
DRAFT STATUTORY INSTRUMENTS

2011 No.

The Family Procedure (Modification of Enactments) Order 2011

PART 3

AMENDMENTS TO PRIMARY LEGISLATION

Amendment of the Courts Act 1971

3. In section 52 of the Courts Act 1971(1), after subsection (3) insert—
- “(3A) Subsection (3) does not apply to family proceedings (within the meaning of section 65 of the Magistrates’ Courts Act 1980(2)).”

Amendment of the Magistrates’ Courts Act 1980

4. The Magistrates’ Courts Act 1980 is amended as provided in articles 5 to 14.
5. In section 53 after subsection (3) insert—
- “(4) Subsections (1) to (3) are subject, for the purposes of family proceedings in any magistrates’ court, to other provision made by Family Procedure Rules.”
6. In section 54—
- (a) for the heading, substitute “Adjournment and stays”; and
- (b) after subsection (2) insert—
- “(3) In family proceedings a magistrates’ court may stay the whole or part of any proceedings or order either generally or until a specified date or event.
- (4) Subsections (1) and (2) are subject, for the purpose of family proceedings in any magistrates’ court, to other provision made by Family Procedure Rules.”
7. In section 55 after subsection (8) insert—

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- (1) [1971 c.23](#). Section 52 was amended by section 21 of and Schedule 2 to the Costs in Criminal Cases Act [1973 \(c.14\)](#), section 154 of and paragraph 96 of Schedule 7 to the Magistrates’ Courts Act [1980 \(c.43\)](#) and by section 109(1) of and paragraph 140(a) and (b) of Schedule 8 to the Courts Act [2003 \(c.39\)](#).
- (2) [1980 c.43](#). Section 65 was amended by section 15(4) of, and Part 1 of Schedule 12 to, the Civil Jurisdiction and Judgments Act [1982 \(c.27\)](#), section 44 of the Matrimonial and Family Proceedings Act [1984 \(c.42\)](#), section 86 of, and paragraph 54 of Schedule 10 to, the Social Security Act [1986 \(c.50\)](#), section 33 of, and Schedules 2 and 4 to, the Family Law Reform Act [1987 \(c.42\)](#), sections 92 and 108(7) of, and paragraph 8 of Schedule 11 and Schedule 15 to, the Children Act [1989 \(c.41\)](#), sections 116 and 125(7) of, and paragraph 40 of Schedule 16 and Schedule 20 to, the Courts and Legal Services Act [1990 \(c.41\)](#), sections 3 and 4 of, and Schedule 1 and paragraph 60 of Schedule 2 to, the Social Security (Consequential Provisions) Act [1992 \(c.6\)](#), section 66(1) of, and paragraph 49 of Schedule 8 to, the Family Law Act [1996 \(c.27\)](#), section 119 of, and paragraph 42 of Schedule 8 to, the Crime and Disorder Act [1998 \(c.37\)](#), sections 83(5) and 85 of, and paragraph 2(1) to (3) of Schedule 8 and Part 9 of Schedule 9 to, the Child Support, Pensions and Social Security Act [2000 \(c.19\)](#), section 139(1) of, and paragraphs 36 and 37 of Schedule 3 to, the Adoption and Children Act [2002 \(c.38\)](#), section 109(1) of, and paragraph 214 of Schedule 8 to, the Courts Act 2003, section 261(1) of, and paragraph 65 of Schedule 27 to, the Civil Partnership Act 2004, section 103(1) of, and paragraph 2 of Schedule 2 to, the Childcare Act [2006 \(c.21\)](#), section 166 of, and Part 5 of Schedule 15 to, the Health and Social Care Act [2008 \(c.14\)](#), section 56 of, and paragraph 20 of Part 1 of Schedule 6 to, the Human Fertilisation and Embryology Act [2008 \(c.22\)](#), section 72 of, and paragraphs 1 and 2 of Schedule 1 to, the [Children and Families \(Wales\) Measure 2010 \(nawm 1\)](#), and by [S.I. 1993/623](#), [1997/1898](#), [2001/3929](#), [2005/265](#) and [2007/1655](#), and was modified by [S.I. 2010/985](#).

“(9) Subsections (1) to (8) are subject, for the purpose of family proceedings in any magistrates’ court, to other provision made by Family Procedure Rules.”.

8. In section 56 for “Where” substitute “Subject to other provision made by Family Procedure Rules for the purposes of family proceedings in any magistrates’ court, where”.

9. In section 57 for “Where” substitute “Subject to other provision made by Family Procedure Rules for the purposes of family proceedings in any magistrates’ court, where.”.

10. In section 64(3)—

(a) in subsection (1) omit “periodical payment of money, or for the revocation, revival or variation of such an order” and substitute “variation of an order for the periodic payment of money”;

(b) after subsection (1) insert—

“(1A) Subsection (1) does not apply to family proceedings.”;

(c) in subsection (2) for “subsection (1) above” substitute “subsection (1) or (4A)”;

(d) after subsection (4) insert—

“(4A) Subject to the provisions of any other enactment, the costs of and incidental to all family proceedings in any magistrates’ court (including those required to be issued by complaint and those relating to the making of a periodic payment order) shall be in the discretion of that court and that court shall have full power to determine by whom and to what extent costs are to be paid.”.

