
STATUTORY INSTRUMENTS

2015 No. 548 (L. 6)

MENTAL CAPACITY, ENGLAND AND WALES

The Court of Protection (Amendment) Rules 2015

Made - - - - - *4th March 2015*

Laid before Parliament *9th March 2015*

Coming into force in accordance with rule 2

The President of the Family Division (the judicial office holder nominated by the Lord Chief Justice), being President of the Court of Protection, makes the following Rules in exercise of the powers conferred by sections 50(2), 51, 53(2) and (4), 55, 56 and 65(1) of the Mental Capacity Act 2005⁽¹⁾, and in accordance with Part 1 of Schedule 1 to the Constitutional Reform Act 2005⁽²⁾:

Citation, commencement and interpretation

1. These Rules may be cited as the Court of Protection (Amendment) Rules 2015.
2. These Rules come into force as follows—
 - (a) rules 1 to 4 and 8(e), 41, 45, 54, 55, 57 to 64 and 66(2) of these Rules come into force on 6th April 2015;
 - (b) rules 5 to 7, 8(a) to (d), 9 to 40, 42 to 44, 46 to 53, 56, 65 and 66(1) and (3) to (7) of, and the Schedule to, these Rules come into force on 1st July 2015.
3. In these Rules, a reference to a Part or rule by number alone means the Part or rule so numbered in the Court of Protection Rules 2007⁽³⁾.

Amendments to the Court of Protection Rules 2007

4. The Court of Protection Rules 2007 are amended in accordance with rules 5 to 65 of these Rules.
5. After rule 3, insert—

(1) 2005 c. 9. Section 51 was amended by S.I. 2006/1016, article 2, Schedule 1 paragraphs 30 and 34. Section 53 was amended by section 62 of the Criminal Justice and Courts Act 2015 (c. 2). Section 65(1) was amended by S.I. 2006/1016, article 2, Schedule 1 paragraphs 30 and 37(1) and (2).

(2) 2005 c. 4.

(3) S.I. 2007/1744, to which there are relevant amendments in S.I. 2009/582, S.I. 2009/3348 and S.I. 2011/2753.

“Participation of P

3A.—(1) The court shall in each case, on its own initiative or on the application of any person, consider whether it should make one or more of the directions in paragraph (2), having regard to—

- (a) the nature and extent of the information before the court;
- (b) the issues raised in the case;
- (c) whether a matter is contentious; and
- (d) whether P has been notified in accordance with the provisions of Part 7 and what, if anything, P has said or done in response to such notification.

(2) The directions are that—

- (a) P should be joined as a party;
- (b) P’s participation should be secured by the appointment of an accredited legal representative to represent P in the proceedings and to discharge such other functions as the court may direct;
- (c) P’s participation should be secured by the appointment of a representative whose function shall be to provide the court with information as to the matters set out in section 4(6) of the Act and to discharge such other functions as the court may direct;
- (d) P should have the opportunity to address (directly or indirectly) the judge determining the application and, if so directed, the circumstances in which that should occur;
- (e) P’s interests and position can properly be secured without any direction under sub-paragraphs (a) to (d) being made or by the making of an alternative direction meeting the overriding objective.

(3) Any appointment or directions made pursuant to paragraph (2)(b) to (e) may be made for such period or periods as the court thinks fit.

(4) Unless P has capacity to conduct the proceedings, an order joining P as a party shall only take effect—

- (a) on the appointment of a litigation friend on P’s behalf; or
- (b) if the court so directs, on or after the appointment of an accredited legal representative.

(5) If the court has directed that P should be joined as a party but such joinder does not occur because no litigation friend or accredited legal representative is appointed, the court shall record in a judgment or order—

- (a) the fact that no such appointment was made; and
- (b) the reasons given for that appointment not being made.

(6) A practice direction may make additional or supplementary provision in respect of any of the matters set out in this rule.

(The appointment of litigation friends, accredited legal representatives and representatives under paragraph (2)(c) is dealt with under Part 17.)

(“Accredited legal representative” is defined in rule 6.)”.

6. For rule 4 substitute—

“The duty of the parties

- 4.—(1) The parties are required to help the court to further the overriding objective.
- (2) Without prejudice to the generality of paragraph (1), each party is required to—
- (a) co-operate with the other parties and with the court in identifying and narrowing the issues that need to be determined by the court, and the timetable for that determination;
 - (b) adhere to the timetable set by these Rules and by the court;
 - (c) comply with all directions and orders of the court;
 - (d) be full and frank in the disclosure of information and evidence to the court (including any disclosure ordered under Part 16);
 - (e) co-operate with the other parties in all aspects of the conduct of the proceedings, including in the preparation of bundles.

(3) If the court determines that any party has failed without reasonable excuse to satisfy the requirements of this rule, it may under rule 159 depart from the general rules about costs in so far as they apply to that party.

(Rule 133(2) deals with the requirements of general disclosure.)”.

7. In rule 5(2)—

- (a) at the end of sub-paragraph (j), omit “and”;
- (b) at the end of sub-paragraph (k), substitute a semi-colon for the full stop;
- (c) after sub-paragraph (k) insert—
 - “(l) “(l) considering whether any hearing should be held in public; and
 - (m) considering whether any document relating to proceedings should be a public document and, if so, whether and to what extent it should be redacted.

(Rules 91 to 93 make provision about the court’s powers to authorise publication of information about proceedings and to order that a hearing be held in public.)”.

8. In rule 6—

- (a) after the definition of “the Act” insert—

““accredited legal representative” means a legal representative authorised pursuant to a scheme of accreditation approved by the President to represent persons meeting the definition of “P” in this rule in proceedings before the court;”;
- (b) after the definition of “filing” insert—

““hearing” includes a hearing conducted by telephone, video link, or any other method permitted or directed by the court;”;
- (c) omit the definition of “permission form”;
- (d) after the definition of “protected party” insert—

““representative” means a person appointed under rule 3A(2)(c), except where the context otherwise requires;”;
- (e) after the definition of “Senior Judge” insert—

““Tier 1 Judge” means any judge nominated to act as a judge of the Court of Protection under section 46 of the Act who is neither a Tier 2 Judge nor a Tier 3 Judge;

“Tier 2 Judge” means—

 - (a) the Senior Judge; and

- (b) such other judges nominated to act as a judge of the Court of Protection under section 46 of the Act as may be set out in the relevant practice direction;

“Tier 3 Judge” means—

- (a) the President;
- (b) the Vice-President; and
- (c) such other judges nominated to act as a judge of the Court of Protection under section 46 of the Act as may be set out in the relevant practice direction.”.

