

COURTS ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS: PART 7

Criminal Procedure Rules and practice directions

Section 68: Meaning of “criminal court”

175. This section gives the collective title of “criminal court” to the Criminal Division of the Court of Appeal and, when dealing with any criminal cause or matter, the Crown Court and magistrates’ courts. The term is used in this Part when referring to the new Criminal Procedure Rule Committee (Crim PRC) (section 70) and the new power to make practice directions (section 74).

Section 69: Criminal Procedure Rules

176. This section provides for rules of court to be made by the Crim PRC, to determine the practice and procedure to be followed in all criminal courts in England and Wales. Once established, this Crim PRC will deal with the criminal business matters now dealt with by the Magistrates and Crown Court Rule Committees, but will be able to exercise an over-arching, watching brief to ensure consistency in procedures across the criminal courts and for ensuring that rules are made consistently.
177. The section confirms that Criminal Procedure Rules may be made for different cases or different areas. This distinction is intended to enable the Crim PRC to make rules in support of new initiatives - that is, to enable “pilot” schemes to be established. Rules may also be made for specified courts or proceedings, for example, Youth Courts. Subsection (4) sets out guiding principles that the Crim PRC must follow when making rules, consistent with those that the Family Procedure Rule Committee (FPRC) and the Civil PRC must follow.

Section 70: Criminal Procedure Rule Committee

178. This section sets out the proposed membership of the new Crim PRC. The membership includes representatives of all the key groups in the criminal justice system and enables representatives from voluntary groups to be included. Therefore those with a direct interest will be able to participate in the rule-making process.
179. The Lord Chief Justice will chair the Crim PRC and will have a deputy who is a High Court or Court of Appeal judge. The Lord Chancellor will have the power to reimburse the travelling expenses of members of the Crim PRC and any person (for example, an expert in a particular field) invited to assist the Crim PRC in its programme of work.

Section 71: Power to change certain requirements relating to Committee

180. This section makes provision for the Lord Chancellor to revise the membership and other arrangements set out in section 70. The Lord Chancellor must consult with the Lord Chief Justice before making an order to bring about any change. These provisions are intended to give flexibility to adjust the membership and other arrangements.

Section 72: Process for making Criminal Procedure Rules

181. This section sets out the arrangements for the making of the criminal procedure rules. It confirms that the Crim PRC should consult as appropriate and, unless it is inexpedient, meet, before it makes the rules. This is intended to encourage the full discussion of the difficulties with existing procedures and of the potential improvements.
182. The section also describes the power for the Lord Chancellor, with the agreement of the Secretary of State, to allow, alter or disallow any rules made by the Crim PRC and sets out the Parliamentary process for the rules. The agreement of the Secretary of State is necessary as he bears responsibility for criminal policy, while the Lord Chancellor is responsible for the administration of the courts.
183. The section provides for the Lord Chancellor to consult the Crim PRC, before he alters any rules made by them. This is necessary in order to ensure that there is clear understanding of the reasons for any alteration. In addition where rules are altered, they would follow the affirmative resolution procedure in Parliament, enabling alterations to be debated.

Section 73: Power to amend legislation in connection with the rules

184. This section sets out the powers of the Lord Chancellor to make changes to legislation where, as a result of the work of the Crim PRC, anomalies are discovered. It describes the requirement for the Lord Chancellor to act, with the concurrence of the Secretary of State, when making such changes. The agreement of the Secretary of State is necessary for the reasons set out above in the notes on section 72.

Section 74: Practice directions as to practice and procedure of the criminal courts

185. This section provides that the Lord Chief Justice, with the concurrence of the Lord Chancellor, can issue directions as to the practice and procedure of the criminal courts. This does not prevent the Lord Chief Justice from giving guidance to the criminal courts on law or making judicial decisions without the concurrence of the Lord Chancellor.

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).

Civil Procedure Rules

Section 82: Civil Procedure Rules

197. This section amends the Civil Procedure Act 1997 (CPA 1997) to ensure that if the Lord Chancellor alters draft Civil Procedure Rules he observes the general objectives of fairness and simplicity.

Section 83: Civil Procedure Rule Committee

198. This section reflects the fact that statutory backing has been given to the posts of Head and Deputy Head of Civil Justice under section 62. The two holders of the posts will be ex officio members of the Civil PRC and the post of Vice-Chancellor is to be removed as an ex officio member of the Committee.
199. There are to be changes to the lay membership of the committee to allow for two members with experience in and knowledge of consumer affairs, or the lay advice sector, or both, rather than the current requirement of one from each. This reflects the fact that experience has shown difficulty in finding suitable members to meet the requirements. The Lord Chancellor is also to have the power to amend the composition of the Committee after consultation with the Master of the Rolls, Head of Civil Justice and the Deputy Head of Civil Justice (when appointed).

Section 84: Power to change certain requirements relating to Committee

200. This section allows the Lord Chancellor to amend the composition of the Committee after consultation with the Head and Deputy Head of Civil Justice and the Master of the Rolls. This power to amend the composition of the Committee is to extend only to the class of appointed members. The Committee retains its existing power to co-opt those with specialist expertise in the formulation of particular rules. Such co-optees are not members of the Committee.

Section 85: Process for making Civil Procedure Rules

201. The Civil Procedure Rules, created under the CPA 1997, govern the practice and procedure of the civil division of the Court of Appeal, the High Court and the county courts.
202. This section makes minor amendments to the CPA 1997 by providing for the Lord Chancellor to allow, disallow or alter rules made by the Committee. Before altering rules the Lord Chancellor must consult the committee. Altered rules will be subject to the affirmative resolution procedure in Parliament to allow democratic scrutiny of the exercise of this power by the Lord Chancellor. Those rules which are allowed by the Lord Chancellor without alteration will continue to follow the negative resolution procedure.

*These notes refer to the Courts Act 2003 (c.39)
which received Royal Assent on 20 November 2003*

Part 8: Miscellaneous

Summary

203. This part contains provisions relating to criminal and civil procedure, appeals, court fees, periodical payment for personal injury and minor amendments to judicial posts in England, Wales and Northern Ireland.