

DRAFT AMENDMENTS TO FAMILY PROCEDURE RULES PART 25 AND PART 25A PRACTICE DIRECTION ON EXPERTS

Introduction

1. Attached with this paper are draft amendments to Part 25 (Experts and Assessors) of the Family Procedure Rules 2010 (“the FPR”) and draft Practice Directions modelled on Practice Direction 25A, Experts and Assessors in Family Proceedings.
2. The amendments have been developed following recommendations made by the Family Justice Review in its final report published in November 2011 (available from the Ministry of Justice website at www.justice.gov.uk/about/moj/independent-reviews/family-justice-review). The Review panel’s recommendations, which followed a full public consultation exercise, focused on the use of expert witness evidence in care and supervision proceedings under the Children Act 1989.
3. Before making these amendments, the Family Procedure Rule Committee wishes to consult you in accordance with the provisions of section 79(1) (a) of the Courts Act 2003. The Committee seeks your views on the specific Rule amendments highlighted below. These amendments would affect private law financial remedy proceedings and all other family proceedings which are not related to children, where the use of expert witness evidence would not have an impact on children, who were the primary focus of the Family Justice Review panel’s recommendations.
4. FPR1.4 and FPR Part 25 have been extracted from the whole of the FPR and inserted into the attached document. The proposed new amendments affecting financial remedy proceedings and other proceedings not relating to children are highlighted below. Further amendments affecting these proceedings are derived from the current Practice Direction and are simply being elevated to the Rules from the Practice Direction.
5. While much of the substance is unchanged, Practice Direction 25A has been split into several shorter documents. These are enclosed for information and to assist interested parties’ understanding of the context for the Rule changes highlighted below. New Practice Directions 25B and 25D are the most relevant to the questions in this consultation.
6. It is intended that the revised Rules and Practice Directions would be finalised for implementation in late 2012.

The proposed amendments

Rule 1.4, Court’s duty to manage cases

FPR 1.4(2) has been expanded so that active case management in all family proceedings includes controlling the use of expert evidence.

Rule 25.1, Duty to restrict expert evidence

The word ‘necessary’ is substituted for “reasonably required” in FPR 25.1 and will mean that expert evidence has to be that which the court considers is necessary to assist the court to resolve the proceedings. This reflects a Family Justice Review recommendation but would apply to all family proceedings.

Rule 25.5, further provisions about the court's power to restrict expert evidence

New Rule 25.5 (3) sets out factors that the court will have particular regard to when determining whether to give permission for expert evidence to be used in proceedings other than those relating to children. The court will need to consider how the evidence would relate to the issues in the proceedings which need to be resolved, the questions which the court would require the expert to answer, the impact on the progression of the case and the cost of obtaining that evidence. The court will also need to take into account any failure to comply with any direction made by the court in relation to expert evidence, or any failure to comply with Rule 25.6.

Rule 25.6 requires parties to apply for permission to instruct an expert or put expert evidence before the court no later than the specified hearing for the listed proceedings, and as soon as possible in other proceedings, unless the court directs otherwise.

Consultation

The questions we would like you to address are as follows:

Do you agree that active case management should explicitly include controlling expert evidence in family proceedings other than those relating to children?

If you do not agree, please give reasons.

Do you agree that the criterion that expert evidence must be "necessary" rather than "reasonably required" should apply to family proceedings other than those relating to children?

If you do not agree, please give reasons.

Do you agree that the court should explicitly consider the factors set out in new draft Rule 25.5 (3) when determining whether to give permission for expert evidence to be used in family proceedings other than those relating to children?

If you do not agree, please give reasons.

Do you have any other comments on the proposed amendments?

Please send your comments to **Joanne Willows** at the address below **by 5 pm on Thursday 20 September 2012**.

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