

PRACTICE DIRECTION – TRANSITORY AND TRANSITIONAL PROVISIONS

This practice direction supplements Part 22 of the Court of Protection Rules

PRACTICE DIRECTION A – TRANSITIONAL PROVISIONS

Introductory

1. In this practice direction:
 - (a) “commencement” means 1st October 2007;
 - (b) “pending proceedings” means proceedings on an application within paragraph 3 or 12 of Schedule 5 to the Act; and
 - (c) “the Previous Rules” means the Court of Protection Rules 2001,¹ as in force immediately before commencement.

Applications received after commencement

2. If an application under the Previous Rules is received at the court on or after commencement, it will be returned.

Applications received before commencement

3. The general presumption will be that:
 - (a) any step in pending proceedings which is to be taken on or after commencement is to be taken under the Rules; and
 - (b) pending proceedings are to be decided having regard to the Rules.
4. However, the general presumption is subject to:
 - (a) any contrary provision in paragraphs 5 to 8 of this practice direction; and
 - (b) any directions given by the court (including directions which disapply one or more of those paragraphs).
5. Any step already taken in the proceedings before commencement in accordance with the Previous Rules will remain valid on or after commencement.

¹ S.I. 2001/824.

6. A party to the proceedings will not normally be required to take any action that would amount to taking that step again under the Rules. For example, if evidence has been given in accordance with Part 5 of the Previous Rules, a person will not normally be required to comply with the requirements in Part 14 of the Rules (admissions, evidence and depositions).
7. Any question as to whether permission is required for the making of the application which commenced the pending proceedings will normally be determined in accordance with the Previous Rules.
8. If after commencement a party to the proceedings has served a document, or given notification, in accordance with:
 - (a) Part 4 of the Previous Rules (which makes provisions as to service of documents and giving of notice); or
 - (b) rule 10(4) of the Enduring Powers of Attorney Rules 2001 (notifications in connection with certain applications relating to enduring powers of attorney),² the court may treat that as valid service or notification. If it does, it will give directions as to the extent to which it is appropriate to disapply rules 66 to 70 of the Rules or to modify the application of the Rules to the proceedings.

Case management

9. Part 2 of the Rules (the overriding objective) will apply to all pending proceedings and a court officer may at any time refer the proceedings to a judge so that case management decisions can be made about the proceedings and the conduct of any hearing.
10. A judge may at any time direct how the Rules are to apply to the proceedings.

Orders made before commencement

11. Where a court order has been made before commencement under the Previous Rules, the order must still be complied with on or after commencement.

² S.I. 2001/825.

Costs

12. Any assessment of costs that takes place on or after commencement will be in accordance with Part 19 of the Rules.