

Draft Order laid before Parliament under section 108(2) and (3)(c)(ii) of the Courts Act 2003, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2004 No.

**SUPREME COURT OF ENGLAND AND WALES
COUNTY COURTS, ENGLAND AND WALES
MAGISTRATES' COURTS,
ENGLAND AND WALES**

The Courts Act 2003 (Consequential Amendments) Order 2004

Made - - - - 2004
Coming into force - - 1st September 2004

Whereas a draft of this Order has been laid before and approved by resolution of each House of Parliament;

Now therefore, in exercise of the powers conferred on him by section 109(4) and (5) of the Courts Act 2003(1), the Lord Chancellor hereby makes the following Order:

Citation

1. This Order may be cited as the Courts Act 2003 (Consequential Amendments) Order 2004.

Commencement

- 2.—(1) This Order comes into force on 1st September 2004.
(2) But the amendment of any enactment by this Order—
 - (a) so far as it relates to Criminal Procedure Rules, shall not affect the operation of the enactment amended in relation to rules of court other than Criminal Procedure Rules during the period between the coming into force of this Order and the coming into force of the first Criminal Procedure Rules made under section 69 of the Courts Act 2003,
 - (b) so far as it relates to Family Procedure Rules, shall not affect the operation of the enactment amended in relation to rules of court other than Family Procedure Rules during the period

between the coming into force of this Order and the coming into force of the first Family Procedure Rules made under section 75 of the Courts Act 2003.

Consequential amendments and repeals

3. The enactments set out in the Schedule are amended and repealed as specified in that Schedule.

Dated 2004

Parliamentary Under Secretary of State
Department for Constitutional Affairs

SCHEDULE

Article 3

Administration of Justice (Miscellaneous Provisions) Act 1933

1.—(1) Amend section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933(2) (procedure for indictment of offenders) as follows.

(2) In subsection (6)(3)—

- (a) for “The Lord Chancellor may make rules” substitute “Rules may make provision”, and
- (b) for “in particular for making” substitute “, in particular,”.

(3) After subsection (6), insert—

“(6A) In subsection (6) above “rules”—

- (a) in relation to the preferment of a bill of indictment by the direction or with the consent of a judge of the High Court, means rules made by the Lord Chancellor, and
- (b) in any other case, means Criminal Procedure Rules.”

Maintenance Orders (Reciprocal Enforcement) Act 1972

2.—(1) Amend section 38A(4) of the Maintenance Orders (Reciprocal Enforcement) Act 1972(5) (rules of court) as follows.

(2) In subsection (1), for the words preceding “may make provision” substitute “Rules of court”.

(3) In subsection (2), for “rules made under section 144 of the Magistrates' Courts Act 1980” substitute “rules of court”.

(4) Omit subsection (3)(6).

(5) In the section heading, for “Magistrates' courts rules” substitute “Rules of court”.

Greater London Council (General Powers) Act 1972

3. In section 17(3)(a) of the Greater London Council (General Powers) Act 1972(7) (duty to give information in certain cases), for “rules made under section 15 of the Justices of the Peace Act 1949” substitute “Criminal Procedure Rules”.

Adoption Act 1976

4. Amend the Adoption Act 1976(8) as follows.

5. In section 61(9) (evidence of agreement and consent), for “rules” (in both places) substitute “Family Procedure Rules”.

(2) 1933 c. 36.

(3) 1933 c. 36; section 2(6) was partially repealed by the Courts Act 1971 (c. 23), Schedule 11, Part 4.

(4) 1972 c. 18; section 38A was inserted by the Maintenance Orders (Reciprocal Enforcement) Act 1992 (c. 56), Schedule 1, Part 2, paragraph 18.

(5) 1972 c. 18.

(6) 1972 c. 18; section 38A(3)(b) was repealed by S.I.1995/755 (N.I. 2), article 185(2) and Schedule 10.

(7) 1972 c. lx

(8) 1976 c. 36; the whole Act (except Part 4 and Schedule 2, paragraph 6) is repealed by the Adoption and Children Act 2002 (c. 38), Schedule 5, with effect from a day to be appointed by the Secretary of State.

(9) 1976 c. 36; section 61(1) was partially repealed by the Adoption (Intercountry Aspects) Act 1999 (c. 18), sections 15(2), 17 and Schedule 3.

6. In section 62(2)(c)(10) (authorised county courts), for the words from “rules” onwards substitute “Family Procedure Rules”.

