STATUTORY INSTRUMENTS

2007 No. 1744

The Court of Protection Rules 2007

PART 9

HOW TO START PROCEEDINGS

Initial steps

General

61.—(1) Applications to the court to start proceedings shall 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.

(3) If permission to make an application is required, the court shall not issue the application form until permission is granted.

When proceedings are started

62.—(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

63. 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 he ought to be heard in relation to the application (as opposed to being notified of it in accordance with rule 70); and

(iv) any person whom the applicant intends to notify in accordance with rule 70; and

(d) if the applicant is applying in a representative capacity, state what that capacity is.

Documents to be filed with the application form

64. When an applicant files his application form with the court, he must also file—

(a) in accordance with the relevant practice direction, any evidence upon which he intends to rely;

(b) if permission was required to make the application, a copy of the court's order granting permission;

(c) an assessment of capacity form, where this is required by the relevant practice direction;

(d) any other documents referred to in the application form; and

(e) 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

65. As soon as practicable after an application form is filed the court will issue the application form in any case where permission—

(a) is not required; or

(b) has been granted by the court; 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

66.—(1) As soon as practicable and in any event within 21 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 64 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

67.—(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 64 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 he is the donor, on every donee of the power; and

(c) if he is a donee, on the donor and any other donee of the power,

but only if the above-mentioned persons 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 a power, the requirements of rules 66 and 70 do not apply to an application made under this rule by—

(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 21 days of 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, he must notify the donor in accordance with Part 7.

Applications relating to enduring powers of attorney

68.—(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 64 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 of the power;

(b) if he is the donor, on every attorney under the power; or

(c) if he is an attorney, on the donor and any other attorney under the power,

but only if the above-mentioned persons 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 a power, the requirements of rules 66 and 70 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 21 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, he must notify the donor in accordance with Part 7.

Applicant to notify P of an application

69. 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 49.

Applicant to notify other persons of an application

70.—(1) As soon as practicable and in any event within 21 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 form has been issued;

(b) whether it relates to the exercise of the court's jurisdiction in relation to P's property and affairs, or his 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

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

Responding to an application

Responding to an application

72.—(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 21 days after the application form was served or notification of the application was given.

(3) The court will 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 he opposes the application and, if so, set out the grounds for doing so;

(c) state whether he 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 him or his legal representative.

(5) Subject to rules 120 and 123 (restriction on filing an expert's report and court's power to restrict expert evidence), where a person who has been served in accordance with rule 66, 67 or 68 opposes the application or seeks a different order, the acknowledgment of service must be accompanied by 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 67(5), 68(5), 69 or 70 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 120 and 123 (restriction on filing an expert's report and court's power to restrict expert evidence), where a person has been notified in accordance with rule 67(5), 68(5), 69, 70, the acknowledgment of notification must be accompanied by a witness statement containing any evidence of his interest in the proceedings and, if he opposes the application or seeks a different order, any evidence upon which he intends to rely.

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

(9) Where a person who is notified in accordance with rule 67(5), 68(5), 69 or 70 complies with the requirements of this rule, he need not comply with the requirements of rule 75 (application to be joined as a party).

(10) Where a person has filed an acknowledgment of notification in accordance with rule 57 (acknowledgment of notification of permission application) he must still acknowledge service or notification of an issued application form in accordance with this rule.

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

The parties to the proceedings

Parties to the proceedings

73.—(1) Unless the court otherwise directs, 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

74.—(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

75.—(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 his interest in the proceedings;

(c) state whether he consents to the application;

(d) state whether he opposes the application and, if so, set out the grounds for doing so;

(e) state whether he 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 him or his legal representative.

(3) Subject to rules 120 and 123 (restriction on filing an expert's report and court's power to restrict expert evidence), an application to be joined must be accompanied by—

(a) a witness statement containing evidence of his interest in the proceedings and, if he proposes that an order different from that set out in the application form should be made, the evidence on which he 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 will serve the application notice and any accompanying documents on all parties to the proceedings.

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

Applications for removal as a party to proceedings

76. 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.