
STATUTORY INSTRUMENTS

2023 No. 105

The Civil Procedure (Amendment) Rules 2023

Amendment of Part 21

14.—(1) In the Table of Contents for the Part, in the entry for rule 21.12, for “Expenses” substitute “Costs and expenses”.

(2) In rule 21.1(2)(e)—

- (a) for “him” substitute “them”; and
- (b) for “his” in both places where it occurs substitute “their”.

(3) In rule 21.2—

- (a) in paragraph (1), for “his” substitute “their”;
- (b) for paragraph (2) substitute—

“(2) Unless the court makes an order under paragraph (3), a litigation friend must conduct proceedings on a child’s behalf.”;

(c) for paragraph (5)(b) substitute—

“(b) it later appears to the court desirable for a litigation friend to conduct the proceedings on the child’s behalf.”; and

(d) after paragraph (5) insert—

“(6) Where one of the parties is a child or protected party, that party shall be referred to in the title to the proceedings as “[name] (a [child] [protected party]) by [name] as litigation friend”.

(7) Where one of the parties is a child conducting the proceedings on their own behalf, the child shall be referred to in the title as “[name] (a child)”.

(4) In rule 21.3, for “permission of the court” where those words appear in paragraphs (2) and (3) substitute “the court’s permission”.

(5) In rule 21.4—

(a) in paragraph (2)—

- (i) for “litigation friend of the protected party” substitute “protected party’s litigation friend”; and
- (ii) for “his” substitute “the deputy’s”; and

(b) in paragraph (3)—

- (i) omit “has been” the second time it occurs;
- (ii) for “he” substitute “they”;
- (iii) in sub-paragraph (b), for “has” substitute “have”; and
- (iv) for sub-paragraph (c) substitute—

“(c) where the child or protected party is a claimant, undertake to pay any costs that the claimant is ordered to pay, subject to any right to be repaid from the assets of the child or protected party.”.

- (6) In rule 21.5—
- (a) in paragraph (2)—
 - (i) for “his” substitute “their”;
 - (ii) in sub-paragraph (a)—
 - (aa) for “deputy” to “for” substitute “protected party is to be”; and
 - (bb) for “at the time” substitute “when”; and
 - (iii) in sub-paragraph (b)—
 - (aa) for “deputy” to “for” substitute “protected party is to be”;
 - (bb) for “he” substitute “the deputy”; and
 - (cc) for “on behalf of the deputy” substitute “on the deputy’s behalf”;
 - (b) in paragraph (3)—
 - (i) for “he satisfies” substitute “they satisfy”; and
 - (ii) in sub-paragraph (b)—
 - (aa) for “he first takes” substitute “they first take”; and
 - (bb) for “on behalf of the defendant” substitute “on the defendant’s behalf”
 - (c) after paragraph (3) insert—

“(4) The certificate of suitability must be verified by a statement of truth and must state in accordance with the prescribed form that the person—

 - (a) agrees to act;
 - (b) knows or believes the person concerned is a child or lacks capacity to conduct the proceedings (stating in the latter case the grounds for that knowledge or belief); and
 - (c) meets the requirements of rule 21.4(3).”;
 - (d) paragraph (4) is renumbered as paragraph (5); and
 - (e) after paragraph (5) as so renumbered insert—

“(6) Where the grounds for believing that a protected party lacks capacity to conduct the litigation are based on expert opinion, a copy of such opinion must be served, either with the certificate of suitability or separately.”.
- (7) In rule 21.6—
- (a) in paragraph (2), after “made” insert “under Part 23”;
 - (b) in paragraph (4), after “evidence” insert “of all the matters set out in rule 21.4(3)”;
 - (c) in paragraph (5), for the words after “satisfied” substitute “of those matters”; and
 - (d) after paragraph (5) insert—