9. For rule 9 substitute—

“Application of Civil Procedure Rules and Family Procedure Rules

9.—(1) In any case not expressly provided for by these Rules or the practice directions made under them, the court may apply either the Civil Procedure Rules 1998(4) or the Family Procedure Rules 2010(5) (including in either case the practice directions made under them) with any necessary modifications, in so far as is necessary to further the overriding objective.

(2) A reference in these Rules to the Civil Procedure Rules 1998 or to the Family Procedure Rules 2010 is to the version of those rules in force at the date specified for the purpose of that reference in the relevant practice direction.

Pilot schemes

9A.—(1) Practice directions may make provision for the operation of pilot schemes for assessing the use of new practices and procedures in connection with proceedings—

- (a) for specified periods; and
- (b) in relation to proceedings—
 - (i) in specified parts of the country; or
 - (ii) relating to specified types of application.

(2) Practice directions may modify or disapply any provision of these Rules during the operation of such pilot schemes.”.

10. In rule 10(1), omit sub-paragraph (a).

11. In rule 11—

- (a) in paragraph (1)(a), for “a permission form, an application form or an application notice” substitute “an application form, an application notice, an appellant’s notice or a respondent’s notice”;
- (b) in paragraph (3)—
 - (i) omit sub-paragraph (a);
 - (ii) for the comma at the end of sub-paragraph (c) substitute a semi-colon; and
 - (iii) after sub-paragraph (c) insert—
 - “(d) “(d) an appellant’s notice or a respondent’s notice”;

(4) S.I. 1998/3132 (as amended).

(5) S.I. 2010/2955 (as amended).

- (c) in paragraph (4)(a), for “a permission form, an application form or an application notice” substitute “an application form, an application notice, an appellant’s notice or a respondent’s notice”; and
- (d) in paragraph (6), for “a permission form, an application form or an application notice” substitute “an application form, an application notice, an appellant’s notice or a respondent’s notice”.

12. After rule 11 insert—

“Position statement not required to be verified by statement of truth

11A. Nothing in these Rules requires a position statement to be verified by a statement of truth.”

13. In rule 12—

- (a) for “a permission form, application form or an application notice” substitute “an application form, an application notice, an appellant’s notice or a respondent’s notice”; and
- (b) after “the applicant” insert “(or respondent as the case may be)”.

14. Omit rule 25(7).

15. In rule 33—

- (a) in paragraph (1), for “other person duly authorised to conduct proceedings” substitute “as directed by the court”;
- (b) in paragraph (5), for “147(2) (procedure where appointment of a litigation friend comes to an end – for P)” substitute “144(1)(b) (power of court to bring to an end the appointment of a litigation friend)”; and
- (c) at the end of the rule insert—

“(Rule 41A requires P to be notified where a direction has been made under rule 3A, and of the appointment of a litigation friend, accredited legal representative or representative.)”.

16. For rule 39 substitute—

“Scope and interpretation

39.—(1) This rule and rules 39A to 39H make provision about—

- (a) service of application forms and other documents out of the jurisdiction; and
- (b) the procedure for service.

(2) In this rule and rules 39A to 39H—

“application form” includes an application notice;

“Commonwealth State” means a State listed in Schedule 3 to the British Nationality Act 1981(6);

“jurisdiction” means, unless the context otherwise requires, England and Wales and any part of the territorial waters of the United Kingdom adjoining England and Wales;

“Member State” means a Member State of the European Union;

(6) 1981 c.61. There are relevant amendments in: S.I. 1983/882; S.I. 1983/1699; the Brunei and Maldives Act 1985 (c.3); section 1, Schedule; S.I. 1989/1331; S.I. 1998/3161; S.I. 1990/1502; S.I. 1994/1634; S.I. 2010/246.

“the Service Convention” means the Convention on the service abroad of judicial and extra-judicial documents in civil or commercial matters signed at the Hague on November 15, 1965;

“Service Convention country” means a country, not being a Member State, which is a party to the Service Convention; and

“the Service Regulation” means Regulation (EC) No. 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extra-judicial documents in civil and commercial matters (service of documents) and repealing Council Regulation (EC) No. 1348/2000(7).

(3) In rules 39A to 39H, a reference to service by a party includes service by a person who is not a party where service by such a person is required under these Rules.

Service of application form and other documents out of the jurisdiction

39A.—(1) Subject to paragraph (2), any document to be served for the purposes of these Rules may be served out of the jurisdiction without the permission of the court.

(2) An application form may not be served out of the jurisdiction unless the court has power to determine the application to which it relates under the Act.

Period for acknowledging service or responding to application where application is served out of the jurisdiction

39B.—(1) This rule applies where, under these Rules, a party is required to file—

- (a) an acknowledgment of service; or
- (b) an answer to an application,

and sets out the time period for doing so where the application is served out of the jurisdiction.

(2) Where the applicant serves an application on a respondent in—

- (a) Scotland or Northern Ireland; or
- (b) a Member State or Service Convention country within Europe,

the period for filing an acknowledgment of service or an answer to an application is 21 days after service of the application.

(3) Where the applicant serves an application on a respondent in a Service Convention country outside Europe, the period for filing an acknowledgment of service or an answer to an application is 31 days after service of the application.

(4) Where the applicant serves an application on a respondent in a country not referred to in paragraphs (2) and (3), the period for filing an acknowledgment of service or an answer to an application is set out in Practice Direction 6B.

Method of service – general provisions

39C.—(1) This rule contains general provisions about the method of service of an application form or other document on a party out of the jurisdiction.

Where service is to be effected on a party in Scotland or Northern Ireland

(2) Where a party serves an application form or other document on a party in Scotland or Northern Ireland, it must be served by a method permitted by this Part.

Where service is to be effected out of the United Kingdom

(3) Where an application form or other document is to be served on a person out of the United Kingdom, it may be served by any method—

(a) provided for by—

(i) rule 39D (service in accordance with the Service Regulation); or

(ii) rule 39E (service through foreign governments, judicial authorities and British Consular authorities); or

(b) permitted by the law of the country in which it is to be served.

(4) Nothing in paragraph (3) or in any court order authorises or requires any person to do anything which is contrary to the law of the country where the application form or other document is to be served.

Service in accordance with the Service Regulation

39D.—(1) This rule applies where an application form or other document is to be served on a person out of the United Kingdom in accordance with the Service Regulation.

(2) The person wishing to serve must file—

(a) the application form or other document;

(b) any translation; and

(c) any other documents required by the Service Regulation.

(3) When the person wishing to serve files the documents referred to in paragraph (2), the court officer must—

(a) seal, or otherwise authenticate with the stamp of the court, the copy of the application form; and

(b) forward the documents to the Senior Master of the Queen’s Bench Division.

(4) In addition to the documents referred to in paragraph (2), the person wishing to serve may, if of the view that this would assist in ensuring effective service, file a photograph of the person to be served.

(The Service Regulation is annexed to Practice Direction 6B.)

