

Proposed changes relating to court bundles in family proceedings: Practice Direction 27A supplementing the Family Procedure Rules 2010

This is a consultation exercise by the Family Procedure Rule Committee

This consultation begins on 12.09.2024.

This consultation ends on 21.10.2024.

Introduction

1. The Family Procedure Rule Committee (“the Committee”) is undertaking a project to produce a new Practice Direction (PD) 27A concerning the preparation of bundles in family proceedings, to apply in the Family Division of the High Court and in the family court.

The Committee, rules of court and PDs

2. Under section 75 of the Courts Act 2003, the Committee has a statutory role to make rules of court governing practice and procedure in family proceedings. These are the Family Procedure Rules 2010 (“the Rules”). That power is to be exercised to secure fairness, accessibility and efficiency in the family justice system.
3. Section 76(8) of the Courts Act 2003 states that Family Procedure Rules may, instead of providing for any matter, refer to provision made or to be made about that matter by directions. There are a number of PDs supplementing the Rules, including the current PD27A.
4. Section 79(1) of the Courts Act 2003 provides that before making the Rules, the Committee must consult such persons as they think appropriate.

Proposal for a new PD27A

5. The primary purpose of a court bundle is to assist the court to make efficient and judicious decisions. The Committee recognises that the current PD27A is out of date and that the existence of separate judicial guidance in relation to bundles, in addition to PD27A, can be confusing.
6. The Committee established a Working Group to consider what should be included in a new PD27A. The Working Group was comprised of experts including solicitors, barristers, a lay magistrate and judges, with specialist knowledge in relation to different types of family proceedings. The Working

Group worked with officials from the Ministry of Justice and His Majesty's Courts and Tribunals Service (HMCTS) to develop a draft new PD27A.

7. The Committee's aim is that a new PD27A should reflect the fact that electronic bundles are commonly used now in most family proceedings and also to bring into PD27A provisions which are currently made in judicial guidance, including the General Guidance on electronic court bundles (29 November 2021), the Guidance on e-bundles for use in the family court and Family Division (21 December 2021) and the Statement on the Efficient Conduct of Financial Remedy Proceedings in the Financial Remedies Court (11 January 2022).
8. A key purpose of the draft new PD27A is to ensure clarity on the process and consistency across how bundles are formulated. The Committee intend for the new PD27A to be a comprehensive source of requirements for the preparation of bundles in family proceedings, with which anyone preparing a bundle is able to comply.
9. The Committee considers that the draft new PD27A provides in-depth guidance on the preparation of bundles, including in relation to the content, structure, filing and service of bundles, whether electronic ("e-bundles") or paper.

Consultation

10. Given the centrality of the need for clear and consistent bundles to a fair and efficient family justice system, as well as the practical implications for parties and their legal representatives, the Committee has decided to consult publicly on the draft new PD27A.
11. It is recognised that this PD will have significant implications for the daily work of legal practitioners, litigants in person, HMCTS and magistrates and judges working in family proceedings across England and Wales. There will likely be implications for the software and systems which parties and their legal representatives use to develop bundles.
12. Attached with this paper is a draft of the proposed new PD27A. The existing PD27A can be found online at https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_27a.

Consultation questions

13. The questions the Committee would like you to address can be found embedded in the attached draft and they are listed below.

- Question 1: What are your views about the provision in Chapter 3 of the draft new practice direction as regards who should be responsible for preparing the court bundle?
- Question 2: Do you agree with the draft provision stating what may not be included in a bundle? Should any other items be included, such as photographs, travel documents, educational reports?
- Question 3: Should different provision to that in the draft practice direction be made in relation to bundles filed for subsequent hearings in financial remedy proceedings?
- Question 4: What are your views about the appropriate pagination system to be used for bundles in (a) financial remedy proceedings (b) public law proceedings relating to children (c) private law proceedings relating to children and (d) any other proceedings?
- Question 5: As regards public law proceedings, should this practice direction make provision for minutes of advocates' meetings to be included, and for templates to be used for case summaries and position statements?
- Question 6: Do you consider that, as well as setting out limits on the length of position statements, this practice direction should set out more detail about what a position statement should include? If so, what provision should be made?
- Question 7: Do you consider that the default 350-page limit should be altered?
- Question 8: Should this practice direction require computer-generated page numbering to match PDF "page label" numbering? If so, should the court have discretion to direct otherwise?
- Question 9:
 - (a) Do you consider that the timescales in Chapter 13 are appropriate?

