

PRACTICE DIRECTION AMENDMENTS

The amendments to the existing Practice Directions, and the new Practice Direction 40A, 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 Caroline Dinenage, Parliamentary Under-Secretary of State for Women, Equalities and Family Justice, by the authority of the Lord Chancellor.

The amendments to existing Practice Directions, and the new Practice Direction 40A, come into force on 6 April 2016.

Signed:

Sir James Munby
The President of the Family Division

Signed:

Caroline Dinenage
Parliamentary Under-Secretary of State, Ministry of Justice

TRANSITIONAL AND SAVING PROVISION

(1) Subject to paragraph (2), the amendments and the new Practice Direction 40A below apply to any proceedings which were commenced but not disposed of before these amendments came into force, as they apply to proceedings commenced on or after that date.

(2) In any proceedings which were commenced but not disposed of before these amendments and the new Practice Direction 40A came into force, the court may give directions for the purpose of ensuring that the proceedings are dealt with fairly and, in particular, may—

- (a) apply any provision in a Practice Direction which applied to the proceedings before these amendments or the new Practice Direction 40A came into force; or
- (b) disapply provisions of the amendments or of the new Practice Direction 40A below.

PRACTICE DIRECTION 2A – FUNCTIONS OF THE COURT IN THE FAMILY PROCEDURE RULES 2010 AND PRACTICE DIRECTIONS WHICH MAY BE PERFORMED BY A SINGLE LAY JUSTICE

(1) In Table 1, after the entry for Part 37 insert-

- | | |
|----------|--|
| “Part 39 | The duties and powers of the family court in this Part. |
| Part 40 | The duties and powers of the family court in this Part.” |

(2) In Table 2, after the entry for PD37A, insert-

- | | |
|---|--|
| “PD 40A–
Charging Orders,
Stop Orders and
Stop Notices | • Generally, the family court’s functions in respect of applications and proceedings for charging orders, stop orders and stop notices.” |
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PRACTICE DIRECTION 4A- STRIKING OUT A STATEMENT OF CASE

(1) After paragraph 1.1, insert-

“1.1A Before exercising these powers the court must take into account any written evidence filed in relation to the application or answer (rule 4.4(1A)). For example, the court must take into account the financial statement (Form E) filed in relation to an application for a property adjustment order, pension sharing order and other financial orders.”.

PRACTICE DIRECTION 5A – FORMS

(1) In Table 1-

(a) in the row relating to Part 33, in the second column, omit-

- (i) “N56,”;
- (ii) “N336, N337,”; and
- (iii) “, n379, N380”; and

(b) after the row relating to Part 37, insert-

- | | |
|----------|-----------------|
| “Part 39 | N56, N336, N337 |
| Part 40 | N379, N380”. |

PRACTICE DIRECTION 12B – CHILD ARRANGEMENTS PROGRAMME

(1) After paragraph 2.7(2), insert-

“(3) A draft of a Parenting Plan prepared by CAFCASS Cymru for parents or families to complete:

<http://gov.wales/docs/cafcass/publications/071015ParentingPlanEn.pdf> (this links to the draft plan in English) or

<http://gov.wales/docs/cafcass/publications/071015ParentingPlanCy.pdf> (this links to the draft plan in Welsh).”

PRACTICE DIRECTION 40A – CHARGING ORDERS, STOP ORDERS AND STOP NOTICES

(1) After Practice Direction 37A, insert the new Practice Direction 40A – Charging Orders, Stop Orders and Stop Notices, as set out in the Schedule to this document.

SCHEDULE

“PRACTICE DIRECTION 40A

CHARGING ORDERS, STOP ORDERS AND STOP NOTICES

This Practice Direction supplements Part 40

SECTION I - CHARGING ORDERS

Applicant and application notice – rules 40.2 and 40.4

1.1 A creditor may apply for a charging order. The term “creditor” is defined in rule 40.2 to mean “the person to whom payment of a sum of money is due under a judgment or order, or a person who is entitled to enforce such a judgment or order”. A person who is entitled to enforce such a judgment or order would include a court officer who is able to take enforcement proceedings by virtue of rule 32.33.