(Rule 39E makes provision for service on a person in a Service Convention country.)

Service through foreign governments, judicial authorities and British Consular authorities

39E.—(1) Where an application form or other document is to be served on a person in a Service Convention country, it may be served—

(a) through the authority designated under the Service Convention in respect of that country; or

(b) if the law of that country permits, through—

(i) the judicial authorities of that country; or

(ii) a British Consular authority in that country.

(2) Where an application form or other document is to be served on a person in a country which is not a Service Convention country, it may be served, if the law of that country so permits, through—

(a) the government of that country, where that government is willing to serve it; or

(b) a British Consular authority in that country.

(3) Where an application form or other document is to be served in—

- (a) any Commonwealth State which is not a Service Convention country;
- (b) the Isle of Man or the Channel Islands; or
- (c) any British Overseas Territory,

the methods of service permitted by paragraphs (1)(b) and (2) are not available and the person wishing to serve, or that person's agent, must effect service direct unless Practice Direction 6B provides otherwise.

(4) This rule does not apply where service is to be effected in accordance with the Service Regulation.

(Rule 39D makes provision for service on a party in a Member State in accordance with the Service Regulation.)

(A list of British Overseas Territories is reproduced in Practice Direction 6B.)

Procedure where service is to be through foreign governments, judicial authorities and British Consular authorities

39F.—(1) This rule applies where an application form or other document is to be served under rule 39E(1) or (2).

(2) Where this rule applies, the person wishing to serve must file—

- (a) a request for service of the application form or other document, by specifying one or more of the methods in rule 39E(1) or (2);
- (b) a copy of the application form or other document;
- (c) any other documents or copies of documents required by Practice Direction 6B; and
- (d) any translation required under rule 39G.

(3) When the person wishing to serve files the documents specified in paragraph (2), the court officer must—

- (a) seal, or otherwise authenticate with the stamp of the court, the copy of the application form; and
- (b) forward the documents to the Senior Master of the Queen's Bench Division.

(4) The Senior Master shall send documents forwarded under this rule—

- (a) where the application form or other document is being served through the authority designated under the Service Convention, to that authority; or
- (b) in any other case, to the Foreign and Commonwealth Office with a request that it arranges for the application form or other document to be served.

(5) An official certificate which—

- (a) states that the method requested under paragraph (2)(a) has been performed and the date of such performance;
- (b) states, where more than one method is requested under paragraph (2)(a), which method was used; and
- (c) is made by—

- (i) a British Consular authority in the country where the method requested under paragraph (2)(a) was performed;

- (ii) the government or judicial authorities in that country; or
- (iii) the authority designated in respect of that country under the Service Convention,

is evidence of the facts stated in the certificate.

(6) A document purporting to be an official certificate under paragraph (5) is to be treated as such a certificate unless it is proved not to be.

Translation of application form or other document

39G.—(1) Except where paragraphs (4) and (5) apply, every copy of the application form or other document filed under rule 39E (service through foreign governments, judicial authorities and British Consular authorities) must be accompanied by a translation of the application form or other document.

- (2) The translation must be—
 - (a) in the official language of the country in which it is to be served; or
 - (b) if there is more than one official language of that country, in any official language which is appropriate to the place in the country where the application form or other document is to be served.

(3) Every translation filed under this rule must be accompanied by a statement by the person making it that it is a correct translation, and the statement must include that person's name, address and qualifications for making the translation.

(4) The applicant is not required to file a translation of the application form or other document filed under rule 39E where it is to be served in a country of which English is an official language.

(5) The applicant is not required to file a translation of the application form or other document filed under rule 39E where—

- (a) the person on whom the document is to be served is able to read and understand English; and
- (b) service of the document is to be effected directly on that person.

(This rule does not apply to service in accordance with the Service Regulation, which contains its own provisions about the translation of documents.)

Undertaking to be responsible for expenses of the Foreign and Commonwealth Office

39H. Every request for service under rule 39F (procedure where service is to be through foreign governments, judicial authorities, etc.) must contain an undertaking by the person making the request—

- (a) to be responsible for all expenses incurred by the Foreign and Commonwealth Office or foreign judicial authority; and
- (b) to pay those expenses to the Foreign and Commonwealth Office or foreign judicial authority on being informed of the amount.”.

17. In rule 40—

- (a) in paragraph (2), for “If” substitute “Except where rule 41A applies, if”;
- (b) after paragraph (3) insert—

“(4) Subject to paragraph (5), where P is a child—

- (a) if the person to be notified under this rule is a person with parental responsibility for the child within the meaning of the Children Act 1989(8) or, if there is no such person, a person with whom the child resides or in whose care the child is;
- (b) all references to “P” in this Part, except that in paragraph (2), are to be read as referring to the person notified in accordance with sub-paragraph (a).

(5) Paragraph (4) does not apply, and there is no requirement to notify P, where the person referred to in paragraph (4)(a) has already been served or notified of the relevant matter in accordance with another rule or practice direction.”.

18. After rule 41 insert—

“Notifying P of appointment of a litigation friend, etc.

41A. P must be notified—

- (a) where a direction has been made under rule 3A; and
- (b) of the appointment of a litigation friend, accredited legal representative or representative on P’s behalf.”.

19. In rule 44—

- (a) in paragraph (1), for “a final order of the court” substitute “any decision of the court relating to P except for a case management decision”;
- (b) in paragraph (2), for “order” substitute “decision”;
- (c) in paragraph (3), for “he” in the two places where it occurs, substitute “P” and
- (d) after paragraph (3) insert—

“(4) The person effecting notification must also provide P with a copy of any order relating to a decision of which P must be notified in accordance with paragraph (1).”.

20. In rule 46—

- (a) in paragraph (1)—
 - (i) after “provide P with”, insert “, or arrange for P to be provided with,”; and
 - (ii) for “42” substitute “41A”;
- (b) in paragraph (3)—
 - (i) for “21” substitute “14”;
 - (ii) in sub-paragraph (b), for “order” substitute “decision”;
 - (iii) at the end of sub-paragraph (b), omit “or”;
 - (iv) for the comma at the end of sub-paragraph (c) substitute “; and”; and
 - (v) after sub-paragraph (c) insert—
 - “(d) “(d) the order referred to in rule 44(4) was served upon the person who is required to effect notification of P under that rule,”; and
- (c) after paragraph (3) insert—

“(4) Where the provisions of rule 40(4) apply, paragraphs (1) and (2) of this rule do not apply and the person effecting notification may provide information and documents of which P must be notified to the person to be notified under rule 40(4), by any method by which service of documents would be permitted under rule 31.”.

