

## **PRACTICE DIRECTION AMENDMENTS**

These amendments to the existing Practice Directions 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 Dr Phillip Lee, Parliamentary Under-Secretary of State, Ministry of Justice.

These amendments come into force on 3rd October 2016.

Signed:

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Sir James Munby  
The President of the Family Division

Signed:

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Dr Phillip Lee  
Parliamentary Under-Secretary of State  
Ministry of Justice

### **TRANSITIONAL AND SAVING PROVISIONS**

(1) The amendments made to Practice Direction 3A apply to proceedings commenced on or after 3rd October 2016.

(2) (a) The amendments made to Practice Direction 30A, except for paragraph 4.1B, do not apply in relation to an appeal under section 31K of the Matrimonial and Family Proceedings Act 1984 or section 13(2A) of the Administration of Justice Act 1960 if the notice of appeal was filed before the date on which the amendments made by those paragraphs come into force.

(b) In this provision, "notice of appeal" includes an application seeking permission to appeal.

### **PRACTICE DIRECTION 3A – FAMILY MEDIATION INFORMATION AND ASSESSMENT MEETINGS (MIAMS)**

(1) In paragraph 20(1)-

- (a) for the second paragraph denoted as paragraph (j)-
  - (i) for “(j)” substitute “(ja)”; and
  - (ii) after “domestic violence” insert “by another prospective party”;
- (b) in paragraphs (aa), (b), (d), (e)(ii), (g)(ii), (h), (j)(i), (ja), (k)(i), (l)(i), (m), (n) and (o), for “twenty four” substitute “sixty”; and
- (c) in paragraph (n), for “application; or” substitute “application;”;
- (d) in paragraph (o), for “application.” substitute “application; or”; and
- (e) after paragraph (o), insert-
  - “(p) evidence which demonstrates that a prospective party has been, or is at risk of being, the victim of domestic violence by another prospective party in the form of abuse which relates to financial matters, where that evidence dates within the sixty month period immediately preceding the date of the application.”.

(2) In paragraph 21(a) for “petition” substitute “application”.

(3) In paragraph 35, after “bring” insert “any”.

(4) In paragraph 38, in the definition of “protective injunction” after sub-paragraph (h)(v), insert-

- “(i) a female genital mutilation protection order under paragraph 1 or 18 of Schedule 2 to the Female Genital Mutilation Act 2003;
- (j) a violent offender order within the meaning of section 98 of the Criminal Justice and Immigration Act 2008;”.

## **PRACTICE DIRECTION 9A – APPLICATIONS FOR A FINANCIAL REMEDY**

(1) After paragraph 12.2, insert—

### **“Applications to set aside a financial remedy**

13.1 As set out in rule 9.9A(4), the Part 18 procedure applies to applications to set aside a financial remedy. Where such an application was made before rule 9.9A came into force, the Part 18 procedure will still apply subject to any directions that the court might make for the purpose of ensuring the proceedings are dealt with fairly (see the Family Procedure (Amendment No. 2) Rules 2016, rule 5).

13.2 If the financial remedy order was made before 22 April 2014, by any court, an application to set it aside under rule 9.9A is to be made to the family court. This is the combined effect of rule 9.9A(3), which provides that the application is made within the original proceedings, and the Crime and Courts Act 2013 (Family Court: Transitional and

Savings Provision) Order 2014, which provides that any such proceedings became family court proceedings as of 22 April 2014.

13.3 If the financial remedy order was made on or after 22 April 2014, an application to set it aside under rule 9.9A is to be made to the court that made the order.

13.4 An application under rule 9.9A is to be dealt with by the same level of judge that dealt with the original application, by virtue of rule 17 of the Family Court (Composition and Distribution of Business) Rules 2014. Where reasonably possible, the application will be dealt with by the same judge that dealt with the original application.

13.5 An application to set aside a financial remedy order should only be made where no error of the court is alleged. If an error of the court is alleged, an application for permission to appeal under Part 30 should be considered. The grounds on which a financial remedy order may be set aside are and will remain a matter for decisions by judges. The grounds include (i) fraud; (ii) material non-disclosure; (iii) certain limited types of mistake; (iv) a subsequent event, unforeseen and unforeseeable at the time the order was made, which invalidates the basis on which the order was made.

13.6 The effect of rules 9.9A(1)(a) and (2) is that an application may be made to set aside all or only part of a financial remedy order, including a financial remedy order that has been made by consent.

13.7 The family court has the power under section 31F(6) of the Matrimonial and Family Proceedings Act 1984 to vary or set aside a financial remedy order. The High Court has the power under rule 9.9A and section 17(2) of the Senior Courts Act 1981 to set aside a financial remedy order. The difference in the wording of the legislative provisions is the reason that “set aside” has been defined as it has in rule 9.9A(1)(b).

