PRACTICE DIRECTION UPDATE No. 5 of 2024

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 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:

Provision	**Coming into force date**
Amendment to Practice Direction 7A	1 June 2024
Amendments to Practice Direction 9A	31 May 2024
Amendments to Practice Direction 12B	31 May 2024
Amendments to Practice Direction 12F	On the day after the date on which this Practice Direction Update is signed
Amendment to Practice Direction 36N	On the day after the date on which this Practice Direction Update is signed
Amendments to Practice Direction 12B (Pilot), annexed to Practice Direction 36Z	31 May 2024
Amendments to Practice Direction 36ZE	On the day after the date on which this Practice Direction Update is signed
New Practice Direction 41G	1 June 2024

Signed:

_____ Date: 21 May 2024

Sir Andrew McFarlane, The President of the Family Division

Signed:

_____ Date: 22 May 2024

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

PRACTICE DIRECTION 7A – PROCEDURE FOR APPLICATIONS IN MATRIMONIAL AND CIVIL PARTNERSHIP PROCEEDINGS

(1) In paragraph 3.1(b) after "document", the second time it appears, insert "verified by the translator and".

PRACTICE DIRECTION 9A – APPLICATION FOR A FINANCIAL REMEDY

(1) For paragraph 2.1 substitute-

"2.1 The pre-application protocol annexed to this Practice Direction outlines the steps parties should take to-

(a) seek to resolve their dispute without applying to court, for example via non-court dispute resolution, and

(b) seek and provide information from and to each other before making any application for a financial remedy.

The court will expect the parties to comply with the terms of the protocol.".

(2) For the Annex (Pre-application protocol) to Practice Direction 9A, substitute the Pre-Application Protocol as set out in Annex 1 to this Practice Direction Update.

PRACTICE DIRECTION 12B – CHILD ARRANGEMENTS PROGRAMME

(1) After paragraph 1.3 insert-

"**1A Pre-Application Protocol**.

1A.1 The pre-application protocol annexed to this Practice Direction (Annex 2) outlines the steps parties should take before starting any court proceedings, including trying to resolve their dispute by non-court dispute resolution, where this is safe and appropriate. It also outlines sources of support and information available to parties. The court will expect parties to comply with the pre-application protocol.".

(2) In paragraph 3.2 for "the Annex" substitute "Annex 1".

(3) After paragraph 23.1 for the heading "Annex" substitute "Annex 1".

(4) After Annex 1 (Explanation of Terms), insert the Pre-Application Protocol as set out in Annex 2 to this Practice Direction Update.

PRACTICE DIRECTION 12F – INTERNATIONAL CHILD ABDUCTION

(1) In the Protocol at Annex 1 (Communicating with UK Visas and Immigration (UKVI) in Family Proceedings, Protocol agreed between the President of the Family Division and the Home Office), for the email addresses referred to in paragraph 5 and in paragraph 6 substitute " ICESSVECRCJ@homeoffice.gov.uk ".

PRACTICE DIRECTION 36N – PILOT SCHEME: PROCEDURE FOR ONLINE FILING AND PROGRESSION OF CERTAIN APPLICATIONS FOR OR IN RELATION TO A FINANCIAL REMEDY

(1) In paragraph 1.3(f) for "30 June 2024" substitute "31 December 2024".

PRACTICE DIRECTION 36Z – PILOT SCHEME: PRIVATE LAW REFORM: INVESTIGATIVE APPROACH

AMENDMENT OF THE ANNEXED PRACTICE DIRECTION 12B (PILOT) – PRIVATE LAW REFORM: INVESTIGATIVE APPROACH

(1) In Practice Direction 12B (Pilot) as annexed to Practice Direction 36Z-

(a) after paragraph 1.3 insert-

"**1A Pre-Application Protocol**.

1A.1 The pre-application protocol annexed to this Practice Direction (Annex 2) outlines the steps parties should take before starting any court proceedings, including trying to resolve their dispute by non-court dispute resolution, where this is safe and appropriate. It also outlines sources of support and information available to parties. The court will expect parties to comply with the pre-application protocol.";

(b) in paragraph 3.2 for "the Annex" substitute "Annex 1";

(c) after paragraph 28.1 for the heading "Annex" substitute "Annex 1";

(d) after Annex 1 (Explanation of Terms), insert the Pre-Application Protocol as set out in Annex 3 to this Practice Direction Update.

PRACTICE DIRECTION 36ZE – PILOT PROVISION: TEMPORARY MODIFICATION OF PRACTICE DIRECTIONS 2C, 5B, 12A AND 12B

(1) In the table at paragraph 3.1(b), insert at the end-

"the 1989 Act, section 12(1)	Only where- 1. the proceedings are allocated within the family court to lay justices or when the justices' legal adviser is acting as a gatekeeper at the allocation stage; 2. the parties have first been made aware of the requirement to make an order for parental responsibility under section 4 of the 1989 Act (pursuant to section 12(1) of the 1989 Act);

	3. the parties consented to the making of the child arrangements order knowing that an order for parental responsibility would be made; 4. Cafcass has confirmed that no safeguarding issues have been identified which require further enquiry or would preclude the parties agreeing a consent order; and 5. the principles of PD12J have been applied and the justices' legal adviser determines it is consistent with PD12J and the child's welfare to make the order in the terms sought.
the 1989 Act, section 12(1A)	Only where- 1. the proceedings are allocated within the family court to lay justices or when the justices' legal adviser is acting as a gatekeeper at the allocation stage; 2. all those with parental responsibility for the child consent to a parental responsibility order being made pursuant to section 12(1A) of the 1989 Act; 3. Cafcass has confirmed that no safeguarding issues have been identified which require further enquiry or would preclude the parties agreeing a consent order; and 4. the principles of PD12J have been applied and the justices' legal adviser determines it is consistent with PD12J and the child's welfare to make the order in the terms sought.
The 1996 Act, section 46	Only where- 1. the terms of the undertaking are recorded in writing; 2. all parties consent that an undertaking is an appropriate means of dealing with the issue;

	3. all parties consent to the terms of the undertaking; 4. the justices' legal adviser has explained the consequences of any breach to the person giving the undertaking.".

NEW PRACTICE DIRECTION 41G – PROCEEDING BY ELECTRONIC MEANS: CERTAIN PROCEEDINGS FOR A MATRIMONIAL ORDER OR CIVIL PARTNERSHIP ORDER (NEW LAW)

(1) After Practice Direction 41F insert new Practice Direction 41G as set out in Annex 4 to this Practice Direction Update.

ANNEX 1

PRE-APPLICATION PROTOCOL TO BE SUBSTITUTED FOR THE ANNEX TO PRACTICE DIRECTION 9A

ANNEX

Summary of the Pre-application Protocol for financial remedy proceedings

1. The Protocol sets out the key steps the court will expect parties to take in relation to non-court dispute resolution (NCDR), i.e. resolving a dispute other than through the court process, before starting court proceedings. The Protocol also underlines the duty to make full and honest disclosure. The full Protocol is attached to this document. Everyone is required to comply with the terms of the Protocol, even if they have not had professional advice from a legal representative.

2. Before coming to court, unless there are safety concerns or other good reasons not to do so, the court will expect parties to have attended at least one form of NCDR. Please see paragraphs 10, 11, and 12 of the Protocol for more details.

3. All applicants are required to attend a MIAM before they start court proceedings unless they have a valid exemption, and all respondents are expected to do so. An authorised mediator will give the parties information about which form of NCDR may be most suitable.

4. If court proceedings are started, a party must set out their position on using NCDR using **Form FM5** (which can be accessed here) and send this to the Court and to the other party at least 7 working days before the first hearing or as directed by the court.

5. If the parties have not attended a form of NCDR, the court may decline to commence the court timetable or suspend the court timetable so that the parties may attend a form of NCDR. The court will also take into account any failure by a party to attend a MIAM or form of NCDR when considering the question of costs (together with any other failure to comply with the Protocol, see paragraph 25) and may make an order requiring that party to pay the other party's costs.

6. Lengthy and unnecessary correspondence must be avoided and the parties must seek to identify the issues as soon as possible. The impact of any correspondence upon the reader must always be considered, particularly the first letter.

7. Before starting court proceedings, the parties should attempt, where possible, voluntary financial disclosure and negotiation. Any disclosure must be full, honest

and open. Parties must be advised of this duty by their legal advisers, including the ongoing duty to disclose any material changes. Requests for disclosure must be necessary, relevant and limited to what is reasonably required.

8. Pre-application disclosure should be provided using **Form E** (financial remedy proceedings); **Form E1** (financial claims for the benefit of children under Schedule 1 of the Children Act 1989) or **Form E2** (application to vary an existing order other than to capitalise periodical payments) which can be accessed here. Financial information can be summarised in Template **ES2** which can be accessed here.

   The Protocol helpfully signposts a number of on-line resources for the parties to consider to help them resolve the dispute without the need for court proceedings (paragraph 40).