21. For rule 48 substitute—

“Certificate of notification

48.—(1) The person effecting notification must, within 7 days beginning with the date on which notification in accordance with this Part was given, file a certificate of notification which certifies—

- (a) the date on which, and how, P was notified; and
- (b) that P was notified in accordance with this Part.

(2) Subject to paragraph (3), the person effecting notification in accordance with this Part must in the certificate required by paragraph (1) describe the steps taken to enable P to understand, and the extent to which P appears to have understood, the information.

(3) Where the provisions of rule 40(4) apply, paragraph (2) does not apply.”.

22. For rule 51, substitute—

“Where the court’s permission is not required

51. The permission of the court is not required—

- (a) where an application is made by—
 - (i) the Official Solicitor; or
 - (ii) the Public Guardian;
- (b) where the application concerns—
 - (i) P’s property and affairs;
 - (ii) a lasting power of attorney which is, or purports to be, created under the Act; or
 - (iii) an instrument which is, or purports to be, an enduring power of attorney;
- (c) where an application is made under section 21A of the Act⁽⁹⁾;
- (d) where an application is made for an order under section 16(2)(a) of the Act, which is to be relied on to authorise the deprivation of P’s liberty pursuant to section 4A(3) of the Act⁽¹⁰⁾;
- (e) where an application is made in accordance with Part 10;
- (f) where a person files an acknowledgment of service or notification in accordance with this Part or Part 9, for any order proposed that is different from that sought by the applicant; or
- (g) in any other case specified for this purpose in a practice direction.”.

23. Omit rule 52.

24. Omit rule 53(1).

25. For rule 54, substitute—

“Application for permission

54. Where permission is required, the applicant must apply for permission when making an application.

⁽⁹⁾ Section 21A was inserted by the Mental Health Act 2007 (c. 12), section 50(7), Schedule 9, paragraphs 1 and 2.

⁽¹⁰⁾ Section 4A was inserted by the Mental Health Act 2007 (c. 12), section 50(1) and(2).

(Rule 84(1A) explains how the court will deal with an application for permission.)”.

26. Omit rules 55 to 58.

27. In rule 59—

- (a) for “will” substitute “must”; and
- (b) for the words after “on any other person” to the end, substitute “served with or notified of the application form”.

28. At the end of rule 60, insert—

“(Rule 89 deals with reconsideration of orders and decisions made without a hearing or without notice to any person who is affected by such order or decision.)”

29. Omit rule 61(3).

30. In rule 64, omit sub-paragraph (b).

31. For rule 65, substitute—

“What the court will do when an application form is filed

65. As soon as practicable after an application form is filed the court must issue it and do anything else that may be set out in a practice direction.”.

32. In rule 66, for “21” substitute “14”.

33. In rule 67(3), for “21” substitute “14”.

34. In rule 68(3), for “21” substitute “14”.

35. In rule 70(1), for “21” substitute “14”.

36. In rule 72—

- (a) in paragraph (2), for “21” substitute “14”;
- (b) in paragraph (5)—
 - (i) before “where a person”, insert “unless the court directs otherwise,”; and
 - (ii) for “the acknowledgment of service must be accompanied by” substitute “that person must within 28 days of such service file”;
- (c) in paragraph (7)—
 - (i) before “where a person”, insert “unless the court directs otherwise,”; and
 - (ii) for “the acknowledgment of service must be accompanied by” substitute “that person must within 28 days of such service file”; and
- (d) omit paragraph (10).

37. In rule 77, after paragraph (4) insert—

37.—“(5) Where the application seeks solely to withdraw an existing application—

- (a) the applicant must file a written request for permission setting out succinctly the reasons for the request;
- (b) the request must be in an application notice;
- (c) the court may permit an application to be made orally at a hearing or in such alternative written form as it thinks fit.

(6) Where the court deals with a written request under paragraph (5) without a hearing, rule 89 applies to any order so made.

(Rule 87A requires the court’s permission to withdraw proceedings.)”.

38. After rule 81, insert—

“Security for costs

81A.—(1) A respondent to any application may apply for security for the respondent’s costs of the proceedings.

(2) An application for security for costs must be supported by written evidence.

(3) Where the court makes an order for security for costs, it must—

- (a) determine the amount of security; and
- (b) direct—

- (i) the manner in which; and
- (ii) the time within which,

the security must be given.

Conditions to be satisfied

81B.—(1) The court may make an order for security for costs under rule 81A—

(a) if it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and

(b) if—

- (i) one or more of the conditions in paragraph (2) applies; or
- (ii) an enactment permits the court to require security for costs.

(2) The conditions are—

(a) the applicant is—

- (i) resident out of the jurisdiction; but
- (ii) not resident in a Brussels Contracting State, a State bound by the Lugano Convention or a Regulation State, as defined in section 1(3) of the Civil Jurisdiction and Judgments Act 1982⁽¹¹⁾;

(b) the applicant is a company or other body (whether incorporated inside or outside Great Britain) and there is reason to believe that it will be unable to pay the respondent’s costs if ordered to do so;

(c) the applicant has changed address since proceedings were commenced with a view to avoiding the consequences of the litigation;

(d) the applicant failed to give an address, or gave an incorrect address, in the application form commencing the proceedings;

(e) the applicant is acting as a nominal applicant and there is reason to believe that the applicant will be unable to pay the respondent’s costs if ordered to do so;

(f) the applicant has taken steps in relation to the applicant’s assets that would make it difficult to enforce an order for costs against the applicant.

⁽¹¹⁾ 1982 c. 27. Section 1(3) has been amended by S.I. 1990/2591, article 6, section 2(5) and (6) of the Civil Jurisdiction and Judgments Act 1991 (c. 12), S.I. 2007/1655, regulation 2(1), (3)(a), S.I. 2009/3131, regulations 2. 3(1), 4, S.I. 2011/1215, regulations 3 and 4, and S.I. 2012/1809, article 3(1), Schedule Part 1.

Security for costs other than from the applicant

81C.—(1) The respondent may seek an order against a person other than the applicant, and the court may make an order for security for costs against that person, if—

- (a) it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and
- (b) one or more of the conditions in paragraph (2) applies.

(2) The conditions are that the person—

- (a) has assigned the right to the substantive matter to the applicant with a view to avoiding the possibility of a costs order being made against the person; or
- (b) has contributed or agreed to contribute to the applicant’s costs in return for a share of any money or property which the applicant may recover or be awarded in the proceedings; and

is a person against whom a costs order may be made.

(Rule 166 makes provision about costs orders against non-parties.)

Security for costs of an appeal

81D.—(1) The court may order security for costs of an appeal against—

- (a) an appellant;
- (b) a respondent who also appeals,

on the same grounds as it may order security for costs against an applicant under rule 81A.

(2) The court may also make an order under paragraph (1) where the appellant or the respondent who also appeals is a limited company and there is reason to believe it will be unable to pay the costs of the other parties to the appeal should its appeal be unsuccessful.”.

