

This Practice Direction is made by the President of the Family Division under the powers delegated to him by the Lord Chief Justice under Schedule 2, Part 1, paragraph 2(2) of the Constitutional Reform Act 2005, and is approved by the Parliamentary Under Secretary of State, by authority of the Lord Chancellor and comes into force on xxx 2012

PRACTICE DIRECTION 25A – EXPERTS – EMERGENCIES AND PRE PROCEEDINGS INSTRUCTIONS

This Practice Direction supplements FPR Part 25

Introduction

1.1 This Practice Direction and Practice Directions 25B to E relate to experts in family proceedings and supplement FPR Part 25. The Practice Direction applies to children proceedings and all other family proceedings.

Emergency and urgent cases

2.1 In emergency or urgent cases – for example, where, before formal issue of proceedings, a without-notice application is made to the court during or out of business hours; or where, after proceedings have been issued, a previously unforeseen need for (further) expert evidence arises at short notice – a party may wish to call expert evidence without having complied with all or any part of Practice Directions 25B to E. In such circumstances, the party wishing to call the expert evidence must apply forthwith to the court – where possible or appropriate, on notice to the other parties – for directions as to the future steps to be taken in respect of the expert evidence in question. *(based on paragraph 2.4 of PD25A)*

Pre-application instruction of experts

3.1 When experts' reports are commissioned before the commencement of proceedings, it should be made clear to the expert that he or she may in due course be reporting to the court and should therefore consider himself or herself bound by the duties of an expert set out in Practice Direction 25B (*The Duties of An Expert, the Expert's Report and Arrangements for An Expert To Attend Court*). In so far as possible the enquiries of the expert and subsequent letter of instruction should follow either Practice Direction 25C (*Children Proceedings -the Use of Single Joint Experts and the Process Leading to an Expert Being Instructed or Expert Evidence Being Used*) or 25D (*Financial Remedy Proceedings and other Family Proceedings (except Children Proceedings) – the Use of Single Joint Experts and the Process Leading to Expert Evidence Being Used*). *(based on paragraph 2.3 of PD25A)*.

3.2 In particular, a prospective party to children proceedings (for example, a local authority) should always write a letter of instruction when asking a potential witness for a report or an opinion, whether that request is within proceedings or pre-proceedings (for example, when commissioning specialist assessment materials, reports from a treating expert or other evidential materials); and the letter of

instruction should conform to the principles set out in Practice Direction 25C.*(based on paragraph 2.1 of PD25A)*

3.3 It should be noted that the court's permission is required to use expert evidence in all family proceedings (see FPR 25.4(1)). In children proceedings the court's permission is required for an expert to be instructed and for a child to be medically or psychiatrically examined or otherwise assessed for the purpose of the preparation of expert evidence for use in the proceedings (FPR 25.4(2)) Where the court's permission has not been given no evidence arising out of such an instruction or examination or assessment will be admissible in evidence without the court's permission (FPR 24.4(3)). The court's permission will be needed to use any expert evidence obtained before proceedings have started.*(Based on part paragraphs 1.6 and 1.7 of PD25A with adjustments in light of draft rule amendments)*

The Right Honourable
Sir Nicholas Wall
The President of the Family Division

Signed by authority of the Lord Chancellor:

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Parliamentary Under Secretary of State
Ministry of Justice