
STATUTORY INSTRUMENTS

2017 No. 1035

The Court of Protection Rules 2017

PART 9

HOW TO START AND RESPOND TO
PROCEEDINGS, AND PARTIES TO PROCEEDINGS

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Initial steps

General

9.1.—(1) Applications to the court to start proceedings must be made in accordance with this Part and, as applicable, Part 8 and the relevant practice directions.

(2) The appropriate forms must be used in the cases to which they apply, with such variations as the case requires, but not so as to omit any information or guidance which any form gives to the intended recipient.

When proceedings are started

9.2.—(1) The general rule is that proceedings are started when the court issues an application form at the request of the applicant.

(2) An application form is issued on the date entered on the application form by the court.

Contents of the application form

9.3. The application form must—

- (a) state the matter which the applicant wants the court to decide;
- (b) state the order which the applicant is seeking;
- (c) name—
 - (i) the applicant;
 - (ii) P;
 - (iii) as a respondent, any person (other than P) whom the applicant reasonably believes to have an interest which means that that person ought to be heard in relation to the application (as opposed to being notified of it in accordance with rule 9.10);
 - (iv) any person whom the applicant intends to notify in accordance with rule 9.10; and
- (d) if the applicant is applying in a representative capacity, state what that capacity is.

Documents to be filed with the application form

9.4. Where an applicant files the application form with the court, the applicant must also file—

- (a) in accordance with the relevant practice direction, any evidence on which the applicant intends to rely;
- (b) an assessment of capacity form, where this is required by the relevant practice direction;
- (c) any other documents referred to in the application form; and
- (d) such other information and material as may be set out in a practice direction.

What the court will do when an application form is filed

9.5. As soon as practicable after an application form is filed the court must issue it and do anything else that may be set out in a practice direction.

Steps following issue of application form

Applicant to serve the application form on named respondents

9.6.—(1) As soon as practicable and in any event within 14 days of the date on which the application form was issued, the applicant must serve a copy of the application form on any person who is named as a respondent in the application form, together with copies of any documents filed in accordance with rule 9.4 and a form for acknowledging service.

(2) The applicant must file a certificate of service within 7 days beginning with the date on which the documents were served.

Applications relating to lasting powers of attorney

9.7.—(1) Where the application concerns the powers of the court under section 22 or 23 of the Act (powers of the court in relation to the validity and operation of lasting powers of attorney) the applicant must serve a copy of the application form, together with copies of any documents filed in accordance with rule 9.4 and a form for acknowledging service—

- (a) unless the applicant is the donor or donee of the lasting power of attorney (“the power”), on the donor and every donee of the power;
- (b) if the applicant is the donor, on every donee of the power; or
- (c) if the applicant is a donee, on the donor and any other donee of the power,

but only if the persons mentioned in sub-paragraphs (a) to (c) have not been served or notified under any other rule.

(2) Where the application is solely in respect of an objection to the registration of the power, the requirements of rules 9.6 and 9.10 do not apply to an application made under this rule—

- (a) a donee of the power; or
- (b) a person named in a statement made by the donor of the power in accordance with paragraph 2(1)(c)(i) of Schedule 1 to the Act.

(3) The applicant must comply with paragraph (1) as soon as practicable and in any event within 14 days of the date on which the application form was issued.

(4) The applicant must file a certificate of service with 7 days beginning with the date on which the documents were served.

(5) Where the applicant knows or has reasonable grounds to believe that the donor of the power lacks capacity to make a decision in relation to any matter that is the subject of the application, the applicant must notify the donor in accordance with Part 7.

Applications relating to enduring powers of attorney

9.8.—(1) Where the application concerns the powers of the court under paragraphs 2(9), 4(5)(a) and (b), 7(2), 10(c), 13, or 16(2), (3), (4) and (6) of Schedule 4 to the Act, the applicant must serve a copy of the application form, together with copies of any documents filed in accordance with rule 9.4 and a form for acknowledging service—

- (a) unless the applicant is the donor or attorney under the enduring power of attorney (“the power”), on the donor and every attorney under the power;
- (b) if the applicant is the donor, on every attorney under the power; or
- (c) if the applicant is an attorney, on the donor and any other attorney under the power,

but only if the persons mentioned in sub-paragraphs (a) to (c) have not been served or notified under any other rule.

(2) Where the application is solely in respect of an objection to the registration of the power, the requirements of rules 9.6 and 9.10 do not apply to an application made under this rule by—

- (a) an attorney under the power; or
- (b) a person listed in paragraph 6(1) of Schedule 4 to the Act.

(3) The applicant must comply with paragraph (1) as soon as practicable and in any event within 14 days of the date on which the application form was issued.

(4) The applicant must file a certificate of service within 7 days beginning with the date on which the documents were served.

(5) Where the applicant knows or has reasonable grounds to believe that the donor of the power lacks capacity to make a decision in relation to any matter that is the subject of the application, the applicant must notify the donor in accordance with Part 7.

Applicant to notify P of an application

9.9. P must be notified in accordance with Part 7 that an application form has been issued, unless the requirement to do so has been dispensed with under rule 7.11.