7.—(1) Amend section 65 (duties of officers of the Service) as follows.

(2) In subsection (1)(11), for “rules shall” substitute “Family Procedure Rules shall”.

(3) In subsection (3)(12), for “Rules of court” substitute “Family Procedure Rules”.

8.—(1) Amend section 66 (rules of procedure) as follows.

(2) In subsection (1)—

(a) omit “in regard to any matter to be prescribed under this Act and”, and

(b) omit “all matters of procedure and”.

(3) Omit subsection (2)(13).

(4) In each of subsections (3) and (4), for “rules” substitute “Family Procedure Rules”.

(5) In subsection (5), for “Rules” substitute “Family Procedure Rules”.

9. In section 72(1)(14) (interpretation)—

(a) in the definition of “prescribed”, for “rules” substitute “Family Procedure Rules”, and

(b) omit the definition of “rules”.

Magistrates' Courts Act 1980

10. Omit paragraphs 141 and 142 of Schedule 7 to the Magistrates' Courts Act 1980(15) (amendments of the Adoption Act 1976).

Supreme Court Act 1981

11. Amend the Supreme Court Act 1981(16) as follows.

12. In each of the following provisions, for “Crown Court Rules” substitute “Rules of court”—

(a) section 52(1) (costs in the Crown Court),

(b) section 73(2) (general provisions), and

(c) section 74(2), (3) and (7)(17) (appeals and committals for sentence).

13. In section 77(1)(18) (committal for trial: date of trial), for “Crown Court Rules” substitute “Criminal Procedure Rules”.

(10) 1976 c. 36; section 62(2)(c) was amended by the County Courts Act 1984 (c. 28), Schedule 2, Part 5, paragraph 58. It was further amended by the Matrimonial and Family Proceedings Act 1984 (c. 42), Schedule 1, paragraph 20(a), with effect from a day to be appointed by the Secretary of State.

(11) 1976 c. 36; section 65(1) was amended by the Criminal Justice and Court Services Act 2000 (c. 43), Schedule 7, Part 2, paragraphs 51 and 52(a) and Schedule 8.

(12) 1976 c. 36; section 65(3) was inserted by the Criminal Justice and Court Services Act 2000 (c. 43), Schedule 7, Part 2, paragraphs 51 and 52(c).

(13) 1976 c. 36; section 66(2) was amended by the Magistrates' Courts Act 1980 (c. 43), section 154 and Schedule 7, paragraph 141.

(14) 1976 c. 36; a relevant amendment was made to section 72(1) by the Magistrates' Courts Act 1980 (c. 43), section 154 and Schedule 7, paragraph 142.

(15) 1980 c. 43; paragraph 141 amended section 66(2) of the Adoption Act 1976 (c. 36) and paragraph 142 amended the definition of “rules” in section 72(1) of that Act.

(16) 1981 c. 54.

(17) 1981 c. 54; section 74(7) was partially repealed (with savings) by the Access to Justice Act 1999 (c. 22) Schedule 15, Part 5(4) and Schedule 14, paragraph 27.

(18) 1981 c. 54; section 77(1) was amended by the Criminal Justice Act 1987 (c. 38) Schedule 2, paragraph 11. It is further amended (and partially repealed) by the Prosecution of Offences Act 1985 (c. 23), Schedule 1, Part 3, paragraph 11 and Schedule 2, from a day to be appointed.

- 14.** In section 81(2) (bail), for “Crown Court Rules” substitute “rules of court”.
- 15.**—(1) Amend section 84 (power to make rules of court) as follows.
- (2) In subsection (1)(**19**)—
- (a) after “prescribing” insert “, except in relation to any criminal cause or matter,”, and
- (b) omit “and the criminal division of the Court of Appeal”.
- (3) In each of subsections (5) and (5A)(**20**)—
- (a) in paragraph (a), omit “or”, and
- (b) after paragraph (b), insert—
- “(c) Criminal Procedure Rules, or
- (d) Family Procedure Rules,”.
- (4) In subsection (9)(**21**), after “Civil Procedure Rule Committee”, insert “, the Family Procedure Rule Committee, the Criminal Procedure Rule Committee,”.
- 16.**—(1) In section 86(1)(**22**) (Crown Court Rule Committee), omit—
- (a) “in relation to the Crown Court and the criminal division of the Court of Appeal”, and
- (b) paragraph (d).
- 17.**—(1) Amend section 87 (particular matters for which rules of court may provide) as follows.
- (2) In subsection (3)(**23**)—
- (a) after “Rules of court” insert “made under section 84”, and
- (b) for “or the criminal division of the Court of Appeal” substitute “(except so far as relating to criminal causes or matters)”.
- (3) In subsection (4), for “Criminal Appeal Rules” substitute “Criminal Procedure Rules”.
- (4) In subsection (5)—
- (a) for “Crown Court Rules” substitute “Rules of court made under section 84”, and
- (b) after “such appeals” insert “(except so far as relating to criminal causes or matters)”.
- 18.** In section 151(4)(**24**) (interpretation), omit the definitions of “Criminal Appeal Rules” and “Crown Court Rules”.

