Draft Order laid before Parliament under sections 80 and 108(1), (2) and (3)(c)(i) of the Courts Act 2003, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2011 No. [XX] (L. [XX])

FAMILY PROCEEDINGS
SENIOR COURTS OF ENGLAND AND WALES
COUNTY COURTS, ENGLAND AND WALES
MAGISTRATES' COURTS,
ENGLAND AND WALES

The Family Procedure (Modification of Enactments) Order 2011

Laid before Parliament in draft

Made - - - -	***
Coming into force - -	***

The Lord Chancellor makes the following Order in exercise of the powers conferred by section 80 of the Courts Act 2003(**1**):

In accordance with section 80(1) of that Act, the Lord Chancellor has consulted the President of the Family Division (as the nominee of the Lord Chief Justice(**2**)).

In accordance with section 108(2) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation

1. This Order may be cited as the Family Procedure (Modification of Enactments) Order 2011 and will come into force on 6th April 2011.

(**1**) 2003 c.39. Section 80 was amended by section 15(1) of and paragraphs 308 and 343 of Part 1 of Schedule 4 to the Constitutional Reform Act 2005 (c.4).

(**2**) The Lord Chief Justice may nominate a judicial office holder to exercise his functions, under section 80(2) of the Courts Act 2003.

PART 1

MODIFICATION OF TERMINOLOGY

Terminology

2.—(1) For the purpose of this article—

"civil partnership proceedings" means proceedings for a civil partnership order; and

"civil partnership order" means one of the orders mentioned in section 37 of the Civil Partnership Act 2004(**3**).

(2) In the following provisions, any reference to "ancillary relief" is to be read as a reference to "financial order"—

(a) section 49C of the Child Support Act 1991(**4**) (in so far as that section relates to civil partnership proceedings); and

(b) Part 10 of Schedule 5 and Part 9 of Schedule 15 to the Civil Partnership Act 2004.

(3) Unless the context otherwise requires, in any provision which relates to civil partnership proceedings in any enactment, any reference to "cause" or "causes" is to be read as a reference to "proceedings".

PART 2

AMENDMENTS TO PRIMARY LEGISLATION

Amendment of the Courts Act 1971

3. In section 52 of the Courts Act 1971(**5**), 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).".

Amendment of the Magistrates' Courts Act 1980

4. The Magistrates' Courts Act 1980(**6**) 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.

(**3**) 2004 c.33.
(**4**) 1991 c.48. Section 49C was inserted by section 39 of the Child Maintenance and Other Payments Act 2008 (c.6).
(**5**) 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).
(**6**) 1980 c.43.

(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—

"(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—

(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 "subsections (1) or (4A)"; and

(d) after subsection (4) insert—

"(4A) Subject to the provisions of any other enactment and to rules of court, 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—

"**Meaning of family procedure rules**

65A. In this Act, "Family Procedure Rules" means rules made under section 75 of the Courts Act 2003.".

12. After section 68 insert—

"**Power of the magistrates' court to order disclosure of documents, inspection of property etc. in family proceedings**

68A.—(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

(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(**7**), in subsections (1)(a) and (2) for "under the Adoption and Children Act 2002 (c 38)" substitute "in family proceedings".

14. In section 150 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) in 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),".

PART 3

AMENDMENTS TO SECONDARY LEGISLATION

Amendment of the Magistrates' Courts Rules 1981

16. In the Magistrates' Courts Rules 1981(**9**) in the entry in the Arrangement of Rules relating to rule 3, in the heading to rule 3 and in rule 3—

(a) for "and" substitute ","; and

(b) after "1991" the second time it appears, insert "and the Family Procedure Rules 2010(**10**).".

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

(**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 S.I. 2008/1779.

(**9**) S.I. 1981/552. Rule 3 was substituted by S.I. 1991/1991.

(**10**) S.I. 2010/2955.

Amendment of the Civil Procedure Rules 1998

17. The Civil Procedure Rules 1998(**11**) are amended as provided in articles 18 and 19.

18. In the table following rule 2.1(2)—

(a) in entry 5 (Family proceedings), in the second column, omit the current words and substitute "Courts Act 2003, s.75"; and

(b) in entry 6 (Adoption proceedings), in the second column—

(i) omit "Adoption Act 1976, s.66 or"; and

(ii) after "s.141" insert "or Courts Act 2003, s.75".

19. In rule 57.15(2), for "the Family Proceedings Rules 1991", substitute "the Family Procedure Rules 2010(**12**)".

Amendment of the Data Protection (Subject Access Modification) (Health) Order 2000

20. In article 4(2) of the Data Protection (Subject Access Modification) (Health) Order 2000(**13**)—

(a) after "1997" for "or" substitute ","; and

(b) after "1996" insert "or the Family Procedure Rules 2010(**14**)".

Amendment of the Data Protection (Subject Access Modification) (Social Work) Order 2000

21. The Data Protection (Subject Access Modification) (Social Work) Order 2000(**15**) is amended as provided in articles 22 to 24.

22. In article 5(2)(a), for "(t) or (tt)" substitute "(t), (tt), (v) or (w)".

23. In article 7(2), in section 7(12)(a) of the Data Protection Act 1998 as modified, for "(t) or (tt)" substitute "(t), (tt), (v) or (w)".

24. In the Schedule—

(a) after paragraph 1(u) insert—

"(v) data processed by any children's guardian appointed under rule 16.3(1)(i) or rule 16.4 of the Family Procedure Rules 2010(**16**);

(w) data processed by any officer of the Children and Family Court Advisory and Support Service or Welsh family proceedings officer for the purpose of the functions referred to in rule 16.33 (insofar as it applies to proceedings to which Part 12 of the Family Procedure Rules 2010 applies) or 16.38(1) of the Family Procedure Rules 2010."; and

(b) in paragraph 2—

(i) after "1996" for "or" substitute ","; and

(ii) after "the Family Proceedings Rules 1991" insert "or the Family Procedure Rules 2010".

(**11**) S.I. 1998/3132. Rule 2.1 was amended by section 59(5) of and paragraph 1(2) of Part 1 of Schedule 11 to the Constitutional Reform Act 2005 and by S.I. 1999/1008, 2003/1242, 2005/3515 and 2007/ 2204. Rule 57.15 was amended by S.I. 2002/2058 and 2009/3390.
(**12**) S.I. 2010/2955.
(**13**) S.I. 2000/413.
(**14**) S.I. 2010/2955.
(**15**) S.I. 2000/415. Relevant amending instruments are S.I. 2002/2469 and 3220, 2004/696, 2005/467 and 3504 and 2011/ .
(**16**) S.I. 2010/2955.