Pre-application Protocol: financial remedy proceedings

Introduction

1. Pre-application protocols explain the conduct and set out the steps the court expects parties to take before starting court proceedings.

2. This Protocol applies to all applications for a financial remedy as defined by rule 2.3. It covers all classes of case, including applications for periodical payments, lump sum, property adjustment and/or pension sharing orders. It applies whatever the size of the parties' assets and whether it is a so-called "needs" or "sharing" case. It applies whether the parties are legally represented or not.

3. This Protocol underlines the duty of parties to make full and honest disclosure of all material facts, documents, and other information relevant to the issues.

4. Any legal representatives instructed should give a copy of this Protocol to all parties, and explain its meaning and implications to their client, before they start court proceedings.

Objectives

5. The objectives of this Protocol are to encourage appropriate engagement in non-court dispute resolution and to:
    a. enable the parties to understand each other's position;
    b. assist the parties in deciding how to proceed;
    c. identify the issues in dispute;
    d. narrow the scope of the dispute;
    e. try to settle the issues without court proceedings;
    f. support efficient management of dispute resolution; and
    g. reduce the costs of resolving the dispute.

Compliance

6. To comply with this Protocol the court will usually expect the parties to have done the following:
    a. attended a MIAM with an authorised mediator, unless a valid exemption applies;
    b. considered, and unless there is good reason for not doing, proposed and engaged in appropriate non-court dispute resolution;
    c. provided full disclosure (information relevant to the issues in dispute) to the other party, including appropriate financial disclosure;
    d. clearly set out their position (including the orders they would wish the court to make were proceedings started); and
    e. attempted negotiation (trying to agree the issues in dispute) by making reasonable proposals for settlement.

Attendance at a Mediation Information and Assessment Meeting (MIAM)

7. A MIAM is a meeting where an authorised mediator will give the parties information about non-court dispute resolution, explain its benefits, and

indicate which method(s) of non-court dispute resolution may be most suitable.

8. All prospective applicants are required to attend a MIAM before they start court proceedings unless they have a valid exemption. All prospective respondents are expected to attend a MIAM before proceedings are started, unless there is a good reason why they should not do so.

9. The list of exemptions for attending a MIAM are set out at rule 3.8. A link to the list of exemptions can be found here: https://www.justice.gov.uk/courts/procedure-rules/family/parts/part_03#para3.8.

Non-court dispute resolution

10. Non-court dispute resolution is defined in rule 2.3. It means methods of resolving a dispute other than through the court process and includes, but is not limited to, the following:
    a. mediation (a third party seeking to facilitate a resolution);
    b. arbitration (a third party deciding the dispute);
    c. neutral evaluation (a third party giving a neutral indication on the dispute, such as a private Financial Dispute Resolution process); and
    d. the collaborative process (the parties and their collaboratively trained legal representatives meeting together, but with those legal representatives being prevented from representing the parties in later court proceedings if the collaborative process does not result in settlement).

11. The court may also consider the parties having obtained legal advice via the "single lawyer" or a "one couple, one lawyer" scheme as good evidence of a constructive attempt to obtain advice and avoid unnecessary proceedings, if they have complied with paragraph 6 above.

12. Although there is a place for constructive negotiation via correspondence between legal representatives, that alone shall not be a sufficient attempt at non-court dispute resolution for the purposes of this Protocol. Other forms of negotiation between legal representatives, such as round-table meetings, may be considered sufficient depending on when and how they took place.

13. All parties and legal representatives should seek, from the outset, to engage in appropriate non-court dispute resolution, and keep any initial decision not to do so under careful ongoing review.

14. Before starting court proceedings, the court will expect parties to have attended at least one form of non-court dispute resolution, unless there are safety concerns or there is another good reason not to do so.

15. Legal representatives should make the parties aware that if they have not attempted at least one form of non-court dispute resolution before starting court proceedings then the court (on being informed by a party that this is the case or by the court finding out of its own initiative) may (i) decline to

commence the court timetable by the issue of a Form C (Notice of a First Appointment); or (ii) suspend the same and instead make such directions as it thinks appropriate to ensure that at least one form of non-court dispute resolution has been attempted before directions on Form C are given.

16. If one party is not willing to attend non-court dispute resolution, they should give reasons in writing so that (i) the other party is clear about their position and the reasons given for it; and (ii) if court proceedings are started the position is clear to the court when it is considering whether, and if so how, to encourage non-court dispute resolution.

17. Before starting court proceedings, parties should bear in mind the following:
    a. although there may be an advantage in having a court timetable, many (if not all) of the same benefits can be achieved within a non-court dispute resolution process such as arbitration where the parties agree that the arbitrator's case management powers are to be similar to those available to a court;
    b. if court proceedings are issued, the court will have the possibility of non-court dispute resolution forefront in its mind:
        i. by rule 1.4, the court must further the overriding objective by actively managing cases. By rule 1.2(2)(f), active case management includes encouraging the parties to use non-court dispute resolution if the court considers that appropriate and facilitating the use of such procedure;
        ii. by rule 3.3(1), the court must consider, at every stage in proceedings, whether non-court dispute resolution is appropriate;
        iii. by rule 3.3(1A), before a first hearing, and before any later hearing when the court so requires, a party must file with the court and serve on all other parties a form (Form FM5) setting out their views on using non-court dispute resolution as a means of resolving the matters raised in the proceedings. By paragraph 10C of PD3A, unless the court directs otherwise, the form is to be filed and served seven days before the relevant hearing;
        iv. by rule 3.4(1A), where the timetabling of proceedings allows sufficient time for these steps to be taken, the court should encourage parties, as it considers appropriate, to obtain information and advice about, consider using and undertake non-court dispute resolution; and
        v. by rule 28.3(7), a failure, without good reason, to attend non-court dispute resolution is an express reason for the court to consider departing from the general rule of no order as to costs.

18. If court proceedings are started, the parties may be required by the court to provide evidence that non-court dispute resolution has been attempted or that there are good reasons for it not having been attempted.

19. If the parties are engaged in non-court dispute resolution, an application to the court should not be made until the process has concluded, unless there are

good reasons, which could include, but would not be limited to, seeking orders from the court to prevent assets from being disposed of or dissipated.

20. Although there may be good reasons (for example, where there is a real risk one party may start competing proceedings in another jurisdiction or dissipate assets) to start court proceedings before attempting non-court dispute resolution, the court will still expect parties to attempt non-court dispute resolution to resolve other issues in dispute once the urgent issue which caused the party to start court proceedings has been resolved.

General principles

21. Parties and legal representatives must always bear in mind the court's overriding objective as set out at rule 1.1 to resolve cases justly, as quickly and fairly as possible, in ways that are proportionate to the nature, importance and complexity of the issues, and without costs being unreasonably incurred. By rule 1.3 the parties are required to help the court further the overriding objective. These obligations apply equally to conduct before as well as after proceedings have started.

22. The needs of any children should be addressed and safeguarded.

23. The procedures which it is appropriate to follow should be conducted with minimum distress to the parties and in a manner designed to promote as good a continuing relationship between the parties and any children affected as is possible in the circumstances.

24. It is not acceptable for the costs of any case to be disproportionate to the financial value of the subject matter of the dispute. The principle of proportionality must therefore always be borne in mind. Proportionality is a factor the court will take into account when considering whether, and if so to what extent, to make an order for one party to pay the costs of the other party.

25. Parties and legal representatives should be aware that where a court is considering whether to make an order requiring one party to pay the costs of another party, it will take into account (i) any open pre-application offers to settle; (ii) if a party did not attend a MIAM and was not exempt from doing so; (iii) the FM5; (iv) whether a party has provided appropriate financial disclosure and, if so, when; and (v) a failure, without good reason, to attend non-court dispute resolution or a premature and unjustified abandonment of ongoing non-court dispute resolution.

Correspondence

26. All correspondence must focus on the clarification of claims and identification of issues and their resolution. Parties and legal representatives will usually be expected to raise and recommend non-court dispute resolution in early correspondence. Protracted and unnecessary correspondence must be avoided.

27. The impact of any correspondence (including the time at which it is sent) upon the reader must always be considered. Any correspondence which raises

irrelevant issues, or which might cause the other party to adopt an entrenched, polarised, or hostile position is to be discouraged.

28. The circumstances of parties to an application for a financial remedy are so various that it would be difficult to prepare a specimen first letter. However, the tone and content of the initial letter is important and the guidelines in paragraphs 26 and 27 should be followed. Where a first letter is drafted by a legal representative, it should be approved in advance by the client. Particular consideration should be given as to how the first letter will be received by the person to whom it is sent, having regard to its tone and content.

29. Legal representatives writing to an unrepresented party should always recommend that he or she seeks independent legal advice and, if sent in hard copy, enclose a second copy of the letter to be passed to any legal representative instructed. A reasonable time limit for an answer may be 14 days.

Identifying the issues

30. Parties must seek to clarify their claims and identify the issues between them as soon as possible.

Disclosure and negotiation

31. Before starting court proceedings, parties and their legal representatives (or those facilitating non-court dispute resolution) should consider whether the case is suitable for pre-application financial disclosure and negotiation. This option may be particularly suitable where providing or obtaining financial disclosure is not likely to be an issue or has already been adequately dealt with separately.

