

**PRACTICE DIRECTION UPDATE No. 2 of 2024**

The amendments to an existing Practice Direction, 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 Lady Chief Justice under Schedule 2, Part 1, paragraph 2(2) of the Constitutional Reform Act 2005, and are approved by Lord Bellamy KC, Parliamentary Under-Secretary of State, Ministry of Justice.

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

<b>Provision</b>	<b>Coming into force date</b>
Amendments to Practice Direction 5A	29 April 2024
New Practice Direction 8B	8 April 2024
New Practice Direction 41F	1 April 2024

Signed:

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

Sir Andrew McFarlane, The President of the Family Division

Signed:

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

Lord Bellamy KC, Parliamentary Under-Secretary of State, Ministry of Justice

**PRACTICE DIRECTION 5A – FORMS**

- (1) In Table 1, in the row relating to Part 3-
  - (a) in the first column for “Alternative Dispute Resolution (Family Mediation)” substitute “Non-court dispute resolution”;
  - (b) in the second column after “FM1” insert “FM5”.
- (2) In Table 2, after the row for form FM1 insert-

“FM5	Statement of position on non-court dispute resolution (NCDR)”.
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**NEW PRACTICE DIRECTION 8B – APPLICATION BY BIRTH PARENT FOR  
DECLARATION OF PARENTAGE IN RESPECT OF AN ADOPTED CHILD**

(1) After Practice Direction 8A insert new Practice Direction 8B as set out in Annex 1 to this Practice Direction Update.

**NEW PRACTICE DIRECTION 41F – PROCEEDING BY ELECTRONIC MEANS:  
PLACEMENT PROCEEDINGS**

(1) After Practice Direction 41E insert new Practice Direction 41F as set out in Annex 2 to this Practice Direction Update.

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ANNEX 1

NEW PRACTICE DIRECTION 8B TO BE INSERTED AFTER PRACTICE DIRECTION 8A

**PRACTICE DIRECTION 8B - APPLICATION BY BIRTH PARENT FOR DECLARATION OF PARENTAGE IN RESPECT OF AN ADOPTED CHILD**

This Practice Direction supplements Part 8 FPR (Procedure for Miscellaneous Applications)

**Introduction**

1. Section 55A(1) of the Family Law Act 1986 provides that, subject to the provisions of that section, any person may apply to the High Court or the family court for a declaration as to whether or not a person named in the application is or was the parent of another person named in the application.

2. In *H v R and An Adoption Agency (Declaration of Parentage Following Adoption)* [2020] EWFC 74, it was determined that the court has jurisdiction pursuant to section 55A(1) of the Family Law Act 1986, in an appropriate case, to grant to a birth parent a declaration of parentage in respect of a child following the lawful adoption of that child under Part 1 of the Adoption and Children Act 2002.

3. This Practice Direction sets out the procedure to be followed where a birth parent makes an application pursuant to s.55A(1) for a declaration of parentage in respect of a child following the lawful adoption of that child.

4. For the avoidance of doubt, this Practice Direction applies *only* to applications by a birth parent pursuant to s.55A(1) for a declaration of parentage in respect of a child following the lawful adoption of that child.

**Allocation**

5. On issue, an application by a birth parent pursuant to s.55A(1) for a declaration of parentage in respect of a child under the age of 18 following the lawful adoption of that child should, in the first instance, be allocated to be heard by a judge of High Court level.<sup>1</sup>

**Notice and Respondents**

*Adopted child under 18*

6. Where a birth parent makes an application pursuant to s.55A(1) for a declaration of parentage in respect of a child under the age of 18 following the lawful adoption of that child, in the first instance the placing authority is the appropriate lead respondent to the application.

7. Pursuant to FPR 2010 r. 8.20(1), the adoptive parents will be automatic respondents to any application made under s.55A of the Family Law Act 1986 in respect of an adopted child under the age of 18. The adoptive parents of the subject child should be served with the application by the court and informed that the placing authority will be the lead respondent.

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<sup>1</sup> The Family Court (Composition and Distribution of Business) Rules 2014, as amended by the Family Court (Composition and Distribution of Business) (Amendment) Rules 2024.

8. The identity and the address of the respondent adoptive parents must not be disclosed by the court or the lead respondent to the applicant birth parent.

