

PRACTICE DIRECTION 3AA

VULNERABLE PERSONS: PARTICIPATION IN PROCEEDINGS AND GIVING EVIDENCE

This Practice Direction supplementing the Family Procedure Rules 2010 is 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 [], [Parliamentary Under-Secretary of State/ Minister of State], Ministry of Justice.

This Practice Direction comes into force on [xx].

Signed:

Sir James Munby

The President of the Family Division

Signed:

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[Parliamentary Under-Secretary of State/ Minister of State]

Ministry of Justice

This Practice Direction supplements FPR Part 3A

Preamble and interpretation

1.1.1 Part 3A FPR makes provision in relation to vulnerable persons (parties and witnesses), including protected persons, in family proceedings.

- Rule 3A.4 FPR places a duty on the court to consider whether a party's participation in the proceedings is likely to be diminished by reason of vulnerability and, if so whether it is necessary to make one or more participation directions (as defined in rule 3A.1 FPR). Rule 3A.4 FPR does not apply to a child or to a party who is a protected party.

- Rule 3A.5 FPR places a duty on the court to consider 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 make one or more participation directions. Rule 3A.5 FPR does not apply to party who is a protected party.

- Rule 3A.6 FPR places a duty on the court to consider whether it is necessary to make one or more participation directions to assist a protected party in proceedings, or a protected party giving evidence.

1.2 This Practice Direction sets out the procedure and practice to be followed to achieve a fair hearing by providing for appropriate measures to be put in place to ensure that the participation of parties and the quality of their evidence and that of vulnerable or intimidated witnesses is not diminished by reason of their vulnerability.

1.3 It is the duty of the court (under rules 1.1(2); 1.2 & 1.4 and Part 3A FPR) and of all parties to the proceedings (rule 1.3 FPR) to identify any party or witness who is a vulnerable person at the earliest possible stage of any family proceedings.

1.4 All parties and their representatives are required to work with the court and each other to ensure that each party or witness can participate in proceedings without the quality of their evidence being diminished and without being put in fear or distress by reason of their vulnerability as defined with reference to the circumstances of each person and to the nature of the proceedings.

1.5 In applying the provisions of Part 3A FPR and the provisions of this Practice Direction, the court and the parties must also have regard to all other relevant rules and Practice Directions and in particular those referred to in the Annex to this Practice Direction.

Additional factors to which regard has to be had when considering the vulnerability of a party or witness mentioned: rule 3A.3 (1) FPR

2.1 Rule 3A.3 FPR makes clear that when considering the vulnerability of a party or witness for the purposes of rule 3A.4 FPR (the court's duty to consider how a vulnerable party other than a child can participate in the proceedings) or rule 3A.5 FPR (the court's duty to consider how a vulnerable party or witness can give evidence), the court must have regard in particular to the matters set out in paragraphs (a) to (j) of rule 3A.7 FPR. In addition, further to rule 3A. 3(1) FPR and rule 3A.7(m) FPR, the court must have regard to the presence of any of the following-

- a) domestic abuse, including financial abuse;
- b) sexual abuse;
- c) physical and emotional abuse;
- d) racial and/or cultural abuse;
- e) forced marriage or so called "honour based violence";
- f) female genital or other physical mutilation;
- g) abuse or discrimination based on gender or sexual orientation.

Guidance about vulnerability: rule 3A.3(2) FPR

3.1 Rule 3A.3 FPR requires the court to have regard in particular to the matters set out in paragraphs (a) to (j) and (m) of rule 3A.7 FPR when considering the vulnerability of a party

or witness other than a protected party or child. The court should require the assistance of relevant parties in the case when considering whether these factors or any of them make it likely that the participation of any party or witness in the case is likely to be diminished by reason of vulnerability. When addressing this question, the court should consider the ability of the party or witness to-

- a) comprehend the proceedings when in court;
- b) put their views to the court;
- c) instruct their representative/s before, during and after the hearing; and
- d) attend the hearing without fear or unnecessary distress.

Participation directions: the giving of evidence by a vulnerable party, vulnerable witness or protected party

4.1 This section of the Practice Direction applies where a court has concluded that a vulnerable party, vulnerable witness or protected party should give evidence. In reaching its conclusion as to whether a child should give evidence to the court, the court must apply the guidance from relevant caselaw and the guidance of the Family Justice Council in relation to children giving evidence in family proceedings.

