

PRACTICE DIRECTION UPDATE: No. 6 of 2022

The amendments to existing Practice Directions, and the new Practice Direction, 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 QC, Parliamentary Under-Secretary of State, Ministry of Justice.

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

Provision	Coming into force date
Amendments to Practice Direction 36M	On the day after the date on which this Practice Direction Update is signed.
Amendments to Practice Direction 36P	On the day after the date on which this Practice Direction Update is signed.
Amendments to Practice Direction 36V	On the day after the date on which this Practice Direction Update is signed.
Amendments to Practice Direction 36ZB	On the day after the date on which this Practice Direction Update is signed.
New Practice Direction 41D	1 November 2022

Signed:

_____ Date: 15 July 2022
Sir Andrew McFarlane
The President of the Family Division

Signed:

_____ Date: 17 July 2022
Lord Bellamy QC, Parliamentary Under-Secretary of State
Ministry of Justice

PRACTICE DIRECTION 36M – PILOT SCHEME: ONLINE SYSTEM FOR CERTAIN PUBLIC LAW PROCEEDINGS AND EMERGENCY PROCEEDINGS RELATING TO CHILDREN

(1) In paragraph 2.2C, omit sub-paragraph (a).

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

(1) In paragraph 1.3(d) for “1 September 2022” substitute “31 March 2023”.

PRACTICE DIRECTION 36V – PILOT SCHEME: FAMILY MEDIATION VOUCHER SCHEME

(1) In paragraph 1.2(b) for “30 September 2022” substitute “31 March 2023”.

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

(1) After paragraph 1.3(f)(viii) insert-

- “(ix) Reading;
- (x) Central London;
- (xi) Liverpool;”

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

(1) After Practice Direction 41C insert new Practice Direction 41D as set out in the Annex to this Practice Direction Update.

ANNEX: NEW PRACTICE DIRECTION 41D TO BE INSERTED AFTER PRACTICE DIRECTION 41C:

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

This Practice Direction supplements rule 41.1 of the Family Procedure Rules 2010

Scope and interpretation

1.1 This Practice Direction makes provision for the procedure by which, in the circumstances set out in this Practice Direction, an application in public law proceedings or in emergency proceedings relating to children may proceed by electronic means via an online system.

1.2 This Practice Direction comes into force on 1 November 2022.

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

(a) the application is -

(i) for an order in public law proceedings, as defined in rule 12.2 FPR;

(ii) for a secure accommodation order under section 119 of the Social Services and Wellbeing (Wales) Act 2014;

(iii) for an order in emergency proceedings, as defined in rule 12.2 FPR; or

(iv) made within proceedings for an order referred to in paragraph (i), (ii) or (iii);

(b) the application is made by-

(i) a Local Authority;

(ii) Cafcass or Cafcass Cymru; or

(iii) a legally represented party to proceedings;

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

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

(e) the application is started in the family court (irrespective of whether it is subsequently transferred to the High Court); and

(f) the application is filed on or after 1 November 2022.

1.4 In this Practice Direction, “the online system” means Her Majesty’s Courts and Tribunals Service’s online system to allow for specified applications and stages in the proceedings specified in paragraph 1.3(a) of this Practice Direction to be dealt with online.

Purpose and use of the online system

2.1 The online system enables a person or body referred to in paragraph 1.3(b) to start, progress and participate in proceedings via the online system, to include taking the following steps -

(a) to create and file an application referred to in paragraph 1.3(a)(i), (ii) or (iii) to commence proceedings;

(b) to file an application referred to in paragraph 1.3(a)(iv);

(c) in respect of an application referred to in sub-paragraph (a) or (b), 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

(d) to view an electronic record of the progress of the application and of applications within proceedings that are progressing using the online system.

2.2 Subject to paragraph 2.4, a Local Authority which is a party to proceedings started on or after 1 November 2022 must use the procedure provided for by this Practice Direction to start, progress and participate in proceedings, to include taking any of the steps specified in paragraph 2.1(a) to (d).

2.3 Subject to paragraph 2.4, where existing proceedings are progressing via the online system on or after 1 November 2022, a Local Authority which is a party to those proceedings must continue to use the procedure provided for by this Practice Direction to progress and participate in those proceedings.

2.4 Paragraph 2.2 or 2.3 does not apply when the online system is not available for use because of-

(a) planned “down time” for system maintenance or upgrades; or

(b) unplanned “down-time” because of, for example, a system failure or power outage or some other unplanned circumstance.

2.5 For the avoidance of doubt, it should not be assumed that an application of a type specified in paragraph 1.3(a), or any or all stages of such an application, will always be able to be dealt with on the online system. This is because Her Majesty’s Courts and Tribunals Service will be gradually rolling out the types of application that can be dealt with via the online system: see for example paragraph 2.4 above.

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 10.2.

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 41D applies, by creating and submitting or uploading, the document on the online system referred to in that Practice Direction”.

Modification of Part 5 FPR

- 5.1** For rule 5.1, substitute-

“5.1 (1) Where Practice Direction 41D applies, the applicant must-

(a) either-

(i) complete all sections of the application process set out in the online system referred to in that Practice Direction; or

(ii) upload the application to the online system in the manner specified by the online system; 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.

(2) In particular, where Practice Direction 41D applies, the requirement in rule 26.2(2)(b) 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** In rule 5.2 for “Subject” substitute “Where rule 5.1(a)(ii) applies, subject”

- 5.3** After rule 5.2 FPR insert-

“Timing of receipt of applications

5.3 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

5.3A 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.”.

Modification of Part 17 FPR

- 6.1** In rule 17.2(6), for “The statement of truth” substitute “Subject to paragraph (6A), the statement of truth”.

- 6.2** 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 41D applies, the applicant 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 Part 29 FPR

7.1 After rule 29.13(1) insert-

“(1A) Where Practice Direction 41D applies, service under paragraph (1) or otherwise may be effected by the court sending each 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.”.

Modification of Practice Direction 5B

8.1 After paragraph 1.1 insert-

“**1.1A** Where Practice Direction 41D 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 41D, 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 41D.”.

Modification of Practice Direction 6A

9.1 After paragraph 4.1 insert-

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

(a) Practice Direction 41D 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 41D.

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 by email a weblink from which the judgment or order may be accessed and downloaded.”.

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

9.3 After paragraph 4.6 insert-

“Service by a party where Practice Direction 41D applies

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

- (a) Practice Direction 41D applies; and
- (b) a party is required to effect service of a document on another party.

4A.2 Where this paragraph applies, service of a document by a party may be effected by-

- (a) the party filing the document to be served on the online system referred to in Practice Direction 41D; and
- (b) 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.”.

Modification of Practice Direction 17A

10.1 Omit paragraphs 1.5 and 2.3.

10.2 In the heading to paragraph 3.1 and in paragraphs 3.1, 3.4, 3.7, 3.8 and 3.10 references to “sign”, “signs”, “signed” and “signing” are to be read as references to checking a box next to the statement of truth included in applications to which Practice Direction 41D applies.