

PRACTICE DIRECTION UPDATE: No. 9 of 2022

The amendments to the existing Practice Directions 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 as follows:

Provision	Coming into force date
Amendments to Practice Direction 5A	16 January 2023
Amendment to paragraph 1.2(d) of Practice Direction 36G	On the day after the date on which this Practice Direction Update is signed
Amendments to paragraphs 4.1 and 7.1 of Practice Direction 36G	16 January 2023
The first amendment to paragraph 1.1 of Practice Direction 36N and the insertion of new paragraphs 2.2A and 2.2B of Practice Direction 36N	31 January 2023
Amendment to paragraph 1.3(f) of Practice Direction 36N	On the day after the date on which this Practice Direction Update is signed
All other amendments to Practice Direction 36N	16 December 2022
Amendments to Practice Direction 36ZD	16 January 2023
Amendments to Practice Direction 41D	On the day after the date on which this Practice Direction Update is signed

Signed:

_____ Date: _____ 6 December 2022 _____

Sir Andrew McFarlane
The President of the Family Division

Signed:

_____ Date: _____ 12 December 2022 _____

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

PRACTICE DIRECTION 5A – FORMS

- (1) In Table 2-
(a) in the row for Form E, in the second column-

- (i) omit “(other than a variation order)”; and
- (ii) at the end of the entry insert-
“(NOTE: this form should not be used for an application for a variation of an order, except where that application is to capitalise an order for periodical payments.)”;

(b) in the row for Form E Notes, in the second column, omit “(other than a variation order)”;

(c) in the row for Form E2, in the second column, after “remedy” insert “(other than for variation to capitalise an order for periodical payments)”;

(d) after the row for Form E2 insert-

“Form E2 Notes	Form E2 (Financial statement for a variation of an order for a financial remedy, other than for variation to capitalise an order for periodical payments) Notes for guidance.”
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PRACTICE DIRECTION 36G – PILOT SCHEME, PROCEDURE FOR USING AN ONLINE SYSTEM TO GENERATE APPLICATIONS IN CERTAIN PRIVATE LAW PROCEEDINGS RELATING TO CHILDREN

- (1) In paragraph 1.2(d) for “31 December 2022” substitute “31 October 2023”.
- (2) For paragraph 4.1 substitute-
“For rule 3.7 substitute-
“3.7 Where the Pilot Scheme referred to in Practice Direction 36G applies, the application must either-
(a) be accompanied by a form (uploaded to the online system) which includes confirmation from an authorised family mediator that –
(i) the prospective applicant has attended a MIAM; or
(ii) a mediator’s exemption applies; or
(b) contain a claim by the prospective applicant that one of the MIAM exemptions applies.
(A list of MIAM exemptions is set out in Rule 3.8(1) below. A list of mediator’s exemptions is set out in Rule 3.8(2) below.)”.
- (3) For paragraph 7.1 substitute-
“For paragraph 6 substitute-
“6. Where the pilot scheme referred to in Practice Direction 36G applies, an applicant must either-
(a) provide on a separate form uploaded to the online system confirmation from a mediator that-
(i) the applicant has attended a MIAM; or
(ii) a 'mediator's exemption' applies; or
(b) include in the application a claim that a MIAM exemption applies.

An applicant who claims an exemption from the MIAM requirement is not required to attach any supporting evidence with their application, but should bring any supporting evidence to the first hearing.”.

PRACTICE DIRECTION 36N – PILOT SCHEME: PROCEDURE FOR ONLINE FILING AND PROGRESSION OF CERTAIN APPLICATIONS FOR A FINANCIAL REMEDY IN CONNECTION WITH PROCEEDINGS FOR A MATRIMONIAL ORDER OR FOR A CIVIL PARTNERSHIP ORDER

- (1) In the title-
 - (a) after “APPLICATIONS FOR” insert “, OR IN RELATION TO,”; and
 - (b) omit “IN CONNECTION WITH PROCEEDINGS FOR A MATRIMONIAL ORDER OR FOR A CIVIL PARTNERSHIP ORDER”.

- (2) In paragraph 1.1-
 - (a) for “allow for” substitute “require”;
 - (b) after “applications for” insert “, or in relation to”; and
 - (c) omit “in connection with proceedings for a matrimonial order or for a civil partnership order”.