11. After section 65 insert—

“65A Meaning of family procedure rules

In this Act, “Family Procedure Rules” means rules made under section 75 of the Courts Act 2003(4).”.

12. After section 68(5) insert—

“68A Power of the magistrates’ court to order disclosure of documents, inspection of property etc. in family proceedings

(1) On the application, in accordance with rules of court, of a party to any family proceedings, a magistrates’ court, in such circumstances as may be prescribed, has the power to order a person who is not a party to the proceedings and who appears to the court to be likely to have in his or her possession, custody or power any documents which are relevant to any issue arising out of the proceedings—

(a) to disclose whether those documents are in that person’s possession, custody or power; and

(b) to produce such of those documents as are in that person’s possession, custody or power to the applicant or, on such conditions as may be specified in the order,—

(i) to the applicant’s legal advisers; or

(ii) to the applicant’s legal advisers and any medical or other professional adviser of the applicant; or

(3) Section 64 was amended by section 33(1) of and paragraph 81 of Schedule 2 to the Family Reform Act 1987 (c.42).

(4) Section 75 was amended by section 15(1) and 146 of and Part 1 of Schedule 4 and paragraphs 308 and 338 of Part 2 of Schedule 18 to the Constitutional Reform Act 2005.

(5) Section 68 was repealed by section 49(2) and 109(3) of and Schedule 10 to the Courts Act 2003.

(iii) if the applicant has no legal adviser, to any medical or other professional adviser of the applicant.

(2) On the application, in accordance with rules of court, of a party to any family proceedings, a magistrates' court, in such circumstances as may be prescribed, has the power to make an order providing for any one or more of the following—

(a) the inspection, photographing, preservation, custody and detention of property which is not the property of, or in the possession of, any party to the proceedings but which is the subject matter of the proceedings or as to which any question arises in the proceedings;

(b) the taking of samples of any such property as is mentioned in paragraph (a) and the carrying out of any experiment on or with any such property.

(3) This section is without prejudice to the exercise by a magistrates' court of any power to make orders which is exercisable apart from the provisions of this section.”.

13. In section 97(6), in subsections (1)(a) and (2) for “under the Adoption and Children Act 2002 (c 38)” substitute “in family proceedings”.

14. In section 150(7) before the definition of “family proceedings” insert—
“Family Procedure Rules” has the meaning assigned by section 65A above;”.

Amendment of the Sexual Offences Act 2003

15. In section 21(12) of the Sexual Offences Act 2003(8)—

(a) at the end of paragraph (b) omit “or”;

(b) at the end of paragraph (c) insert “or”; and

(c) after paragraph (c) insert—

“(d) is appointed to be the children’s guardian of B under rule 59 of the Family Procedure (Adoption) Rules 2005 (S.I. 2005/2795) or rule 16.3(1)(ii) or rule 16.4 of the Family Procedure Rules 2010 (S.I. 2010/2955),”.

(6) Subsection (1) was substituted by section 169(2) of the Serious Organised Crime and Police Act 2005 (c.15) and article 2 of S.I. 2005/3275 and subsection (1) was modified in relation to proceedings to deal with a contempt of court under section 18 of the Criminal Procedure and Investigations Act 1996 (c.25) by article 5 of the Magistrates’ Courts (Criminal Procedure and Investigations Act 1996) (Confidentiality) Rules 1997 (S.I. 1997/704).

(7) Section 150 was amended by section 33 of and paragraph 88 of Schedule 2 to and Schedule 4 to the Family Law Reform Act 1987 (c.42), section 92 of and paragraph 8 of Schedule 11 to the Children Act 1989 (c.41), section 125(3) of and paragraph 25 of Schedule 18 to the Courts and Legal Services Act 1990 (c.41), section 168(3) of and Schedule 11 to the Criminal Justice and Public Order Act 1994 (c.33), section 1(3) of and paragraph 11(4) of Schedule 2 to the Local Government (Wales) Act 1994 (c.19), articles 2 of and paragraph 2(7) of the Schedule to S.I. 1996/675, section 106 of and Part V Table (1) of Schedule 15 to the Access to Justice Act 1999 (c.22), sections 41, 331 and 332 of and paragraphs 51(i) and (ii) of Part 2 of Schedule 3 to and paragraphs 7 and 9 of Part 2 of Schedule 36 to and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c.44), section 109(1) and (3) of and paragraphs 250(1) to (3) of Schedule 8 to and Schedule 10 to the Courts Act 2003 (c.39), section 62(3) of and paragraphs 45, 63 (1) to (3) of Schedule 13 to the Tribunals, Courts and Enforcement Act 2007 (c.15) and section 208(1) of and paragraphs 42 and 44 of Schedule 21 to the Legal Services Act 2007 (c.29).

(8) 2003 c.42. Section 21(12) was amended by section 40 of and paragraph 18 of Schedule 3 to the Children Act 2004 (c.31) and by articles 3, 6(1) and (8) of S.I. 2008/1779.