“(6) Where the proposed litigation friend is the Official Solicitor, the court’s order must make provision for payment of any charges, expenses or disbursements.”.
- (8) In rule 21.7(1)(c), for “in substitution for” substitute “instead of”.
- (9) In rule 21.8—
- (a) for paragraph (2) substitute—

“(2) In the case of a protected party, an application under rule 21.6 must also be served on the protected party, unless the court directs otherwise.”;
 - (b) in paragraph (3)—

- (i) in sub-paragraph (a), for “who is purporting to act as the litigation friend” substitute “appearing to act as such”; and
 - (ii) for sub-paragraph (b) substitute—
 - “(b) the proposed litigation friend, if they are not the applicant.”; and
 - (c) in paragraph (4), omit “specified”.
- (10) In rule 21.9—
 - (a) in paragraph (3)(a), omit “former”;
 - (b) in paragraph (4)—
 - (i) for the words from “child” to “act” substitute “party whose litigation friend’s appointment”;
 - (ii) in sub-paragraph (b), for “his” substitute “the party’s”; and
 - (iii) in sub-paragraph (c), for “he intends” substitute “they intend”;
 - (c) after paragraph (4) insert—
 - “(5) Where that party was a child, the notice must state that they have reached the age of 18 and be signed by that party personally.”;
 - (d) paragraph (5) is renumbered as paragraph (6), and in paragraph (6) as so renumbered—
 - (i) for “the child or protected” both times it occurs substitute “that”;
 - (ii) after “appointment” omit “of the litigation friend”; and
 - (iii) before “strike out” insert “stay or”; and
 - (e) paragraph (6) is renumbered as paragraph (7), and in paragraph (7) as so renumbered, for “until—” to the end substitute “until the party concerned serves the notice required under paragraph (4) or the former litigation friend serves notice on the parties that their appointment has ceased”.
- (11) In rule 21.10, for paragraph (3) substitute—
 - “(3) The documents supporting any application or request for approval must include—
 - (a) a draft consent order setting out the proposed settlement terms;
 - (b) details of whether or to what extent liability is admitted;
 - (c) the age and occupation (if any) of the child or protected party;
 - (d) confirmation that the litigation friend approves the settlement;
 - (e) a copy of any relevant medical, financial or other expert evidence or advice;
 - (f) in a personal injury claim arising from an accident, details of the accident and of claimed loss and damage;
 - (g) any documents relevant to considerations of liability; and
 - (h) a legal opinion on the merits of the settlement, except in very clear cases, together with any relevant instructions unless they are sufficiently set out in the opinion.
 - (4) If the claim includes damages for future financial loss, the court must be satisfied that the parties have considered whether the damages should wholly or partly comprise periodical payments.
 - (5) If the settlement includes periodical payments, the draft consent order must satisfy the requirements of rules 41.8 and 41.9 as appropriate.
 - (6) In proceedings to which Section II or Section III of Part 45 applies, the court will not make an order for detailed assessment of the costs payable to the child or protected party but will assess the costs in the manner set out in that Section.

(7) Where settlement of a claim by or on behalf of a dependent child includes agreement on a sum to be apportioned to the dependent child, the parties must provide to the court in addition details of—

- (a) the claimed loss of future earnings in respect of the deceased;
- (b) the nature and extent of the dependency.”.

(12) In rule 21.11—

- (a) in paragraph (3), for “in accordance with” substitute “under”; and
- (b) after paragraph (3) insert—

“(4) Where a child lacks capacity to manage and control any money recovered by or on behalf of the child, and is likely to remain so on reaching full age, the fund will be administered as a protected beneficiary’s fund.

(5) Where a child or protected beneficiary is in receipt of publicly funded legal services the fund shall be subject to a first charge under section 25 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(1) (statutory charge) and an order for the investment of money on the child’s or protected beneficiary’s behalf must contain a direction to that effect.

(6) The representative or litigation friend of the child or protected beneficiary must apply to the court for directions for management of the fund or payment into court (using Form CFO 320 or CFO 320PB to be completed by the judge), stating the nature and terms of any proposed investment vehicle, with appropriate supporting evidence.

