

EXPLANATORY MEMORANDUM

THE COURTS ACT 2003 (CONSEQUENTIAL AMENDMENTS) ORDER 2004 No. 2035

This explanatory memorandum is laid before Parliament by Command of Her Majesty.

Department

1. The Department responsible for this Order is the Department for Constitutional Affairs.

Description of the Order

2. This Order makes a number of amendments to primary legislation consequential to the Courts Act 2003 (“the 2003 Act”), sections 68 to 70 (concerning Criminal Procedure Rules) and sections 75 to 77 (concerning Family Procedure Rules).

Commencement provision

3. It is proposed to come into force on 1st September 2004, but shall not affect the general operation of the enactments amended—
 - (a) in so far as they relate to Criminal Procedure Rules, until the first Criminal Procedure Rules come into force, and
 - (b) in so far as they relate to Family Procedure Rules, until the first Family Procedure Rules come into force.

Matters of special interest to the Joint Committee on Statutory Instruments

Vires of the Order

4. Section 109(4) and (5) of the 2003 Act gives a general power to amend and revoke legislation “for the purposes of, in consequence of, or for giving full effect to any provision” of that Act. The power is limited to enactments passed in or before the Session in which the 2003 Act was passed and Orders made thereunder are subject to affirmative resolution.
5. There are, however, two additional powers for modifying enactments, which relate specifically to Criminal and Family Procedure Rules respectively. Section 73 gives a power to amend legislation in connection with Criminal Procedure Rules. Orders under section 73 are made to facilitate the making of those Rules and they may extend to any enactments, including ones passed after the 2002-03 Session. These Orders must be made with the concurrence of the Secretary of the State (which in this context, means the Home Secretary). Section 80 gives a power to amend legislation in connection with Family Procedure Rules. It is equivalent to the power under section 73, but does not require the concurrence of the Secretary of State. Orders under sections 73 and 80 are also subject to affirmative resolution, so nothing turns on this.

6. Although the repeals and amendments in this Order relate to Criminal and Family Procedure Rules, it is nevertheless considered to be appropriate here to use the general power under section 109(4) and (5). Sections 73 and 80 were intended to facilitate the making of *specific* Rules. The purpose of this Order, however, is to give full effect to the rule-making powers in sections 69 and 75 of the 2003 Act. Although the Order will facilitate the making of rules generally, the repeals and amendments contained within it are consequential to the Act, rather than to the Rules, which have not yet been made. This Order is, accordingly, consequential to a policy laid before, and agreed by, Parliament. It does not put forward any new policy, nor will it effect a change in policy and, therefore, there is no particular reason for seeking the concurrence of the Secretary of State, under section 73, to the modifications relating to Criminal Procedure Rules. (Home office officials have, in any event, been consulted).

Vires to amend section 38A of the Maintenance Orders (Reciprocal Enforcement) Act 1972

7. Section 38A of the Maintenance Orders (Reciprocal Enforcement) Act 1972 (“the 1972 Act”) is contained in Part 2 of that Act. Applications under that Part are not included expressly within the definition of “family proceedings” under section 75(4) of the 2003 Act. However, it is the Department’s view that most applications under Part 2 will fall within scope of Family Procedure Rules, albeit by an indirect route. This is because the majority of applications under that Part are required to be treated as applications under the Children Act 1989 or the Domestic Proceedings and Magistrates’ Courts Act 1978 (by virtue of section 27A(3) and (4) of the 1972 Act) and such proceedings are family proceedings in magistrates’ courts (by virtue of the Magistrates’ Courts Act 1980, section 65(1)(j) and (n)).
8. This particular section has been amended by substituting the reference to rules made under section 144 of the Magistrates’ Courts Act 1980 with a reference to “rules of court” (see paragraphs 31 to 34 below). This will ensure that the power to make Family Procedure Rules for the purpose of giving effect to Part 2 of the 1972 Act, is confined to proceedings that are required to be treated as family proceedings.

Background

The Criminal Procedure Rule Committee

9. Section 69 of the 2003 Act gives power to the Criminal Procedure Rule Committee to make rules of court (to be called “Criminal Procedure Rules”) governing the practice and procedure to be followed in the criminal courts. Provisions for the appointment and membership of the Criminal Procedure Rule Committee are contained in section 70.
10. Section 68 of the 2003 Act defines “criminal court” to mean:

“(a) the criminal division of the Court of Appeal;

- (b) when dealing with any criminal cause or matter –
 - (i) the Crown Court;
 - (ii) a magistrates’ court.”

