

2015 No.

FAMILY PROCEEDINGS

SENIOR COURTS OF ENGLAND AND WALES

FAMILY COURT, ENGLAND AND WALES

The Family Procedure (Amendment No. X) Rules 2015

<i>Made</i> - - - -	.xxx
<i>Laid before Parliament</i>	.xxx
<i>Coming into force</i> - -	***

The Family Procedure Rule Committee, in exercise of the powers conferred by sections 75 and 76 of the Courts Act 2003(a), makes the following Rules:

1. These Rules may be cited as the Family Procedure (Amendment No. X) Rules 2015 and come into force on XXXX.
2. After Part 3 of the Family Procedure Rules 2010(b) insert—

“PART 3A

CHILDREN AND VULNERABLE PERSONS: PARTICIPATION IN PROCEEDINGS AND GIVING EVIDENCE

Application of this Part and interpretation

3A.1.—(1) The rules in this Part apply to proceedings where—

- (a) a child is involved;
- (b) the participation of a party in the proceedings is likely to be diminished; or
- (c) the quality of evidence given by a party or witness is likely to be diminished.

(2) 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—

(a) 2003 c. 39.
(b) S.I. 2010/2955

- (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 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) “mental disorder” has the meaning given in section 1 of the Mental Health Act 1983;
- (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.

The court’s duty to consider whether a child should participate in proceedings

3A.2.—(1) The court must consider whether a child should participate in the proceedings by reason of meeting one of the conditions set out in paragraphs 2(a), (b) or (c) and if so, make a direction that the child should participate.

(2) The conditions are that the child is—

- (a) a party to the proceedings;
- (b) the subject of the proceedings but not a party to them; or
- (c) otherwise affected by matters in the proceedings.

(3) Before making a direction under paragraph (1), the court must consider any views expressed by the child about participating in the proceedings taking into account the child’s age and maturity.

(The court must make a child a party in care and supervision and other specified proceedings unless it is satisfied that it is not necessary to do so to safeguard the interests of the child (FPR Part 12 and 16.3).

In other proceedings the court may make a child a party to proceedings if it considers it is in the best interests of the child to do so or a provision in the rules provides for a child to be a party (FPR 16.4 and 5).).

Court’s duty to consider how a child can participate in proceedings

3A.3.—(1) If the court decides that a child should participate in the proceedings as mentioned in rule 3A.2, the court must consider how the child is to participate and whether it is necessary to make one or more of the directions in paragraph (2) to assist the child.

(2) The directions are case management directions and directions that—

- (a) the child should have information about the court proceedings;
- (b) the child should have the opportunity to—
 - (i) visit the court;
 - (ii) meet or otherwise communicate with the judge (directly or indirectly) in accordance with the guidance in Practice Direction xxx; or
 - (iii) attend a hearing or part of it;

- (c) the child should be joined as a party where a provision in these rules gives the court power to join the child to be a party and the child has not already been joined;
- (d) the child should be represented by a litigation friend, officer of the service or wales family proceedings officer in accordance with Part 16 of these rules where such a representative has not already been appointed;
- (e) the child should give evidence in accordance with guidance in Practice Direction xxx;
- (f) the child should have the assistance of one or more measures in rule 3A.7;
- (g) the child should be informed of the outcome of the proceedings in a way which is appropriate for that child.

(3) If the court does not make a direction under paragraph (2), the court order must state that the court considers the child's interest and position can properly be secured without any direction under paragraph (2) being made or by making an alternative direction meeting the overriding objective.

(4) Before making directions, the court must consider any views expressed by the child about how the child wants to participate in the proceedings or give evidence taking into account the child's age and maturity.

(FPR 12.14(3) makes provision for proceedings or any part of them to take place in the absence of a child who is a party to proceedings if the court considers it is in the interests of the child and the child is represented by a children's guardian or solicitor.

Any power of the court to give directions includes power to vary or revoke them FPR 4.1(7).)

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 is likely to be diminished and, if so whether it is necessary to make one or more directions in paragraph (2) to assist the party.

(2) The directions are case management directions and directions that—

- (a) the party should have the assistance of one or more measures in rule 3A.7;
- (b) the party should be a protected party.

(Part 15 contains rules about the representation of a protected party)

(3) If the court does not make a direction under paragraph (2), the court order must state that the court considers the party's interest and position can properly be secured without any direction under paragraph (2) being made or by making an alternative direction meeting the overriding objective.