13.8 In applications under rule 9.9A, the starting point is that the order which one party is seeking to have set aside was properly made. A mere allegation that it was obtained by, eg, non-disclosure, is not sufficient for the court to set aside the order. Only once the ground for setting aside the order has been established (or admitted) can the court set aside the order and rehear the original application for a financial remedy. The court has a full range of case management powers and considerable discretion as to how to determine an application to set aside a financial remedy order, including where appropriate the power to strike out or summarily dispose of an application to set aside. If and when a ground for setting aside has been established, the court may decide to set aside the whole or part of

the order there and then, or may delay doing so, especially if there are third party claims to the parties' assets. Ordinarily, once the court has decided to set aside a financial remedy order, the court would give directions for a full rehearing to re-determine the original application. However, if the court is satisfied that it has sufficient information to do so, it may proceed to re-determine the original application at the same time as setting aside the financial remedy order.

13.9 The effect of rule 28.3(9) is that the Part 28 rules relating to costs do not apply to applications under rule 9.9A.”.

#### **PRACTICE DIRECTION 12G – COMMUNICATION OF INFORMATION**

(1) In the table in paragraph 2.1, after the tenth row insert—

“A legal representative or a professional legal adviser	A professional indemnity insurer	To enable the professional indemnity insurer to be notified of a claim or complaint, or potential claim or complaint, in relation to the legal representative or a professional legal adviser, and the legal representative or professional legal adviser to obtain advice in respect of that claim or complaint”.
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#### **PRACTICE DIRECTION 14E – COMMUNICATION OF INFORMATION RELATING TO PROCEEDINGS**

(1) In the table in paragraph 1.3, after the eleventh row insert—

“A legal representative or a professional legal adviser	A professional indemnity insurer	To enable the professional indemnity insurer to be notified of a claim or complaint, or potential claim or complaint, in relation to the legal representative or a professional legal adviser, and the legal representative or professional legal adviser to obtain advice in respect of that claim or complaint”.
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#### **PRACTICE DIRECTION 16A – REPRESENTATION OF CHILDREN**

(1) Omit paragraph 2.2.

## PRACTICE DIRECTION 30A – APPEALS

(1) In the table in paragraph 2.1-

(a) after row numbered 4, insert-

"4A. Circuit judge or Recorder, except where paragraph 5 of this table applies.	Yes	High Court Judge (sitting in the High Court)"
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(b) for row numbered 5 substitute-

"5. Circuit judge or Recorder, where the appeal is from: (a) a decision or order in proceedings under— (i) Part 4 or 5 of, or paragraph 19(1) of Schedule 2 to, the Children Act 1989; or (ii) the Adoption and Children Act 2002; (b) a decision or order in exercise of the court's jurisdiction in relation to contempt of court, where that decision or order was made in, or in connection with, proceedings of a type referred to in sub-paragraph (a); or (c) a decision or order made on appeal to the family court.	Yes	Court of Appeal"
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; and

(c) after row numbered 7 insert-

"8. Any other judge of the family court not referred to in paragraphs 1 to 7 of this table.	Yes	Court of Appeal"
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(2) In the text which follows the table at paragraph 2.1, at the end of the second paragraph insert-

"Amendments to the 2014 Order (made by the Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) (Amendment) Order 2016) route certain appeals from Circuit Judges or Recorders to the High Court instead of the Court of Appeal. These appeals are heard by a High Court judge sitting in the High Court (see paragraph 8.4 below).".

(3) For paragraph 4.1 substitute-

**“4.1** FPR 30.3 (Permission) sets out the circumstances in which permission to appeal is required. At present, permission to appeal is generally required under that provision where the decision of the family court appealed against was made by-

- (a) a Circuit Judge or Recorder, except where the appeal is against a decision or order made in proceedings referred to in paragraph 4.1A;
- (b) a district judge (including a District Judge (Magistrates’ Courts)); or
- (c) a costs judge.

However, permission to appeal is not required where FPR 30.3(2) applies (appeals against a committal order, a secure accommodation order under section 25 of the Children Act 1989, or a refusal to grant habeas corpus for release in relation to a minor).

In proceedings in the High Court, permission to appeal is required under FPR 30.3 where the decision appealed against is a decision of a district judge or a costs judge, except where FPR 30.3(2) applies.