11. Once established, the Criminal Procedure Rule Committee will deal with the criminal matters that are dealt with currently by the Crown Court Rule Committee, under section 84(1) of the Supreme Court Act 1981, and by the Lord Chancellor and the Magistrates’ Courts Rule Committee, under section 144(1) of the Magistrates’ Courts Act 1980. The Crown Court Rule Committee will continue to make rules for the small number of civil matters that are dealt with in the Crown Court and the Lord Chancellor will continue to make rules (under section 144 of the 1980 Act, above), in relation to civil matters before magistrates’ courts.

The Family Procedure Rule Committee

12. Section 75 of the 2003 Act gives power to the Family Procedure Rule Committee to make rules of court (to be called “Family Procedure Rules”) governing the practice and procedure to be followed in family proceedings in the High Court, county courts, and magistrates’ courts. Section 76 makes further provision about the scope of Family Procedure Rules and section 77 makes provision for the appointment and membership of the Family Procedure Rule Committee.

13. Once established, the Family Procedure Rule Committee will deal with the family proceedings that are dealt with currently by the Family Proceedings Committee, under section 40(1) of the Matrimonial and Family Proceedings Act 1984, and by the Lord Chancellor and the Magistrates’ Courts Rule Committee, under section 144(1) of the Magistrates’ Courts Act 1980. The definition of “family proceedings”, under section 75(3) of the 2003 Act, includes adoption matters (by virtue of the Magistrates’ Court Act 1980, section 65(1)(h) and the Supreme Court Act 1981, Schedule 1, paragraph 3). Accordingly, the Family Procedure Rule Committee will also make rules of court for adoption matters, which currently are made by the Lord Chancellor under 66(1) of the Adoption Act 1976.

Relevant consequential amendments and repeals contained in the Courts Act 2003

14. The scale of consequential amendments that were necessitated by the Courts Bill was significant and it was anticipated, during the passage of the Bill, that further repeals and amendments would need to be made by Order, after the Act was passed. The amendments and repeals that were made by the Act are set out in Schedules 8 and 10. This Order should, accordingly, be read together with those Schedules and, in particular, with paragraphs 245 and 278 of Schedule 8, which amend section 144 of the Magistrates’ Courts Act 1980 and repeal section 40 of the Matrimonial and Family Proceedings Act 1984. (The relevant amendments and repeals in Schedules 8 and 10 will take effect on a date to be appointed by the Lord Chancellor. However, the commencement of these provisions will tie in with the commencement of this Order).

Consequential amendments and repeals to other rule-making powers and authorities

Administration of Justice (Miscellaneous Provisions) Act 1933

15. Section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933 (“the 1933 Act”) makes provision for the procedure for the indictment of offenders. Subsection (6) provides:

“(6) The Lord Chancellor may make rules for carrying this section into effect and in particular for making provision as to the manner in which and the time at which bills of indictment are to be preferred before any court and the manner in which application is to be made for the consent of a judge of the High Court . . . for the preferment of a bill of indictment.”

16. Section 69 of the 2003 Act plainly contemplates that the Criminal Procedure Committee alone will make rules governing the practice and procedure to be followed in the criminal courts. It would clearly be anomalous for the Lord Chancellor to make rules concurrently with the Criminal Procedure Rule Committee—and possibly inconsistent with it—in relation to the indictment of offenders. When section 69 of the 2003 Act is brought into force, part of the power to make rules under section 2(6) of the 1933 Act will come within the scope of Criminal Procedure Rules. It is therefore necessary to amend section 2(6) of the 1933 Act, to avoid any overlap between the powers of the Lord Chancellor and the powers of the new Rule Committee.

17. Section 2(6) confers a general power to make rules for carrying the section into effect. Most of the provisions of section 2 come within the scope of Criminal Procedure Rules. However, section 2(6) includes power to make provision as to “the manner in which application is to be made for the consent of a judge of the High Court”. The meaning of the expression “judge of the High Court” (which appears in section 2(2)(b) and 2(6)) is not defined in the Act. However, it has been held by the divisional court to mean a High Court judge *exercising the jurisdiction of the High Court*. It follows that that part of that power falls outside the scope of Criminal Procedure Rules, because it does not relate to the criminal courts.

18. To address this difficulty, the reference to the Lord Chancellor has been removed and “rules” has been defined in a new subsection. As amended, the power to make rules under section 2(6)—

(a) in relation to the preferment of a bill of indictment by the direction or with the consent of a judge of the High Court, is conferred on the Lord Chancellor, and

(b) in any other case falling within the scope of that subsection, on the Criminal Procedure Rule Committee.

19. Rules made by the Lord Chancellor under section 2(6) are not subject to resolution in either House of Parliament. However, this amendment will not enable the Criminal Procedure Rule Committee to make rules directly under

section 2(6) of the 1933 and thereby circumvent the requirement for either a negative or affirmative resolution under section 72(6) and (7) of the 2003 Act. It will only allow the Rule Committee to make rules, *by virtue of* section 2(6) of the 1933 Act, *under* section 69 of the 2003 Act.

