

2012 No.

FAMILY PROCEEDINGS

SENIOR COURTS OF ENGLAND AND WALES

COUNTY COURTS, ENGLAND AND WALES

MAGISTRATES' COURTS, ENGLAND AND WALES

The Family Procedure (Amendment) (No.3) Rules 2012

<i>Made</i> - - - -	2012
<i>Laid before Parliament</i>	***
<i>Coming into force</i> - -	2012

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.3) Rules 2012 and come into force on xxx 2012.

Amendments to the Family Procedure Rules 2010

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

3. For rule 1.4 substitute—

“Court’s duty to manage cases

1.4.—(1) The court must further the overriding objective by actively managing cases.

(2) Active case management includes—

- (a) setting timetables or otherwise controlling the progress of the case;
- (b) identifying at an early stage—

(a) c.39. Section 75 was amended by sections 15(1) and 146 of and paragraphs 308 and 338 of Schedule 4 and Part 2 of Schedule 18 to the Constitutional Reform Act 2005 (c.4). Section 76 was amended by section 26(7) of the Children Act 2004, section 261(1) of and paragraph 172 of Schedule 27 to the Civil Partnership Act 2004 (c.33), section 12(2) of and paragraph 29 of Part 2 of Schedule 1 to the Constitutional Reform Act 2005 and section 25 of and paragraph 14 of Part 2 of Schedule 3 to the Children, Schools and Families Act 2010 (c.26).

(b) Section 79 was amended by sections 15(1) and 146 of and paragraphs 308 and 341(1) of Schedule 4 and Part 2 of Schedule 18 to the Constitutional Reform Act 2005.

(c) S.I.2010/2955.

- (i) the issues; and
- (ii) who should be a party to the proceedings;
- (c) deciding promptly—
 - (i) which issues need full investigation and hearing and which do not; and
 - (ii) the procedure to be followed in the case;
- (d) deciding the order in which issues are to be resolved;
- (e) controlling the use of expert evidence;
- (f) encouraging the parties to use an alternative dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure;
- (g) helping the parties to settle the whole or part of the case;
- (h) encouraging the parties to co-operate with each other in the conduct of proceedings;
- (i) considering whether the likely benefits of taking a particular step justify the cost of taking it;
- (j) dealing with as many aspects of the case as it can on the same occasion;
- (k) dealing with the case without the parties needing to attend at court;
- (l) making use of technology; and
- (m) giving directions to ensure that the case proceeds quickly and efficiently.”.

4. Omit rules 12.20 and 12.74.

5. For “proceedings relating to children” substitute “children proceedings” in —

- (a) the headings to Part 12 and to Part 12, Chapter 7; and
- (b) rule 12.43(a).

6. For Part 25 substitute Part 25 (Experts and assessors) as set out in the Schedule to these Rules.

I allow these Rules

Signed by authority of the Lord Chancellor

Date

Parliamentary Under Secretary of State

Ministry of Justice

SCHEDULE

Rule 6

“PART 25

EXPERTS AND ASSESSORS

Duty to restrict expert evidence

25.1. Expert evidence will be restricted to that which in the opinion of the court is necessary to assist the court to resolve the proceedings.

Interpretation

25.2. In this Part—

- (a) “children proceedings” means—

- (i) proceedings referred to in rules 12.1 and 14.1 and any other proceedings which relate wholly or mainly to the maintenance or upbringing of a minor; and
- (ii) applications for permission to start proceedings mentioned in paragraph (i) or made in the course of those proceedings;
- (b) “expert” means a person instructed to give or prepare expert evidence for the purpose of family proceedings;
- (c) “expert evidence” means evidence, in any form, given by a person dealing with matters on which the person is qualified to give expert evidence, other than—
 - (i) evidence about the matters mentioned in section 94(1) of the 2002 Act (suitability for adoption etc) given by a person within a description prescribed for the purposes of that subsection;
 - (ii) evidence given by an officer of the service in that capacity, or evidence given by a Welsh family proceedings officer,

(Regulation 3 of the Restriction on the Preparation of Adoption Reports Regulations 2005 (S.I. 2005/1711) sets out which persons are within a prescribed description for the purposes of section 94(1) of the 2002 Act.);

- (d) “Single joint expert” means an expert instructed to prepare a report for the court on behalf of two or more of the parties (including the applicant) to the proceedings.

