



Ministry of Justice

Family Procedure Rule Committee

ANNUAL REPORT 2016 – 2017

This annual report of the Family Procedure Rule Committee for April 2016 – March 2017 includes references to rules made during the period of the report, the Committee's terms of reference, membership and dates of meetings.

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1. Terms of Reference

The Family Procedure Rule Committee (“the Committee”) is an Advisory Non-Departmental Public Body sponsored by the Ministry of Justice. Its function is to make rules of court governing the practice and procedure in family proceedings in the High Court and the family court. Its power to make rules is to be exercised with a view to securing that the family justice system is accessible, fair and efficient and the rules are both simple and simply expressed. Before making rules the Committee must meet and discuss proposed rules (unless it is inexpedient to do so) and consult such persons as it considers appropriate.

2. Background

The Committee was established in 2004 in accordance with the provisions of the Courts Act 2003.

3. Membership

The Committee comprises the following members:

- The Right Honourable Sir James Munby – President of the Family Division (Chair)
- The Right Honourable Lord Justice McFarlane – Court of Appeal Judge
- The Honourable Mrs Justice Theis – High Court Judge (*re-appointed 29 March 2017*)
- Her Honour Judge Alison Raeside – Circuit Judge
- District Judge Chris Darbyshire – District Judge (County Court)
- District Judge Paul Carr – District Judge (Magistrates’ Courts)
- Marie Brock JP – Magistrate
- Richard Burton – Justices’ Clerk
- William Tyler QC - Barrister

- Michael Horton – Barrister
- Hannah Perry – Solicitor
- Dylan Jones – Solicitor
- Melanie Carew – Cafcass
- Jane Harris – Lay Advice Member

The Acting Chair of the Committee is The Honourable Mrs Justice Pauffley.

His Honour Judge Waller is not a serving member of the Committee since the expiry of his ten-year term. However, due to his expertise in financial remedy proceedings, he continues to attend meetings and contribute to the drafting of Family Procedure Rules.

4. Remuneration

The Chair and members are not remunerated for their service on the Committee.

Members of the Committee are permitted to submit claims to travel and subsistence expenses which are paid by the Ministry of Justice.

A register of member interests for the period of this report has been published on the Committee's website and can be found at the following link:

https://www.gov.uk/government/publications?departments%5B%5D=family-procedure-rule-committee&publication_type=corporate-reports

5. Meetings

The Committee met on 11 April 2016, 16 May 2016, 13 June 2016, 12 September 2016, 10 October 2016, 7 November 2016, 5 December 2016, 6 February 2017 and 6 March 2017.

The meeting held on 5 December 2016 was an open meeting of the Committee. Notification of the open meeting was posted on the Family Procedure Rule Committee's website at <https://www.gov.uk/government/organisations/family-procedure-rule-committee>. There were nine observers at this meeting who were given the opportunity to ask questions about the work of the Committee.

6. Working Parties

The Committee establishes working parties to consider the detail of rules relating to specific types of family proceedings. During the period of this report, the following working parties were in existence: Vulnerable Witnesses and Children Working Group, Financial Proceedings Working Party and the Forms Working Group.

The Vulnerable Witnesses and Children Working Group met on an ad hoc basis with MoJ Officials, HMCTS and Cafcass Cymru to further the drafting of the Children and Vulnerable Witnesses Practice Directions prior to drafts being submitted to the full Committee for consideration and comment.

The Financial Proceedings Working Party predominantly communicate by email in agreeing how to implement the recommendations of the Financial Remedies Working Group. The group prepares draft Rule amendments for consideration by MoJ officials prior to their full consideration by the Committee. His Honour Judge Waller regularly updates the Committee of the work of this group. The Working Party met with MoJ Officials on 17 January 2017 to discuss the issue of procedural de-linking between divorce and financial remedy proceedings and timescales for its implementation.

The Forms Working Group meet after Committee meetings as required to discuss proposed amendments to family forms.

7. Family Procedure Rules

The Family Procedure Rules, which were made by the Committee on 13 December 2010, came into force on 6 April 2011.

The rules are contained in 40 Parts covering different areas of procedure and different types of proceedings. Under the provisions of the Courts Act 2003, rules may, instead of providing for any matter, refer to provision made about that matter in directions. Accordingly, much of the detail of the procedure is contained in Practice Directions supplementing the Parts of the Rules.

The Committee adopted the following principles in development of the rules:

- i. Modernisation of language,
- ii. Harmonisation with the Civil Procedure Rules to the extent that it is appropriate,
- iii. Creation of a single unified code of practice in addition to rules and
- iv. Alignment of procedures in all levels of Court except where there are strong reasons not to do so.

8. Family Procedure (Amendment) Rules

During the period covered by this Report, the rules were amended by three instruments. The amendments were made by the Committee in accordance with section 79 Courts Act 2003.

The Family Procedure (Amendment No 2) Rules 2016 (S.I. 2016 No. 901) came into effect on 3 October 2016. This included amendments to:

- to remove the automatic party status of a child (other than a child applicant) in an application for a declaration of parentage, leaving the court discretion over whether to make such a child a party or not;
- to make new provision about when a child who is made a party to an application for a declaration of parentage should have a children's guardian, or should have a litigation friend, or may proceed without either;

- by inserting new rules for applications to set aside a financial remedy order of the court where no error of the court is alleged.

The Family Procedure (Amendment No 3) Rules 2016 (S.I. 2016 No. 1013) came into effect on 14 November 2016. These rules amend the FPR 2010 to provide for the automatic assignment (rather than assignment on request) of serial numbers to adoptive parents or prospective adoptive parents in proceedings for adoption and certain other proceedings in order to keep their identity confidential.

The Family Procedure (Amendment) Rules 2017 (S.I. 2017 No. 413) came into effect on 6 April 2017. This included amendments to:

- amend the provisions in Parts 10 and 11 of the FPR 2010 relating to the service of protective orders to make clear that an applicant should not him or herself personally hand the application or order to the person they are seeking the protective order against;
- make two minor, tidying amendments to the FPR 2010.

9. Consultations

During the period of this report, the Committee were consulted on proposed amendments to the Courts Act 2003 to revise the membership of the Committee to provide a more diverse representation on the Committee. This is particularly in relation to Welsh interests when making Family Procedure Rules in light of the increasing divergence between English and Welsh law pertaining to the family jurisdiction. The Committee were consulted on the Courts Act 2003 (Amendment) Order 2017 which amended the Committee's membership to:

- include one judge of the family court who sits primarily or exclusively in Wales;
- include a person nominated by Welsh Ministers to represent the interests of Welsh family proceedings officers;

- amend the position of District Judge of the Principal Registry of the Family Division to a District Judge who is either a District Judge of the Principal Registry of the Family Division or a District Judge appointed under Section 6 of the County Courts Act 1984.

The Committee and the President of the Family Division endorsed the proposed amendments in the Order which was subsequently sent to The Right Honourable Sir Oliver Heald QC and the Lord Chief Justice for consideration. The Order came into effect on 27 March 2017.

During the period of this report, the Committee consulted on the Vulnerable Witnesses Practice Direction. This Consultation was launched on 23 February 2017 and closed on 17 March 2017. The Consultation was sent to targeted stakeholders but was also published on the Committee's website at:

<https://www.gov.uk/government/consultations/vulnerable-witnesses-practice-direction>. The Ministry of Justice are considering the consultation responses which will be presented to the Committee to progress this work in due course.

10. Contact

Any enquiries about the work of the Committee may be addressed to:

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