20. Section 2(6) is due to be further amended by the Constitutional Reform Bill, clause 6 and paragraph 7 of Part 2 of Schedule 2. (An amendment to the Bill will be tabled, once this Order has been made, to co-ordinate the respective amending provisions).

Adoption Act 1976, section 66

21. Section 66(1) of the Adoption Act 1976 (“the 1976 Act”) gives power to the Lord Chancellor to make rules in relation to adoption matters prescribed by that Act. Again, section 75 of the 2003 Act plainly contemplates that the Family Procedure Rule Committee alone will make rules of court applying to family proceedings—and “family proceedings”, as defined by section 75(3) of that Act, includes adoption matters. It is therefore necessary to amend section 66(1) in order to avoid any overlap between the powers of the Lord Chancellor and the powers of the new Rule Committee.

22. As it currently stands, section 66(1) provides:

“(1) Rules in regard to any matter to be prescribed under this Act and dealing generally with all matters of procedure and incidental matters arising out of this Act and for carrying this Act into effect shall be made by the Lord Chancellor.”

23. When section 75 of the 2003 Act comes into force, part of the power to make rules under section 66(1) will come within the scope of Family Procedure Rules. Section 66(1) applies to four separate cases. The first is where any matter is to be “prescribed” under the 1976 Act. The second case is where rules are made dealing generally with all matters of procedure arising out of the Act. The third case is where rules are made dealing generally with incidental matters arising out of the Act. The fourth case is where rules are made for carrying the Act into effect.

24. The second and third cases are what one would nowadays expect to see in the context of a general power to make supplementary, incidental, consequential provision etc. It would not, therefore, be appropriate to delegate power to make this latter type of rules to the Family Procedure Rule Committee.

25. However, the power to make rules in relation to the first and second cases will overlap with the general power to make Family Procedure Rules under section 75 of the 2003 Act. That part of the Lord Chancellor’s power under section 66(1) should accordingly be repealed. This will allow the Family Procedure Rule Committee alone to make rules in the second case, under section 75 of the 2003 Act. Family Procedure Rules will also deal with matters to be prescribed under the Act by virtue of the amendments to section 72(1) of the 1976 Act. (See paragraphs 36 to 37 below).

26. Section 66(1) is due to be further amended by the Constitutional Reform Bill, clause 6 and paragraph 12 of Part 2 of Schedule 2.
27. Section 66(2) of the 1976 Act provides that “subsection (1) does not apply in relation to proceedings before magistrates’ courts, but the power to make rules conferred by section 144 of the Magistrates’ Courts Act 1980, shall include power to make provision as to any of the matters mentioned in that subsection”. However, as a consequence of the amendment to section 144 of the Magistrates’ Courts Act 1980, contained in the 2003 Act (see paragraph 14 above), it is necessary to repeal section 66(2) of the 1976 Act. This will allow the Family Procedure Rule Committee alone to make rules in relation to adoption matters before the High Court, county courts *and* magistrates’ courts.

Supreme Court Act 1981, section 84

28. Section 84(1) of the Supreme Court Act 1981 (“the 1981 Act”), when read together with section 86(1), gives power to the Crown Court Rule Committee to make rules to regulate and prescribe the practice and procedure of the Crown Court and the criminal division of the Court of Appeal. The power under section 84(1) is not limited to making rules in relation to criminal matters only, but extends to all matters before those courts, including a small number of civil matters.
29. To avoid any overlap between the powers of the Crown Court Rule Committee and those of the Criminal Procedure Rule Committee, it is necessary to amend section 84(1) of the 1981 Act. This Order will have the effect of removing, from section 84(1), the power to make rules for the criminal division of the Court of Appeal and (when dealing with any criminal cause or matter) the Crown Court. This will leave the Crown Court Rule Committee with power to make rules to be followed in the Crown Court, when dealing with civil matters.

Further consequential repeals and amendments

30. The remaining amendments and repeals are consequential to the repeals and amendments (contained either in this Order or in Schedules 8 and 10 of the 2003 Act) to the following enactments:
- (a) section 66 of the Adoption Act 1976,
 - (b) section 144 of the Magistrates’ Courts Act 1980,
 - (c) section 84 of the Supreme Court Act 1981, and
 - (d) section 40 of the Matrimonial and Family Proceedings Act 1984.

