



Ministry of
JUSTICE

Family Procedure Rule Committee

Annual Report 2008

This annual report of the Family Procedure Rule Committee for 2008 includes references to rules made during the period of the report, the Committee's terms of reference, membership and dates of meetings.

Contents	Page
Terms of Reference	3
Background	3
Membership	4
Remuneration	5
Meetings	5
Working Parties	5
Family Procedure Rules	6
Family Proceedings Rules	7
Open Meeting	8
Contact	8

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, county courts and family proceedings courts. 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.

Background

The Committee was established in 2004 in accordance with the provisions of the Courts Act 2003. To date, the power of the Committee to make rules has been brought into force only in regard to matters relating to adoption.

Membership

During the period of this report, the Committee comprised the following members:

The Right Honourable Sir Mark Potter, President of the Family Division (Chair)

The Right Honourable Lord Justice Wall (Deputy Chair)

The Honourable Mr Justice Singer – High Court Judge

Her Honour Judge Angela Finnerty – Circuit Judge

Senior District Judge Philip Waller – District Judge (Principal Registry of the Family Division)

District Judge Duncan Adam – District Judge (County Court)

District Judge Katharine Marshall – District Judge (Magistrates' Courts) (*Until April 2008*)

District Judge Paul Carr – District Judge (Magistrates' Courts) (*From June 2008*)

Martyn Cook JP – Magistrate

John Baker – Justices' Clerk

Jane Probyn – Barrister

Charles Hyde QC – Barrister

Susan Jones – Barrister

David Salter – Solicitor

Bruce Edgington – Solicitor

Clive Redley – Solicitor

Mike Hinchliffe – CAFCASS

Ruth Lindley-Glover – Lay Advice member

Lord Justice Wall, Her Honour Judge Angela Finnerty, District Judge Duncan Adam, John Baker, Charles Hyde QC and Clive Redley were re-appointed to the Committee as their previous terms of office expired in 2008

Remuneration

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

Meetings

The Committee met on 15 February 2008, 14 March 2008, 18 April 2008, 6 June 2008, 11 July 2008, 6 October 2008 and 3 November 2008.

Working Parties

The Committee has established working parties to develop draft Family Procedure Rules relating to different aspects of family proceedings. The working parties include individual co-opted members with particular expertise in the relevant areas of family procedure, as well as members of the Committee.

The working parties and their terms of reference are:

(i) The Child Abduction Working Party

“To examine and make recommendations about the manner in which the current provisions for the conduct of proceedings relating to international parental child abduction and connected matters may best be adapted to and incorporated into the Family Procedure Rules and in particular to consider:

whether provisions contained in existing practice directions or protocols and recent leading judgements are to be incorporated in rules or practice directions or set out in some other form.”

(ii) The Children’s Proceedings Working Party

“ To examine and make recommendations about the manner in which the current provisions for the conduct of proceedings relating to children may best be adapted to and incorporated in the Family Procedure Rules and in particular to consider:

- (a) the extent to which the provisions of the Civil Procedure Rules (CPR) may be applied or adapted to children’s proceedings;
- (b) whether provisions contained in existing guidance or protocols are to be incorporated in rules or practice directions or set out in some other form;
- (c) whether the provisions of the rules should be extended to include procedural matters beyond the scope of the current rules (e.g. mediation); and
- (d) rationalising the procedures for children’s proceedings across all levels of court.”

(iii) The Experts Working Party

“To examine current guidance on the role and instruction of experts in family proceedings with a view to considering whether a composite protocol can and should be formulated for inclusion in the Family Procedure Rules.”

(iv) The Financial Proceedings Working Party

“To examine the extent and the manner in which the provisions of the CPR may be applied or adapted to financial and property proceedings and to make recommendations for (i) incorporating and harmonising the relevant provisions of the CPR in formulating rules relating to financial and property proceedings and (ii) rationalising the procedures prescribed for financial and property proceedings across all levels of court.”

(v) The Rule Harmonisation Working Party

“To examine the extent to which and the manner in which the provisions of the CPR may be applied or adapted to family proceedings and to make recommendations for incorporating and harmonising the relevant provisions of the CPR in formulating Family Procedure Rules.”

(vi) The Master Document Working Party

“To consider all members’ comments on the master document sent out in July 2007 and to agree consequent changes on the master document in readiness for consultation to stakeholders and interested parties in November 2008 and to identify which proposals should be logged for future consideration”.

Family Procedure Rules

Following the production of a first draft of the new Family Procedure Rules (“the Master Document”) referred to in the Committee’s 2007 Annual Report, the Master Document and members’ comments upon it were subjected to close scrutiny by the Committee in 2008.

This has culminated in the issue of a public consultation paper, *“Family Procedure Rules – An invitation to comment on the draft rules, practice directions and forms”* on 28 November, with responses invited by 27 February 2009. This consultation is being carried out by the Committee in accordance with its statutory obligation under section 79(2) Courts Act 2003.

Annexed to the consultation paper are new rules which have been drafted in accordance with the requirements of the Courts Act 2003 that the power to make rules 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.

The draft rules are contained in 34 Parts covering different areas of procedure and different types of proceedings. Under the provisions of the Courts Act 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 draft Practice Directions supplementing the Parts of the Rules.

The Committee has 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.

The publication of the consultation paper follows a great deal of work undertaken by the Committee and its working parties over the previous years. It is intended that the new rules will improve the current procedural system significantly with procedures that will be easier to use and understand for courts, practitioners and those individuals who find themselves involved in family proceedings. Additionally, there shall for the first time be a single unified code for family proceedings in the magistrates' courts, county courts and the High Court.

The Committee is consulting widely and hopes for a large response.

Amendment Rules

The first rules made by the Committee were the Family Procedure (Adoption) Rules 2005. In 2008 the Committee made minor amendments to rules 55 (How a person becomes a litigation friend by court order) and 95 (Power of the court to proceed in the absence of a party) contained in the Family Procedure (Adoption) (Amendment) Rules 2008 [SI 2008 No. 2447 (L.12)].

FAMILY PROCEEDINGS RULES

Pending the bringing into force of its full rule-making powers under the Courts Act 2003, rules in relation to family proceedings in the High Court and county courts continue to be made under the provisions of s.40 Matrimonial and Family Proceedings Act 1984. Those appointed to make such rules are drawn from the Committee.

During the year the Committee has considered and made amendments to the Family Proceedings Rules to set out a procedural code for applications under Part 4A (Forced Marriage) of the Family Law Act 1996 and consequential amendments arising from the Tribunals, Courts and Enforcement Act 2007. These are contained in the Family Proceedings (Amendment) Rules 2008 [2008 SI 2446 (L.11)].

The Committee also made rules to support the implementation of sections 1-5 and 8 of the Children and Adoption Act 2006 and introduced a new prescribed form for applications under s.8 of the Children Act 1989. These are contained in the Family Proceedings (Amendment) (No.2) Rules 2008 [SI 2008 No.2861 (L.25)].

Open meeting

In line with its commitment to openness in its working practices, the Committee held its third open meeting in July. Those attending observed the business of the Committee and were afforded the opportunity to put questions to the Committee.

Contact

Updates on the Committee's work may be viewed on the Family Procedure Rule Committee web page.

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

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