STATUTORY INSTRUMENTS

2017 No. 1033 (L. 14)

FAMILY PROCEEDINGS
SENIOR COURTS OF ENGLAND AND WALES
FAMILY COURT, ENGLAND AND WALES

The Family Procedure (Amendment No. 3) Rules 2017

Made - - - -	*23rd October 2017*
Laid before Parliament	*30th October 2017*
Coming into force - -	*27th November 2017*

The Family Procedure Rule Committee makes the following Rules in exercise of the powers conferred by sections 75, 76(8) and 79(2) of the Courts Act 2003(**1**), after consulting in accordance with section 79(1) of that Act:

Citation and commencement

1. These Rules may be cited as the Family Procedure (Amendment No. 3) Rules 2017 and come into force on 27th November 2017.

Amendment of the Family Procedure Rules 2010

2. The Family Procedure Rules 2010(**2**) are amended in accordance with rule 3.

Insertion of new Part 3A

3. After Part 3 (Non-court Dispute Resolution) insert—

(**1**) 2003 c. 39. Section 75 was amended by paragraphs 308 and 338 of Schedule 4 and Part 2 of Schedule 18 to the Constitutional Reform Act 2005 (c. 4) and by paragraphs 83 and 91 of Schedule 10 to the Crime and Courts Act 2013 (c. 22).
(**2**) S.I. 2010/2955, to which there are amendments not relevant to these Rules.

"PART 3A

VULNERABLE PERSONS: PARTICIPATION IN PROCEEDINGS AND GIVING EVIDENCE

Interpretation

3A.1. In this Part—

"child" means a person under the age of 18 years whether or not the child is the subject of the proceedings, except that—

(a) in adoption proceedings, it also includes a person who is the subject of proceedings and has attained the age of 18 years before the proceedings are concluded; and

(b) in proceedings brought under Article 11 of the Council Regulation(**3**), the 1980 Hague Convention(**4**) or the European Convention(**5**), it means a person under the age of 16 years who is the subject of proceedings;

"intermediary" means a person whose function is to—

(a) communicate questions put to a witness or party;

(b) communicate to any person asking such questions the answers given by the witness or party in reply to them; and

(c) explain such questions or answers so far as is necessary to enable them to be understood by the witness or party or by the person asking such questions;

"live link" means a live television link or other arrangement whereby a witness or party, while absent from the courtroom or other place where the proceedings are being held, is able to see and hear a person there and to be seen and heard by the judge, legal representatives acting in the proceedings and other persons appointed to assist a witness or party;

"mental disorder" has the meaning given in section 1 of the Mental Health Act 1983(**6**);

"participation direction" means—

(a) a general case management direction made for the purpose of assisting a witness or party to give evidence or participate in proceedings; or

(b) a direction that a witness or party should have the assistance of one or more of the measures in rule 3A.8; and

references to "quality of evidence" are to its quality in terms of completeness, coherence and accuracy; and for this purpose "coherence" refers to a witness's or a party's ability in giving evidence to give answers which address the questions put to the witness or the party and which can be understood both individually and collectively.

(**3**) Council Regulation (EC) No 2201/2003 of 27 November 2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility.
(**4**) The Convention of the Civil Aspects of International Child Abduction which was signed at The Hague on 25 October 1980.
(**5**) The European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on the Restoration of Custody of Children which was signed in Luxembourg on 20 May 1980.
(**6**) 1983 c. 20. Section 1 was amended by sections 1(1), (2) and (3), 2 and 3 of, and Part 1 of Schedule 11 to, the Mental Health Act 2007 (c. 12).

Application of provisions in this Part

3A.2.—(1) Rule 3A.4 does not apply to a party who is a child.

(2) Rules 3A.3 to 3A.5 do not apply to a party who is a protected party.

Court's duty to consider vulnerability of a party or witness

3A.3.—(1) When considering the vulnerability of a party or witness as mentioned in rule 3A.4 or 3A.5, the court must have regard in particular to the matters set out in paragraphs (a) to (j) and (m) of rule 3A.7.

(2) Practice Direction 3AA gives guidance about vulnerability.

Court's duty to consider how a party can participate in the proceedings

3A.4.—(1) The court must consider whether a party's participation in the proceedings (other than by way of giving evidence) is likely to be diminished by reason of vulnerability and, if so, whether it is necessary to make one or more participation directions.

(2) Before making such participation directions, the court must consider any views expressed by the party about participating in the proceedings.

Court's duty to consider how a party or a witness can give evidence

3A.5.—(1) The court must consider whether the quality of evidence given by a party or witness is likely to be diminished by reason of vulnerability and, if so, whether it is necessary to make one or more participation directions.

(2) Before making such participation directions, the court must consider any views expressed by the party or witness about giving evidence.

Protected parties

3A.6.—(1) The court must consider whether it is necessary to make one or more participation directions to assist—

(a) the protected party participating in proceedings; or

(b) the protected party giving evidence.

(2) Before making such participation directions, the court must consider any views expressed by the protected party's litigation friend about the protected party's participation in the proceedings or that party giving evidence.

(Part 15 contains rules about representation of a protected party. Practice Direction 15B contains provisions about the ability of a protected party to give evidence.)

What the court must have regard to

3A.7. When deciding whether to make one or more participation directions the court must have regard in particular to—

(a) the impact of any actual or perceived intimidation, including any behaviour towards the party or witness on the part of—

(i) any other party or other witness to the proceedings or members of the family or associates of that other party or other witness; or

(ii) any members of the family of the party or witness;

(b) whether the party or witness—