39. In rule 84—

(a) after paragraph (1), insert—

“(1A) Where permission to start proceedings is required, and whether or not it has been applied for, the court’s consideration under paragraph (1) shall include whether to grant or refuse permission without a hearing, or to direct a hearing to consider whether permission should be granted.”; and

(b) in paragraph (4), for the words after “state” to the end, substitute “what is to be dealt with at the hearing, including whether the matter is to be disposed of at that hearing”.

40. In rule 85—

(a) in paragraph (2), omit sub-paragraphs (c) and (d);

(b) at the end of the rule, insert—

“(Participation of P in proceedings is addressed in rule 3A (participation of P) and Part 17 (litigation friends and rule 3A representatives).)”.

41. For rule 86, substitute—

“Court’s jurisdiction in certain kinds of case to be exercised by certain judges

86.—(1) A practice direction made under this rule may specify certain categories of case to be dealt with by a specific judge or a specific class of judges.

(2) Applications in any matter other than those specified in the practice direction referred to in paragraph (1) may be dealt with by any judge.”.

42. In rule 87, in paragraph (3)—

- (a) omit “and” at the end of sub-paragraph (b);
- (b) for the full stop at the end of sub-paragraph (c), substitute “; and”; and
- (c) after sub-paragraph (c) insert—
 - “(d) “(d) discharging any litigation friend, accredited legal representative or representative.”

43. After rule 87, insert—

“Permission required to withdraw proceedings

- 87A.**—(1) Proceedings may only be withdrawn with the permission of the court.
- (2) An application to withdraw proceedings must be made in accordance with Part 10.”.

44. At the end of rule 88, insert—

“(Rule 3A deals with participation of P.)”

45. In rule 89—

- (a) for paragraph (6), substitute—
 - “(6) An order made by a court officer authorised under rule 7A may be reconsidered by any judge.
 - (6A) An order made by a Tier 1 Judge may be reconsidered by any judge.
 - (6B) An order made by a Tier 2 Judge may be reconsidered by any Tier 2 Judge or by a Tier 3 Judge.
 - (6C) An order made by a Tier 3 Judge may be reconsidered by any Tier 3 Judge.
 - (6D) In any case to which paragraphs (6A) to (6C) apply the reconsideration may be carried out by the judge who made the order being reconsidered.”;
- (b) for paragraph (7), substitute—
 - “(7) No application may be made seeking a reconsideration of—
 - (a) an order that has been made under paragraph (5); or
 - (b) an order granting or refusing permission to appeal.”;
- (c) in paragraph (8), for “a decision” substitute “an order”;
- (d) in paragraph (9), after “paragraph (5)” insert “or one granting or refusing permission to appeal”; and
- (e) after paragraph (10), insert—
 - “(Rule 7A(2)(c) provides that a court officer authorised under that rule may not deal with an application for the reconsideration of an order made by that court officer or another court officer.)”.

46. In rule 91—

- (a) in paragraph (1), for the words after “private” to the end, substitute “(whether or not contained in a document filed with the court) may be communicated in accordance with paragraph (2) or (2A)”;
- (b) in paragraph (2)(a)—
 - (i) after “publication”, insert “or communication”; and
 - (ii) after “information”, insert “or material”;

- (c) after paragraph (2), insert—
 “(2A) Subject to any direction of the court, information referred to in paragraph (1) may be communicated in accordance with Practice Direction 13A.”; and
- (d) after paragraph (3), insert—
 “(4) The court may on its own initiative or upon request authorise communication—
 (a) for the purposes set out in Practice Direction 13A; or
 (b) for such other purposes as it considers appropriate,
 of information held by it.”.
- 47.** In rule 95—
 (a) omit “and” at the end of sub-paragraph (c): and
 (b) for sub-paragraph (d), substitute—
 “(d) “(d) admit such evidence, whether written or oral, as it thinks fit; and
 (e) admit, accept and act upon such information, whether oral or written, from P, any protected party or any person who lacks competence to give evidence, as the court considers sufficient, although not given on oath and whether or not it would be admissible in a court of law apart from this rule.”.
- 48.** In rule 120—
 (a) in paragraph (1), omit “permission form or” in both places where those words occur;
 (b) in paragraph (2), omit “permission form or”; and
 (c) in the words in parentheses after paragraph (2), omit the words after “application form” to the end.
- 49.** For Part 17, substitute the new Part 17 in the Schedule to these Rules.
- 50.** In rule 155—
 (a) for paragraph (1), substitute—
 “(1) In this Part—
 “authorised court officer” means any officer of the Senior Courts Costs Office whom the Lord Chancellor has authorised to assess costs;
 “costs” include fees, charges, disbursements, expenses, remuneration and any reimbursement allowed to a litigant in person;
 “costs judge” means a taxing Master of the Senior Courts;
 “costs officer” means a costs judge or an authorised court officer;
 “detailed assessment” means the procedure by which the amount of costs or remuneration is decided by a costs officer in accordance with Part 47 of the Civil Procedure Rules 1998 (which are applied to proceedings under these Rules, with modifications, by rule 160);
 “fixed costs” are to be construed in accordance with the relevant practice direction;
 “fund” includes any estate or property held for the benefit of any person or class of persons, and any fund to which a trustee or personal representative is entitled in that capacity;
 “paying party” means a party liable to pay costs;
 “pro bono representation” means representation provided free of charge;

“receiving party” means a party entitled to be paid costs;

“summary assessment” means the procedure by which the court, when making an order about costs, orders payment of a sum of money instead of fixed costs or detailed assessment.”;

- (b) in paragraph (2), in sub-paragraph (a), for “his solicitor” substitute “their legal representative”; and
- (c) in paragraph (4), for “is to an agreement which satisfies all the conditions applicable to it by virtue of” substitute “means an agreement enforceable under”.

51. In rule 159, in paragraph (2)—

- (a) omit “and” at the end of sub-paragraph (c);
- (b) for the full stop at the end of sub-paragraph (d) substitute “; and”; and
- (c) after sub-paragraph (d) insert—
 - “(e) “(e) any failure by a party to comply with a rule, practice direction or court order.”.

52. For rule 160, substitute—

“Rules about costs in the Civil Procedure Rules to apply

160.—(1) Subject to the provisions of these Rules, Parts 44, 46 and 47 of the Civil Procedure Rules 1998⁽¹²⁾ (“the 1998 Rules”) apply with the modifications in this rule and such other modifications as may be appropriate, to costs incurred in relation to proceedings under these Rules as they apply to costs incurred in relation to proceedings in the High Court.

(2) Rules 3.12 to 3.18 of the 1998 Rules and Practice Direction 3E supporting those Rules do not apply in relation to proceedings under these Rules.

