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STATUTORY INSTRUMENTS

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**201x No.xx (L.xx)**

**FAMILY PROCEEDINGS**

**SENIOR COURTS OF ENGLAND AND WALES**

**FAMILY COURT, ENGLAND AND WALES**

**The Family Procedure (Amendment No. x) Rules 2017**

*Made* - - - - - \*\*\*

*Laid before Parliament* \*\*\*

*Coming into force*

The Family Procedure Rule Committee makes the following rules in exercise of the powers conferred by sections 75 and 76 of the Courts Act 2003(a), after consulting in accordance with section 79 of the Courts Act 2003(b).

**Citation and commencement**

1. These Rules may be cited as the Family Procedure (Amendment No. x) Rules 2017 and come into force on [ ].

**Amendments to the Family Procedure Rules 2010**

2. The Family Procedure Rules 2010(c) are amended in accordance with rule 3.

**Insertion of new Part 3A**

3. After Part 3 (Non-court Dispute Resolution) insert—

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(a) 2003 c. 39. Section 75 was amended by paragraph 338 of Schedule 4 and Part 2 of Schedule 18 to the Constitutional Reform Act 2005 (c. 4) and by paragraph 91 of Schedule 10 to the Crime and Courts Act 2013 (c. 22). Section 76 was amended by section 62(7) of the Children Act 2004 (c. 31), paragraph 29 of Schedule 1 to the Constitutional Reform Act 2005 and paragraph 92 of Schedule 10 to the Crime and Courts Act 2013.

(b) Section 79 was amended by paragraph 341 of Schedule 4 and Part 2 of Schedule 18 to the Constitutional Reform Act 2005.

(c) S.I. 2010/2955. Relevant amending instruments are S.I. 2012/679, 2013/3204 and 2014/843.

## “PART 3A

### VULNERABLE PERSONS: PARTICIPATION IN PROCEEDINGS AND GIVING EVIDENCE

#### **Interpretation**

##### **3A.1.** In this Part—

- (a) references to “quality of evidence” are to its quality in terms of completeness, coherence and accuracy;
- (b) “child” means a person under the age of 18 years whether or not the child is the subject of the proceedings; except that—
  - (i) in adoption proceedings, it also includes a person who is the subject of proceedings and has attained the age of 18 years before the proceedings are concluded; and
  - (ii) in proceedings brought under Article 11 of the Council Regulation, the 1980 Hague Convention or the European Convention, it means a person under the age of 16 years who is the subject of proceedings;
- (c) “coherence” refers to a witness’s ability in giving evidence to give answers which address the questions put to the witness and can be understood both individually and collectively;
- (d) “intermediary” means a person whose function is to—
  - (i) communicate questions to a witness and put questions to the witness;
  - (ii) communicate to any person asking such questions the answers given by the witness in reply to them; and
  - (iii) explain such questions or answers so far as is necessary to enable them to be understood by the witness or the person asking such questions;
- (e) “live link” means a live television link or other arrangement whereby a witness, while absent from the courtroom or other place where the proceedings are being held, is able to see and hear a person there and to be seen and heard by the judge, legal representatives acting in the proceedings and other persons appointed to assist a witness;
- (f) “mental disorder” has the meaning given in section 1 of the Mental Health Act 1983;
- (g) “participation direction” means—
  - (i) a general case management direction made for the purpose of assisting a witness or party to give evidence or participate in proceedings; or
  - (ii) a direction that a witness or party should have the assistance of one or more measures in rule 3A. 8.

#### **Application of provisions in this Part**

**3A.2.**—(1) Rule 3A.4 does not apply to a party who is a child.

(2) Rules 3A.3 to 3A.5 do not apply to a party who is a protected party.

#### **Court’s duty to consider vulnerability of a party or witness**

**3A.3.**—(1) When considering the vulnerability of a party or witness as mentioned in rules 3A.4 or 3A.5, the court must have regard in particular to the matters set out in paragraphs (a) to (j) and (m) of rule 3A.7.

(2) Practice Direction 3AA gives guidance about vulnerability.

### **Court's duty to consider how a party can participate in the proceedings**

**3A.4.**—(1) The court must consider whether a party's participation in the proceedings (other than by way of giving evidence) is likely to be diminished by reason of vulnerability and, if so, whether it is necessary to make one or more participation directions.

(2) Before making such participation directions, the court must consider any views expressed by the party about participating in the proceedings.

### **The court's duty to consider how a party or a witness can give evidence**

**3A.5.**—(1) The court must 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.

(2) Before making such participation directions, the court must consider any views expressed by the party or witness about giving evidence.

### **Protected parties**

**3A.6.**—(1) The court must consider whether it is necessary to make one or more participation directions to assist —

- (a) the protected party participating in proceedings; or
- (b) the protected party giving evidence.

(2) Before making such participation directions, the court must consider any views expressed by the protected party's litigation friend about the protected party's participation in the proceedings or that party giving evidence.

(Part 15 contains rules about representation of a protected party. Practice Direction 15B contains provisions about the ability of a protected party to give evidence.)