Applicant to notify other persons of an application

9.10.—(1) As soon as practicable and in any event within 14 days of the date on which the application form was issued, the applicant must notify the persons specified in the relevant practice direction—

- (a) that an application has been issued;
- (b) whether it relates to the exercise of the court’s jurisdiction in relation to P’s property and affairs, or P’s personal welfare, or to both; and
- (c) of the order or orders sought.

(2) Notification of the issue of the application form must be accompanied by a form for acknowledging notification.

(3) The applicant must file a certificate of notification within 7 days beginning with the date on which notification was given.

Requirements for certain applications

9.11. A practice direction may make additional or different provision in relation to specified applications.

Responding to an application

Responding to an application

9.12.—(1) A person who is served with or notified of an application form and who wishes to take part in proceedings must file an acknowledgment of service or notification in accordance with this rule.

(2) The acknowledgment of service or notification must be filed not more than 14 days after the application form was served or notification of the application was given.

(3) The court must serve the acknowledgment of service or notification on the applicant and on any other person who has filed such an acknowledgment.

(4) The acknowledgment of service or notification must—

- (a) state whether the person acknowledging service or notification consents to the application;
- (b) state whether that person opposes the application and, if so, set out the grounds for doing so;
- (c) state whether that person seeks a different order from that set out in the application form and, if so, set out what that order is;
- (d) provide an address for service, which must be within the jurisdiction of the court;; and
- (e) be signed by that person or that person's legal representative.

(5) Subject to rules 15.2 and 15.5 (restriction on filing an expert's report and court's power to restrict expert evidence), unless the court directs otherwise, where a person who has been served in accordance with rule 9.6, 9.7 or 9.8 opposes the application or seeks a different order, that person must within 28 days of such service file a witness statement containing any evidence upon which that person intends to rely.

(6) In addition to complying with the other requirements of this rule, an acknowledgment of notification filed by a person notified of the application in accordance with rule 9.7(5), 9.8(5), 9.9 or 9.10 must—

- (a) indicate whether the person wishes to be joined as a party to the proceedings; and
- (b) state the person's interest in the proceedings.

(7) Subject to rules 15.2 and 15.5 (restriction on filing an expert's report and court's power to restrict expert evidence), unless the court directs otherwise, where a person has been notified in accordance with rule 9.7(5), 9.8(5), 9.9 or 9.10, that person must within 28 days of such notification file a witness statement containing any evidence of that person's interest in the proceedings and, if that person opposes the application or seeks a different order, any evidence upon which that person intends to rely.

(8) The court must consider whether to join a person mentioned in paragraph (6) as a party to the proceedings and, if it decides to do so, must make an order to that effect.

(9) Where a person who is notified in accordance with rule 9.7(5), 9.8(5), 9.9 or 9.10 complies with the requirements of this rule, that person need not comply with the requirements of rule 9.15 (application to be joined as a party).

(10) A practice direction may make provision about responding to applications.

The parties to the proceedings

Parties to the proceedings

9.13.—(1) Unless the court directs otherwise, the parties to any proceedings are—

- (a) the applicant; and
- (b) any person who is named as a respondent in the application form and who files an acknowledgment of service in respect of the application form.

(2) The court may order a person to be joined as a party if it considers that it is desirable to do so for the purpose of dealing with the application.

(3) The court may at any time direct that any person who is a party to the proceedings is to be removed as a party.

(4) Unless the court orders otherwise, P shall not be named as a respondent to any proceedings.

(5) A party to the proceedings is bound by any order or direction of the court made in the course of those proceedings.

Persons to be bound as if parties

9.14.—(1) The persons mentioned in paragraph (2) shall be bound by any order made or directions given by the court in the same way that a party to the proceedings is so bound.

(2) The persons referred to in paragraph (1) are—

- (a) P; and
- (b) any person who has been served with or notified of an application form in accordance with these Rules.

Application to be joined as a party

9.15.—(1) Any person with sufficient interest may apply to the court to be joined as a party to the proceedings.

(2) An application to be joined as a party must be made by filing an application notice in accordance with Part 10, which must—

- (a) state the full name and address of the person seeking to be joined as a party to the proceedings;
- (b) state that person’s interest in the proceedings;
- (c) state whether that person consents to the application;
- (d) state whether that person opposes the application and, if so, set out the grounds for doing so;
- (e) state whether that person proposes that an order different from that set out in the application form should be made and, if so, set out what that order is;
- (f) provide an address for service, which must be within the jurisdiction of the court; and
- (g) be signed by that person or that person’s legal representative.

(3) Subject to rules 15.2 and 15.5 (restriction on filing an expert’s report and court’s power to restrict expert evidence), a person’s application to be joined must be accompanied by—

- (a) a witness statement containing evidence of that person’s interest in the proceedings and, if that person proposes that an order different from that set out in the application form should be made, the evidence on which that person intends to rely; and
- (b) a sufficient number of copies of the application notice to enable service of the application on every other party to the proceedings.

(4) The court must serve the application notice and any accompanying documents on all parties to the proceedings.

(5) The court must consider whether to join a person applying under this rule as a party to the proceedings and, if it decides to do so, must make an order to that effect.

Application for removal as a party to proceedings

9.16. A person who wishes to be removed as a party to the proceedings must apply to the court for an order to that effect in accordance with Part 10.