Maintenance Orders (Reciprocal Enforcement) Act 1972

31. In section 38A of the Maintenance Orders (Reciprocal Enforcement) Act 1972, subsections (1) and (2) each contain a reference to “section 144 of the Magistrates’ Courts Act 1980”. Subsection (3) provides:

“(3) In its application to Northern Ireland—

(a) in subsection (1), for the reference to section 144 of the Magistrates' Courts Act 1980 there shall be substituted a reference to Article 13 of the Magistrates' Courts (Northern Ireland) Order 1980

(b) [repealed].”

32. Most proceedings under Part 2 of the 1972 Act are family proceedings and therefore fall within the scope of Family Procedure Rules (see paragraph 7 above). However, the operation of this Part of the 1972 Act is complicated. There are some applications under that Part which do not constitute family proceedings (for example, applications under section 26 of that Act). The Part also applies to Northern Ireland. For these reasons, it is more convenient to use the composite expression “rules of court”, in substitution for the references to “section 144 of the Magistrates' Courts Act 1980”.

33. The Interpretation Act 1978 defines “rules of court” as meaning, in relation to any court, “rules made by the authority having power to make rules or orders regulating the practice and procedure of that court”. Accordingly, a reference to “rules of court” in section 38A(1) and (2) will have the following meaning:

- (a) in relation to family proceedings in England and Wales, it will mean “Family Procedure Rules”,
- (b) in relation to non-family proceedings in England and Wales, it will mean rules made under section 144 of the Magistrates' Courts Act 1980, and
- (c) in its application to Northern Ireland, it will mean rules made under Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981.

34. Section 38A(3) consequently becomes unnecessary and can be repealed. It is also desirable to amend the heading to section 38A so that it corresponds with the amendments that have been made to that section. (Officials at the Northern Ireland Office have been consulted on the proposed amendments to this section).

Greater London Council (General Powers) Act 1972

35. Section 17(3)(a) of the Greater London Council (General Powers) Act 1972 makes a reference to “rules made under section 15 of the Justices of the Peace Act 1949”. Section 15 of the 1949 Act was repealed and replaced by section 144 of the Magistrates' Courts Act 1980 and this appears, therefore, to be a missed consequential. The reference should now be substituted by a reference to “Criminal Procedure Rules”.

Adoption Act 1976

36. Section 66(1) of the 1976 Act gives power to the Lord Chancellor to make rules in relation to any matter prescribed by that Act. In section 72(1) the definition of “prescribed” (when read together with the definition of “rules”) means prescribed by rules made under section 66(1), or made by virtue of section 66(2), under section 144 of the Magistrates' Courts Act 1980. The definition of “prescribed”

operates only on sections 50, 54, 65 and Schedule 1 (as “prescribed” is specifically defined in the other cases in which it appears in the Act). These provisions all come within the scope of Family Procedure. The definition in section 72(1) has accordingly been amended to mean prescribed by Family Procedure Rules.

37. The definition of “rules” is not particularly helpful as it does not appear to apply to *every* reference in the Act to “rules”. For example, section 42 refers to “rules” in the context of rules of construction. Only in sections 61, 62(2)(c), 65(1) and (3) and 66(3), (4) and (5) do the references to “rules” relate to what will now be Family Procedure Rules. The references to “rules”, in each of the sections specified above, have substituted by a reference to Family Procedure Rules. As a result, the definition of “rules” in section 72(1) becomes unnecessary and can be repealed.

Magistrates’ Court Act 1980

38. Paragraph 141 of Schedule 7 to the Magistrates’ Court Act 1980 amended section 66(2) of the Adoption Act 1976. Paragraph 142 of that Schedule amended the definition of “rules” in section 72(1) of the Adoption Act 1976. This Order further amends those provisions of the 1976 Act (see paragraphs 27 and 37 above), and, as a consequence, the amending provisions in the Magistrates’ Courts Act 1980 are now spent. Paragraphs 141 and 142 of Schedule 7 to that Act are accordingly repealed.

Supreme Court Act 1981

39. Sections 52, 73, 74 and 81 of the 1981 Act each contain references to “Crown Court Rules”. These are all general provisions, applying to both criminal and civil proceedings in the Crown Court, and have therefore been amended by substituting references to “rules of court”. Section 77(1) of that Act contains a reference to “Crown Court Rules” in the context of criminal proceedings only and has therefore been amended by substituting a reference to “Criminal Procedure Rules”. (Section 77(1) is to be amended also by the Criminal Justice Act 2003, section 41 and Schedule 3, Part 2, paragraph 54(3)(a): but that amendment and this are independent of each other).
40. Section 84(5) of the 1981 Act makes provision for “special rules”. Special rules may apply rules made under section 84, or Civil Procedure Rules, to proceedings to which the special rules apply. “Special rules”, as defined under section 84(9), are rules applying to proceedings of a particular kind in the Supreme Court, which are made by an authority *other than* the Civil Procedure Rule Committee or the Crown Court Rule Committee. Consequently, rules of court currently made under section 84(1), in relation to the Crown Court and the criminal division of the Court of Appeal, are *not* “special rules” and may accordingly be applied by special rules to other proceedings in the Supreme Court.
41. Section 84(5A) provides that rules made under section 84 (by the Crown Court Rule Committee) may apply special rules, or Civil Procedure Rules, to proceedings to which Crown Court Rules apply. This allows Crown Court