### **What the court must have regard to**

**3A.7.** When deciding whether to make one or more participation directions the court is to have regard in particular to—

- (a) whether the party or witness—
  - (i) suffers from mental disorder or otherwise has a significant impairment of intelligence or social functioning;
  - (ii) has a physical disability or suffers from a physical disorder; or
  - (iii) is undergoing medical treatment;
- (b) the nature and extent of the information before the court;
- (c) the issues raised in the proceedings;
- (d) whether a matter is contentious;
- (e) the age, maturity and understanding of the party or witness;
- (f) the social and cultural background and ethnic origins of the party or witness;
- (g) the domestic circumstances and religious beliefs of the party or witness;
- (h) any behaviour towards the party or witness on the part of—
  - (i) any other party to the proceedings or members of the family or associates of that other party;
  - (ii) any members of the family of the party or witness;
- (i) any questions which the court is putting or causing to be put to a witness in accordance with section 31G(6) of the 1984 Act;

- (j) any characteristic of the party or witness which is relevant to the participation directions which may be made;
- (k) whether any measure is available to the court;
- (l) the costs of any available measure; and
- (m) any matters set out in Practice Direction 3AA.

### **Measures**

**3A.8.**—(1) The measures referred to in this Part are those which —

- (a) prevent a party or witness from seeing another party or witness;
- (b) allow a party or witness to participate in hearings and give evidence by live link;
- (c) provide for a party or witness to use a device to help communicate;
- (d) provide for a party to participate in proceedings with the assistance of an intermediary;
- (e) provide for a party or witness to be questioned in court with the assistance of an intermediary; or
- (f) do anything else which is set out in Practice Direction 3AA.

(2) If the family court makes a direction for a measure which is not available where the court is sitting, it may direct that the court will sit at the nearest or most convenient location where the family court sits and the measure is available.

(3) If the High Court makes a direction for a measure which is not available where the court is sitting, it may direct that the court will sit at the nearest or most convenient location where the court sits and the measure is available.

(4) Nothing in these rules gives the court power to direct that public funding must be available to provide a measure.

(5) If a direction for a measure is considered by the court to be necessary but the measure is not available to the court, the court must set out in its order the reasons why the measure is not available.

### **When the duties of the court apply and recording reasons for decisions made under this Part**

**3A.9.**—(1) The court's duty to consider the matters mentioned in this Part applies as soon as possible after the start of proceedings and continues until the resolution of the proceedings.

(2) The court must set out its reasons on the court order for —

- (a) making, varying or revoking directions referred to in this Part; or
- (b) deciding not to make, vary or revoke directions referred to in this Part, in proceedings that involve a vulnerable person or protected party.

### **Application for directions under this Part**

**3A.10.**—(1) An application for directions under this Part may be made on the application form initiating the proceedings or during the proceedings by any person filing an application notice.

(2) The application form or application notice must contain the matters set out in Practice Direction 3AA.

(3) The Part 18 procedure with the modifications contained in this rule and Practice Direction 3AA applies to an application for directions during the proceedings.

(4) This rule is subject to any direction of the court.

### **Procedure where court makes directions of its own initiative**

**3A.11.**—(1) Where the court proposes to make a participation direction of its own initiative the procedure set out in rule 4.3(2) to (6) applies.

### **Functions of officers of the Service and Welsh family proceedings officers**

**3A.12.** Nothing in this Part gives the court power to direct that an officer of the Service or a Welsh family proceedings officer should perform any function beyond the functions conferred upon such officers by any other enactment.”.

*[FPRC signatures]*

I allow these Rules

Date

*Name*  
Parliamentary Under-Secretary of State  
Ministry of Justice

### **EXPLANATORY NOTE**

*(This note is not part of the Rules)*

These Rules amend the Family Procedure Rules 2010 (S.I. 2010/2955) (“FPR”).

Rule 3 inserts a new Part 3A into the FPR making special provisions about the participation of vulnerable persons in family proceedings and about vulnerable persons giving evidence in such proceedings.

New rule 3A.4 FPR, which does not apply to a party who is a child, requires the court to consider whether a party’s participation in proceedings may be diminished as a result of vulnerability and whether it is necessary to make participation directions, as defined in new rule 3A.1 FPR.

New rule 3A.5 FPR requires the court to consider if a party or witness’s quality of evidence may be diminished as a result of vulnerability and whether it is necessary to make participation directions.

New rule 3A.6 FPR makes specific provision in relation to protected parties.

New rule 3A.7 FPR sets out the matters the court must have regard to when deciding whether to make participation directions.

New rule 3A.8 FPR sets out the measures which the court may direct be put in place to assist a party or witness and provides that the FPR do not give the court power to direct that public funding must be available to provide such a measure.

New rules 3A.9 to 3A.11 FPR deal with procedural matters related to the other new rules inserted by these Rules.

New rule 3A.12 provides that the new Part 3A FPR does not give the court power to impose new functions on officers of the Service or on Welsh Family Proceedings Officers.

No impact assessment has been produced for this instrument because no, or no significant, impact on the private, voluntary or public sectors is foreseen.