Ground rules hearings

4.2 When the court has decided that a vulnerable party, vulnerable witness or protected party should give evidence there shall be a “ground rules hearing” prior to the trial at which any necessary participation directions will be given-

- a) as to the conduct of the advocates and the parties in respect of the evidence of that person, including the need to address the matters referred to in paragraphs [4.3 to 4.7] and
- b) to put [any necessary] support in place for that person.

4.3 If the court decides that a vulnerable party, vulnerable witness or protected party should give evidence to the court, consideration should be given to the form of such evidence, for example whether it should be oral or other physical evidence, such as through sign language or another form of direct physical communication.

4.4 The court must consider the best way in which the person should give evidence, including considering whether the person’s oral evidence should be given at a point before the trial, recorded and transcribed, or given at the trial with, if appropriate, participation directions being made.

4.5 In all cases in which it is proposed that a vulnerable party, vulnerable witness or protected party is to be cross-examined (whether before or during a trial) the court must consider whether to make participation directions, including prescribing the manner in which the person is to be cross-examined. The court must consider whether to direct that-

- a) any questions that can be asked by one advocate should not be repeated by another without the permission of the court;
- b) questions or topics to be put in cross-examination should be agreed prior to the hearing;
- c) questions to be put in cross-examination should be put by one legal representative or advocate alone, or, if appropriate, by the judge.

4.6 The court must also consider whether a vulnerable party, vulnerable witness or protected party has previously given evidence, and been cross-examined, in criminal proceedings and whether that evidence and cross-examination has been pre-recorded (see sections 27 and 28 of the Youth Justice and Criminal Evidence Act 1999). If so, and if any such recordings are available, the court should consider their being used in the family proceedings.

4.7 All advocates (including those who are litigants in person) are expected to be familiar with and to use the techniques employed by the toolkits and approach of the Advocacy Training Council. The toolkits are available at www.theadvocatesgateway.org/toolkits. Further guidance for advocates is available from the Ministry of Justice at <http://www.justice.gov.uk/guidance.htm>.

Matters to be included in an application form for directions: rule 3A.10(2) FPR

5.1 An application for directions under Part 3A FPR should contain the following information, as applicable:

- a) why the party or witness would benefit from assistance;
- b) why the measure or measures sought would be likely to improve the person's ability to participate in the proceedings;
- c) why the measure or measures sought would be likely to improve the quality of the person's evidence;
- d) the measure or measures that would be likely to maximise as far as practicable the quality of that evidence.

Modifications to the Part 18 FPR procedure in an application for directions under Part 3A FPR: rule 3A.10(3) FPR

6.1 The Part 18 FPR procedure shall be applied to an application under Part 3A FPR with the following modifications:

- a) any party who makes application to the court to give or make directions for an order must –
 - i) apply in writing as soon as reasonably practical; and
 - ii) serve the application on every other party; and
- b) the court may decide whether to give, vary or discharge a direction -
 - i) at a hearing or without a hearing;
 - ii) in a party's absence provided that party has 7 days to make representations or such shorter period as the court may direct.

ANNEX

As noted at paragraph [1.5], in applying the provisions of Part 3A FPR and the provisions of this Practice Direction, the court and the parties must also have regard to all other relevant rules and Practice Directions and in particular-

- Part 1 FPR (Overriding Objective);
- Part 4 FPR (General Case Management Powers);
- Part 12 FPR and Practice Direction 12J

- Part 15 FPR (Representation of Protected Parties) and Practice Direction 15B (Adults Who May Be Protected Parties and Children Who May Become Protected Parties in Family Proceedings);
- Part 18 FPR (Procedure for Other Applications in Proceedings);
- Part 22 FPR (Evidence);
- Part 24 FPR (Witnesses, depositions generally and taking of evidence in Member States of the European Union);
- Part 25 FPR (Experts) and the Experts Practice Directions;
- Rule 27.6 FPR and Practice Direction 27A (Court Bundles);
- Part 30 FPR (Appeals) and Practice Direction 30A (Appeals).

[END]