Rules—which presently include rules to be followed in criminal proceedings in the Crown Court—to apply Civil Procedure Rules or other special rules to proceedings in the Crown Court.

42. When brought into force, section 69 of the 2003 Act, together with the amendments and revocations to section 84(1) proposed by this Order, will affect the meaning of “special rules”, as defined in section 84(9) and the operation of section 84(5) and (5A). However, it is not desirable to limit the operation of these provisions and section 84, subsections (5), (5A) and (9), has accordingly been amended to preserve those provisions, as they currently operate.
43. At present, Family Proceedings Rules (which are rules made under section 40 of the Matrimonial and Family Proceedings Act 1984) are “special rules” for the purposes of section 84 of the 1981 Act. However, it is not strictly necessary to preserve this position following the establishment of the Family Procedure Rule Committee. Section 76(4) of the 2003 Act provides that Family Procedure Rules may apply any rules of court which relate to (a) courts which are outside the scope of Family Procedure Rules and (b) proceedings other than family proceedings. This provision is accordingly broader than section 84(5) of the 1981 Act. To avoid any unnecessary overlap between the two provisions, section 84(9) of the 1981 Act has been amended, so as to exclude Family Procedure Rules from the definition of special rules.
44. Section 86 makes provision for the appointment and membership of the Crown Court Rule Committee. As that Committee will no longer make rules applying to the criminal division of the Court of Appeal, it will not be necessary to include the registrar of criminal appeals within its membership. It is therefore desirable to repeal section 86(1)(d) of the 1981 Act. Section 86(1) also refers to the power to make rules of court under section 84 “in relation to the Crown Court and the criminal division of the Court of Appeal”. This is inconsistent with the amendments to section 84(1), made under this Order, and those words have accordingly been repealed.
45. Section 87(3) provides:

“Rules of court may amend or repeal any statutory provision relating to the practice and procedure of the Crown Court or the criminal division of the Court of Appeal so far as may be necessary in consequence of provision made by the rules”.
46. The use of the composite expression “rules of courts” is problematic here. As the expression is not defined in the 1981 Act, it must, unless the contrary intention appears, be construed according to the broad definition in the Interpretation Act 1978 (see paragraph 33, above). However, it is not entirely clear to which rules section 87(3) is referring. Construed in the context of the Part in which it appears, section 87(3) seems to be referring only to rules made under section 84(1). But, following the commencement of section 69 of the 2003 Act, this expression may be construed as a reference to Criminal Procedure Rules.

47. Therefore, if section 87(3) is *not* amended, it may be possible for the Criminal Procedure Rule Committee to make rules by virtue of that section which, in turn, may make consequential modifications to statutory provision. This would not be consistent with the 2003 Act, which gives no equivalent power to the Criminal Procedure Rule Committee and would therefore be regarded as an inappropriate delegation of power to the Committee. To avoid these difficulties, section 87(3) is amended by inserting, after the reference to “rules of court”, the words “made under section 84”. The subsection has also been amended to make it clear that the power to make rules made under section 84 does not apply to criminal causes or matters dealt with in the Crown Court.
48. In section 87(4), the reference to “Criminal Appeal Rules” has been substituted by a reference to Criminal Procedure Rules.
49. Section 87(5) refers to “Crown Court Rules” and provides that such rules “may amend or repeal any statutory provision about appeals to the Crown Court so far as it relates to the practice and procedure with respect to such appeals”. Most appeals to the Crown Court will be appeals in criminal cases from magistrates’ courts, in relation to which section 73 of the 2003 Act will be available (the power to amend legislation in connection with Criminal Procedure Rules). But there are also some appeals to the Crown Court in relation to civil matters. It is therefore desirable that the Crown Court Rule Committee retains this power to amend legislation. Section 87(5) has been amended by substituting the reference to “Crown Court Rules” with a reference to “Rules of court made under section 84”. As a consequence of these amendments, the definitions, in section 151(4), of “Crown Court Rules” and “Criminal Appeal Rules” become unnecessary and can be repealed.