*Adopted person over 18*

9. Where an application pursuant to s.55A(1) for a declaration of parentage is made in respect of an adopted person over the age of 18, it is the adopted person who should be the respondent to the application and not the placing local authority.

**Preliminary Hearing**

10. Section 55A(5) provides that the court may refuse to hear such an application made under s.55A(1) if it considers that the determination of the application would not be in the best interests of the subject child.

11. Where a birth parent makes an application pursuant to s.55A(1) for a declaration of parentage in respect of a child under the age of 18 following the lawful adoption of that child, the court should ordinarily list the question of whether the determination of that application would not be in the best interests of the child to be dealt with as a preliminary issue.

**Additional Matters**

12. A court dealing with an application by a birth parent pursuant to s.55A(1) for a declaration of parentage in respect of a child under the age of 18 following the lawful adoption of that child should bear in mind the following further matters.

13. Pursuant to FPR r. 8.22(1) there is a mandatory requirement for all names by which a person is known to appear on the declaration of parentage. Where a declaration of parentage is made in respect of a child who has been made the subject of an adoption order, this means that the child's adoptive name (placed on his or her birth certificate by virtue of the relevant provisions of Schedule 1 of the Adoption and Children Act 2002) must be placed on the declaration of parentage.

14. The declaration containing the adopted name of the child must, pursuant to FPR r 8.22(2), be sent to the Registrar General within 21 days beginning with the date the declaration was made for the Registrar General to consider whether re-registration should take place under the provisions of the Births and Deaths Registration Act 1953. Where a declaration has been granted in favour of a birth parent with respect to a child who is the subject of an adoption order, the original birth certificate may be re-registered in the register of live births annotated with the word "adopted" placed on the re-registered certificate.

15. In circumstances where the Registrar General is required by the 2002 Act to make traceable the connection between any entry in the registers of live-births or other records which have been marked 'Adopted' and any corresponding entry in the Adopted Children Register, following the granting of a declaration of parentage to a birth parent in respect of a child who has been made the subject of an adoption order, the birth parent will be able to discover the name of the adopted person and, in consequence, identifying information about the adopted person by requesting a copy of the Adopted Children Register.

16. There is a continuing risk of a breach in anonymity remains whilst it continues to be mandatory in all cases under FPR r. 8.22(1) for all names by which a person is known to appear on the declaration of parentage. In the circumstances, the court will wish to give early consideration to case management directions that ameliorate that risk.

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ANNEX 2

NEW PRACTICE DIRECTION 41F TO BE INSERTED AFTER PRACTICE DIRECTION 41E

**PRACTICE DIRECTION 41F - PROCEEDING BY ELECTRONIC MEANS: PLACEMENT PROCEEDINGS**

This Practice Direction supplements rule 41.1 FPR (proceeding by electronic means).

**Scope and interpretation**

- 1.1** This Practice Direction makes provision-
- (a) for applications in placement proceedings, all required accompanying documents and all documents filed during the course of proceedings, to be filed with the court via uploading them to the online system; and
  - (b) for applications, judgments and orders in such proceedings to be served by the court via the online system.
- 1.2** This Practice Direction comes into force on 1st April 2024.
- 1.3** This Practice Direction applies where all of the following conditions are met-
- (a) the application is in placement proceedings (as defined in rule 2.3(1) FPR);
  - (b) access to the online system for filing via uploading such applications, all required accompanying documents and all documents to be filed during the course of proceedings is permitted;
  - (c) the application is started in the family court; and
  - (d) the application and all required accompanying documents are filed on or after 1st April 2024.
- 1.4** In this Practice Direction, “the online system” means His Majesty’s Courts and Tribunals Service’s online system to allow for applications for placement proceedings to be filed with the court by being uploaded, and for applications, judgments and orders in those proceedings to be served via that system.

**Purpose and use of the online system**

- 2.1** Where the conditions in paragraph 1.3 are met, the online system enables parties to engage in placement proceedings via the online system, to include taking the following steps-
- (a) to create and file an application in placement proceedings;
  - (b) in respect of an application referred to in sub-paragraph (a) to-
    - (i) file documents;
    - (ii) amend the application;

(iii) indicate willingness to accept service of documents relating to the application via email containing a weblink from which a document may be accessed and downloaded;

(iv) accept service of any documents relating to the application;

(v) effect service of applications and other documents relating to the application on other parties to the proceedings, in the manner specified in modifications made by this Practice Direction; and

(c) to view an electronic record of the progress of the application and of applications made in the course of proceedings that are progressing using the online system.