32. If the parties give pre-application financial disclosure, they must provide full and honest disclosure to the other party of facts, information and documents which are material and sufficiently accurate and up-to-date to enable proper negotiations then to take place. Openness in all dealings is essential.

33. Legal representatives must tell their clients in clear terms of this duty and of the possible consequences of providing false information without an honest belief in its truth.

34. The duty of disclosure is an ongoing obligation until a final financial remedies order has been made and therefore includes the duty to disclose any material changes after initial disclosure has been given. Any agreement reached by the parties which is based on dishonest information supplied in pre-application disclosure is very unlikely to be upheld by the court. Legal representatives are referred to Resolution's Good Practice Guides at https://resolution.org.uk/membership/our-code-of-practice/good-practice-guides/. They can also contact The Law Society Practice Advice Service on 020 7320 5685 or practiceadvice@lawsociety.org.uk.

35. If parties provide financial disclosure before starting proceedings, they should do so using the appropriate financial statement (Form E, E1 or E2) as a guide

to the format. The three forms used in financial remedy proceedings are as follows:

a. Form E (which is used to give financial disclosure when resolving financial claims on divorce or dissolution of civil partnership) https://assets.publishing.service.gov.uk/media/63c132468fa8f516ac0d5a6d/Form_E_0123_save.pdf.
b. Form E1 (which is used to give financial disclosure when resolving financial claims for the benefit of children): https://assets.publishing.service.gov.uk/media/661910c5679e9c8d921dfe4a/Form_E1_0424.pdf and
c. Form E2 (which is used to give financial disclosure when resolving financial claims on an application to vary an existing order other than to capitalise an order for periodical payments): https://assets.publishing.service.gov.uk/media/6515c07a6dfda600148e3846/Form_E2_0123.pdf

36. The financial information can then be summarised in Template ES2 (Composite asset and income schedule): https://www.judiciary.uk/guidance-and-resources/notice-from-the-financial-remedies-court-4/

37. If the appropriate statement is the Form E1 or E2 the parties may, by agreement and where appropriate, use the Form E which requires more extensive and detailed financial information than the other two forms.

38. Documents should only be disclosed to the extent they are required by the financial statement in the first instance. Any requests for further disclosure should be limited to seeking information and documentation that is necessary, relevant, and proportionate. Excessive or disproportionate costs should not be incurred.

39. In the event of pre-application disclosure and negotiation, a court application should not be made when a settlement is a reasonable prospect.

Other resources

40. Legal representatives are encouraged to inform their clients of resources which may help them resolve the dispute without the need for court proceedings, and unrepresented parties are encouraged to consider such resources. These include but are not limited to:
    a. LawforLife's 'Advicenow' guides: https://www.advicenow.org.uk/affordable-advice-help-family-problems;
    b. Family Justice Council's 'Sorting out Finances on Divorce' (Second Edition, March 2024) https://www.judiciary.uk/wp-content/uploads/2023/06/1.-Sorting-Out-Finances-on-Divorce-2024.final-for-publication.pdf; and
    c. Pension Advisory Group's 'A Guide to the Treatment of Pensions on Divorce' (Second Edition, January 2024) - https://www.nuffieldfoundation.org/wp-content/uploads/2023/A-guide-to-the-treatment-of-pensions-on-divorce-2nd-edition.pdf

Summary

41. The aim of all steps that are taken before the start of court proceedings must be to assist the parties to resolve their differences speedily and fairly or at least narrow the issues and, should that not be possible, to assist the court to do so.

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PRE-APPLICATION PROTOCOL TO BE INSERTED AS ANNEX 2 TO PRACTICE DIRECTION 12B

ANNEX 2

Summary of the Pre-application Protocol for private law proceedings relating to children

1. This summary of the Protocol sets out the key steps the court will expect parties to take before starting court proceedings: the full Protocol is attached. Everyone is required to comply with the terms of the Protocol, even if they have not had professional advice from a legal representative.

2. The Protocol does not apply when (a) the parties are agreed about the order they are inviting the court to make; (b) the child or children are the subject of emergency proceedings, care proceedings or supervision proceedings: or (c) if there is evidence of domestic abuse, risk of harm to a child or risk of the removal of a child from the United Kingdom.

3. The Protocol includes links and signposting to sources of guidance, information and tools that can help separating families to navigate their separation and find the right arrangement for them.

4. It is important to note that, if the dispute does come to court, a judge will only make an order in relation to a child if they believe that making an order would be better for the child than not making one. Therefore, the judge will expect parties to have tried everything they can to agree their child arrangements outside of court.

5. It is also important to note that the law expects parties to do what is best for the child/children involved in a dispute, even when they might find that difficult. Unless it is unsafe to do so, a child needs to have a relationship with both parents and the family court will expect both parents to cooperate to meet this need.

6. Coming to court should be a last resort if there are no safety concerns. Before coming to court, where it is safe to do so, parties are expected to explore the sources of support and advice which may help them to resolve their dispute away from court (see paragraph 14 of the Protocol). They are expected to consider whether a form of non-court dispute resolution (“NCDR”) might help to resolve a dispute without the need to start potentially lengthy and difficult court proceedings (some of the options are set out in paragraph 23 of the Protocol).

7. Parties will also be expected to see their dispute through the eyes of the child/children involved and ensure that all decisions are made in the child/children's best interests. Wherever possible, and where age appropriate, it is also expected that the child/children involved in a dispute will have their voices heard when decisions which impact them are being made. Outcomes are likely to be better for the whole family when children understand how their lives will change and are helped to contribute to discussions about future family arrangements.

8. The applicant must attend a MIAM before making an application to the court, unless they have a valid exemption, and the respondent is strongly encouraged and expected to attend a MIAM.

Pre-application Protocol: private law proceedings relating to children

Introduction

1. This Protocol sets out the steps the court will expect parties to take before starting court proceedings. A list of definitions for terms used in this Protocol can be found at paragraph 28, below.

Scope

2. This Protocol applies where a party is considering making an application for one or more of the following orders, unless circumstances from paragraph 3, below, apply –
    a. a child arrangements order or other order with respect to a child or children under section 8 of the Children Act 1989;
    b. a parental responsibility order or an order terminating parental responsibility;
    c. an order appointing a guardian for a child or an order terminating the appointment of such a guardian;
    d. an order giving permission to change a child's surname or remove a child from the United Kingdom;
    e. a special guardianship order and an order varying or discharging such an order.

3. If a case falls within one of the categories above, this Protocol does not apply to applications which a party is considering making which –
    a. are for a consent order;
    b. are for an order relating to a child or children in respect of whom there are ongoing emergency proceedings, care proceedings or supervision proceedings;
    c. are for an order relating to a child or children who are the subject of an emergency protection order, a care order or a supervision order; or
    d. involves concerns about domestic abuse which would mean that it would qualify for the domestic abuse MIAM exemption. See paragraph 21 below for more details.

Things to note

4. If the dispute proceeds to court, the judge will expect all parties to have complied with the Protocol, unless circumstances from paragraph 3, above, apply, and will ask what steps each party has taken to comply with the Protocol.

5. This Protocol also includes links and signposting to sources of guidance, information and helpful tools that can help separating families to navigate their separation and find the right arrangement for them.

6. It is important to note that, if the dispute does come to court, a judge will only make an order in relation to a child if they believe that making an order would be better for the child than not making one. This is known as the “no order principle” and is in place to try to prevent unnecessary orders from being made and to encourage families to co-operate outside of court. Therefore, the judge will expect parties to have tried everything they can to agree their child arrangements outside of court.

7. It is also important to note that the law expects parties to do what is best for the child/children involved in a dispute, even when they might find that difficult. The family court will presume that, unless there are reasons to the contrary, the involvement of a parent in a child’s life will promote that child’s welfare. Unless it is unsafe to do so, a child needs to have a relationship with both parents and the family court will expect both parents to cooperate to meet this need.

Objectives

8. The purpose of the Protocol is:
    a. to help parties identify the key issues of a dispute;
    b. to help parties focus on the best interests of the child/children involved in the dispute and so promote good outcomes for children;
    c. to help parties avoid court, if safe and appropriate, by resolving the dispute before any proceedings begin; and
    d. to allow court time to be used more effectively where proceedings are necessary.

Parties without legal representation

9. Everyone is required to comply with the terms of this Protocol, even if they have not had professional advice from a legal representative.

10. Since April 2013, most people do not qualify for free legal help or representation at court in family disputes unless they can provide written evidence of domestic violence or child abuse concerns. A law centre, advice agency or Advicenow will be able to help parties find out whether they might be able to claim legal aid to help pay for legal help.

11. If parties are not eligible for legal aid, there is information and advice available to help, see paragraph 14 below. There are also other support services available – for example, Advicenow - who may be able to offer some help with any dispute.