Local Government (Miscellaneous Provisions) Act 1982

50. Section 16 of the Local Government (Miscellaneous Provisions) Act 1982 makes supplementary provision to sections 14 and 15, which relate to the registration of persons carrying on the practice of acupuncture or the business of tattooing, ear-piercing etc. Section 16(6) contains a reference to “Crown Court Rules” in the context of criminal proceedings, which should now be substituted with a reference to “Criminal Procedure Rules”.

Matrimonial and Family Proceedings Act 1984

51. The Matrimonial and Family Proceedings Act 1984 (Schedule 1, paragraph 20(a)) amended section 62(2)(c) of the Adoption Act 1976, by substituting a reference to “section 75 of the County Courts Act 1984” with a reference to “section 66(1) of this Act”. This Order further amends section 62(2)(c) of the 1976 Act (see paragraph 37 above) and, as a consequence, the amending provision in the 1984 Act is now spent. Paragraph 20(a) of Schedule 1 to the 1984 Act is accordingly repealed.

Criminal Justice Act 1987

52. Sections 6 and 9 of the Criminal Justice Act 1987 contain references to “Crown Court Rules” in the context of fraud proceedings, which should also be substituted with references to “Criminal Procedure Rules”. (Section 6 is to be repealed by the Criminal Justice Act 2003, Section 332 and Part 4 of Schedule 37, from a date to be appointed. But that repeal is unlikely to take effect before this Order comes into force).
53. Section 9(6)(b) of this Act refers to rules “under section 81 of the Police and Criminal Evidence Act 1984”. Section 81 of the 1984 Act is amended by the 2003 Act, Schedule 8, paragraph 286, which substitutes the reference to “Crown Court Rules” with a reference to “Criminal Procedure Rules”. However, when section 69 of the 2003 Act is brought into force, Criminal Procedure Rules will be made *by virtue of* section 81 of the 1984 Act (and under section 69 of the 2003 Act). The reference in section 9(6)(b) to the 1984 Act has been amended accordingly,

Criminal Justice Act 1988

54. Sections 31 and 32 of the Criminal Justice Act 1988 relate to the form and presentation of evidence in criminal proceedings. Each section contains a reference to “Crown Court Rules” which should now be substituted with a reference to “Criminal Procedure Rules”. In section 32(4), the reference to the rule-making authority should now be substituted by a reference to the Criminal Procedure Rule Committee. Section 32(5) provides that the rules to which subsection (4) applies are “Magistrates’ Courts Rules, Crown Court Rules and Criminal Appeal Rules” and should accordingly be repealed.
55. Section 159 of the Criminal Justice Act 1988 relates to orders for restricting or preventing reports or restricting public access in Crown Court proceedings. Subsection (6) begins with the words “Without prejudice to the generality of section 84 of the Supreme Court Act 1981, rules of court may”. This section extends to Northern Ireland and subsection (7) accordingly provides that:

“(7) In the application of this section to Northern Ireland—

- (a) subsection (2) shall be omitted; and
- (b) the reference in subsection (6) to section 84 of the Supreme Court Act 1981 shall be construed as a reference to sections 52 and 55 of the Judicature (Northern Ireland) Act 1978.”

56. Given that this section applies to Northern Ireland, it is preferable to retain the reference to “rules of court”, rather than substitute it with a reference to “Criminal Procedure Rules”. Subsection (7)(b) has been substituted so as to preserve the modification of this section, in its application to Northern Ireland. (Officials at the Northern Ireland Office have been consulted on the proposed amendments to this section).

57. Schedule 2 to the Criminal Justice Act 1988 relates to documentary evidence in criminal proceedings. Paragraph 4 of that Schedule contains a reference to “(a) Crown Court Rules; (b) Criminal Appeal Rules; and (c) rules under section 144 of the Magistrates’ Courts Act 1980”, which should now be substituted by a single reference to “Criminal Procedure Rules”. As a consequence, the reference to “any authority making them” should be substituted by a reference to the “Criminal Procedure Rule Committee”.

Road Traffic Offenders Act 1988

58. Sections 12 and 13 of the Road Traffic Offenders Act 1988 relate to evidence in proceedings for road traffic offences. Together, these sections contain three references to “rules made under section 144 of the Magistrates’ Courts Act 1980” and each reference should now be substituted with a reference to “Criminal Procedure Rules”.

Criminal Justice Act 1991

59. Section 55(5) of the Criminal Justice Act 1991 (“the 1991 Act”) amended section 32(5) of the Criminal Justice Act 1988 by inserting the reference to “Magistrates’ Courts Rules, Crown Court Rules and Criminal Appeal Rules”. However, section 32(5) of the Criminal Justice Act 1988 Act is repealed by this Order and, therefore, the amending provision in section 55(5) of the 1991 Act should also be repealed.

