

PRACTICE DIRECTION UPDATE: No. 2 of 2023

The amendments to the existing Practice Directions, and the new Practice Direction, supplementing the Family Procedure Rules 2010 are made by the President of the Family Division under the powers delegated to him by the Lord Chief Justice under Schedule 2, Part 1, paragraph 2(2) of the Constitutional Reform Act 2005, and are approved by Lord Bellamy 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 2C	On the day after the date on which this Practice Direction Update is signed
Amendment to Practice Direction 36P	On the day after the date on which this Practice Direction Update is signed
Amendment to Practice Direction 36V	On the day after the date on which this Practice Direction Update is signed
Amendment to Practice Direction 36Z	1 April 2023
Amendments to Practice Direction 36ZB	On the day after the date on which this Practice Direction Update is signed
Amendments to Practice Direction 36ZC	On the day after the date on which this Practice Direction Update is signed
New Practice Direction 36ZE	1 April 2023
Amendments to Practice Direction 41D	1 April 2023

Signed:

_____ Date: _____

Sir Andrew McFarlane

The President of the Family Division

Signed:

_____ Date: _____

Lord Bellamy KC

Parliamentary Under-Secretary of State, Ministry of Justice

PRACTICE DIRECTION 2C – JUSTICES’ LEGAL ADVISER

- (1) In the Table, in the row in which column 1 states “Practice Direction 12J, paragraph 6, first three bullet points only, for “6” substitute “5”.

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

- (1) In paragraph 1.3(d) for “31 March 2023” substitute “31 October 2023”.

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

- (1) In paragraph 1.2(b) for “2023” substitute “2025”.

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

- (1) For the heading to paragraph 7.1 and for paragraphs 7.1 and 7.2 substitute-

“Disapplication of aspects of Practice Direction 36ZE

7.1 Paragraph 6.1 of Practice Direction 36ZE (Pilot Provision: Temporary modification of Practice Directions 2C, 5B, 12A and 12B) does not apply in cases to which this Practice Direction 36Z applies.”

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

- (1) In paragraph 1.3(g) for “31 March 2023” substitute “31 October 2023”.

PRACTICE DIRECTION 36ZC- PILOT SCHEME: PROCEDURE FOR USING AN ONLINE SYSTEM TO COMPLETE CERTAIN PROCEEDINGS FOR A MATRIMONIAL ORDER OR CIVIL PARTNERSHIP ORDER (NEW LAW)

- (1) In paragraph 1.5(g) for “5 April 2023” substitute “30 November 2023”.

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

- (1) After Practice Direction 36ZD insert new Practice Direction 36ZE as set out in the Annex to this Practice Direction Update.

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

- (1) After paragraph 2.3 insert-

“2.3A Subject to paragraph 2.4, a legal representative for a party to proceedings started on or after 1 April 2023 must use the procedure provided for by this Practice Direction to start, progress and participate in proceedings, to include taking any of the steps specified in paragraph 2.1(a) to (d).

2.3B Subject to paragraph 2.4, where existing proceedings are progressing via the online system on or after 1 April 2023, a legal representative for a party to those proceedings must continue to use the procedure provided for by this Practice Direction to progress and participate in those proceedings.”.
 - (2) In paragraph 2.4 for “2.2 or 2.3” substitute “2.2, 2.3, 2.3A or 2.3B (as applicable)”.
 - (3) In paragraph 2.5 omit “. This is because His Majesty’s Courts and Tribunals Service will be gradually rolling out the types of application that can be dealt with via the online system”.
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ANNEX: NEW PRACTICE DIRECTION 36ZE TO BE INSERTED AFTER PRACTICE DIRECTION 36ZD:

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

This practice direction supplements rule 36.2 FPR (transitional arrangements and pilot schemes)

1.1 This practice direction is made under rule 36.2 of the Family Procedure Rules. It is intended to assess modifications to Practice Directions 2C, 5B, 12A and 12B-

- (a) to ensure that the administration of justice is carried out and so as to take account of available resources; and
- (b) following the expiry of Practice Direction 36Y, to continue to test modifications in order to inform potential longer term procedural reform.

1.2 This Practice Direction-

- (a) comes into force on 1 April 2023, immediately on the expiry of Practice Direction 36Y; and
- (b) expires at the end of 28 February 2025.

Modification of Practice Directions

2.1 During the period in which this Practice Direction is in force, the Practice Directions supporting the FPR will apply as modified by paragraphs 3.1 to 6.1.

Modification of Practice Direction 2C

3.1 Practice Direction 2C (justices' legal adviser) is modified as follows-

- (a) in the table, in the row where the first column reads FPR 12.3(2), delete the wording in the second column; and
- (b) at the end of the table, insert the following new rows-

"FPR rule 3A.4, 3A.5 and 3A.6	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; and 2. the measure specified is under rule 3A.8(1)(a) to 3A.8(1)(c).
Practice Direction 6C	Only where 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.

the 1989 Act, section 10(1)(a)	<p>Only where:</p> <ol style="list-style-type: none"> 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 parties consent to the order being made; 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 1989 Act, sections 11A(2), 11A(2B), 11C(2), 11E(7), 11G(2), 11H(2), 11H(5) and 11H(8)	Only where 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."

Modification of Practice Direction 5B

4.1 Practice Direction 5B (communication and filing of documents by email) is modified as follows-

(a) for the heading to Chapter 2 substitute-

"Specified organisations and adoption agencies"; and

(b) after paragraph 2.1 insert-

"2.1A Subject to this Chapter-

(a) a specified organisation;

(b) an adoption agency (other than a local authority) which has taken part at any stage in the arrangements for the adoption of the child; or

(c) a legal representative of a specified organisation or of an adoption agency referred to in sub-paragraph (b),

may email a court at the court's specified email address and attach or include one or more documents related to adoption proceedings.

2.1B Paragraph 2.1A does not apply to an application for an adoption order (section 46 of the 2002 Act)."

Modification of Practice Direction 12A

5.1 Practice Direction 12A (care, supervision and other Part 4 proceedings: guide to case management) is modified by substituting the second sentence in paragraph 4.1 with the following-

“The justices’ legal adviser (with responsibility for gatekeeping and allocation of proceedings) and/or a district judge (with responsibility for allocation and gatekeeping of proceedings) will consider initial allocation as provided for in any Guidance issued by the President on distribution of business of the family court.”.

Modification of Practice Direction 12B

6.1 Practice Direction 12B (child arrangements programme) is modified by inserting after paragraph 7.2-

“**7.3** Local practices and initiatives can be operated differently to the framework where such practices or initiatives are-

(a) operated to ensure the administration of justice is carried out and so as to take account of available resources;

(b) approved by the local Designated Family Judge, after consultation with Her Majesty’s Courts and Tribunals Service and with Cafcass or Cafcass Cymru.

7.4 Where any local practices and initiatives are put in place under paragraph 7.2 or 7.3, the local Designated Family Judge working with Her Majesty’s Courts and Tribunals Service must ensure that parties, their legal representatives, relevant local support organisations and Local Authorities are given information about the detail of those local practices and initiatives.”.