12. If a party does not have a legal representative, and they decide to come to court, they will have to speak for themselves in court – they may be referred to as a ‘litigant in person’. The party will need to decide how to present their case to the court.

13. Court staff can help with where to get court forms, leaflets and guidance on children and the family courts, and can explain the court process, but they are not allowed to tell parties what they should do about their case.

Accessing resources, advice and support

14. Before coming to court, and where it is safe to do so, parties are expected to explore the following sources of support and advice which may help them to resolve their dispute away from court:
    a. **The Child Arrangement and Information Tool, (CAIT)**: A guide on gov.uk which can help parties find the right options to make their child arrangements. It includes information on where to find emotional support, how to put children's need first, and the different options which can be used (such as mediation) to help make child arrangements. It can be found here: Get help with child arrangements - GOV.UK (justice.gov.uk)
    b. **Cafcass/Cafcass Cymru resources**: Cafcass have a range of resources to help families make arrangements that are in the child's best interests, including help to agree a parenting plan and planning parenting time after a separation: Resources to help you make arrangements that are in your child's best interests | Cafcass
    c. **Advicenow resources**: General advice about sorting out arrangements for children, the use of post-separation mediation, and/or going to court can be found here: http://www.advicenow.org.uk/advicenow-guides/family/sorting-out-arrangements-for-your-children/
    d. **Separated Parenting Programmes**: These programmes cover practical issues including communication, childcare arrangements, holidays, and schooling. They are not about telling a parent how to be a better parent but instead help parents understand how separation can impact on children and how to help them adjust. They can be accessed at any time following a separation. Just search online for 'separated parenting programmes' to find out what might be available in your local area.
    e. **Apps to help parents co-parent effectively**: There are many co-parenting apps which can be downloaded to suit various budgets, including free options. These can be used by parties to manage their children's schedules, keep track of expenses, and exchange information about their children such as a medical records and educational documents. These can be found by searching for 'co-parenting apps' on your computer or smart phone.

15. Parties will also be expected to understand their dispute from the perspective of the child/children involved and ensure that all decisions are made in the child/children's best interests. Wherever possible, and where age appropriate,

it is also expected that the child/children involved in a dispute will have their voices heard when decisions which impact them are being made. This could be arranged by a mediator, or otherwise an independent child consultant. Some resources which can help to achieve this include:

a. The Family Justice Young People's Board tips for separating parents: https://www.family-action.org.uk/content/uploads/2021/06/Childrens-top-tips-for-parents-1.pdf
b. Child inclusive mediation: Can My Children Be Involved In Sessions? - Family Mediation Council
c. Cafcass' guide to supporting your child through a separation: Supporting your child through divorce and separation | Cafcass

16. There is lots of evidence to show that outcomes are better for the whole family when children understand how their lives will change and are helped to contribute to discussions about future family arrangements. There are resources available online for children to help them understand what is happening and why. These include:
    a. The Cafcass website for children and young people - Children and young people | Cafcass.
    b. The Cafcass Cymru website for children and young people - My parents are separating | GOV.WALES

Attendance at a Mediation Information and Assessment Meeting ('MIAM')

17. Coming to court should be a last resort if there are no safety concerns. Before making an application to court, parties are expected to consider whether a form of non-court dispute resolution ("NCDR") might help to resolve a dispute without the need to start potentially lengthy and difficult court proceedings. This includes, but is not limited to, the options set out in paragraph 23 below.

18. The applicant must attend a MIAM before making an application to the court, unless they have a valid exemption.

19. The respondent is strongly encouraged and expected to attend a MIAM, even though they are not legally required to do so before an application is made to court.

20. At the MIAM, an authorised mediator will assess whether the dispute might be suitable for non-court dispute resolution and discuss which option might work best for the parties.

21. There are only a few specific circumstances in which an applicant does not have to attend a MIAM. These exemptions primarily relate to the safety of the family involved, for instance if there is evidence of domestic abuse, risk of harm to a child or risk of the removal of a child from the United Kingdom. The list of exemptions can be found here: PART 3 - NON-COURT DISPUTE

RESOLUTION (justice.gov.uk) (see rule 3.8). More information about evidence requirements for these exemptions can be found here: PRACTICE DIRECTION 3A – FAMILY MEDIATION INFORMATION AND ASSESSMENT MEETINGS (MIAMS) (justice.gov.uk) (see paragraph 20).

22. Information on how to find an authorised family mediator to undertake a MIAM may be obtained from www.familymediationcouncil.org.uk

Non-Court Dispute Resolution

23. There are several ways parties can attempt to resolve their dispute away from court, which are all known as NCDR. Which one is chosen will depend on the individual circumstances of the parties and their dispute, but the court will expect parties to have considered the range of options. These can be broken down into three broad categories:
    a. **Support to make an agreement**: If both parties want to make an agreement but need help from an unbiased, independent source, they can find support to make an agreement. Examples of this option include:
        i. **Mediation**: Sessions run by an independent professional mediator who will help parties reach agreement around their child arrangements. This can be done with the other party or separately, online or in person. The mediator will discuss options with the parties and help them make decisions in the best interests of the child. Mediation can include other supportive professionals, such as solicitors, in the mediation.
        ii. **Collaborative approach**: Each party has a legal representative and everyone meets to reach an agreement on child arrangement issues. The legal representatives will negotiate on the parties' behalf until both parties are happy with the outcome.
        iii. **Lawyer negotiation**: A party can choose to have a legal representative to negotiate on their behalf. They do not have to have direct contact with the other party and they can have a legal representative even if the other party chooses not to. An exchange of letters between legal representatives is not usually considered sufficient to be NCDR.
    b. **Evaluation of the likely outcome**: if parties want a firmer steer from a neutral person about what decisions a judge would make if they went to court, but they still want to have the final say in coming to an agreement, they could use:
        i. **Neutral evaluation**: A neutral professional with experience in the subject of the dispute will evaluate the parties' circumstances and suggest ways forward. This can be arranged by solicitors or by a mediator.

c. **A decision made to resolve the dispute**: If parties cannot agree and want a decision to be made for them, they do not necessarily have to go to a court. Instead, parties can agree to be bound by a decision made by a neutral party known as an arbitrator:
    i. **Arbitration**: The parties jointly choose a qualified, impartial professional to hear both of their viewpoints and come to an impartial decision. Parties can refer themselves to arbitration, or they can be referred by a solicitor or a mediator.

24. More information about all of these options can be found here: Get help with child arrangements - GOV.UK (justice.gov.uk)

25. If the case progresses to court, parties will be required to tell a judge about the non-court dispute resolution methods they explored and why they were unsuccessful.

Compliance with this Protocol

26. If a judge finds that the Protocol has not been complied with, they may order that the gaps between court hearings must be used for the parties to undertake any of the steps described that may have been missed. Or the judge may order that the court proceedings are paused for the same purpose. A judge may, for example, order that parties attend a MIAM, or encourage a method of NCDR.

27. The court also has the power to make costs orders. These can be made when court proceedings are ongoing, or when they come to an end. When deciding whether to order one party to pay some or all of the legal costs of another party, the court will take into account the parties' conduct, including any failure to comply with this Protocol.

Definition of terms used in this Protocol

28. A list of definitions used in this Protocol can be found below:

    Applicant: the person who would be applying to court.

    Arrangements: the details of where a child/children live, who they spend time with, and any other relevant decisions regarding their welfare.

    Cafcass: The Children and Family Court Advisory and Support Service (Cafcass), which supports families and advises the family court on the interests of children involved in family proceedings in England.

    Cafcass Cymru: the Children and Family Court Advisory and Support Service in Wales which supports families and advises the family court on the interests of children involved in family proceedings.

    Child: a person under the age of 18.

Costs order: an instruction given by a judge for one party to pay some or all of the legal costs of the other party.

Legal representative: Someone who is authorised to represent a party in court, such as a solicitor.

Litigant in person: a person who does not have legal representation and will speak for themselves in court.

Mediation Information and Assessment Meeting (MIAM): a meeting, which lasts about an hour, where an authorised mediator gives each party an opportunity to tell them about the issues that need to be decided. The mediator will tell the party/parties whether the issues are suitable for NCDR, and the party/parties can then decide how they wish to proceed.

Non-Court Dispute Resolution (NCDR): ways of resolving disputes without going through the court process.

Party/Parties: the applicant and respondent in a dispute. This will usually be the parents or carers of the child/children involved.

Respondent: the person who would be responding to a court application made by an applicant or an applicant's legal representative.

ANNEX 3

PRE-APPLICATION PROTOCOL TO BE INSERTED AS ANNEX 2 TO PRACTICE DIRECTION 12B (PILOT)

ANNEX 2

Summary of the Pre-application Protocol for private law proceedings relating to children

1. This summary of the Protocol sets out the key steps the court will expect parties to take before starting court proceedings: the full Protocol is attached. Everyone is required to comply with the terms of the Protocol, even if they have not had professional advice from a legal representative.