(3) The provisions of Part 47 of the 1998 Rules apply with the modifications in this rule and such other modifications as may be appropriate, to a detailed assessment of the remuneration of a deputy under these Rules as they apply to a detailed assessment of costs in proceedings to which the 1998 Rules apply.

(4) Where the definitions in Part 44 (referred to in Parts 44, 46 and 47) of the 1998 Rules are different from the definitions in rule 155 of these Rules, the latter definitions prevail.

(5) Rules 44.2(1) to (5), 44.5, 44.6, 44.9 and 44.13 to 44.18 of the 1998 Rules do not apply.

(6) For rule 46.1(1) of the 1998 Rules there is substituted—

“(1) This paragraph applies where a person applies for an order for specific disclosure before the commencement of proceedings.”.

(7) Rules 46.2, 46.5 and 46.10 to 46.14 of the 1998 Rules do not apply.

(8) In rule 47.3(1)(c) of the 1998 Rules, the words “unless the costs are being assessed under rule 46.4 (costs where money is payable to a child or protected party)” are omitted.

(9) In rule 47.3(2) of the 1998 Rules, the words “or a District Judge” are omitted.

(10) Rule 47.4(3) and (4) of the 1998 Rules do not apply.

(11) Rules 47.9(4), 47.10 and 47.11 of the 1998 Rules do not apply where the costs are to be paid by P or charged to P’s estate.”.

⁽¹²⁾ S.I. 1998/3132. Parts 43 to 48 were replaced with amended provisions by S.I. 2013/262, rules 15 and 16 and the Schedule.

53. In rule 166—

(a) in paragraph (1)—

(i) after “party to the proceedings” where those words first occur, insert “, that person must be”;

(ii) in sub-paragraph (a), omit “that person must be”;

(iii) omit “and” at the end of sub-paragraph (a);

(iv) after sub-paragraph (a), insert—

“(aa) “(aa) served with such documents as the court may direct; and”;

(v) in sub-paragraph (b)—

(aa) omit “he must be”; and

(bb) for “a hearing” substitute “any hearing”; and

(b) in paragraph (2), for “Legal Services Commission” substitute “Lord Chancellor in proceedings in which the Lord Chancellor has provided legal aid to a party to the proceedings”.

54. For rule 169, substitute—**“Scope of this Part****169.** This Part applies to an appeal against any decision of the court.”.**55.** In rule 170, in paragraph (1)—

(a) for the full stop at the end of sub-paragraph (d), substitute “; and”; and

(b) after sub-paragraph (d) insert—

“(e) “(e) “a second appeal” means an appeal from a decision of a judge of the court which was itself made on appeal from a judge of the court.”.

56. In rule 171, after paragraph (2) insert—

“(3) Any person bound by an order of the court by virtue of rule 74 (persons to be bound as if parties) may seek permission under this Part.

(4) All parties to an appeal must comply with any relevant practice direction.

(5) Where permission is required, it is to be granted or refused in accordance with this Part.”.

57. After rule 171, insert—**“Destination of appeals****171A.—**(1) An appeal from a decision of a judge of the court shall lie to the Court of Appeal in the following cases—

(a) where it is an appeal from a decision of a Tier 3 Judge; or

(b) where it is a second appeal.

(2) Subject to paragraph (1) and to any alternative provision made by the relevant practice direction—

(a) where the first instance judge was a Tier 1 Judge, any appeal shall be heard by a Tier 2 Judge;

(b) where the first instance judge was a Tier 2 Judge, any appeal shall be heard by a Tier 3 Judge.

(3) No appeal may be made against a decision of a court officer authorised under rule 7A.
(A decision of a court officer authorised under rule 7A can be reconsidered by a judge under rule 89.)

Permission to appeal – appeals to the Court of Appeal

171B.—(1) Subject to rule 172A, an appeal to the Court of Appeal against a decision of a judge of the court may not be made without permission.

(2) Where an appeal to the Court of Appeal is made from a decision of a Tier 3 Judge, permission may be granted by the first instance judge or by the Court of Appeal, unless the appeal is a second appeal.

(3) Where an appeal to the Court of Appeal is a second appeal, permission may only be granted by the Court of Appeal.

(4) No appeal shall lie against—

- (a) the granting or refusal of permission under this rule; or
- (b) an order allowing an extension of time for appealing from an order.

(The procedure for an appeal from a decision of a judge of the court to the Court of Appeal, including requirements for permission, is governed by the Civil Procedure Rules 1998.)”

58. For rule 172, substitute—

“Permission to appeal – other cases

172.—(1) Subject to rules 171B and 172A, an appeal against a decision of the court may not be made without permission.

(2) An application for permission to appeal may be made to—

- (a) the first instance judge; or
- (b) another judge who satisfies the relevant condition in paragraph (4) or (5).

(3) Where an application for permission is refused by the first instance judge, a further application for permission may be made to a judge who satisfies the relevant condition in paragraph (4) or (5).

(4) Where the decision sought to be appealed is a decision of a Tier 1 Judge, permission may also be granted or refused by—

- (a) a Tier 2 Judge; or
- (b) a Tier 3 Judge.

(5) Where the decision sought to be appealed is a decision of a Tier 2 Judge, permission may also be granted or refused by a Tier 3 Judge.

(6) Subject to paragraph (7) and except where another rule or a practice direction provides otherwise, where a judge who satisfies the relevant condition in paragraph (4) or (5), without a hearing, refuses permission to appeal against the decision of the first instance judge, the person seeking permission may request the decision to be reconsidered at a hearing.

(7) Where a Tier 3 Judge or the Senior Judge refuses permission to appeal without a hearing and considers that the application is totally without merit, that judge may order that the person seeking permission may not request the decision to be reconsidered at a hearing.

(8) Subject to paragraph (6), no appeal shall lie against—

- (a) the granting or refusal of permission under this rule; or

- (b) an order allowing an extension of time for appealing from an order.

Appeal against an order for committal to prison

172A. Permission is not required to appeal against an order for committal to prison.”.

- 59.** In rule 173, after paragraph (2), insert—

“(3) Paragraphs (1) and (2) do not apply to second appeals.”.

- 60.** For rule 174, substitute—

“Power to treat application for permission to appeal as application for reconsideration under rule 89

174.—(1) Where a person seeking permission to appeal a decision would be entitled to seek reconsideration of that decision under rule 89 (or would have been so entitled had the application been made within 21 days of the date of that decision)—

- (a) a practice direction may provide; or
 (b) the court may direct,

that an application for permission shall be treated as an application for reconsideration under rule 89.

(2) In any case where paragraph (1) applies, the decision in question shall be reconsidered in accordance with the provisions of rule 89.”.

- 61.** In rule 175, in paragraph (1), for “from the appeal judge” substitute “a judge other than the first instance judge”.