Experts- overriding duty to the court

25.3.—(1) It is the duty of experts to help the court on matters within their expertise.

(2) This duty overrides any obligation to the person from whom experts have received instructions or by whom they are paid.

(Particular duties of an expert are set out in Practice Direction 25B (The Duties of An Expert, the Expert’s Report and Arrangements for an Expert to Attend Court.)

Court’s power to restrict expert evidence

25.4.—(1) No party may call an expert or put in evidence an expert’s report in any family proceedings without the court’s permission.

(2) In children proceedings—

- (a) an expert may not be instructed; and
- (b) a child may not be medically or psychiatrically examined or otherwise assessed for the purpose of obtaining expert evidence for use in the proceedings,

without the court’s permission.

(3) No expert evidence obtained without the permission of the court in contravention of paragraph (2) (a) or (b) shall be admissible evidence unless the court directs otherwise.

Further provisions about the court’s power to restrict expert evidence

25.5.—(1) In deciding whether to give permission as mentioned in rule 25.4(1) or (2) in children proceedings, the court is to have regard in particular to—

- (a) the impact which giving permission would have on the welfare of the child concerned;
- (b) the issues to which the expert evidence would relate;
- (c) the questions which the court would require the expert to answer;
- (d) any other expert evidence available (whether obtained before or after the start of proceedings);

- (e) the impact which giving permission would have on the timetable, duration and conduct of the proceedings;
- (f) any failure to comply with rule 25.6 or any direction of the court about expert evidence;
- (g) whether evidence could be given by another person on the matters on which the expert would give evidence;
- (h) the cost of obtaining expert evidence.

(2) Where the court is deciding whether to give permission as mentioned in rule 25.4(2)(b), in addition to the factors mentioned in paragraph (1), the court is to have regard in particular to the impact which the examination or assessment of the child is likely to have on the welfare of the child.

(3) In deciding whether to give permission as mentioned in rule 25.4(1) in proceedings other than children proceedings, the court is to have regard in particular to—

- (a) the issues to which the expert evidence would relate;
- (b) the questions which the court would require the expert to answer;
- (c) the impact which giving permission would have on the timetable, duration and conduct of the proceedings;
- (d) any failure to comply with rule 25.6 or any direction of the court about expert evidence;
- (e) the cost of obtaining expert evidence.

When to apply for the court’s permission

25.6. Unless the court directs otherwise, parties must apply for the court’s permission as mentioned in rule 25.4 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) in adoption proceedings and placement proceedings, no later than the First Directions Hearing **(c)**;
- (d) in proceedings for a financial remedy, no later than the First Appointment **(d)**;
- (e) in a defended case in matrimonial and civil partnership proceedings, no later than the Case Management Hearing **(e)**;
- (f) in other proceedings, as soon as possible.

What an application for the court’s permission must include

25.7.—(1) In all family proceedings—

- (a) an application for the court’s permission as mentioned in rule 25.4 must state—
 - (i) the field in which the expert evidence is required;
 - (ii) where practicable, the name of the proposed expert;
 - (iii) the issues to which the expert evidence is to relate;

(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.
 (e) See rule 7.22.

- (iv) whether the expert evidence could be obtained by joint instruction of the expert by two or more parties;
 - (v) the other matters set out in Practice Direction 25C or 25D, as the case may be; and
 - (b) a draft of the order sought is to be attached to the application for the court's permission setting out the matters specified in Practice Direction 25C or 25D, as the case may be.
- (2) In children proceedings an application for the court's permission as mentioned in rule 25.4 must, in addition to the matters specified in paragraph (1)(a), state the questions which the expert is to be required to answer.

