

EXPLANATORY MEMORANDUM TO
THE COURTS ACT 2003 (AMENDMENT) ORDER 2017
2017 No. 198 (L. 4)

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This Order amends Section 77 of the Courts Act 2003 (“the 2003 Act”). This section sets out the membership of the Family Procedure Rule Committee and the process of appointing members. This Order amends the 2003 Act by providing for additional persons to be members of the Committee.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Sections 75 to 79 of the 2003 Act provide for the making of Family Procedure Rules by a dedicated committee, the Family Procedure Rule Committee (“the Committee”).
- 4.2 Section 77 of the 2003 Act provides for the membership of the Committee and how they are appointed (judicial members being appointed by the Lord Chief Justice or a judicial office holder nominated by the Lord Chief Justice, and other members by the Lord Chancellor), and section 78 (under which this Order is made) as amended empowers the Lord Chancellor (with the concurrence of the Lord Chief Justice and having consulted the President of the Family Division) to amend section 77(2) (which sets out who the members of the Committee are to be), so that the membership of the Committee may be adjusted.

5. Extent and Territorial Application

- 5.1 This instrument extends to England and Wales
- 5.2 This instrument applies to England and Wales.

6. European Convention on Human Rights

- 6.1 The Right Honourable Sir Oliver Heald QC has made the following statement regarding Human Rights:

“In my view the provisions of The Courts Act 2003 (Amendment) Order 2017 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 The Committee amends the Family Procedure Rules 2010 periodically in light of legislative and other changes. Prior to making Family Procedure Rules, or amendments to them, the Committee must meet and consult relevant persons they consider necessary.
- 7.2 When discussing recent changes, it has become apparent to the Committee that it is not fully representative of the jurisdiction of England and Wales. The Committee were of the view that representation of Welsh views is particularly important when making procedural rules in light of the increasing divergence in legislation between England and Wales particularly in family law.
- 7.3 The Committee were satisfied that Welsh interests could be fully represented by the inclusion of a judge who sits exclusively or primarily in the family court in Wales and a person nominated by Welsh Ministers to represent the interests of Welsh family proceedings officers. With these additional members the Committee were satisfied that Welsh interests would be represented at the time procedural rules and practice directions were considered with appropriate input sought at an early stage to enable amendments to be made to produce final rules and practice directions that are suitable and reflective of the legislative position in both England and Wales.
- 7.4 Welsh Government officials have confirmed that CAF/CASS Cymru is the appropriate organisation to represent the interests of Welsh Family Proceedings Officers. Welsh Government officials, in consultation with the Chief Executive of CAF/CASS Cymru, will nominate a lawyer for nomination by the Welsh Minister for membership to the Committee.
- 7.5 Finally, the Committee considered that the position of District Judge of the Principal Registry of the Family Division should be replaced with a position for a District Judge who could be either a District Judge of the Principal Registry or a District Judge appointed under section 6 of the County Courts Act 1984. The Committee were of the view that an additional District Judge member should remain on the Committee in light of the increasing out of committee work requested of members. The position as currently provided for within section 77(2) (c) in the 2003 Act has been vacant for a considerable period of time and increased demands on existing members. With the creation of the single family court, the number of judicial members eligible for appointment are diminished and the amendment enables a wider range of eligible members of the judiciary to be considered for appointment to the Committee.
- 7.6 The intention is that the amendments proposed to the Committee’s membership will enable a fuller representation between England and Wales in the creation of Rules and Practice Directions and to enable an equal division of out of committee work amongst members by reducing the vacant positions.

Consolidation

- 7.7 This Order does not make any amendments to any other statutory instrument and therefore the question of consolidation does not arise.

8. Consultation outcome

- 8.1 As this Order amends the 2003 Act and does not amend the Family Procedure Rules 2010 a consultation is not mandatory, and the Committee did not undertake a formal consultation in relation to these amendments in view of their technical nature to amend the Committee's membership; but liaised closely, via the Ministry of Justice, with Welsh Government officials, CAFCASS Cymru and the President of the Family Division when developing these amendments.

9. Guidance

- 9.1 The 2003 Act as amended by this Order will be available to the public and legal practitioners on the legislation website: www.legislation.gov.uk
- 9.2 The Family Procedure Rule Committee's web page will be amended to reflect new members upon appointment: <https://www.gov.uk/government/organisations/family-procedure-rule-committee/about#membership>

10. Impact

- 10.1 This Order will have no impact on businesses, charities or voluntary bodies.
- 10.2 This Order has no impact on the public sector, save for a minimal amount in respect of expenses for attendance of any additional members.
- 10.3 An Impact Assessment has therefore not been prepared for this instrument.

11. Regulating small business

- 11.1 This Order does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The Committee will monitor the effects of these amendments as part of its ongoing review of its work and terms of reference and continue to consider whether any additional or alternative members are required to enable the Committee to effectively fulfil its obligations under the 2003 Act.

13. Contact

- 13.1 Please contact Joanne Thambyrajah, Secretary to the Family Procedure Rule Committee, Ministry of Justice, (tel: 0203 334 3181 or e-mail: joanne.thambyrajah1@justice.gsi.gov.uk) who can answer any queries regarding the instrument.