- 62.** In rule 176—

- (a) in paragraph (1)(a), for “the appeal judge to appeal” substitute “a judge other than the first instance judge”;
- (b) in paragraph (2), for “the appeal judge” substitute “a judge other than the first instance judge”; and
- (c) in paragraph (4)—
- (i) in sub-paragraph (a), omit “to appeal” in both places where those words occur; and
- (ii) in sub-paragraph (b)—
- (aa) for “the appeal judge” substitute “a judge other than the first instance judge”; and
- (bb) omit “to appeal”; and
- (iii) in sub-paragraph (c) omit “to appeal”.

- 63.** Omit rule 177(1).

- 64.** Omit rules 180 to 182.

- 65.** In rule 184—

- (a) in the heading, omit “and RSC Orders”;
- (b) in sub-paragraph (a)—
- (i) after “(Third Party Debt Orders)”, for “and” substitute a comma;
- (ii) after “(Charging Orders, Stop Orders and Stop Notices)” insert “, 83 (Writs and Warrants – General Provisions) and 84 (Enforcement by Taking Control of Goods)”;
- and

- (iii) for “; and” at the end of sub-paragraph (a) substitute a full stop; and
- (c) omit sub-paragraph (b).

Transitional provision

66.—(1) The changes made by rules 8(c), 10, 11, 13, 22 to 30, 36(d) and 48 of these Rules apply only in relation to—

- (a) proceedings commenced on or after 1st July 2015; and
- (b) applications made on or after 1st July 2015 in existing proceedings whenever commenced.

(2) The changes made by rules 8(e), 45, 55 and 57 to 64 of these Rules apply only where the decision or order against which it is sought to appeal, or in relation to which a reconsideration is sought, was made on or after 6th April 2015.

(3) The changes made by rule 16 of these Rules apply only where service is to be effected on or after 1st July 2015.

(4) The changes made by rules 17 to 21 of these Rules apply only where the requirement for notification arises on or after 1st July 2015.

(5) The changes made by rule 31 of these Rules apply only where the application form is received on or after 1st July 2015.

(6) The changes made by rules 32 to 35 and 36(a) to (c) of these Rules apply only where the period in question starts on or after 1st July 2015.

(7) The changes made by rules 37 and 43 of these Rules apply only in relation to applications to withdraw made on or after 1st July 2015.

Sir James Munby, P
President of the Family Division

I allow these Rules
Signed by authority of the Lord Chancellor

4th March 2015

Simon Hughes
Minister of State
Ministry of Justice

SCHEDULE

Rule 49

“PART 17

LITIGATION FRIENDS AND RULE 3A REPRESENTATIVES

SECTION 1 – LITIGATION FRIENDS

Who may act as a litigation friend

140.—(1) A person may act as a litigation friend on behalf of a person mentioned in paragraph (2) if that person—

- (a) can fairly and competently conduct proceedings on behalf of that person; and
- (b) has no interests adverse to those of that person.

(2) The persons for whom a litigation friend may act are—

- (a) P;
- (b) a child;
- (c) a protected party.

Requirement for a litigation friend

141.—(1) This rule does not apply to P (whether P is an adult or a child).

(2) A protected party (if a party to the proceedings) must have a litigation friend.

(3) A child (if a party to the proceedings) must have a litigation friend to conduct those proceedings on that child’s behalf unless the court makes an order under paragraph (4).

(4) The court may make an order permitting a child to conduct proceedings without a litigation friend.

(5) An application for an order under paragraph (4)—

- (a) may be made by the child;
- (b) if the child already has a litigation friend, must be made on notice to the litigation friend; and
- (c) if the child has no litigation friend, may be made without notice.

(6) Where—

- (a) the court has made an order under paragraph (4); and
- (b) it subsequently appears to the court that it is desirable for a litigation friend to conduct the proceedings on behalf of the child,

the court may appoint a person to the child’s litigation friend.

Litigation friend without a court order

142.—(1) This rule does not apply—

- (a) in relation to P;
- (b) where the court has appointed a person under rule 143 or 144; or
- (c) where the Official Solicitor is to act as a litigation friend.

(2) A deputy with the power to conduct legal proceedings in the name of a protected party or on the protected party's behalf is entitled to be a litigation friend of the protected party in any proceedings to which the deputy's power relates.

(3) If no-one has been appointed by the court or, in the case of a protected party, there is no deputy with the power to conduct proceedings, a person who wishes to act as a litigation friend must—

- (a) file a certificate of suitability stating that they satisfy the conditions in rule 140(1); and
- (b) serve the certificate of suitability on—
 - (i) the person on whom an application form is to be served in accordance with rule 32 (service on children and protected parties); and
 - (ii) every other person who is a party to the proceedings.

(4) If the person referred to in paragraph (2) wishes to act as a litigation friend for the protected party, that person must file and serve on the persons mentioned in paragraph (3)(b) a copy of the court order which appointed that person.

Litigation friend by court order

143.—(1) The court may make an order appointing—

- (a) the Official Solicitor; or
- (b) some other person,

to act as a litigation friend for a protected party, a child or P.

(2) The court may make an order under paragraph (1)—

- (a) either on its own initiative or on the application of any person; but
- (b) only with the consent of the person to be appointed.

(3) An application for an order under paragraph (1) must be supported by evidence.

(4) The court may not appoint a litigation friend under this rule unless it is satisfied that the person to be appointed satisfies the conditions in rule 140(1).

(5) The court may at any stage of the proceedings give directions as to the appointment of a litigation friend.

(Rule 3A requires the court to consider how P should participate in the proceedings, which may be by way of being made a party and the appointment of a litigation friend under this Part.)

Court's power to prevent a person from acting as a litigation friend or to bring an end to an appointment of a person as a litigation friend or to appoint another one

144.—(1) The court may either on its own initiative or on the application of any person—

- (a) direct that a person may not act as a litigation friend;
- (b) bring to an end a litigation friend's appointment; or
- (c) appoint a new litigation friend in place of an existing one.

(2) If an application for an order under paragraph (1) is based on the conduct of the litigation friend, it must be supported by evidence.

(3) The court may not appoint a litigation friend under this rule unless it is satisfied that the person to be appointed satisfies the conditions in rule 140(1).

(4) The appointment of a litigation friend continues until brought to an end by court order.

(Rule 87 applies if P has capacity in relation to the matter or matters to which the application relates.)

Appointment of litigation friend by court order – supplementary

145. The applicant must serve a copy of an application for an order under rule 143 or 144 on—

- (a) the person on whom an application form is to be served in accordance with rule 32 (service on children and protected parties);
- (b) every other person who is a party to the proceedings;
- (c) any person who is the litigation friend, or who is purporting to act as the litigation friend, when the application is made; and
- (d) unless that person is the applicant, the person who it is proposed should be the litigation friend,

as soon as practicable and in any event within 14 days of the date on which the application was issued.

