

PART 3A - VULNERABLE PERSONS: PARTICIPATION IN PROCEEDINGS AND GIVING EVIDENCE

Interpretation

3A.1. In this Part—

“child” means a person under the age of 18 years whether or not the child is the subject of the proceedings, except that—

(a) 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

(b) 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;

“intermediary” means a person whose function is to—

(a) communicate questions put to a witness or party;

(b) communicate to any person asking such questions the answers given by the witness or party in reply to them; and

(c) explain such questions or answers so far as is necessary to enable them to be understood by the witness or party or by the person asking such questions;

“live link” means a live television link or other arrangement whereby a witness or party, 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 or party;

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

“participation direction” means—

(a) a general case management direction made for the purpose of assisting a witness or party to give evidence or participate in proceedings; or

(b) a direction that a witness or party should have the assistance of one or more of the measures in rule 3A.8; and references to “quality of evidence” are to its quality in terms of completeness, coherence and accuracy; and for this purpose “coherence” refers to a witness’s or a party’s ability in giving evidence to give answers which address the questions put to the witness or the party and which can be understood both individually and collectively.

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 rule 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.

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 must have regard in particular to—

(a) the impact of any actual or perceived intimidation, including any behaviour towards the party or witness on the part of—

(i) any other party or other witness to the proceedings or members of the family or associates of that other party or other witness; or

(ii) any members of the family of the party or witness;

(b) 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;
- (c) the nature and extent of the information before the court;
- (d) the issues arising in the proceedings including (but not limited to) any concerns arising in relation to abuse;
- (e) whether a matter is contentious;
- (f) the age, maturity and understanding of the party or witness;
- (g) the social and cultural background and ethnic origins of the party or witness;
- (h) the domestic circumstances and religious beliefs 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 direction which may be made;
- (k) whether any measure is available to the court;
- (l) the costs of any available measure; and
- (m) any other matter 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 or witness 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 High 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 duties under rules 3A.3 to 3A.6 apply as soon as possible after the start of proceedings and continue 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) Subject to paragraph (2), the Part 18 procedure applies to an application for directions made during the proceedings.
- (4) This rule is subject to any direction of the court.

Procedure where the court makes directions of its own initiative

3A.11

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.