2. The Protocol does not apply when (a) the parties are agreed about the order they are inviting the court to make; (b) the child or children are the subject of emergency proceedings, care proceedings or supervision proceedings: or (c) if there is evidence of domestic abuse, risk of harm to a child or risk of the removal of a child from the United Kingdom.

3. The Protocol includes links and signposting to sources of guidance, information and tools that can help separating families to navigate their separation and find the right arrangement for them.

4. It is important to note that, if the dispute does come to court, a judge will only make an order in relation to a child if they believe that making an order would be better for the child than not making one. Therefore, the judge will expect parties to have tried everything they can to agree their child arrangements outside of court.

5. It is also important to note that the law expects parties to do what is best for the child/children involved in a dispute, even when they might find that difficult. Unless it is unsafe to do so, a child needs to have a relationship with both parents and the family court will expect both parents to cooperate to meet this need.

6. Coming to court should be a last resort if there are no safety concerns. Before coming to court, where it is safe to do so, parties are expected to explore the sources of support and advice which may help them to resolve their dispute away from court (see paragraph 14 of the Protocol). They are expected to consider whether a form of non-court dispute resolution (“NCDR”) might help to resolve a dispute without the need to start potentially lengthy and difficult court proceedings (some of the options are set out in paragraph 23 of the Protocol).

7. Parties will also be expected to see their dispute through the eyes of the child/children involved and ensure that all decisions are made in the child/children’s best interests. Wherever possible, and where age appropriate,

it is also expected that the child/children involved in a dispute will have their voices heard when decisions which impact them are being made. Outcomes are likely to be better for the whole family when children understand how their lives will change and are helped to contribute to discussions about future family arrangements.

8. The applicant must attend a MIAM before making an application to the court, unless they have a valid exemption, and the respondent is strongly encouraged and expected to attend a MIAM.

Pre-application Protocol: private law proceedings relating to children

Introduction

1. This Protocol sets out the steps the court will expect parties to take before starting court proceedings. A list of definitions for terms used in this Protocol can be found at paragraph 28, below.

Scope

2. This Protocol applies where a party is considering making an application for one or more of the following orders, unless circumstances from paragraph 3, below, apply –
    a. a child arrangements order or other order with respect to a child or children under section 8 of the Children Act 1989;
    b. a parental responsibility order or an order terminating parental responsibility;
    c. an order appointing a guardian for a child or an order terminating the appointment of such a guardian;
    d. an order giving permission to change a child's surname or remove a child from the United Kingdom;
    e. a special guardianship order and an order varying or discharging such an order.

3. If a case falls within one of the categories above, this Protocol does not apply to applications which a party is considering making which –
    a. are for a consent order;
    b. are for an order relating to a child or children in respect of whom there are ongoing emergency proceedings, care proceedings or supervision proceedings;
    c. are for an order relating to a child or children who are the subject of an emergency protection order, a care order or a supervision order; or
    d. involves concerns about domestic abuse which would mean that it would qualify for the domestic abuse MIAM exemption. See paragraph 21 below for more details.

Things to note

4. If the dispute proceeds to court, the judge will expect all parties to have complied with the Protocol, unless circumstances from paragraph 3, above, apply, and will ask what steps each party has taken to comply with the Protocol.

5. This Protocol also includes links and signposting to sources of guidance, information and helpful tools that can help separating families to navigate their separation and find the right arrangement for them.

6. It is important to note that, if the dispute does come to court, a judge will only make an order in relation to a child if they believe that making an order would be better for the child than not making one. This is known as the “no order principle” and is in place to try to prevent unnecessary orders from being made and to encourage families to co-operate outside of court. Therefore, the judge will expect parties to have tried everything they can to agree their child arrangements outside of court.

7. It is also important to note that the law expects parties to do what is best for the child/children involved in a dispute, even when they might find that difficult. The family court will presume that, unless there are reasons to the contrary, the involvement of a parent in a child’s life will promote that child’s welfare. Unless it is unsafe to do so, a child needs to have a relationship with both parents and the family court will expect both parents to cooperate to meet this need.

Objectives

8. The purpose of the Protocol is:
    a. to help parties identify the key issues of a dispute;
    b. to help parties focus on the best interests of the child/children involved in the dispute and so promote good outcomes for children;
    c. to help parties avoid court, if safe and appropriate, by resolving the dispute before any proceedings begin; and
    d. to allow court time to be used more effectively where proceedings are necessary.

Parties without legal representation

9. Everyone is required to comply with the terms of this Protocol, even if they have not had professional advice from a legal representative.

10. Since April 2013, most people do not qualify for free legal help or representation at court in family disputes unless they can provide written evidence of domestic violence or child abuse concerns. A law centre, advice agency or Advicenow will be able to help parties find out whether they might be able to claim legal aid to help pay for legal help.

11. If parties are not eligible for legal aid, there is information and advice available to help, see paragraph 14 below. There are also other support services available – for example, Advicenow - who may be able to offer some help with any dispute.

12. If a party does not have a legal representative, and they decide to come to court, they will have to speak for themselves in court – they may be referred

to as a ‘litigant in person’. The party will need to decide how to present their case to the court.

13. Court staff can help with where to get court forms, leaflets and guidance on children and the family courts, and can explain the court process, but they are not allowed to tell parties what they should do about their case.

Accessing resources, advice and support

14. Before coming to court, and where it is safe to do so, parties are expected to explore the following sources of support and advice which may help them to resolve their dispute away from court:
    a. **The Child Arrangement and Information Tool, (CAIT)**: A guide on gov.uk which can help parties find the right options to make their child arrangements. It includes information on where to find emotional support, how to put children's need first, and the different options which can be used (such as mediation) to help make child arrangements. It can be found here: Get help with child arrangements - GOV.UK (justice.gov.uk)
    b. **Cafcass/Cafcass Cymru resources**: Cafcass have a range of resources to help families make arrangements that are in the child’s best interests, including help to agree a parenting plan and planning parenting time after a separation: Resources to help you make arrangements that are in your child’s best interests | Cafcass
    c. **Advicenow resources**: General advice about sorting out arrangements for children, the use of post-separation mediation, and/or going to court can be found here: http://www.advicenow.org.uk/advicenow-guides/family/sorting-out-arrangements-for-your-children/
    d. **Separated Parenting Programmes**: These programmes cover practical issues including communication, childcare arrangements, holidays, and schooling. They are not about telling a parent how to be a better parent but instead help parents understand how separation can impact on children and how to help them adjust. They can be accessed at any time following a separation. Just search online for ‘separated parenting programmes’ to find out what might be available in your local area.
    e. **Apps to help parents co-parent effectively**: There are many co-parenting apps which can be downloaded to suit various budgets, including free options. These can be used by parties to manage their children’s schedules, keep track of expenses, and exchange information about their children such as a medical records and educational documents. These can be found by searching for ‘co-parenting apps’ on your computer or smart phone.

15. Parties will also be expected to understand their dispute from the perspective of the child/children involved and ensure that all decisions are made in the child/children's best interests. Wherever possible, and where age appropriate, it is also expected that the child/children involved in a dispute will have their voices heard when decisions which impact them are being made. This could be arranged by a mediator, or otherwise an independent child consultant. Some resources which can help to achieve this include:
    a. The Family Justice Young People's Board tips for separating parents: https://www.family-action.org.uk/content/uploads/2021/06/Childrens-top-tips-for-parents-1.pdf
    b. Child inclusive mediation: Can My Children Be Involved In Sessions? - Family Mediation Council
    c. Cafcass' guide to supporting your child through a separation: Supporting your child through divorce and separation | Cafcass

16. There is lots of evidence to show that outcomes are better for the whole family when children understand how their lives will change and are helped to contribute to discussions about future family arrangements. There are resources available online for children to help them understand what is happening and why. These include:
    a. The Cafcass website for children and young people - Children and young people | Cafcass.
    b. The Cafcass Cymru website for children and young people - My parents are separating | GOV.WALES

Attendance at a Mediation Information and Assessment Meeting ('MIAM')

17. Coming to court should be a last resort if there are no safety concerns. Before making an application to court, parties are expected to consider whether a form of non-court dispute resolution ("NCDR") might help to resolve a dispute without the need to start potentially lengthy and difficult court proceedings. This includes, but is not limited to, the options set out in paragraph 23 below.

18. The applicant must attend a MIAM before making an application to the court, unless they have a valid exemption.

19. The respondent is strongly encouraged and expected to attend a MIAM, even though they are not legally required to do so before an application is made to court.

20. At the MIAM, an authorised mediator will assess whether the dispute might be suitable for non-court dispute resolution and discuss which option might work best for the parties.

21. There are only a few specific circumstances in which an applicant does not have to attend a MIAM. These exemptions primarily relate to the safety of the

family involved, for instance if there is evidence of domestic abuse, risk of harm to a child or risk of the removal of a child from the United Kingdom. The list of exemptions can be found here: PART 3 - NON-COURT DISPUTE RESOLUTION (justice.gov.uk) (see rule 3.8). More information about evidence requirements for these exemptions can be found here: PRACTICE DIRECTION 3A – FAMILY MEDIATION INFORMATION AND ASSESSMENT MEETINGS (MIAMS) (justice.gov.uk) (see paragraph 20).

