

DRAFT PRACTICE DIRECTION 3AA - VULNERABLE PERSONS: PARTICIPATION IN PROCEEDINGS AND GIVING EVIDENCE

Introduction

1. Attached with this paper is the draft Practice Direction (PD) 3AA, *Vulnerable persons: participation in proceedings and giving evidence*. The PD is intended to support a new Part 3A of the Family Procedure Rules. Part 3A remains in draft and is attached for convenience but does not form part of this consultation. Following earlier consultation by the Family Procedure Rule Committee (FPRC) on Part 3A, the President of the Family Division would now like to invite comments from interested parties on the draft Practice Direction.

Summary

Draft Part 3A Family Procedure Rules

2. Following its consultation in 2015, the FPRC has made further amendments to the draft rules and the latest version is enclosed for information and to assist understanding of the draft PD. Please note, however, that this consultation concerns the draft PD only.
3. The draft new Part 3A of the Family Procedure Rules place a duty on the court to consider
 - a) whether a party's participation in proceedings is likely to be diminished by reason of vulnerability and, if so, whether it is necessary to give "participation directions" for assistance; and
 - b) whether the quality of evidence given by a party or witness is likely to be diminished by reason of vulnerability and, if so, whether it is necessary to give participation directions (This provision on giving evidence extends to children.)

Draft Part 3A then goes on to set out some of the factors the court must have regard to when deciding whether to make participation directions and to detail the types of measures that the court could make provision for in a participation direction. The draft Part sets out the procedure for applying for directions, or for the court making them of its own initiative. Finally, the draft Part makes clear that it does not give the court power to direct officers of Cafcass or CAFCASS Cymru to perform any additional functions.

At this time, the rules and Practice Direction do not include provision for children, other than where a child is giving evidence and the potential use of measures in cases where the court considers that the quality of their evidence would be diminished by reason of vulnerability. Consideration will be given to the wider participation of children in proceedings by separate rules and a separate Practice Direction in due course.

Draft Practice Direction 3AA

4. Draft PD3AA provides guidance to the court on its duties under draft Part 3A of the Family Procedure Rules, including:
 - factors to have regard to when considering the vulnerability of a party or witness;
 - guidance about vulnerability;
 - how the court should proceed if it has concluded that a vulnerable party should give evidence, including by holding a "ground rules hearing";
 - what details to include in any application for directions under Part 3A and how to make such an application.

5. The provision in the draft rules and PD on giving evidence extend to children, but not the provisions which also require the court to consider whether a party's participation other than by giving evidence is likely to be diminished by reason of vulnerability and, if so, whether it is necessary to make appropriate case management directions. Consideration will be given to making such provision in separate rules and in a separate Practice Direction in due course.
6. It is intended that the new Rules and Practice Direction would be finalised for implementation by Spring 2017.

Consultation

The questions we would like you to address are as follows:

Draft PD3AA

When read with draft Part 3A of the Family Procedure Rules:

1. Do you agree that draft PD3AA gives sufficient guidance on the duties of the court, parties and their representatives in relation to vulnerable witnesses?

If you do not agree, please give reasons and explain what further guidance you think is needed.

2. Do you agree that draft PD3AA (particularly when combined with draft rule 3A.7) gives sufficient guidance on the term 'vulnerability', specifically in terms of how to identify if a party or witness is a vulnerable person?

If you do not agree, please give reasons and explain what further guidance you think is needed.

3. Do you agree that draft PD3AA gives sufficient guidance on how the court should assist a vulnerable person to participate and give evidence effectively?

If you do not agree, please give reasons and explain what further guidance you think is needed.

4. Do you agree that draft PD3AA is clear about the responsibilities of the parties and any legal representatives including when applying for directions and preparing for or conducting cross-examination?

If you do not agree, please give reasons and explain what further guidance you think is needed.

5. Do you have any other comments on draft PD3AA?

Please send your comments to Joanna Furlong at the address below **by 5pm on Friday 17 March 2017**.

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