Local Government (Miscellaneous Provisions) Act 1982

- 19.** In section 16(6) of the Local Government (Miscellaneous Provisions) Act 1982(**25**) (provisions supplementary to ss 14 and 15), for “Crown Court Rules” substitute “Criminal Procedure Rules”.

(19) 1981 c. 54; section 84(1) was amended by the Civil Procedure Act 1997 (c. 12) Schedule 2, paragraph 1(4)(a).

(20) 1981 c. 54; section 84(5) was substituted by, and section 84(5A) was inserted by, the Civil Procedure Act 1997 (c. 12), Schedule 2, paragraph 1(4)(c).

(21) 1981 c. 54; section 84(9) was amended by the Civil Procedure Act 1997 (c. 12) Schedule 2, paragraph 1(4)(d).

(22) 1981 c. 54; section 86(1) was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 36(2).

(23) 1981 c. 54; section 87(3) was amended by the Civil Procedure Act 1997 (c. 12) Schedule 2, paragraph 1(6)(b).

(24) 1981 c. 54; section 151(4) was amended by the Civil Procedure Act 1997 (c. 12), Schedule 2, paragraph 1(7)(b).

(25) 1982 c. 30.

Matrimonial and Family Proceedings Act 1984

20. Omit paragraph 20(a) of Schedule 1 to the Matrimonial and Family Proceedings Act 1984**(26)** (amendment of section 62 of the Adoption Act 1976).

Criminal Justice Act 1987

21. Amend the Criminal Justice Act 1987**(27)** as follows.

22. In section 6(6)**(28)** (applications for dismissal), for “Crown Court Rules” substitute “Criminal Procedure Rules”.

23.—(1) Amend section 9 (the preparatory hearing) as follows.

(2) In subsection (6)**(29)**—

- (a) for “Crown Court Rules” substitute “Criminal Procedure Rules”, and
- (b) in paragraph (b), for “rules under” substitute “such rules made by virtue of”.

(3) In subsection (9), for “Crown Court Rules” substitute “Criminal Procedure Rules”.

Criminal Justice Act 1988

24. Amend the Criminal Justice Act 1988**(30)** as follows.

25. In section 31 (form of evidence and glossaries), for “Crown Court Rules” substitute “Criminal Procedure Rules”.

26.—(1) Amend section 32 (evidence through television links) as follows.

(2) In subsection (4)—

- (a) for “rules to which this section applies” substitute “Criminal Procedure Rules”, and
- (b) for “authority making them” substitute “Criminal Procedure Rule Committee”.

(3) Omit subsection (5)**(31)**.

27.—(1) Amend section 159 (crown court proceedings—orders restricting or preventing reports or restricting public access) as follows.

(2) In subsection (6), omit the words preceding “Rules of Court”.

(3) For subsection (7)(b), substitute—

“(b) in subsection (6), before “Rules of Court” there shall be inserted “Without prejudice to the generality of sections 52 and 55 of the Judicature (Northern Ireland) Act 1978””.

28. In paragraph 4 of Schedule 2**(32)** (documentary evidence)—

- (a) for paragraphs (a), (b) and (c) substitute “, Criminal Procedure Rules”, and
- (b) for “authority making any of them” substitute “Criminal Procedure Rule Committee”.

(26) 1984 c. 42; paragraph 20(a) amended section 62(2)(c) of the Adoption Act 1976 (c. 36) from a date to be appointed by the Lord Chancellor.

(27) 1987 c. 38.

(28) 1987 c. 38; section 6 was substituted by the Criminal Justice Act 1988 (c. 33), section 144(5), and is repealed by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 2, paragraphs 58(1) and (2) and Schedule 37, Part 4, with effect from a day to be appointed by the Secretary of State.