60. Schedule 6 to the 1991 Act relates to notices of transfer, for the transfer of proceedings to the Crown Court in lieu of committal. Paragraph 5(8) of that Schedule contains a reference to “Crown Court Rules” which should be now substituted with a reference to “Criminal Procedure Rules”. (Schedule 6 is to be repealed in its entirety by the Criminal Justice Act 2003, section 332 and Schedule 37, Part 4, from a date to be appointed by the Secretary of State. But that repeal is unlikely to take effect before this Order comes into force).

Crime and Disorder Act 1998

61. Section 49 of the Crime and Disorder Act 1998 allows certain powers of magistrates’ courts to be exercised by a single justice of the peace. Section 49(2) provides:

“(2) Without prejudice to the generality of subsection (1) of section 144 of the 1980 Act (rules of procedure)—

(a) rules under that section may, subject to subsection (3) below, provide that any of the things which, by virtue of subsection (1) above, are authorised to be done by a single justice of the peace for any area may, subject to any specified restrictions or conditions, be done by a justices’ clerk for that area; and

(b) rules under that section which make such provision as is mentioned in paragraph (a) above may make different provision for different areas”.

62. This section relates to criminal proceedings and, accordingly, the reference to “section 144 of the 1980 Act” should now be substituted by a reference to “Criminal Procedure Rules”. The words “without prejudice to the generality of” are no longer necessary and have accordingly been repealed. Section 49(2)(b) is also no longer necessary, as section 69(3) of the 2003 Act already gives power to the Criminal Procedure Rule Committee to “make different provision for different cases or different areas”. Section 49(2) has been amended accordingly and, as a consequence, the words “rules under that section”, which appear in section 49(3) and (4), have been substituted, in each place, with a reference to “Criminal Procedure Rules”. Finally, in subsection (4), the reference to the Lord Chancellor has been replaced with a reference to the Criminal Procedure Rule Committee.
63. Schedule 3 to the Crime and Disorder Act 1998 provides for the procedure for sending a person, who is charged with an indictable-only offence, to the Crown Court for trial. Paragraphs 2(7) and 4(12) contain references to “Crown Court Rules” and “rules made under section 144 of the 1980 Act” which should now be substituted with references to “Criminal Procedure Rules”. (Schedule 3 is to be amended by the Criminal Justice Act 2003, section 41 and Schedule 3, Part 2, paragraph 72: but that amendment and this are independent of each other).

Access to Justice Act 1999

64. Schedule 3 to the Access to Justice Act 1999 makes a number of provisions relating to the right to representation by the Criminal Defence Service. Paragraph 2 of that Schedule relates to the grant of that right by the court, which may be exercised by a single justice. Sub-paragraph (7) provides:

“(7) Any rules under section 144 of the Magistrates’ Courts Act 1980 which provide for the functions of a single justice under sub-paragraph (6) to be exercised by a justices’ clerk may make different provision for different areas.”

65. The reference to “section 144 of the Magistrates’ Courts Act 1980” should now be read as a reference to “Criminal Procedure Rules”. However, given that Criminal Procedure Rules may make different provision for different areas under section 69(3) of the 2003 Act, paragraph 2(7) becomes unnecessary and may simply be repealed.

Powers of Criminal Courts (Sentencing) Act 2000

66. Section 31(1) of the Powers of Criminal Courts (Sentencing) Act 2000 provides that “rules of court” may make such provision as is necessary or expedient for the purposes of Part 3 of that Act. The provisions in Part 3 relate to mandatory and discretionary referrals of young offenders to youth offender panels. Section 31(2) defines “rules of court” to mean “(a) Magistrates’ Courts Rules; (b) Crown Court Rules; (c) Criminal Appeal Rules.” “Rules of court” should now be defined to

mean “Criminal Procedure Rules”. However, it is neater to substitute the reference in section 31(1) to “rules of court” with a reference to “Criminal Procedure Rules” and to repeal the definition in section 31(2). As a consequence, the reference, in subsection (1), to “authority making them” has been replaced with a reference to the Criminal Procedure Rule Committee.

67. Section 63(6), which relates to supervision orders, and section 132(2), which relates to appeals against compensation orders, each contain a reference to “section 144 of the Magistrates’ Courts Act 1980”. Section 155 makes provision for the alteration of a Crown Court sentence and subsection (7) contains a reference to “Crown Court Rules”. These references should now be substituted with references to “Criminal Procedure Rules”.
68. Section 163 contains general definitions, including a definition of “the register”, which is defined to mean “the register of proceedings before a magistrates’ court required by rules under section 144 of the Magistrates’ Courts Act 1980 to be kept by the justices’ chief executive for the court”. References to “the register” appear in sections 13, 79 and 108 in the Act; in each place, it is used within the context of criminal proceedings. The definition of “the register” should accordingly be amended by substituting the reference to “rules under section 144 of the Magistrates’ Courts Act 1980” with a reference to “Criminal Procedure Rules”.