1.2 An application for a charging order must be made by filing an application in Practice Form N379 if the application relates to land, or N380 if the application relates to securities.

1.3 The application notice must contain the following information -

(1) the name and address of the debtor;

- (2) details of the judgment or order sought to be enforced;
- (3) the amount of money remaining due under the judgment or order;
- (4) if the judgment debt is payable by instalments, the amount of any instalments which have fallen due and remain unpaid;
- (5) if the judgment creditor knows of the existence of any other creditors of the judgment debtor, their names and (if known) their addresses;
- (6) identification of the asset or assets which it is intended to charge including, where applicable, the title number under which any land upon which it is sought to impose a charge is registered;
- (7) details of the debtor's interest in the asset; and
- (8) the names and addresses of the persons on whom an interim charging order must be served under rule 40.6.

1.4 A creditor may apply in a single application notice for charging orders over more than one asset, but if the court makes interim charging orders over more than one asset, it will draw up a separate order relating to each asset.

High Court and family court jurisdiction

2.1 The jurisdiction of the High Court and the family court to make charging orders is set out in section 1(2) of the 1979 Act.

Change of location

3.1 The court may, on an application by a debtor who wishes to oppose an application for a charging order, direct that the matter be dealt with in a court building serving the address where the debtor resides or carries on business, or in another location (see rule 29.18 FPR).

Enforcement of charging orders by sale

4.1 The High Court or, subject to the county court limit, the county court can enforce a charging order by an order for sale. Provision in respect of applications for an order for sale is made in rule 73.10C CPR.

Charging Orders made against partnership property

5.1 A charging order or interim charging order may be made against any property, within the jurisdiction, belonging to-

- (1) a debtor that is a partnership, or

(2) a debtor who is in a partnership.

5.2 Where paragraph 5.1(1) applies, then for the purposes of rule 40.6 (service of the interim order), the specified documents must be served on-

(1) a member of the partnership within the jurisdiction;

(2) a person authorised by a partner; or

(3) some other person having the control or management of the partnership business.

5.3 Where an order requires a partnership to appear before the court, it will be sufficient for a partner to appear before the court.

SECTION II - STOP NOTICES

6. A sample form of stop notice is set out in the Appendix to this Practice Direction.

SECTION III - APPLICATIONS FOR ORDERS MADE UNDER SECTION 23 OF THE PARTNERSHIP ACT 1890

7.1 This paragraph relates to orders made under section 23 of the Partnership Act 1890 ("Section 23").

7.2 The following applications must be made in accordance with Part 18:

(1) an application for an order under Section 23 of the 1890 Act made by a creditor of a partner;

(2) an application for any order by a partner of the debtor in consequence of any application made by the creditor under Section 23.

7.3. Every application notice filed under this paragraph by a creditor, and every order made following such an application, must be served on the debtor and on any of the other partners that are within the jurisdiction.

7.4 Every application notice filed under this paragraph by a partner of a debtor, and every order made following such an application, must be served-

(1) on the creditor and the debtor; and

(2) on the other partners of the debtor who are not joined in the application and who are within the jurisdiction.

7.5 An application notice or order served under this paragraph on one or more, but not all, of the partners of a partnership is deemed to have been served on all the partners of that partnership.

APPENDIX

STOP NOTICE

To [insert name of person or body to whom the notice is addressed]

TAKE NOTICE that

[insert name and address]

claims to be beneficially entitled to an interest in the following securities--

[specify the securities, giving the name(s) in which they stand]

This Notice requires you to refrain from--

- (1) registering a transfer of the securities specified above; or
- (2) paying any dividend or interest in respect of the securities [delete if inappropriate];

without first giving 14 days' notice in writing to the said [insert name] of the above address.".
