) the court, a rule in this Part or a provision in Practice Direction 9A requires the applicant to file a document with the court; and

(c) the court or the online system requires that that document be filed with the court in a specified manner;

the applicant must comply with that requirement by filing the document in the specified manner.

(See also Practice Direction 9A.) ”.

**6.2** In rule 9.17, after paragraph (5) insert-

“(5A) Where the Pilot Scheme referred to in Practice Direction 36N applies and a document has been filed in a manner specified by the online system referred to in that Practice Direction, paragraph (5) does not apply.

(5B) Where paragraph (5A) applies, the document will not be retained on the online system or on the court file following the conclusion of the FDR appointment.”.

**6.3** For rule 9.26(1)(a) substitute-

“(a) the applicant must file a draft of the order in the terms sought, which must be signed by both parties; and”.

### **Modification of Part 29 FPR**

**7.1** After rule 29.13(1) insert-

“(1A) Where the Pilot Scheme referred to in Practice Direction 36N applies, service on the applicant under paragraph (1) or otherwise may be effected by the court sending the applicant an email, to the address given for service in accordance with Practice Direction 6A, containing a weblink from which the order may be accessed and downloaded.”.

### **Modification of Practice Direction 3A**

**8.1** For paragraph 6 substitute-

“6. Where the Pilot Scheme referred to in Practice Direction 36N applies, the application must include from the applicant one of the following-

(a) confirmation that the applicant has attended a MIAM, including the date attended, the name of the authorised family mediator (and/or Family Mediation Service) and their FMC registration number;

(b) a claim that one of the MIAM exemptions applies; or

(c) confirmation that a mediator’s exemption applies.”.

**8.2** After paragraph 6 insert-

“6A. An applicant who provides confirmation or makes a claim in accordance with paragraph 6(a), (b) or (c) above is not required to provide any supporting evidence with their application, but should bring any supporting evidence (including where applicable the signed confirmation by the authorised family mediator that a mediator’s exemption applies) to the first appointment.”.

**8.3** Omit paragraphs 14 and 15.

**8.4** In paragraph 18 for “on the relevant form” substitute “in the relevant section of the online system”.

**8.5** In paragraph 34, for the words after “MIAM exemption” substitute “and signed confirmation should then be returned to the applicant.”.

#### **Disapplication of Practice Direction 5B**

**9.1** Practice Direction 5B does not apply in relation to an application which can be made online under the Pilot Scheme referred to in Practice Direction 36N.

#### **Modification of Practice Direction 6A**

**10.1** In paragraph 4.2(b)-

(a) in paragraph (iii) for “; or” substitute “;”;

(b) in paragraph (iv) for the full-stop substitute “; or”; and

(c) after paragraph (iv) insert-

“(v) confirmation given, by the applicant, within the online system referred to in Practice Direction 36N, that the applicant is willing to accept service by email and stating the email address for such service.”.

#### **Modification of Practice Direction 9A**

**11.1** After paragraph 2.1, insert-

##### **“Application for a financial remedy received via the online system: timing**

**2A.1** When-

(a) an application for a financial remedy to which the Pilot Scheme referred to in Practice Direction 36N applies is received via the online system referred to in that Practice Direction; and

(b) that application is recorded by Her Majesty’s Courts and Tribunals Service software has having been received at or after 4.31pm and before or at 11.59pm,

the date of filing will not be before the next day that the court location to which the application has been sent via the online system is open for business.

**2A.2** When an application for a financial remedy to which the Pilot Scheme referred to in Practice Direction 36N applies is received via the online system referred to in that Practice Direction, an acknowledgement of receipt will automatically be sent to the email address given as the address for service in the online system. This acknowledgement of receipt does not constitute a notice that the application has been issued.

##### **Application for a financial remedy received via the online system: filing of subsequent documents (etc) by the applicant**

**2B.1** Rule 9.9C makes provision in relation to cases to which the Pilot Scheme referred to in Practice Direction 36N applies. The term “document” is defined widely in the rule. The reference in rule 9.9C to a “document” includes all statements, evidence, notices and other documents that the applicant may be required to file in accordance with a direction or order of the court, a rule in Part 9 of the FPR or a provision of this Practice Direction, to include:

rule 9.14 - a financial statement, documents accompanying the financial statement, a statement of issues, chronology, questionnaire, notice of readiness, confirmation of who has been served;

rule 9.15 – further documents to be filed, as directed by the court at the first appointment;

rule 9.16 – documents to be filed, as directed by the court after the first appointment;

rule 9.17(3) – details of offers and proposals;

rule 9.17(9) – evidence directed at the conclusion of an FDR appointment to be filed;

rule 9.18(2)(c)(iii) – certificate of service;

rule 9.19(1), (2) and (3) – financial statement and specified supporting documents;

rule 9.20(3)(a) and (b) – further evidence or documents to be filed, as directed by the court at the first hearing;

rule 9.28(1) – an open statement which sets out concise details, including the amounts involved, of the orders which the applicant proposes to ask the court to make;

paragraph 4.1 of this Practice Direction – a summary of the case agreed between the parties, a schedule of assets agreed between the parties and details of any directions that they seek, including, where appropriate, the name of any expert they wish to be appointed; and

paragraph 5.2 – documents or information filed by way of reply to a questionnaire, where the court has directed that these be filed with the court.”.

**11.2** For paragraph 7.1 substitute-

“**7.1** Rule 9.26(1)(a) is considered to be properly complied with if the draft order is signed by solicitors on record as acting for a party. However, where the consent order applied for contains undertakings, it should be signed by the party giving the undertakings as well as by that party’s solicitor.

(Provision relating to the enforcement of undertakings is contained in Practice Direction 33A supplementing Part 33 of the FPR.)”.

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