Criminal Justice Act 2003

69. Section 29 of the Criminal Justice Act 2003 establishes a new method of instituting criminal proceedings and section 30 makes further provision about the new method, including provision for rules. The reference, in section 30(1), to “Rules under section 144 of the Magistrates’ Courts Act 1980” should accordingly be substituted with a reference to “Criminal Procedure Rules” and the reference to the Lord Chancellor should be replaced with a reference to the Criminal Procedure Rule Committee. Section 30(3) provides that nothing in subsections (1) or (2) is to be taken as affecting the generality of section 144(1) of the Magistrates’ Courts Act 1980. This provision is no longer necessary and can simply be repealed.
70. Section 56 of the Criminal Justice Act 2003 defines “rules of court” to mean “Magistrates’ Courts Rules, Crown Court Rules or Criminal Appeal Rules”. That definition operates for the purpose of section 55 of that Act. Section 55 confers power to make rules of court for the purposes of Part 8, which relates to the giving of evidence in criminal proceedings through live links. The references to “rules of court” and “authority making them”, in section 55, should accordingly be substituted by references to “Criminal Procedure Rules” and the “Criminal Procedure Rule Committee”. As a consequence, it is also necessary to repeal the definition of “rules of court” in section 56.
71. Sections 111 and 132 each contain five references to “rules of court”. The expression is defined in sections 111(7) and 132(10) to mean Crown Court Rules, Criminal Appeal Rules or rules under section 144 of the Magistrates’ Courts Act 1980. This is inconsistent with the introduction of Criminal Procedure Rules and needs to be amended. However, this is not a case where the references can simply be replaced with references to Criminal Procedure Rules.

72. In section 111, “rules of court” should probably now be construed as references to Criminal Procedure Rules. However, section 111 operates (or purports to operate) “for the purposes of this Act” (although it was probably intended to operate only for the purposes of Chapter 1 of Part 11 relating to bad character evidence). Not all the provisions of the Act fall within the scope of Criminal Procedure Rules and it is therefore safer to repeal the definition of “rules of court” and to leave the references to “rules of court” in place (relying on the definition in the Interpretation Act 1978).
73. Section 132 extends to Northern Ireland, as modified by Schedule 7 of the Act. It is therefore preferable to retain the composite expression of “rules of court” and to simply repeal the definition of that expression in section 132(10).
74. Section 127 of the Criminal Justice Act 2003 relates to the use of statements as expert evidence in criminal proceedings. Subsection (1)(c) makes a reference to “the appropriate rules” and subsection (7) provides that the appropriate rules are rules made under section 81 of the Police and Criminal Evidence Act 1984 or rules made under section 144 of the Magistrates’ Courts Act 1980. The appropriate rules should now be defined to mean Criminal Procedure Rules made by virtue of the Police and Criminal Evidence Act 1984, and the reference to section 144 of the Magistrates’ Courts Act 1980 should be repealed.
75. The preceding amendments affect paragraph 5 of Schedule 6 and paragraph 2(6) of Schedule 7 to the Criminal Justice Act 2003, which apply those provisions to service courts. Those paragraphs are amended correspondingly.

Extent

76. This Order extends throughout the United Kingdom. But, where this Order amends an enactment which extends to Northern Ireland or Scotland, the amendment does not change the substance of the law in Scotland or Northern Ireland, even though it may change the text.

European Convention on Human Rights

77. The Lord Chancellor is of the opinion that the provisions of this Order are compatible with the Convention rights.

Policy background

78. The amendments contained in this Order are consequential to the 2003 Act, sections 69 to 70 (concerning Criminal Procedure Rules) and sections 75 to 77 (concerning Family Procedure Rules). This Order is, accordingly, consequential to a policy laid before, and agreed by, Parliament. It does not put forward any new policy, nor will it effect a change in policy.
79. The policy underlying those particular provisions (referred to in the above paragraph) was to establish a single forum for the development of rules determining the practice and procedures to be used in all criminal courts (and one

for all family proceedings) in England and Wales. The Criminal Procedure Rule Committee is therefore intended to have over-arching responsibility for rules governing the practice and procedure of the criminal courts and, similarly, the Family Procedure Rule Committee is intended to have over-arching responsibility for rules governing family proceedings. The amendments in this Order are necessary to give full effect to that policy.

Impact

80. This Order does not impose a charge on businesses.

Contacts

81. The departmental contacts for this Order are:

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