

PRACTICE DIRECTION UPDATE: No. 3 of 2023

The new Practice Direction 41E, the associated revocation of Practice Direction 36ZB, and the amendments to existing 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 Bellamy KC, Parliamentary Under-Secretary of State, Ministry of Justice.

The provisions in this Practice Direction Update come into force on 18 May 2023.

Sir Andrew McFarlane

The President of the Family Division

Date: 11 May 2023

Lord Bellamy KC

Parliamentary Under-Secretary of State, Ministry of Justice

Date: 16 May 2023

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

- (1) In paragraph 1.1(a) -
 - (a) omit “and” the first time it occurs; and
 - (b) after “documents” insert “and all documents filed during the course of proceedings”.
- (2) In paragraph 1.3(b)-
 - (a) omit “and”; and
 - (b) after “documents” insert “and all documents to be filed during the course of proceedings”.
- (3) For paragraph 4.1 substitute-

4.1 In cases to which this Pilot Scheme applies, 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 36P 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.” ”.

(4) After paragraph 5.1 insert-

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

Modification of Practice Direction 5B

5A.1 After paragraph 1.1 insert-

“1.1A Where Practice Direction 36P 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 36P, 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 36PD.” ”.

(5) In paragraph 6.2(c)-

(a) in the inserted paragraph (v) of paragraph 4.2(b) of Practice Direction 6A-

(i) for “36M” substitute “41D”; and

(ii) for “.” substitute “; or”; and

(b) after the inserted paragraph (v) of paragraph 4.2(b) of Practice Direction 6A insert-

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

(6) After paragraph 6.3 insert-

“6.4 After paragraph 4.7 insert-

“Service by a party where Practice Direction 36P applies

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

(a) Practice Direction 36P 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 36P; 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.” ”.

PRACTICE DIRECTION 36ZB – PILOT SCHEME: PROCEDURE FOR USING AN ONLINE SYSTEM TO COMPLETE AND FILE CERTAIN APPLICATIONS FOR AN ADOPTION ORDER

- (1) This Practice Direction is revoked.

PRACTICE DIRECTION 36ZD – PILOT SCHEME: ONLINE SYSTEM FOR CERTAIN PRIVATE LAW PROCEEDINGS RELATING TO CHILDREN AND FOR CERTAIN PROTECTIVE ORDERS

- (1) For paragraph 2.3(c) substitute-

“(c) it should be noted that Practice Direction 36G makes provision for a Pilot Scheme for generating an application for a section 8 order online (with the application then usually being filed by email). If an unrepresented party does not have access to the online system referred to in this Practice Direction 36ZD, or has access but chooses not to use the online system, then they can instead access the online system referred to in Practice Direction 36G or can make or respond to an application on paper. If a legal representative has access to the online system referred to in this Practice Direction 36ZD, then it is expected that they will use that online system. If they do not have that access, then they can instead access the online system referred to in Practice Direction 36G.”.

- (2) After paragraph 6A.1 insert-

“6A.2 In rule 29.13(2) omit “and sufficient copies for service on all the parties”.”.

- (3) After paragraph 11.12 insert-

“Modification of FPR Practice Direction 12C

11A.1 Omit paragraph 1.2.

Modification of FPR Practice Direction 18A

11B.1 In paragraph 3.5 omit “together with sufficient copies for one to be served on each respondent”.”.

PRACTICE DIRECTION 41D – PROCEEDING BY ELECTRONIC MEANS: PUBLIC LAW PROCEEDINGS AND EMERGENCY PROCEEDINGS RELATING TO CHILDREN

- (1) In paragraph 1.3(a)(iv) for “within” substitute “in the course of”.

- (2) In paragraph 2.1(d) for “within” substitute “made in the course of”.
- (3) For paragraph 4.1 substitute-
- 4.1** In rule 2.3(1) 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 41D 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.” ”.
- (4) After paragraph 7.1 insert-
- 7.2** In rule 29.13(2) omit “and sufficient copies for service on all the parties”.”.
- (5) In paragraph 9.3, in the text inserted after paragraph 4.6 of Practice Direction 6A, before the inserted sub-heading “Service by a party where Practice Direction 41D applies” insert-
- 4.7** Where Practice Direction 41D 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.”.
- (6) After paragraph 9.3 insert-
- Modification of Practice Direction 12C**
- 9A.1** Omit paragraph 1.2.”.
- (7) After paragraph 10.2 insert-
- Modification of Practice Direction 18A**
- 11.1** In paragraph 3.5 omit “together with sufficient copies for one to be served on each respondent”.”.