- (3) In paragraph 1.3(a)-
 - (a) in sub-paragraph (a) for “exception” substitute “exceptions”;
 - (b) at the end of paragraph (i) omit “or”; and
 - (c) after paragraph (ii) insert-
 - “(iii) for an order under Schedule 1 to the 1989 Act; or
 - (iv) to set aside an order for a financial remedy.”

- (3) In paragraph 1.3(f) for “2022” substitute “2023”.

- (4) For paragraph 1.4 substitute-

“1.4 The exceptions referred to in paragraph 1.3 are where the application is-
 - (a) for an order for payment in respect of legal services which is not made at the same time as an application for another form of financial remedy or is not made in proceedings already on the online system for another form of financial remedy; or
 - (b) to set aside a financial remedy order where the application to set aside relates to an order which was not made as a result of a financial remedy application made and progressed on the online system.”.

- (5) In paragraph 1.5 after “stages in” insert “, or in relation to,”.

- (6) In paragraph 2.1-
 - (a) after “applications for” insert “, or in relation to,”; and
 - (b) omit “, made in connection with certain proceedings for a matrimonial order of for a civil partnership order,”.

- (7) In paragraph 2.2 after “stages in” insert “, or in relation to,”.

- (8) After paragraph 2.2 insert-
- “2.2A** Subject to paragraphs 2.2B and 2.3, from 31st January 2023-
- (a) applications to which the Pilot Scheme applies must be created, started and progressed via the online system; and
 - (b) applications to which the Pilot Scheme applies which have already been created, started or progressed on the online system must remain on the online system.
- 2.2B** Paragraph 2.2A 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.”.

(9) In paragraph 2.3(a) for the second sentence substitute “For example, there may be circumstances which require a case to be removed from the online system, such as where an intervenor becomes involved in the proceedings.”.

(10) After the heading “Modification of Practice Direction 6A” and before paragraph 10.1 insert-

“10.A1 After paragraph 4.1 insert-

“4.1A Paragraphs 4.2 to 4.6 also apply where-

 - (a) Practice Direction 36N 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 36N.

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.”.

(11) In paragraph 10.1(c) for the inserted paragraph (v) of paragraph 4.2(b) of Practice Direction 6A substitute-

“(v) a legal representative for the party to be served having registered on MyHMCTS (being the online case management tool managed by HM Courts and Tribunals Service).”.

(12) After paragraph 10.1 insert-

“10.2 After paragraph 4.6 insert-

“Service by a party where Practice Direction 36N applies

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

 - (a) Practice Direction 36N 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 by a party may be effected by-
 - (i) the party filing the document to be served on the online system referred to in Practice Direction 36N; and
 - (ii) the party who filed the document then sending each party to be served an email, to the address given for service in accordance with this Practice Direction 6A, indicating that the documents may be accessed and downloaded from the online system.” ”.

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

- (1) In paragraph 1.2-
 - (a) omit sub-paragraph (b);
 - (b) in sub-paragraph (c) for “applicant’s” substitute “party or their”; and
 - (c) in sub-paragraph (e) for “19 April” substitute “31 October”.
- (2) For paragraph 2.2 substitute-

2.2 This Practice Direction has subsequently been, and may in future be, amended to allow for other stages in applications to be completed via the online system.”.
- (3) In paragraph 2.3(c)-
 - (a) after “36ZD” insert “, or has access but chooses not to use the online system,”; and
 - (b) at the end of the paragraph insert “An unrepresented party also has the option to make or respond to an application on paper rather than via either online system.”
- (4) After paragraph 6.2 insert-

Modification of Part 29 FPR

6A.1 After rule 29.13(1) insert-

“(1A) Where the Pilot Scheme referred to in Practice Direction 36ZD 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.

(1B) Paragraph (1A) is subject to the court directing that service be effected by another means.

(1C) Where service under paragraph (1) or (1A) is effected by email on an unrepresented party, a letter confirming such service may be sent by the court to the postal address of the person being served, by first class post or other service which provides for delivery on the next business day.

Modification of Practice Direction 6A

6B.1 After paragraph 4.1 insert-

- “4.1A Paragraphs 4.2 to 4.6 also apply where-
- (a) the Pilot Scheme referred to in Practice Direction 36ZD 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 36ZD.

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.

6B.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 36ZD that that party is willing to accept service by email and stating the email address for such service;
 - (vi) a legal representative having registered on MyHMCTS (being the online case management tool managed by HM Courts and Tribunals Service).”.