Procedure where appointment of a litigation friend comes to an end for a child

145A. When a child reaches 18, provided the child is neither—

- (a) P; nor
- (b) a protected party,

the litigation friend’s appointment ends and the child must serve notice on every other party—

- (i) stating that the child has reached full age;
- (ii) stating that the appointment of the litigation friend has ended; and
- (iii) providing an address for service.

Practice direction in relation to litigation friends

146. A practice direction may make additional or supplementary provision in relation to litigation friends.

SECTION 2 – RULE 3A REPRESENTATIVES

Interpretation

146A. In this Section, references to “rule 3A representatives” are references to both accredited legal representatives and representatives.

(“Accredited legal representative” and “representative” are defined in rule 6.)

Who may act as a rule 3A representative for P

147. A person may act as an accredited legal representative, or a representative, for P, if that person can fairly and competently discharge his or her functions on behalf of P.

Rule 3A representative by court order

148.—(1) The court may make an order appointing a person to act as a representative, or an accredited legal representative, for P.

- (2) The court may make an order under paragraph (1)—
 - (a) either of its own initiative or on the application of any person; but
 - (b) only with the consent of the person to be appointed.

(3) The court may not appoint a representative or an accredited legal representative under this rule unless it is satisfied that the person to be appointed satisfies the conditions in rule 147.

(4) The court may at any stage of the proceedings give directions as to the terms of appointment of a representative or an accredited legal representative.

(Rule 3A requires the court to consider how P should participate in the proceedings, which may be by way of the appointment of a representative or accredited legal representative under this Part.)

Application by rule 3A representative or by P for directions

148A. A representative, an accredited legal representative or P may, at any time and without giving notice to the other parties, apply to the court for directions relating to the performance, terms of appointment or continuation of the appointment of the representative or accredited legal representative.

Court's power to prevent a person from acting as a rule 3A representative or to bring an end to an appointment of a person as a rule 3A representative or appoint another one

- 148B.**—(1) The court may, either of its own initiative or on the application of any person—
- (a) direct that a person may not act as a representative or accredited legal representative;
 - (b) bring to an end a representative's or accredited legal representative's appointment;
 - (c) appoint a new representative or accredited legal representative in place of an existing one; or
 - (d) vary the terms of a representative's or accredited legal representative's appointment.

(2) If an application for an order under paragraph (1) is based on the conduct of the representative or accredited legal representative, it must be supported by evidence.

(3) The court may not appoint a representative or accredited legal representative under this rule unless it is satisfied that the person to be appointed satisfies the conditions in rule 147.

(4) The appointment of a representative or accredited legal representative continues until brought to an end by court order.

(5) The court must bring to an end the appointment of a representative or an accredited legal representative if P has capacity to appoint such a representative and does not wish the appointment by the court to continue.

Appointment of rule 3A representative by court order – supplementary

148C. The applicant must serve a copy of an application for an order under rule 148 or rule 148B on—

- (a) the person on whom an application form is to be served in accordance with rule 32 (service on children and protected parties);
- (b) every other person who is a party to the proceedings;
- (c) any person who is the representative, or accredited legal representative, purporting to act as such representative, when the application is made; and

(d) unless that person is the applicant, the person who it is proposed should be the representative or accredited legal representative,
as soon as practicable and in any event within 14 days of the date on which the application was issued.

Practice direction in relation to rule 3A representatives

149. A practice direction may make additional or supplementary provision in relation to representatives or accredited legal representatives.”

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Court of Protection Rules 2007 (“the 2007 Rules”) by—

- in Part 3 of the 2007 Rules (the overriding objective)—
 - inserting a new rule 3A making provision for the court to consider how “P” should be enabled to participate in proceedings; and
 - amending rule 4 to reinforce the duty of the parties to co-operate so as to further the overriding objective of dealing with cases justly having regard to the principles in the Mental Capacity Act 2005;
- in Part 5 of the 2007 Rules (interpretation and general provisions)—
 - amending and adding definitions in rule 6 (interpretation) for the purposes of amendments made elsewhere in the 2007 Rules;
 - replacing rule 9 (application of the Civil Procedure Rules) with a new rule 9 allowing for application of the Family Procedure Rules as well as the Civil Procedure Rules, and a new rule 9A enabling the rules to be applied with modifications for the purposes of pilot schemes;
- in Parts 4 (court documents) and 5 (general case management powers), making amendments consequential on changes elsewhere in the 2007 Rules;
- in Part 6 (service of documents), introducing free-standing rules on service of documents out of the jurisdiction in place of provision incorporating provisions of the Family Procedure Rules 2010 by reference;
- in Part 7 (notifying P), making amendments to make notification less burdensome and more effective, and amendments consequential on changes elsewhere in the 2007 Rules;
- in Parts 8 (permission), 9 (how to start proceedings) and 12 (dealing with applications), making amendments to remove the need for a separate application where permission is required, removing the requirement for permission in certain cases and enabling the requirement for permission to be removed from other types of case;
- in Part 10 (applications within proceedings), introducing free-standing rules on security for costs in place of provision incorporating provisions of the Civil Procedure Rules 1998 by reference, together with amendments consequential on changes elsewhere in the 2007 Rules;

- in Part 12 (dealing with applications), making amendments in relation to allocation of types of cases to levels of judge, reflecting the introduction of Tier 1, Tier 2 and Tier 3 categories of judge following widening of the pool of judges who may be judges of the Court of Protection by virtue of changes made by the Crime and Courts Act 2013⁽¹³⁾;
- in Part 13 (hearings), making amendments to allow communication of information about proceedings to third parties for specified purposes (for example, research), and for the court to be able to do this on its own initiative;
- replacing Part 17 with a revised Part (litigation friends and rule 3A representatives) making provision about who may act as a litigation friend for P or as a representative or accredited legal representative as provided for in the new rule 3A; how a litigation friend or such “rule 3A representative” is appointed; and how such an appointment may be brought to an end;
- in Part 19 (costs), making amendments to ensure that where provisions of the Civil Procedure Rules are incorporated by reference, they are the provisions following amendment as part of the implementation of Part 2 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012⁽¹⁴⁾;
- in Part 20 (appeals), making provision for appeals within the Court of Protection between the different tiers of judge, and revised provision about appeals to the Court of Appeal;
- in Part 21 (enforcement), making amendments to ensure that where provisions of the Civil Procedure Rules are incorporated by reference, they are the provisions following recent amendment.

⁽¹³⁾ 2013 c. 22: see Part 3 of Schedule 14, amending section 46 of the Mental Capacity Act 2005.

⁽¹⁴⁾ 2012 c. 10.