22. Information on how to find an authorised family mediator to undertake a MIAM may be obtained from www.familymediationcouncil.org.uk

Non-Court Dispute Resolution

23. There are several ways parties can attempt to resolve their dispute away from court, which are all known as NCDR. Which one is chosen will depend on the individual circumstances of the parties and their dispute, but the court will expect parties to have considered the range of options. These can be broken down into three broad categories:
    a. **Support to make an agreement**: If both parties want to make an agreement but need help from an unbiased, independent source, they can find support to make an agreement. Examples of this option include:
        i. **Mediation**: Sessions run by an independent professional mediator who will help parties reach agreement around their child arrangements. This can be done with the other party or separately, online or in person. The mediator will discuss options with the parties and help them make decisions in the best interests of the child. Mediation can include other supportive professionals, such as solicitors, in the mediation.
        ii. **Collaborative approach**: Each party has a legal representative and everyone meets to reach an agreement on child arrangement issues. The legal representatives will negotiate on the parties' behalf until both parties are happy with the outcome.
        iii. **Lawyer negotiation**: A party can choose to have a legal representative to negotiate on their behalf. They do not have to have direct contact with the other party and they can have a legal representative even if the other party chooses not to. An exchange of letters between legal representatives is not usually considered sufficient to be NCDR.
    b. **Evaluation of the likely outcome**: if parties want a firmer steer from a neutral person about what decisions a judge would make if they went to court, but they still want to have the final say in coming to an agreement, they could use:
        i. **Neutral evaluation**: A neutral professional with experience in the subject of the dispute will evaluate the parties'

circumstances and suggest ways forward. This can be arranged by solicitors or by a mediator.

c. **A decision made to resolve the dispute**: If parties cannot agree and want a decision to be made for them, they do not necessarily have to go to a court. Instead, parties can agree to be bound by a decision made by a neutral party known as an arbitrator:
    i. **Arbitration**: The parties jointly choose a qualified, impartial professional to hear both of their viewpoints and come to an impartial decision. Parties can refer themselves to arbitration, or they can be referred by a solicitor or a mediator.

24. More information about all of these options can be found here: Get help with child arrangements - GOV.UK (justice.gov.uk)

25. If the case progresses to court, parties will be required to tell a judge about the non-court dispute resolution methods they explored and why they were unsuccessful.

Compliance with this Protocol

26. If a judge finds that the Protocol has not been complied with, they may order that the gaps between court hearings must be used for the parties to undertake any of the steps described that may have been missed. Or the judge may order that the court proceedings are paused for the same purpose. A judge may, for example, order that parties attend a MIAM, or encourage a method of NCDR.

27. The court also has the power to make costs orders. These can be made when court proceedings are ongoing, or when they come to an end. When deciding whether to order one party to pay some or all of the legal costs of another party, the court will take into account the parties' conduct, including any failure to comply with this Protocol.

Definition of terms used in this Protocol

28. A list of definitions used in this Protocol can be found below:

Applicant: the person who would be applying to court.

Arrangements: the details of where a child/children live, who they spend time with, and any other relevant decisions regarding their welfare.

Cafcass: The Children and Family Court Advisory and Support Service (Cafcass), which supports families and advises the family court on the interests of children involved in family proceedings in England.

Cafcass Cymru: the Children and Family Court Advisory and Support Service in Wales which supports families and advises the family court on the interests of children involved in family proceedings.

Child: a person under the age of 18.

Costs order: an instruction given by a judge for one party to pay some or all of the legal costs of the other party.

Legal representative: Someone who is authorised to represent a party in court, such as a solicitor.

Litigant in person: a person who does not have legal representation and will speak for themselves in court.

Mediation Information and Assessment Meeting (MIAM): a meeting, which lasts about an hour, where an authorised mediator gives each party an opportunity to tell them about the issues that need to be decided. The mediator will tell the party/parties whether the issues are suitable for NCDR, and the party/parties can then decide how they wish to proceed.

Non-Court Dispute Resolution (NCDR): ways of resolving disputes without going through the court process.

Party/Parties: the applicant and respondent in a dispute. This will usually be the parents or carers of the child/children involved.

Respondent: the person who would be responding to a court application made by an applicant or an applicant's legal representative.

ANNEX 4

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

PRACTICE DIRECTION 41G – PROCEEDING BY ELECTRONIC MEANS: CERTAIN PROCEEDINGS FOR A MATRIMONIAL ORDER OR CIVIL PARTNERSHIP ORDER (NEW LAW)

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

A. SCOPE OF THIS PRACTICE DIRECTION

Introduction and interpretation

1.1 This practice direction provides for the procedure by which, in the circumstances set out in this practice direction, an application for a matrimonial order or civil partnership order may proceed by electronic means via the online system.

1.2 References in this practice direction to "the online system" mean HM Courts and Tribunal Service's online system to allow for specified applications in matrimonial and civil partnership proceedings to be completed online. The online system is accessible at https://www.gov.uk/apply-for-divorce.

1.3 This Practice Direction comes into force on 1 June 2024.

Types of applications which may proceed by electronic means

2.1 An application may proceed by electronic means where all of the following conditions are met-

a) the application is for a matrimonial order which is an order of divorce made under section 1 of the 1973 Act;
b) the application is for a civil partnership order which is an order of dissolution made under section 1 of the 2004 Act;
c) the application is not unsuitable to proceed by electronic means, as explained in paragraph 2.4;
d) in a sole application either party chooses to proceed with the application by electronic means;
e) in a joint application, the parties each choose to proceed with the application by electronic means; and
f) the application is started in the family court.

2.2 Subject to paragraph 2.3, an application must proceed by electronic means where-

(a) the conditions in paragraph 2.1 are met; and

(b) the applicant is legally represented.

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

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

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

(c) in a joint application, the same legal representative is acting for both applicants.

2.4 HM Courts and Tribunals Service may conclude that certain individual or categories of applications are not suitable to proceed by electronic means, and such categories are to be specified in guidance issued by HM Courts and Tribunals Service and published on GOV.UK.

Steps which may be taken by electronic means: outline

3.1 This practice direction enables an applicant or applicants jointly to, in the circumstances set out in this practice direction, take the following steps by electronic means via the online system-

(a) create and start certain types of application for a matrimonial order or civil partnership order;

(b) in respect of such an application-

(i) file documents;

(ii) in the case of joint applicants, file an acknowledgment of receipt;

(iii) indicate willingness to accept service of any documents relating to the application by email;

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

(v) serve any documents relating to the application (but not serve the application itself);

(vi) make an application for a conditional order; and

(vii) make an application for a final order (and give notice of such application where required);

(c) view an electronic record of the progress of the application.

3.2 This practice direction enables a respondent, in the circumstances set out in this practice direction, to take the following steps by electronic means via the online system in respect of an application for a matrimonial order or civil partnership order which is progressing via the online system -

(a) file an acknowledgment of service;

(b) indicate willingness to accept service of any documents relating to the application (but not the application itself) by email;

(c) accept service of any documents relating to the application (but not the application itself);

(d) make an application for a final order (where applicable); and

(e) view an electronic record of the progress of the application.

3.3 This practice direction does not make provision for a respondent to file an answer via the online system. If an application for a matrimonial order becomes a disputed case (for any reason) then it cannot proceed via the online system and must proceed offline and in accordance with Part 7 FPR.

3.4 This practice direction does not make provision in relation to steps that can already be undertaken by email (via rule 5.5 FPR and PD5B) or in relation to procedures to enable documents to be held electronically by HMCTS via bulk scanning (via PD5D).

B. RELATIONSHIP BETWEEN THE FAMILY PROCEDURE RULES AND THIS PRACTICE DIRECTION

Application of the Family Procedure Rules 2010

4.1 The Family Procedure Rules 2010 ("FPR") and supporting practice directions apply to proceedings to which this practice direction applies, subject to the provisions of this practice direction.

4.2 In particular, certain provisions of Part 7 FPR and certain provisions in Practice Direction 7A apply to proceedings to which this practice direction applies. These are set out in the table below.

(It should be noted that this table relates only to Part 7 FPR and Practice Direction 7A, so is not an exhaustive list of all provisions in the FPR and supporting practice directions which apply to proceedings to which this practice direction applies.)

Rule in Part 7 FPR or paragraph in Practice Direction 7A	Subject matter of provision
Rule 7.4	Limitation on applications in respect of the same marriage or civil partnership
Rule 7.2	Who the parties are
Rule 7.16 (except insofar as it relates to an application being made for further information, as referred to in Practice Direction 7A, paragraphs 6.1 to 6.5)	Further information about the contents of the application
Practice Direction 7A, paragraph 3.5	Other methods of proof of the marriage or civil partnership
Practice Direction 7A, paragraph 4.1	Information required where evidence of a conviction or a finding is to be relied on

4.3 In particular, certain provisions of Part 7 FPR and certain provisions in Practice Direction 7A do not apply to proceedings to which this practice direction applies but provisions of this practice direction apply instead. These are detailed in the table below.