(29) 1987 c. 38; section 9(6) was amended by the Criminal Procedure and Investigations Act 1996 (c. 25), section 74(4) and (5).

(30) 1988 c. 33.

(31) 1988 c. 33; section 32(5) was amended by the Criminal Justice Act 1991 (c. 53), section 55(5).

(32) 1988 c. 33; Schedule 2 is repealed by the Criminal Justice Act 2003 (c. 44), section 136(a) and Schedule 37, Part 6, with effect from a day to be appointed by the Secretary of State.

Road Traffic Offenders Act 1988

29. Amend the Road Traffic Offenders Act 1988(33) as follows.

30. In section 12(1)(a) and (3)(a) (proof, in summary proceedings, of identity of driver of vehicle), for “rules made under section 144 of the Magistrates' Courts Act 1980” substitute “Criminal Procedure Rules”.

31. In section 13(4)(c) (admissibility of records as evidence), for “rules under section 144 of the Magistrates' Courts Act 1980” substitute “Criminal Procedure Rules”.

Criminal Justice Act 1991

32. Amend the Criminal Justice Act 1991(34) as follows.

33. Omit section 55(5) (amendment of section 32 of the Criminal Justice Act 1988).

34. In paragraph 5(8) of Schedule 6(35) (notices of transfer: procedure in lieu of committal), for “Crown Court Rules” substitute “Criminal Procedure Rules”.

Crime and Disorder Act 1998

35. Amend the Crime and Disorder Act 1998(36) as follows.

36.—(1) Amend section 49 (powers of magistrates' courts exercisable by single justice etc.) as follows.

(2) For subsection (2) substitute—

“(2) Criminal Procedure Rules may, subject to subsection (3) below, provide that any of the things which, by virtue of subsection (1) above, are authorised to be done by a single justice of the peace for any area may, subject to any specified restrictions or conditions, be done by a justices' clerk for that area.”

(3) In subsection (3), for “Rules under that section” substitute “Criminal Procedure Rules”.

(4) In subsection (4)—

(a) for “rules under that section” substitute “Criminal Procedure Rules”, and

(b) for “Lord Chancellor” substitute “Criminal Procedure Rule Committee”.

37.—(1) Amend Schedule 3 (procedure where persons are sent for trial under section 51) as follows.

(2) In paragraph 2(7), for “Crown Court Rules” substitute “Criminal Procedure Rules”.

(3) In paragraph 4(12), in the definition of “prescribed”, for “rules made under section 144 of the 1980 Act” substitute “Criminal Procedure Rules”.

Access to Justice Act 1999

38. Omit paragraph 2(7) of Schedule 3 to the Access to Justice Act 1999(37) (Criminal Defence Service: right to representation).

(33) 1988 c. 53.

(34) 1991 c. 53.

(35) 1991 c. 53; Schedule 6 is repealed by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 2, paragraph 62(1) and (3) and Schedule 37, Part 4, with effect from a day to be appointed by the Secretary of State.

(36) 1998 c. 37.

(37) 1999 c. 22.

Powers of Criminal Courts (Sentencing) Act 2000

39. Amend the Powers of Criminal Courts (Sentencing) Act 2000(**38**) as follows.

40.—(1) Amend section 31 (rules of court) as follows.

(2) In subsection (1)—

(a) for “Rules of court” substitute “Criminal Procedure Rules”, and

(b) for “authority making them” substitute “Criminal Procedure Rule Committee”.

(3) Omit subsection (2).

41. In section 63(6) (supervision orders), for “rules under section 144 of the Magistrates' Courts Act 1980” substitute “Criminal Procedure Rules”.

42. In section 132(2) (compensation orders: appeals etc.), for “Rules under section 144 of the Magistrates' Courts Act 1980” substitute “Criminal Procedure Rules”.

43. In section 155(7) (alteration of Crown Court sentence), for “Crown Court Rules” substitute “Criminal Procedure Rules”.

44. In section 163(**39**) (general definitions), in the definition of “the register”, for “rules under section 144 of the Magistrates' Courts Act 1980” substitute “Criminal Procedure Rules”.

Criminal Justice Act 2003

45. Amend the Criminal Justice Act 2003(**40**) as follows.

46.—(1) Amend section 30 (further provision about new method of instituting proceedings) as follows.