**4.1A** FPR Part 30 does not apply to an appeal against the decision or order of a Circuit Judge or Recorder in the family court where the decision or order was made-

- (a) in proceedings under
  - (i) Part 4 or 5 of, or paragraph 19(1) of Schedule 2 to, the Children Act 1989; or
    - (ii) the Adoption and Children Act 2002;
- (b) in exercise of the court’s jurisdiction in relation to contempt of court, where that decision or order was made in, or in connection with, proceedings of a type referred to in paragraph (a); or
- (c) on appeal to the family court.

(An appeal against a decision by a Circuit Judge or Recorder, where the appeal is from a decision or order referred to in paragraph 4.1A, is to the Court of Appeal and the Civil Procedure Rules 1998 apply.)

**4.1B** The court should not ordinarily grant permission to appeal where the matters complained of would be better dealt with on an application to set aside a financial remedy order under rule 9.9A. Such an application would be appropriate if the proposed appeal does not in fact allege an error of the court on the materials that were before the court at the time the order was made. However, by way of exception, permission to appeal may still be given where (i) a litigant alleges both that the court erred on the materials before it and that a ground for setting aside under rule 9.9A exists; or (ii) the order which it is sought to set aside includes a pension sharing order or pension compensation sharing order and the court may

be asked to consider making orders under s 40A(5) or s 40B(2)(b) of the Matrimonial Causes Act 1973".

(4) In paragraph 4.16, after "paragraph 5.9" insert "or 5.9A, as applicable".

(5) In the heading to paragraph 4.17, for "the Legal Services Secretary of State" substitute "legal aid:".

(6) In paragraph 5.1, at the end, insert "Practice Direction 5A specifies the forms to be used to make an appeal: different forms are to be used, depending on the court to which the appeal lies.".

(7) For the heading to paragraph 5.8, substitute "**Documents: appeals to the family court**".

(8) In paragraph 5.8-

- (a) for "The appellant must file" substitute "Where the appeal lies to the family court, the appellant must file";
- (b) omit sub-paragraphs (a), (d) and (e); and
- (c) in sub-paragraph (c), for "copy of the appellant's notice that is filed" substitute "of the respondents".

(9) In paragraph 5.9, for "An appellant must include" substitute "Where the appeal lies to the family court, an appellant must include".

(10) After paragraph 5.10, insert-

**"Documents: appeals to the High Court"**

**5.10A** Where an appeal lies to the High Court, the appellant must file the following documents, in the following sequence, as the appeal bundle:

- (a) a sealed or stamped copy of the appellant's notice (including the grounds of appeal);
- (b) a sealed or stamped copy of the order being appealed [or a copy of the notice of the making of an order];
- (c) a transcript or note of the judgment (see also paragraphs 5.23 and 5.24);
- (d) copies of any documents specifically referred to in the judgment;
- (e) a copy of the appellant's skeleton argument (see also paragraphs 5.14 and 5.15).

**5.10B** Subject to paragraphs 5.11 and 6.4(1) and (c), no further documents may be included in the appeal bundle without an order of a High Court Judge sitting in the High Court.

**5.10C** In addition to the appeal bundle, the appellant must file the following duplicate documents-

- (a) one copy of the appellant's notice for each of the respondents;
- (b) one copy of the appellant's skeleton argument for each of the respondents (see also paragraphs 5.14 and 5.15).".

(11) Before paragraph 5.11, insert the heading:

**"Documents: appeals to the family court or the High Court".**

(12) In paragraph 5.13, for "The appellant's notice" substitute "As noted in paragraphs 5.9 and 5.10A, the appellant's notice".

(13) In paragraphs 5.39 and 7.11, for "6.33(2)" substitute "6.33(3)".

(14) For paragraph 8.1, substitute-

**"8.1** The appellant's notice must be filed at the Family Division of the High Court at the Royal Courts of Justice, Strand, London, WC2A 2LL.".

(15) In paragraph 8.3, omit "or by any person authorised under section 9 of the Senior Courts Act 1981 to act as a judge of the High Court".

(16) After paragraph 8.3, insert-

**"8.4** In cases where paragraph 8.5 applies, appeals, applications for permission to appeal and any other applications in the appeal may be heard, and directions in the appeal or application may be given, by a High Court judge only.

8.5. This paragraph applies in the case of appeals from a Circuit judge or Recorder, except where the appeal is from:

(a) a decision or order in proceedings under—

- (i) Part 4 or 5 of, or paragraph 19(1) of Schedule 2 to, the Children Act 1989; or
- (ii) the Adoption and Children Act 2002;

(b) a decision or order in exercise of the court's jurisdiction in relation to contempt of court, where that decision or order was made in, or in connection with, proceedings of a type referred to in sub-paragraph (a); or

(c) a decision or order made on appeal to the family court.".

(17) Omit paragraph 13.2.

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