Where permission is granted

25.8.—(1) In all family proceedings where the court grants permission as mentioned in rule 25.4—

- (a) the permission will relate only to the expert named or the field identified in the application for permission; and
- (b) the court —
 - (i) will give directions specifying the date by which the expert is to provide a written report; and
 - (ii) may give directions about payment of the expert's fees and expenses and may limit the amount of a party's expert's fees and expenses that may be recovered from any other party.

(2) In children proceedings, in addition to the directions in paragraph (1)(b), the court will give directions—

- (a) identifying the questions which the expert is required to answer;
- (b) specifying the date by which the expert is to receive the letter of instruction.

General requirement for expert evidence to be given in a written report

25.9.—(1) Expert evidence is to be given in a written report unless the court directs otherwise.

(2) The court will not direct an expert to attend a hearing unless it is necessary to do so in the interests of justice.

Written questions to experts

25.10.—(1) A party may put written questions about an expert's report to—

- (a) an expert instructed by another party; or
- (b) a single joint expert appointed under rule 25.11.

(2) Written questions under paragraph (1)—

- (a) must be proportionate;
- (b) may be put once only;
- (c) must be put within 10 days beginning with the date on which the expert's report was served;
- (d) must be for the purpose only of clarification of the report; and
- (e) must be copied and sent to the other parties at the same time as they are sent to the expert,

unless in any case—

- (i) the court directs otherwise; or

- (ii) a practice direction provides otherwise.
- (3) An expert's answers to questions put in accordance with paragraph (1)—
 - (a) must be given within the timetable specified by the court; and
 - (b) are treated as part of the expert's report.
- (4) Where—
 - (a) a party has put a written question to an expert instructed by another party; and
 - (b) the expert does not answer that question,

the court may make use of one or both of the following orders in relation to the party who instructed the expert—

- (i) that the party may not rely on the evidence of that expert; or
- (ii) that the party may not recover the fees and expenses of that expert from any other party.

Court's power to direct that evidence is to be given by a single joint expert

25.11.—(1) Where two or more parties wish to submit expert evidence on a particular issue, the court may direct that the evidence on that issue is to be given by a single joint expert.

- (2) Where the parties who wish to submit the evidence (“the relevant parties”) cannot agree who should be the single joint expert, the court may—
 - (a) select the expert from a list prepared or identified by the instructing parties; or
 - (b) direct that the expert be selected in such other manner as the court may direct.

Instructions to a single joint expert

25.12.—(1) Where the court gives a direction under rule 25.11(1) for a single joint expert to be used, the instructions are to be contained in a jointly agreed letter unless the court directs otherwise.

(2) Where the instructions are to be contained in a jointly agreed letter, in default of agreement the instructions may be determined by the court on the written request of any relevant party copied to the other relevant parties.

(3) Where the court permits the relevant parties to give separate instructions to a single joint expert, each instructing party must, when giving instructions to the expert, at the same time send a copy of the instructions to the other relevant parties.

- (4) The court may give directions about—
 - (a) the payment of the expert's fees and expenses; and
 - (b) any inspection, examination or assessments which the expert wishes to carry out.

(5) The court may, before an expert is instructed, limit the amount that can be paid by way of fees and expenses to the expert.

(6) Unless the court directs otherwise, the relevant parties are jointly and severally liable for the payment of the expert's fees and expenses.

Power of court to direct a party to provide information

25.13.—(1) Subject to paragraph 2, where a party has access to information which is not reasonably available to another party, the court may direct the party who has access to the information to prepare, file and serve a document recording the information.

(2) In proceedings under Part 14 (procedure for applications in adoption, placement and related proceedings),—

- (a) the court may direct the party with access to the information to prepare and file a document recording the information; and
- (b) a court officer will send a copy of that document to the other party.

Contents of report

25.14.—(1) An expert’s report must comply with the requirements set out in Practice Direction 25B.