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

(5) This rule does not apply where the party is a child.

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 and, if so whether it is necessary to make one or more of the directions in paragraph (2) to assist the party or witness give evidence.

(2) The directions are case management directions and directions that the party or witness should have the assistance of one or more measures in rule 3A.7;

(3) If the court does not make a direction under paragraph (2), the court order must state that the court considers the interest and position of the party or witness can properly be

secured without any direction under this paragraph being made or by making an alternative direction meeting the overriding objective.

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

(5) This rule does not apply where the party or witness is a child.

What the court must have regard to

3A.6. When deciding whether to give a direction as mentioned in rules 3A.3(2), 3A.4(2) or 3A.5(2) the court is to have regard in particular to—

- (a) whether the child, 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 of the party or witness;
- (f) the social and cultural background and ethnic origins of the child, party or witness;
- (g) the domestic circumstances and religious beliefs of the child, party or witness;
- (h) any behaviour towards the child, 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 of the family of the child, 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) whether a measure is available in the court;
- (k) the costs of any available measure; and
- (l) any matters set out in Practice Direction xxx

Measures

3A.7.—(1) The measures referred to in rules 3A.3(2)(f), 3A.4(2) and 3A.5(2) are those which —

- (a) prevent a party or witness from seeing the other party;
- (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 xxx.

(2) If the family court gives a direction for a measure which is not available where the court is sitting, it must 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 gives a direction for a measure which is not available where the court is sitting, it must 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 in the court, in another location where the family court or the High Court sits and which is convenient or out of court.

(5) Practice Direction xx gives guidance about what measures are available.

When the duties of the court apply

3A.8.—(1) The court’s duty to consider the matters mentioned in rules 3A.2(1),3A.3(1), 3A.4(1) and 3A.5(1) applies as soon as possible after the start of proceedings and in—

- (a) public law proceedings referred to in rule 12.2, no later than the Case Management Conference(**a**);
- (b) private law proceedings referred to in rule 12.2, no later than the First Hearing Dispute Resolution Appointment(**b**);
- (c) adoption proceedings and placement proceedings, no later than the first directions hearing(**c**);
- (d) proceedings for a financial remedy, no later than the first appointment(**d**);
- (e) a defended case referred to in rule 7.1(3), no later than a case management hearing directed by the court under rule 7.20.

(2) The court’s duty to consider the matters mentioned in rules 3A.2(1),3A.3(1),3A.4(1) and 3A.5 (1) continues until the resolution of the proceedings.

Application for directions

3A.9.—(1) Any application for directions under this Part must—

- (a) explain why the participation of a party to the proceedings is likely to be diminished;
- (b) explain why the quality of evidence given by a party or witness is likely to be diminished;
- (c) explain why the direction sought is likely to—
 - (i) improve the ability of a child or other party to participate in the proceedings;
 - or
 - (ii) improve the quality of evidence given by a party or witness;
- (d) propose the direction that is likely to maximise as far as practicable—
 - (i) the participation of the child or party in the proceedings;
 - (ii) the quality of evidence given;
- (e) record any views given by a party or witness about the likelihood of a direction improving the quality of the evidence which that party or witness is to give and
- (f) explain any of the other matters set out in Practice Direction xxx.

(2) Any application for directions may be made on the application form initiating the proceedings or during the proceedings by any person filing an application notice.

(3) Part 18 applies to an application for directions during the proceedings.

(a) See rule 12.25 and Practice Direction 12A.
(b) See rule 12.31 and Practice Direction 12B.
(c) See rule 14.8.
(d) See rule 9.15.

Procedure where court makes directions of its own initiative

3A.10. Where the court proposes to make directions mentioned in rules 3A.2(2), 3A.3(2), 3A.4(2) or 3A.5(2) of its own initiative the procedure set out in rule 4.3(2) to (6) applies.

Recording reasons for directions or a measure not being available on court order

3A.11.—(1) In addition to any statement under rules 3A.3(3), 3A.4(3) or 3A.5(3), the court must set out its reasons for the directions given, varied or revoked on the court order.

(2) 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 .

(3) If a direction is given under rule 3A.2(1) the court order must state whether the child falls within 3A.2 (1),(a),(b) or (c).