**2.2** For the avoidance of doubt, it should not be assumed that an application in placement proceedings, or any stages of such an application, will always be able to be dealt with on the online system. For example, it may be that-

(a) 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.;

(b) the online system does not have the facility to create or file every type of application in placement proceedings.

### **Modification of the FPR and Practice Directions**

**3.1** In cases to which this Practice Direction applies, the Family Procedure Rules 2010 and the Practice Directions supporting the rules will apply as modified by paragraphs 4.1 to 8.4.

### **Modification of rule 2.3(1) FPR**

**4.1** In rule 2.3(1) of the FPR, for the defined term “filing” substitute-

“filing” in relation to supplying a document or information means-

(a) delivering it, by post or otherwise, to the court office; or

(b) where Practice Direction 41F applies, by-

(i) uploading the document to the online system referred to in that Practice Direction; or

(ii) submitting the information via that online system.”

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

**5.1** In rule 5.1-

(a) in paragraph (1) after “Subject to” insert “paragraph (7) and to”; and

(b) after paragraph (6) insert-

“(7) Where Practice Direction 41F applies, the requirement in rule 26.2(2)(b) FPR to file notice of a change must be met by completing the relevant section on the online service, not by using the form referred to in a practice direction.”.

**5.2** After rule 5.1 insert-

**“Timing of receipt of applications**

**5.1A** An application that is submitted via the online system referred to in Practice Direction 41F is lodged with the court on the date and at the time that HMCTS software records the application as received, provided that the application is subsequently issued by the court.”.

**Modification of Part 29 FPR**

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

“(1A) Where Practice Direction 41F applies, service under paragraph (1) or otherwise may be effected by the court sending to a party an email, to the address given for service in accordance with Practice Direction 6A, containing a weblink from which the judgment or order may be accessed and downloaded.”.

**6.2** In rule 29.13(2) omit “and sufficient copies for service on all the parties”.

**Modification of Practice Direction 5B**

**7.1** After paragraph 1.1 insert-

**“1.1A** Where Practice Direction 41F applies, this practice direction does not apply except where-

(a) it is not possible to upload a given document to the online system referred to in Practice Direction 41F, for example because the online system is not accessible because of planned system maintenance or unplanned circumstances; or

(b) the court directs that a given document should be sent to the court by email rather than via the online system referred to in Practice Direction 41F.”.

**Modification of Practice Direction 6A**

**8.1** After paragraph 4.1 insert-

**“4.1A** Paragraphs 4.2 to 4.6 also apply where-

(a) Practice Direction 41F applies; and

(b) service by the court-

(i) of an application is to be effected in accordance with paragraph 4.7;  
or

(ii) of a judgment or order is to be effected in accordance with rule 29.13(1A) FPR.

**4.1B** Where paragraph 4.1A applies, references in paragraphs 4.2 to 4.5 to service of a document by email include service of an application, judgment or order by the court sending by email a weblink from which the application, judgment or order may be accessed and downloaded.”.

**8.2** 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 party to be served, within the online system referred to in Practice Direction 41D or 41F that that party is willing to accept service by email and stating the email address for such service.” or;

(vi) a legal representative having registered on MyHMCTS (being the case management tool managed by HM Courts and Tribunals Service).”.

**8.3** After paragraph 4.6 insert-

“4.7 Where Practice Direction 41F applies, service of an application may be effected by the court sending to a party an email, to the address given for service in accordance with paragraph 4.2, containing a weblink from which the application may be accessed and downloaded.”.

**8.4** After paragraph 4.7 insert-

**“Service by a party where Practice Direction 41F applies**

**4A.1** Paragraph 4A.2 applies where-

(a) Practice Direction 41F applies; and

(b) a party is required to effect service of a document on another party.

**4A.2** Where this paragraph applies-

(a) paragraphs 4.2 to 4.6 apply; and

(b) service of a document may be effected by-

(i) the party filing the document to be served on the online system referred to in Practice Direction 41F; and

(ii) the court then sending each party to be served an email, to the address given for service in accordance with this Practice Direction 6A, containing a weblink from which the document may be accessed and downloaded.”.