

COURTS ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS: PART 7

Family Procedure Rules and Directions

Section 75: Family Procedure Rules

186. This section establishes the Family Procedure Rule Committee. The FPRC will be the sole body with the authority to make rules regulating the practice and procedure for family proceedings in the High Court, county courts and magistrates' courts and it replaces the existing rule making arrangements.
187. Currently, rules of court for family proceedings in the magistrates' courts are made by the Lord Chancellor after consultation with the Magistrates' Courts Rule Committee under section 144 of the MCA 1980. In relation to family proceedings in the High Court and county courts, rules are presently made by the Lord Chancellor and specified persons, under section 40(1) of the Matrimonial and Family Proceedings Act 1984.
188. Subsection (3) defines family proceedings for which the FPRC can make rules. The FPRC can make different rules for a specific court or description of courts or for specific types of proceedings or jurisdiction. For example, rules can prescribe certain practices to be followed in the Principal Registry of the Family Division or in all county courts. Likewise, rules can prescribe the practice to be followed in all ancillary relief proceedings or how courts should exercise their Children Act 1989 jurisdiction.
189. Subsection (5) sets out guiding principles that the FPRC must follow when making rules, consistent with those that the Criminal Procedure Rule Committee and the Civil Procedure Rule Committee must follow.

Section 76: Further provision about scope of Family Procedure Rules

190. Probate rules will continue to be made by the President of the Family Division with the concurrence of the Lord Chancellor under section 127 of the SCA 1981. Family Procedure Rules may modify the rules of evidence that apply to proceedings in a court within the scope of Family Procedure Rules. Subsection (4)(b) provides that Family Procedure Rules may apply any rules of court which relate to proceedings other than family proceedings, so for instance criminal or civil proceedings in the magistrates' courts. Family Procedure Rules may adopt rules made by another authority that apply to proceedings other than family proceedings in a court within the scope of Family Procedure Rules. So for instance, the Civil Procedure Rules made by the Civil Procedure Rule Committee may be applied by Family Procedure Rules to family proceedings. Family Procedure Rules may also delegate matters which could be dealt with by rules of court to the President of the Family Division to deal with by Practice Direction under section 81.

Section 77: Family Procedure Rule Committee

191. This section sets out the membership of the FPRC and deals with the process of appointing members and the consultation requirements. The Lord Chancellor is authorised to remunerate the committee members for travel expenses and out of pocket expenses incurred whilst on committee business.

Section 78: Power to change certain requirements relating to Committee:

192. This section enables the Lord Chancellor to alter the composition of the FPRC by order after consultation with the President of the Family Division. For example, if it were necessary to add a second Circuit Judge to the FPRC or if it became unnecessary to have two Supreme Court Judges as members of the committee, the Lord Chancellor could do so by amending this section thereby reformulating the composition of the committee.

Section 79: Process for making Family Procedure Rules

193. This section describes the process for making Family Procedure Rules. Before making rules the FPRC must meet (unless they are unable to) and consult the appropriate persons. This allows the FPRC to call on the expertise of practitioners, judges, academics or any other experts who are not part of the committee to inform discussion about any proposed rule changes. Any rules drafted by the FPRC must be signed by the majority of the committee before being submitted to the Lord Chancellor who may allow, disallow or alter the rules put to him by the FPRC. Where the Lord Chancellor is to alter rules he must consult with the FPRC before doing so. Rules allowed by the Lord Chancellor are to come into force on such a date as he decides and are to be contained in a statutory instrument. This statutory instrument is to be subject to the negative resolution procedure in Parliament. A statutory instrument containing rules altered by the Lord Chancellor will be subject to the affirmative resolution procedure.

Section 80: Power to amend legislation in connection with the rules

194. This section makes the same provisions as section 4 of the Civil Procedure Act 1997. It provides the Lord Chancellor with an order making power to modify primary legislation and secondary legislation in anticipation of Family Procedure Rules, or as a consequence of these rules or the provisions in sections 75, 76, or 79. It is anticipated that this will be used to make minor revisions to legislation in order, for example, to regularise and modernise terminology to match that in new rules

Section 81: Practice directions relating to family proceedings

195. This section allows the President of the Family Division with the concurrence of the Lord Chancellor to issue practice directions which are binding on the county courts and magistrates' courts in relation to family proceedings. The President of the Family Division and the Lord Chancellor may also approve another person making practice directions for family proceedings in the county courts and magistrates' courts. In the county courts family jurisdiction, the President currently issues Practice Directions with the concurrence of the Lord Chancellor by virtue of s74A(2) of the CCA 1984. No statutory provision deals with the applicability of such directions to magistrates' courts. The President has an inherent jurisdiction to make practice directions for High Court family proceedings, so section 81 does not mention the High Court.
196. Subsection (3) clarifies the scope of the power. For example, a practice direction could specify what practice and procedure should be followed in a certain care centre (specific court), how care proceedings should be handled in all courts (specific proceedings), or how all magistrates' courts should handle a particular type of case (specific jurisdiction).