(2) At the end of an expert’s report there must be a statement that the expert understands and has complied with their duty to the court.

(3) The instructions to the expert are not privileged against disclosure.

(Rule 21.1 explains what is meant by disclosure.)

Use by one party of expert’s report disclosed by another

25.15. Where a party has disclosed an expert’s report, any party may use that expert’s report as evidence at any relevant hearing.

Discussions between experts

25.16.—(1) The court may, at any stage, direct a discussion between experts for the purpose of requiring the experts to—

- (a) identify and discuss the expert issues in the proceedings; and
- (b) where possible, reach an agreed opinion on those issues.

(2) The court may specify the issues which the experts must discuss.

(3) The court may direct that following a discussion between the experts they must prepare a statement for the court setting out those issues on which—

- (a) they agree; and
- (b) they disagree,

with a summary of their reasons for disagreeing.

(4) Where a party refuses to be bound by an agreement reached at an expert’s discussion, that party must inform the court and other parties in writing of the reasons for the refusal, within 10 business days after the discussion or, where an Issues Resolution Hearing^(a) is to be held, not less than 5 days before that hearing.

Expert’s right to ask court for directions

25.17.—(1) Experts may file written requests for directions for the purpose of assisting them in carrying out their functions.

(2) Experts must, unless the court directs otherwise, provide copies of the proposed request for directions under paragraph (1)—

- (a) to the party instructing them, at least 7 days before they file the requests; and
- (b) to all other parties, at least 4 days before they file them.

(3) The court, when it gives directions, may also direct that a party be served with a copy of the directions.

(a) See rule 12.25.

Copies of orders and other documents

25.18. Unless the court directs otherwise, a copy of an order or document affecting an expert filed with the court after the expert has been instructed, must be served on the expert by the party instructing the expert or, in the case of a single joint expert, the party responsible for instructing the expert, within 2 days of that party receiving the order or document.

Action after final hearing

25.19.—(1) Within 10 business days after the final hearing, the party instructing the expert or, in the case of a single joint expert, the party responsible for instructing the expert, must inform the expert in writing about the court’s determination and the use made by the court of the expert’s opinion.

(2) The party instructing the expert or, in the case of the single joint expert, the party responsible for instructing the expert, must send a copy of—

- (a) any transcript of the court’s decision to the expert unless directed by the court not to do so;
- (b) where the decision was one of the magistrates’ court, the reasons for the court’s decision,

within 10 business days from the date when that party received the transcript or reasons.

Assessors

25.20.—(1) This rule applies where the court appoints one or more persons under section 70 of the Senior Courts Act 1981 or section 63 of the County Courts Act 1984(a) as an assessor

(2) An assessor will assist the court in dealing with a matter in which the assessor has skill and experience.

(3) The assessor will take such part in the proceedings as the court may direct and in particular the court may direct an assessor to—

- (a) prepare a report for the court on any matter at issue in the proceedings; and
- (b) attend the whole or any part of the hearing to advise the court on any such matter.

(4) If the assessor prepares a report for the court before the hearing has begun—

- (a) the court will send a copy to each of the parties; and
- (b) the parties may use it at the hearing.

(5) Unless the court directs otherwise, an assessor will be paid at the daily rate payable for the time being to a fee-paid deputy district judge of the principal registry and an assessor’s fees will form part of the costs of the proceedings.

(6) The court may order any party to deposit in the court office a specified sum in respect of an assessor’s fees and, where it does so, the assessor will not be asked to act until the sum has been deposited.

(7) Paragraphs (5) and (6) do not apply where the remuneration of the assessor is to be paid out of money provided by Parliament.”

(a) Section 63 was amended by sections 14(2) and (3) and 125(7) of and Schedule 20 to the Courts and Legal Services Act 1990 and by articles 6(d)(i) to (iv) of the Civil Procedure (Modification of Enactments) Order 1998 (S.I. 1998/2940).

EXPLANATORY NOTE

(This note is not part of the Order)

xxx