(2) In subsection (1)—

(a) for “Rules under section 144 of the Magistrates' Courts Act 1980” substitute “Criminal Procedure Rules”, and

(b) in paragraph (b), for “Lord Chancellor” substitute “Criminal Procedure Rule Committee”.

(3) Omit subsection (3).

47.—(1) Amend section 55 (Rules of court) as follows.

(2) In subsection (1)—

(a) for “Rules of Court” substitute “Criminal Procedure Rules”, and

(b) for “authority making them” substitute “Criminal Procedure Rule Committee”.

(3) In subsection (2), for “Rules of court” substitute “Criminal Procedure Rules”.

(4) In subsection (4), for “rules of court” substitute “Criminal Procedure Rules”.

48. In section 56(1) (interpretation of Part 8), omit the definition of “rules of court”.

49. For section 111(7) (definitions) substitute—

“(7) In this section “prescribed” means prescribed by rules of court.”

50. In section 127(7) (expert evidence: preparatory work)—

(a) for “rules made” substitute “Criminal Procedure Rules made by virtue of”,

(38) 2000 c. 6.

(39) 2000 c. 6; a relevant amendment to section 163 was made by S.I. 2001/618, art 5(1) and (5).

(40) 2003 c. 44.

- (b) in paragraph (a), omit “under”, and
- (c) in paragraph (b), omit “under section 144 of the Magistrates' Courts Act 1980 (c. 43) by virtue of”.

51. For section 132(10) (definitions), substitute—

“(10) In this section “prescribed” means prescribed by rules of court.”

52. In paragraph 5 of Schedule 6 (evidence of bad character: armed forces), for “, in subsection (7), the definition of” substitute “the expression”.

53. For paragraph 2(6) of Schedule 7 (hearsay evidence: armed forces), substitute—

“(6) Section 132 has effect as if the expression “rules of court” included rules regulating the practice and procedure of service courts.”

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes a number of amendments to primary legislation which are consequential to sections 68 to 70 (concerning Criminal Procedure Rules) and sections 75 to 77 (concerning Family Procedure Rules) of the Courts Act 2003. This Order comes into force on 1st September 2004, but shall not affect the general operation of the enactments amended—

- (a) in so far as they relate to Criminal Procedure Rules, until the first Criminal Procedure Rules come into force, and
- (b) in so far as they relate to Family Procedure Rules, until the first Family Procedure Rules come into force.

Section 69 of the Courts Act 2003 confers power on the Criminal Procedure Rule Committee to make rules of court (to be known as “Criminal Procedure Rules”) governing the practice and procedure to be followed in the criminal courts. The criminal courts are defined in section 68 of that Act as the criminal division of the Court of Appeal and (when dealing with any criminal cause or matter) the Crown Court and magistrates' courts.

Section 75 of the Courts Act 2003 confers power on the Family Procedure Rule Committee to make rules of court (to be known as “Family Procedure Rules”) governing the practice and procedure to be followed in family proceedings in the High Court, county courts and magistrates' courts.

This Order makes consequential amendments and repeals to the rule-making powers in:

Administration of Justice (Miscellaneous Provisions) Act 1933, section 2(6)

This section provides for the indictment of offenders. Subsection (6) allows the Lord Chancellor to make rules to carry this section into effect. Following the commencement of section 69 of the Courts Act 2003, part of that power to make rules will come within the scope of Criminal Procedure Rules. This Order makes amendments transferring that part of that power to the Criminal Procedure Rule Committee.

Adoption Act 1976, section 66

This section provides for the Lord Chancellor to make procedural and incidental rules. Following the commencement of section 75 of the Courts Act 2003, part of that power to make

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Courts Act 2003 (Consequential Amendments) Order 2004 No. 2035

rules will come within the scope of Family Procedure Rules. This Order makes amendments transferring that part of that power to the Family Procedure Rule Committee.

Supreme Court Act 1981, section 84

Sections 84(1) and 86(1) of the Supreme Court Act 1981 confer power on the Crown Court Rule Committee to make rules for the purpose of regulating and prescribing the practice and procedure to be followed in the Crown Court and the criminal division of the Court of Appeal.

In order to give full effect to section 69 of the Courts Act 2003, section 84(1) of the 1981 Act is amended so as to exclude, from the scope of that power, proceedings in the Crown Court relating to any criminal cause or matter.

This Order makes further minor consequential amendments and repeals.

This Order does not impose any new charges on businesses.