- (b) Should different provision be made for different types of proceedings?
- (c) Should a hearing template (which is one of the preliminary documents) be filed much further in advance of a hearing so that, for example, any necessary listing adjustments can be sought in good time?
- Question 10: Do you have any other comments on this draft practice direction?

Next steps and timing

14. Responses to this consultation are sought by 21 October 2024.

15. Once the consultation has closed, the Committee will consider the responses and settle on a final version of the new PD27A. Once the draft is finalised, the President of the Family Division and the Minister in the Ministry of Justice will be invited to formally sign the new PD. It is currently intended that the new PD27A will come into force by Spring 2025.

Contact details and how to respond

Please send your responses to this consultation by 21 October 2024 to:

FPRC Secretariat
Courts, Criminal and Family Justice Directorate
Post point 7.22
102 Petty France
London
SW1H 9AJ
FPRCSecretariat@justice.gov.uk

Please note:

Submission format: If you intend sending a PDF document it would be helpful if you could send a word document as well to assist in analysing the responses. Only the PDF document will be retained as the response document.

Complaints or comments: If you have any complaints or comments about the consultation process you should contact the FPRC Secretariat at the address given above.

Circulation and additional copies: Copies of the consultation document are being sent to various stakeholders, a list is included at the end of this document. The list is not exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject.

Representative groups: Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality: Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information and UK General Data Protection Regulation (GDPR) regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004). If you want the information you provide to be treated as confidential, please be aware that under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the FPRC. The FPRC will process your personal data in accordance with the DPA and in the majority of

circumstances this will mean that your personal data will not be disclosed to third parties.

The principles that public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles, which can be viewed at:

https://assets.publishing.service.gov.uk/media/5aafa4f2e5274a7fbe4fbacb/Consultation_Principles_1.pdf

Welsh Language: A Welsh language consultation paper is available via the Secretariat.

For more information on the Welsh Language Scheme:

Am fyw o wybodaeth am y cynllun iaith Gymraeg yn gweld:

<https://www.gov.uk/government/publications/moj-welsh-language-scheme-2018>

Copies of the consultation are being sent to:

Note this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

- Advice Now
- Association of HM District Judges
- Association of High Court Masters and ICC Judges
- Association of Circuit Judges
- Association of Directors of Children's Services
- Association of Lawyers for Children
- Bar Council
- British Association of Social Workers
- Cafcass
- Cafcass Cymru
- Chartered Institute of Legal Executives
- Children's Commissioner for England
- Citizen's Advice Bureau
- Coram
- Council of HM Circuit Judges
- Council of HM District Judges (magistrates' courts)
- Designated Family Justices
- Domestic Abuse Commissioner's Office
- Family Justice Council
- Family Law Bar Association
- Family Rights Group
- Family Solutions Group
- High Court Judges of the Family Division
- International Family Law Committee
- Judicial College
- Judicial Office
- Justices' Clerks' Society
- Justices' Legal Advisers' and Court Officers' Society
- Law for Life
- Lawyers in Local Government
- Local Government Association
- Magistrates' Association
- Magistrates' Leadership Executive
- National Society of Prevention of Cruelty to Children

- Resolution
- RCJ Citizen's Advice Bureau
- Social Care Wales
- Social Work England
- Support Through Court
- Supreme Court
- The Law Society
- Transparency Project