NEW PRACTICE DIRECTION 41E – PROCEDURE FOR USING AN ONLINE SYSTEM TO COMPLETE AND FILE CERTAIN APPLICATIONS FOR AN ADOPTION ORDER

- (1) After Practice Direction 41D insert new Practice Direction 41E as set out in the Annex to this Practice Direction Update.
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ANNEX: NEW PRACTICE DIRECTION 41E TO BE INSERTED AFTER PRACTICE DIRECTION 41D

PRACTICE DIRECTION 41E – PROCEDURE FOR USING AN ONLINE SYSTEM TO COMPLETE AND FILE CERTAIN APPLICATIONS FOR AN ADOPTION ORDER

This Practice Direction supplements rule 41.1 of the Family Procedure Rules 2010 (Proceeding by Electronic Means).

Scope, coming into force and interpretation

1.1 This Practice Direction makes provision for the procedure by which certain applications and stages in proceedings for an adoption order may be completed using the online system.

1.2 This Practice Direction comes into force on 18 May 2023.

1.3 This Practice Direction applies where all of the following conditions are met-

(a) the application is for an adoption order under the Adoption and Children Act 2002 made in relation to a child who is habitually resident in the British Islands;

(b) the application is not for a ‘Convention adoption order’ as defined in Rule 14.1(2);

(c) one of the following applies –

(i) the child to whom the application for an adoption order relates is made has been placed for adoption under section 19 of the 2002 Act;

(ii) a placement order under the 2002 Act is in force in respect of the child to whom the application for an adoption order relates;

(iii) the child is the subject of a Scottish permanence order (which term has the meaning given in section 47(10) of the 2002 Act) which includes provision granting authority for the child to be adopted; or

(iv) the child is free for adoption by virtue of an order made under Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987;

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

(e) the process provided for in the online system can be completed;

(f) the application is started in the family court;

(g) the application is filed on or after 18 May 2023.

1.4 In this Practice Direction the “online system” means HM Courts and Tribunals Service’s online system to allow for certain stages in applications specified in paragraph 1.3 of this Practice Direction to be dealt with online.

Purpose and use of the online system

2.1 Where the conditions in paragraph 1.3 are met, the online system enables-

- (a) prospective adopters;
- (b) local authorities; and
- (c) adoption agencies;

to engage in proceedings via the online system, by taking the steps specified in paragraph 2.2.

2.2 The specified steps are-

- (a) to create and file an application referred to in paragraph 1.3 to commence proceedings; and
- (b) in respect of an application referred to in sub-paragraph (a), to-
 - (i) file documents, including draft orders, further applications and reports at the same time as filing the application;
 - (ii) amend the application;
 - (iii) indicate willingness to accept service by the court of documents relating to the application via email; and
 - (iv) accept service by the court by email of any documents relating to the application.

2.3 For the avoidance of doubt-

- (a) it should not be assumed that an application of a type specified in paragraph 1.3 will always be dealt with on the online system. For example, the online system may not be 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 of some other unplanned circumstance;
- (b) parties to proceedings may not effect service of applications or other documents on other parties via the online service;
- (c) the online service cannot be accessed by those referred to at paragraph 2.1 beyond their being able to take the steps outlined in paragraph 2.2: they will be kept informed of the progress of the application in accordance with the provisions of the FPR; and
- (d) parents (even if parties to the proceedings) and any other parties not referred to in paragraph 2.1 will not have access to the online system: they will be kept informed of the progress of the application in accordance with the provisions of the FPR.

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 those Rules will apply as modified by paragraphs 4.1 to 11.5.

Modification of rule 2.3(1) FPR

- 4.1** In rule 2.3(1) FPR, the definition of “filing” is modified by inserting after “office”-
“or, where Practice Direction 41E applies, by creating and submitting, or by uploading, the document on the online system referred to in that Practice Direction.”.

Modification of Part 5 FPR

- 5.1** For 5.1, substitute-

“5.1 Where Practice Direction 41E applies the applicant, or a local authority assisting the applicant to complete the application for an adoption order, must-

(a) complete all sections of the application process to apply for an adoption order in a manner set out in the online system referred to in that Practice Direction;

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

- 5.2** In rule 5.2, for “Subject” substitute “Where rule 5.1(a) applies and a form is uploaded to the online system, subject”.

- 5.3** After rule 5.2 FPR insert-

“Timing and receipt of applications

5.2A An application that is submitted via the online system in accordance with rule 5.1 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.

Timing of receipt of documents other than applications

5.2B A document, other than an application, that is submitted via the online system is filed with or otherwise received by the court on the date and at the time that HMCTS software records the document as received.”.

- 5.4** At the end of rule 5.3 insert-

“(Rule 14.3A makes provision about issuing applications where Practice Direction 41E applies.)”.