(It should be noted that this table relates only to Part 7 FPR and Practice Direction 7A, so is not an exhaustive list of all provisions in the FPR and supporting practice directions which do not apply to proceedings to which this practice direction applies.)

Rule in Part 7 FPR or paragraph in Practice Direction 7A	Provision of this practice direction which applies instead
Rule 7.3(1) (statement of reconciliation)	Paragraph 8.1
Rule 7.5 (service of application)	Paragraphs 9.1 to 9.3
Rule 7.7 (what the respondent must do on receiving the application)	Paragraphs 10.1 to 10.11
Rule 7.9 (application for conditional order)	Paragraphs 13.1 to 13.6
Rule 7.10, except for paragraph (7) (what the court will do on an application for a conditional order	Paragraphs 14.1 to 14.6
Rule 7.19(1)(a) and (b), (5) and (6) making conditional orders final by giving notice	Paragraphs 15.1 to 15.5

Rule 7.21 (what the court officer must do when a conditional order is made final)	Paragraph 16.1
Practice Direction 7A, paragraphs 1.1 and 1.2	Paragraph 7.1 and 7.2
Practice Direction 7A, paragraph 3.1	Paragraph 7.4

4.4 There are certain steps that cannot be taken by electronic means via the online system and which must be taken offline and in accordance with the FPR and supporting practice directions. (In turn, rule 5.5 and PD5B will apply to determine whether any of the steps can be taken via email.) In particular, the table below sets out the provisions in Part 7 FPR and Practice Direction 7A which cannot apply to cases proceeding by electronic means via the online system.
(It should be noted that this table relates only to Part 7 FPR and Practice Direction 7A, so is not an exhaustive list of all provisions in the FPR and supporting practice directions which cannot apply to proceedings to which this practice direction applies.)

Rule in Part 7 FPR or paragraph in Practice Direction 7A which cannot apply to an application proceeding by electronic means via the online system	Subject matter of provision
Rule 7.6	Withdrawal of application before service
Rule 7.7(5), (6)	Certain steps which may be taken by a respondent on receiving the application
Rule 7.8	Amending an application
Rule 7.10(7)	Inspection of certificate of entitlement to a conditional order and any connected evidence filed
Rule 7.12	How the respondent can make an application
Rule 7.16, insofar as it relates to an application being made for the disclosure of further information, as referred to in Practice Direction 7A, paragraphs 6.1 to 6.5)	Further information about the contents of the application
Rule 7.17	What the court must do for the case management hearing

Rule 7.18	Applications to prevent conditional orders being made final
Rule 7.19 (1)(c), (2), (3)	Making conditional orders final by giving notice, joint applications proceedings as a sole application
Rule 7.20	Applications to make conditional orders final
Rule 7.22	Applications under section 10(2) of 1973 Act or section 48(2) of 2004 Act
Rule 7.23	Orders under section 10A(2) of the 1973 Act
Rule 7.26	Nullity: interim and full gender recognition certificates
Rule 7.29	Medical examination in proceedings for nullity of a marriage of an opposite sex couple
Rule 7.30	General rule – hearing to be in public
Rule 7.31	Notice of hearing
Rule 7.32	Further provision about costs
Rule 7.33	Stay of proceedings
Rule 7.34	Circumstances in which an order may be set aside (rescission)
Rule 7.35	Records of decrees absolute and final orders
Practice Direction 7A, paragraph 3.2	Filing without accompanying proof of marriage or civil partnership
Practice Direction 7A paragraphs 5.1 to 5.4	Supplemental applications and amendments to applications and answers, where permission is needed
Practice Direction 7A paragraphs 8.3 to 8.4	Final orders: need for expedition

4.5 In addition, there are certain applications referred to in provisions of the FPR or practice directions other than Part 7 FPR and Practice Direction 7A which cannot be made by electronic means via the online system and which must be made in accordance with the FPR and supporting practice directions. In particular, the table below sets out the applications under Part 6 FPR which cannot be made by electronic means via the online system.
(It should be noted that this table relates only to Part 6 FPR so is not an exhaustive list of all provisions in the FPR and supporting practice directions which cannot apply to proceedings to which this practice direction applies.)

Rule in Part 6 FPR in respect of which an application cannot be made by electronic means via the online system	Subject matter of provision
Rule 6.9	Request for bailiff service
Rule 6.16	Request that the court directs that the application is deemed to be served
Rule 6.20	Application for an order to dispense with service

4.6 Subject to paragraph 4.7, this practice direction supersedes Practice Directions 36ZC.

4.7 Practice Direction 36ZC will remain in force in relation to any application for a matrimonial or civil partnership order commenced under the pilot scheme referred to in that practice direction, and this practice direction (and any that supersede it) will not apply in relation to such an application.

B. PROCEDURE WHEN PROCEEDING BY ELECTRONIC MEANS VIA THE ONLINE SYSTEM

Security

5.1 HM Courts and Tribunals Service will take such measures as it thinks fit to ensure the security of steps taken in cases proceeding by electronic means or in respect of information stored electronically. These may include requiring parties to cases which are proceeding by electronic means-

(a) to use a unique identification code or password;

(b) to provide personal information for identification purposes; and

(c) to comply with any other security measures,

before taking any of the steps mentioned in paragraphs 3.1 or 3.2.

Providing information requested

6.1 Where proceedings are progressing by electronic means via the online system, each party must at each stage provide all the information requested, including any documents that the online system or the court requires, in the manner specified by the online system or by the court.

Creating and starting an application by electronic means

7.1 Where paragraph 2.1 applies, an application for a matrimonial or civil partnership order can be created via the online system.

Contents of the application

7.2 Where an application for a matrimonial or civil partnership order is created via the online system, the application must be completed according to the detailed guidance contained in the online system.

7.3 The online system sets out the documents which must accompany an application for a matrimonial or civil partnership order and the way in which those documents may be provided (for example, the online system may allow for documents to be posted, or to be uploaded and submitted online with the application).

Proof of validity of marriage or civil partnership

7.4 Where the existence and validity of a marriage or civil partnership is not disputed, its validity will be proved by the application being accompanied, or verified, by –

(a) one of the following –

(i) a certificate of the marriage or civil partnership to which the application relates; issued under the law in force in the country where the marriage or civil partnership registration took place;

(ii) a similar document issued under the law in force in the country where the marriage or civil partnership registration took place; or

(iii) a certified copy of such a certificate or document obtained from the appropriate register office; or

(iv) HM Passport Office's "Life Event Service" (for marriages and civil partnerships that have been registered in England and Wales since 1 January 2011); and

(b) where the certificate, document or certified copy is not in English (or, where the court is in Wales, in Welsh), a translation of that document verified by the translator and certified by a notary public or authenticated by a statement of truth.

Submitting the application

7.6 An application for a matrimonial order or civil partnership order created on the online system is submitted to the court via the online system. Once submitted in this way, the proceedings are started when they are issued by the court.

Timing

7.7 An application for a matrimonial order or civil partnership order that is submitted via the online system 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.

7.8 A document, other than an application for a matrimonial order or civil partnership order, 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.

7.9 When an application for a matrimonial order or civil partnership order is received via the online system, an acknowledgment of receipt is automatically sent to the applicant. This acknowledgment of receipt does not constitute a notice that the application has been issued.

Statement of reconciliation

8.1 Where an applicant is legally represented, the legal representative must complete and provide with the application, in a manner specified in the online system, a statement certifying whether the legal representative has discussed with an applicant the possibility of a reconciliation and given an applicant the names and addresses of persons qualified to help effect a reconciliation.

Service of an application for a matrimonial order or civil partnership order

9.1 After an application for a matrimonial or civil partnership order made via the online system has been issued by the court, a copy of it must be served on a respondent. (Rule 6.5 FPR provides for who is to serve an application; where the applicant serves the application, rule 6.6A and 6.41A provide a time limit of 28 days from the date of issue for taking the prescribed steps to serve the respondent)

9.2 When the application for a matrimonial order or civil partnership order is served on a respondent, it must be accompanied by-

(a) details of what steps to take to respond to the application; and

(b) a notice of proceedings.

9.3 Where the parties have made a joint application for a matrimonial or civil partnership order the court must send a copy of the notice of proceedings to both parties.

What the respondent should do on receiving the application

10.1 On receiving an application for a matrimonial order or civil partnership order, the respondent must file an acknowledgment of service.

10.2 A respondent may choose whether or not to use the online system to complete and file an acknowledgment of service. Details of how to respond online will be sent to them in accordance with paragraph 9.2(a).

10.3 If a respondent chooses to use the online system, the acknowledgment of service must be filed within 14 days beginning with the date on which the application for a matrimonial order or civil partnership order was served.

10.4 If the respondent chooses not to use the online system, they must contact HM Courts and Tribunals Service (using the details provided in accordance with paragraph 9.2(a)) to request a paper form for acknowledging service. If the respondent then files that paper form, the further stages of the proceedings will be completed by the respondent under Part 7 of the FPR and not under this Practice Direction.