(7) The judge hearing the application may adjourn it and give directions for further information to be provided and, unless the judge directs otherwise, the money recovered will be paid into the court special account pending determination of the application for investment.

(8) Where money is recovered for the benefit of a child who is not a protected beneficiary—

- (a) if the court considers it appropriate, it may order that the money be paid directly to the litigation friend to be placed in a bank, building society or similar account for the child’s use;
- (b) if the money remains invested in court, it must be paid out to the child when the child reaches the age of 18;
- (c) any investments held in court other than money must either be sold and the proceeds paid to the child, or transferred to the child, when the child reaches the age of 18.

(9) Where money is recovered for the benefit of a protected beneficiary—

- (a) if the amount is £100,000 or more, subject to (b) below, the court shall direct the litigation friend to apply to the Court of Protection for the appointment of a deputy, after which the fund shall be dealt with as directed by the Court of Protection;
- (b) the procedure in sub-paragraph (a) will not apply where a person with authority to administer the protected beneficiary’s financial affairs has been appointed as attorney under a registered enduring power of attorney, or as donee of a registered lasting power of attorney, or as the deputy appointed by the Court of Protection;

- (c) any payment out of money must be in accordance with any decision or order of the Court of Protection;
- (d) if an application to the Court of Protection is required, that application must be made;
- (e) if the Court of Protection so decides, on its own initiative or at the request of the judge hearing the application for investment, an amount exceeding £100,000 may be retained in court and invested in the same way as the fund of a child.

(10) A request for payment of money from a fund held for the benefit of a child or protected party, or to vary an investment strategy, may be made in writing with appropriate supporting evidence (but without making a formal application) to a Master or District Judge and may be determined without a hearing unless the court directs otherwise.”.

(13) In rule 21.12—

- (a) in the heading, for “Expenses” substitute “Costs and expenses”;
- (b) in paragraph (1), for “Subject to paragraph (1A), in” substitute “In”;
- (c) paragraph (1A) is renumbered as paragraph (2), and in paragraph (2) as so renumbered—
 - (i) in sub-paragraph (a), for “pursuant to” substitute “under”; and
 - (ii) in sub-paragraph (b), for “assessed summarily pursuant to” substitute “summarily assessed under”;
- (d) paragraphs (2) to (8) are renumbered as paragraphs (3) to (9);
- (e) in paragraph (6) as renumbered, after “legal representative” insert “or deputy”;
- (f) in paragraph (7) as renumbered, for “paragraph (7)” substitute “paragraph (8)”;
- (g) in paragraph (8) as renumbered, in sub-paragraph (b), for the words from “pecuniary” to the end substitute “past financial loss”;
- (h) in paragraph (9) as renumbered, before “a claim” insert “where”; and
- (i) after paragraph (9) as renumbered insert—

“(10) A litigation friend must support a claim for payment from a fund of costs or expenses by filing a witness statement setting out, so far as applicable—

- (a) the nature and amount of the costs or expenses and the reason they were incurred;
- (b) a copy of any conditional fee or damages based agreement;
- (c) a copy of any risk assessment by reference to which any success fee was determined;
- (d) the reasons why the particular funding model was selected;
- (e) the advice given to the litigation friend on funding arrangements;
- (f) a copy bill or informal breakdown of the solicitor and own client base costs incurred;
- (g) details of any costs agreed, recovered or fixed costs recoverable by the child; and
- (h) an explanation of the amount agreed or awarded for—
 - (i) general damages for pain, suffering and loss of amenity; and
 - (ii) damages for past financial loss, net of any sums recoverable by the Compensation Recovery Unit or the Department for Work and Pensions.”.

(14) In rule 21.13, at the end of the rule insert—

“(Paragraph 8 of Practice Direction 40A deals with approval of the accounts of a guardian of assets of a child.)”.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.