6B.3 After paragraph 4.6 insert-

“Service by a party where the Pilot Scheme referred to in Practice Direction 36ZD applies

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

- (a) the Pilot Scheme referred to in Practice Direction 36ZD 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 by a party may be effected by-
 - (i) the party filing the document to be served on the online system referred to in Practice Direction 36ZD; 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, which-
 - (aa) contains a weblink to the online system, from which the document may be accessed and downloaded; or
 - (bb) attaches the document to be served.

4A.3 Where a document is served by email in accordance with paragraph 4A.2 on an unrepresented party, a letter confirming such service may be sent by the court to the postal address of the party being served, by first class post or other service which provides for delivery on the next business day."

(5) In paragraph 10.1, in the substituted paragraph 8.2 of Practice Direction 12B, for the final sentence (which begins "For the purposes") substitute "For the purposes of that pilot scheme, references in this Practice Direction to forms "C100", "C7" or "C1A" are to be read as including the versions of those forms generated by the online system."

(6) In paragraph 10.5 for "filed with the court by email" substitute "uploaded to the online system".

(7) After paragraph 10.5 insert-

10.6 After paragraph 8.12 insert-

"8.13 Where a party has agreed to the court sending documents to them by email, the documents referred to in paragraph 8.7, 8.8 or 8.12 may be sent or served by the court sending an email to the party, to the email address given for service in accordance with Practice Direction 6A, which-

- (a) contains a weblink to the online system, from which the document may be accessed and downloaded; or
- (b) attaches the document to be served.

8.14 Where-

(a) paragraph 8.13 applies; and

(b) the person on whom the documents are being served, or to whom the documents are being sent, is unrepresented,

a letter confirming that such an email has been sent may be sent by the court to the postal address of the person to whom the email was sent, by first class post or other service which provides for delivery on the next business day."

10.7 In paragraph 8.11, at the end insert-

"The respondent(s) may send the forms to the court by post or by uploading them to the online system."

10.8 In paragraph 12.5 omit the words from after "safeguarding checks" to the end of the paragraph.

10.9 In the Annex (Explanation of Terms), in the row relating to the term "File", in the second column after "court office" insert-

"or, where Practice Direction 36ZD applies, by-

- (i) uploading the document on the online system referred in that Practice Direction; or
- (ii) submitting the information via that online system." "

- (7) For paragraph 11.1 substitute-
- 11.1** For paragraph 8.2 substitute-
- “8.2 Where the pilot scheme referred to in Practice Direction 36ZD applies, the application must be created and submitted on the online system referred to in Practice Direction 36ZD. For the purposes of that pilot scheme, references in this Practice Direction to forms “C100”, “C7”, “C8” or “C1A” are to be read as including the versions of those forms generated by the online system.” ”.
- (8) Omit paragraph 11.2.
- (9) In paragraph 11.5 for “filed with the court by email” substitute “uploaded to the online system”.
- (10) Omit paragraph 11.6.
- (11) In paragraph 11.7 omit sub-paragraph (b).
- (12) In paragraph 11.8 omit sub-paragraph (b).
- (13) For paragraph 11.9 substitute-
- 11.9** In paragraph 8.12 at the end insert-
- “The respondent(s) may send the forms to the court by post or by uploading them to the online system.”
- 11.10** After paragraph 8.13 insert-
- “8.14 Where a party has agreed to the court sending documents to them by email, the documents referred to in paragraph 8.8, 8.8 or 8.13 may be sent or served by the court sending an email to the party, to the email address given for service in accordance with Practice Direction 6A, which-
- (a) contains a weblink to the online system, from which the document may be accessed and downloaded; or
- (b) attaches the document to be served.
- 8.15 Where-
- (a) paragraph 8.14 applies; and
- (b) the person on whom the documents are being served, or to whom the documents are being sent, is unrepresented,
- a letter confirming that such an email has been sent may be sent by the court to the postal address of the person to whom the email was sent, by first class post or other service which provides for delivery on the next business day.”.
- 11.11** In paragraph 10.6 omit the words from after “safeguarding checks” to the end of the paragraph.

11.12 In the Annex (Explanation of Terms), in the row relating to the term “File”, in the second column after “court office” insert-

“or, where Practice Direction 36ZD applies, by-

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

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

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

(1) In paragraph 9.2(c), in the inserted paragraph (v) of Practice Direction 6A, for “.” substitute-

“; or

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

(2) In paragraph 9.3, for the inserted paragraph 4A.2 of Practice Direction 6A, substitute-

“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 41D; 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.”.