Modification of Part 14 FPR

- 6.1** After rule 14.3 insert-

“Issue of an application where Practice Direction 41E applies

14.3A Where Practice Direction 41E applies-

(a) a local authority may assist the prospective adopters to complete the application, by providing, via the online system, information which the local

authority can more readily provide, for example details of the child's birth parents;

(b) the court may issue an application filed by the prospective adopters whether or not the local authority has provided the information referred to in paragraph (a)."

6.2 In rule 14.5 after paragraph (3) insert-

"(4) In a case where-

(a) Practice Direction 41E applies; and

(b) the court officer is to serve a document by email,

the court may either attach the document to be served to the email or include within the email a link to the document."

6.3 In rule 14.6(1) before sub-paragraph (a) insert-

"(aa) where Practice Direction 41E applies, the court will notify the respondent local authority that the application has been issued and request that the local authority provide any additional information referred to in rule 14.3A(a);".

6.4 In rule 14.17 after paragraph (2) insert-

"(2A) In a case where-

(a) Practice Direction 41E applies; and

(b) any document referred to in paragraph (2) has been provided to the court by being uploaded to the online system,

the court may require that the document also be provided in hard copy by a date specified by the court."

6.5 In rule 14.23 after "special security." insert "Where any information or document is held electronically by the court, such as on the online system referred to in Practice Direction 41E, special security arrangements must be in place, in particular in relation to restrictions on access to any such information or document by the court, court staff or others."

Modification of Part 17 FPR

7.1 In rule 17.2(6), for "The statement of truth" substitute "Subject to paragraph (6A), the statement of truth".

7.2 After rule 17.2(6) insert-

"(6A) Where a statement of truth is included in an application completed using the online system referred to in Practice Direction 41E the party must file with the court an application which includes the name of the person who the online system requires to sign a statement of truth recorded against the statement of truth."

Modification of rule 29.13(1) FPR

8.1 After rule 29.13(1) insert-

“(1A) Where-

- (a) Practice Direction 41E applies; and
- (b) the court is to serve order or judgment on a party by email,

service under paragraph (1) or otherwise may be effected by the court sending the party an email, to the address given for service in accordance with Practice Direction 6A, with the judgment or order attached to the email or with a link to the judgment or order included within the email.”.

Disapplication of Practice Direction 5B as modified by Practice Direction 36ZE

9.1 Subject to paragraph 9.2, where this Practice Direction 41E applies, the modifications to Practice Direction 5B made by Practice Direction 36ZE do not apply.

9.2 Paragraph 9.1 does not apply if it is not possible to upload a given document to the online system referred to in this Practice Direction 41E, for example because the online system is not accessible because of planned system maintenance or unplanned circumstances.

Modification of Practice Direction 6A

10.1 After paragraph 4.1 insert-

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

- (a) Practice Direction 41E applies; and
- (b) service of a judgment or order by the court is to be effected in accordance with rule 29.13(1A), as inserted by Practice Direction 41E.

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 a judgment or order by the court sending an email with the judgment or order attached to the email or with a link to the judgment or order included within the email.”.

10.2 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 41E that that party is willing to accept service by email and stating the email address for such service.”.

Modification of Practice Direction 17A

11.1 Omit paragraphs 1.5 and 2.3.

11.2 In the heading to paragraph 3.1 and in paragraphs 3.1, 3.7, 3.8 and 3.10 references to “sign”, “signs”, “signed” and “signing” are to be read as references to the name of the

person being, or having been, recorded against the statement of truth included in an application for an adoption order to which Practice Direction 41E applies.

11.3 For paragraph 4.1 substitute-

“**4.1** Where an application completed using the online system referred to in Practice Direction 41E contains a statement of truth with the name of a person who is unable to read or sign the document recorded against it, the application must be accompanied by a certificate made by an authorised person.”.

11.4 In paragraph 4.3-

(a) for sub-paragraph (a) substitute-

“(a) that the content of the online application has been read to the person before completion of the statement of truth required by the online system;”

(b) for sub-paragraph (e) substitute-

“(e) that that person confirmed in the presence of the authorised person that it was their belief that the contents of the online application were true.”.

11.5 For the Annex substitute-

“Certificate to be used where a person is unable to read or sign an online application for an adoption order to which Practice Direction 41E applies.

I certify that I [name and address of authorised person] have read the contents of the online application and the statement of truth to the person whose name is recorded against the statement of truth, who appeared to understand (a) the application and approved its contents as accurate and (b) the statement of truth and the consequences of making a false statement, and orally confirmed that this was the case in my presence.”.