10.5 Where paragraph 10.4 applies, the acknowledgment of service must be filed within 14 days beginning with the date on which the respondent received the paper form for acknowledging service. The amended deadline for filing the acknowledgment of service will be notified to all parties.

10.6 Paragraphs 10.3 and 10.5 are subject to rule 6.42 FPR (which specify how the period for filing an acknowledgment of service is calculated where the application is served out of the jurisdiction).

10.7 The acknowledgment of service completed by the respondent must-

(a) include the respondent's address for service of further documents in the proceedings; and

(b) where it is filed by the respondent, indicate whether or not the respondent intends to dispute proceedings.

(Should the application for a matrimonial order or civil partnership order become disputed case it will cease to proceed by electronic means via the online system and will instead proceed offline and in accordance with Part 7 of the FPR).

10.8 The acknowledgment of service must include a statement of truth. Where the acknowledgment of service has been completed via the online system, the name of the person giving the statement of truth must be recorded against it.

10.9 Subject to paragraph 10.10, the name of the person giving the statement of truth must be that of the respondent or the respondent's legal representative.

10.10 Where the respondent completes an acknowledgment of service via the online system-

(a) an acknowledgment of receipt is automatically sent to the respondent via the online system;

(b) the application is deemed to be served; and

(c) a notification must be sent to the applicant via an email attaching a link from which the acknowledgment of service may be accessed and downloaded.

10.11 Where a notice of proceedings is sent to joint applicants as set out in paragraph 9.3, each joint applicant must acknowledge receipt of such notice on the online system within 14 days.

Service by email (documents other than an application for a matrimonial order or civil partnership)

11.1 Paragraph 9.1 makes provision in relation to service of an application for a matrimonial order or civil partnership which this practice direction applies. Paragraphs

11.2 to 11.5 make provision in relation to service of documents other than such an application in cases which are proceeding by electronic means via the online system.

11.2 Practice Direction 6A makes provision about methods of service, including by email. That practice direction applies to proceedings to which this practice direction applies, subject to paragraphs 11.3 to 11.5.

11.3 Where paragraph 4(2)(a) of Practice Direction 6A applies, confirmation given on or via the online system that a party is willing to accept service by email, and stating the email address for such service, is to be taken as sufficient written indication for the purposes of paragraph 4.2(a) of Practice Direction 6A, in addition to the means of confirmation specified in paragraph 4.2(b) of Practice Direction 6A.

11.4 Where a party has indicated willingness to accept service by email (as set out in paragraph 11.3), service of a document may be effected by the court sending the party an email, to the address given for service by email, containing a link from which the document may be accessed and downloaded.

11.5 References in paragraphs 4.2 to 4.5 of Practice Direction 6A to service of a document by email include service by the court acting in accordance with paragraph 11.4 of this practice direction.

Amendment of an application for a matrimonial or civil partnership order

12.1 It is not possible to amend an application for a matrimonial order or civil partnership order via the online system. Any amendments required will proceed under FPR rule 7.8 and PD7A.

Application for a conditional order

13.1 An application may be made by the applicant(s) to the court, using the online system, for it to consider the making of a conditional order in the proceedings at any time after the end of the period of 20 weeks from the date on which the application was issued provided that-

(a) the time for filing the acknowledgment of service has expired and no party has filed an acknowledgment of service indicating an intention to dispute the proceedings; and

(b) in any other case, the time for filing an answer to every application for a matrimonial or civil partnership order has expired.

13.2 An application under paragraph 13.1 must, if the information which was required to be provided by the application is no longer correct, set out particulars of the change.

13.3 If no party has filed an answer disputing the making of a conditional on another party's application for a matrimonial or civil partnership order, then an application under paragraph 13.1 must include a statement-

(a) stating whether there have been any changes in the information given in the application;

(b) confirming that, subject to any changes stated, the contents of the application are true; and

(c) where a paper acknowledgment of service has been signed by the other party to the marriage, confirming that party's signature on the acknowledgment of service.

13.4 A statement under paragraph 13.3 must be verified by a statement of truth.

13.5 Where an application under paragraph 13.1 is received via the online system, an acknowledgment of receipt is automatically sent to the applicant.

13.6 An application under paragraph 13.1 may be made by via the online system—

(a) by the applicant; or

(b) in a joint application, by both parties; or

(c) in a joint application that is to proceed as an application by one party only, by that party.

13.7 Where the application is made under paragraph 13.6(c) on the online system, a notification of the same is served on the other party to the marriage or civil partnership.

What the court will do on an application for a conditional order

14.1 Paragraphs 14.2 to 14.6 apply where an application is made under paragraph 13.1 in relation to an application for a matrimonial order or civil partnership order that is progressing on the online system.

14.2 The court must in a standard case, if satisfied that the applicant is or applicants are entitled to a conditional order, so certify and direct that the application be listed before a judge for the making of that order at the next available date.

14.3 If the court is not satisfied that the applicant is or the applicants are entitled to a conditional order, it must direct–

(a) that any party to the proceedings provide such further information, or take such other steps, as the court may specify, or

(b) that the case be listed for a case management hearing.

14.4 The court may, when giving a direction under paragraph 14.3 direct that the further information provided be verified by a statement of truth.

14.5 If the applicant has applied for costs, the court may, on making a direction under paragraph 14.2 make directions in the costs application.

14.6 The court must not give directions under this paragraph unless at the relevant time it is satisfied –

(a) that a copy of the application for a matrimonial order or civil partnership order (including any amended application) has been properly served on each party on whom it is required to be served; and

(b) that the application for a conditional order was made at a time permitted by paragraph 13.1.

(In this paragraph 'the relevant time' means the time at which the court is considering an application made under paragraph 13.1).

Making conditional orders final by giving notice

15.1 Unless rule 7.20 applies —

(a) a party in whose favour a conditional order has been made may give notice to the court, using the online system, that they wish the conditional order to be made final;

(b) both parties in whose favour a conditional order has been made may jointly give notice to the court, using the online system, that they wish the conditional order to be made final.

15.2 Where the conditional order is in favour of both parties, but the application is to proceed as a notice by one party only, required notice under 7.19(2), filing of a certificate of service under 7.19(3) and the application under 7.19(c) cannot be made on the online system and must be made offline.

15.3 Subject to paragraph 15.4, where the court receives a notice under paragraph 15.1 it will make the condition order final if it is satisfied that –

(a) no application for rescission of the conditional order is pending;

(b) no appeal against the making of the conditional order is pending;

(c) no order has been made by the court extending the time for bringing an appeal of the kind mentioned in sub-paragraph (b), or if such an order has been made, that the time so extended has expired;

(d) no application for an order of the kind mentioned in sub-paragraph (c) is pending;

(e) no application to prevent the conditional order being made final is pending;

(f) the provisions of section 10(2) to (4) of the 1973 Act or section 48(2) to (4) of the 2004 Act do not apply or have been complied with; and

(g) any order under section 10A(2) of the 1973 Act has been complied with.

15.4 Where a notice is received via the online system more than 12 months after the making of the conditional order it must be accompanied by an explanation why the application has not been made earlier.

15.5 Where a notice referred to in paragraph 15.1 is received via the online system, an acknowledgment of receipt is automatically sent to the applicant.

What must happen when a conditional order is made final

16.1 When a conditional order is made final in a case proceeding via the online system-

(a) the date and time on which the conditional order is made final must be recorded on the online system; and

(b) a notification must be sent to each of the parties that the conditional order has been made final.

Statements of Truth

17.1 In paragraphs 17.2 and 17.3, “document” means anything in which information of any description is recorded.

17.2 Where a statement of truth is included in any document completed or generated using the online system-

(a) the document must include the name of the person who the online system requires to give the statement of truth recorded against the statement of truth; and

(b) the court may require the party to produce a copy of the document containing the signature of the person referred to in sub-paragraph (a) at a later date.

17.3 Practice Direction 17A applies to a statement of truth given in a document completed or generated via the online system, except that-

(a) paragraphs 1.5 and 2.3 of Practice Direction 17A do not apply;

(b) in the heading to paragraph 3 and in paragraphs 3.1, 3.7, 3.8 and 3.10 of Practice Direction 17A, 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 the document completed or generated via the online system;

(c) paragraph 4.3(a) is substituted with-

> “(a) that the content of the document completed or generated via the online system has been read to the person before completion of the statement of truth required by the online system;”;

(d) paragraph 4.3(e) is substituted with-

> “(e) that the person confirmed in the presence of the authorised person that it was their belief that the contents of the document completed or generated via the online system were true.”; and

(e) the Annex is substituted with-

> “Certificate to be used where a person is unable to read or sign a document completed or generated in matrimonial or civil partnership proceedings to which the online scheme in Practice Direction 41G applies.
>
> I certify that I [name and address of authorised person] have read the contents of the [name of document completed via the online system] and the statement of truth to the person whose name is recorded against the statement of truth, who appeared to understand (a) the [name of document] 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.”.

———————