

THE
FAMILY
COURT
PRACTICE
1993

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FAMILY LAW

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Preface

The implementation of the Children Act 1989 highlighted a long-standing need for a court practice work covering the entire range of family proceedings at every level of court. This completely new work, which is comprehensive in scope, will satisfy that need as a definitive work of reference. The content and layout are designed to guide the busy practitioner step-by-step through the procedural maze.

No longer will it be necessary to search through, and cross-refer between, numerous sets of rules, textbooks and commentaries in order to discover the correct procedure. No longer will the practitioner ask in despair, "What do I have to do next, and when?". The answers are to be found within one volume, which will be published annually to ensure that the contents are up to date.

Congratulations are due to the team who have worked so hard and skilfully on such a mammoth task. I hope and expect that this book of reference will be an essential tool and as indispensable to family practitioners as *The Supreme Court Practice* and *The County Court Practice* are to those who engage in general civil work.

The Hon Mrs Justice Bracewell
Family Division

February 1993

Introduction

The passing of the Children Act 1989 and the introduction of the Family Proceedings Rules 1991 have focused the mind of the public on the concept of a 'family court'. This is not new. There have over several years been fragmented attempts to persuade the government of the need for an integrated family court. However, despite the achievements of the Children Act in sweeping aside a hotchpot of overlapping legislation and making the first tentative steps towards a combined family structure, there remains a wealth of legislation which governs an already wide, and widening, family system.

Within that system, there is a growing body of specialist practitioners appearing at courts of all levels before a core of trained judiciary. Through this annual practice manual, we are attempting to provide those specialists with a compendium of procedural law covering the family law spectrum and encompassing the jurisdiction of all the tiers of court in which family law is found.

From the very outset, it has been our aim to ensure that this book is 'application-based', so that it embraces the procedural provisions relevant to every conceivable application (no matter how infrequently it might arise). This objective has determined the format of the work. **Part I** comprises over seventy procedural guides. Each guide is specific to a particular application, sets out the key features relevant to it and cites appropriate authority.

Parts II and III comprise the whole array of procedural provisions contained in statutes and statutory instruments. Respectively within each Part, the statutes or statutory instruments are set out in alphabetical order. Where whole provisions are omitted (because they are not procedural), this is denoted by '****'; where numbered subsections or paragraphs are omitted, this is denoted by '...'. Each provision is annotated if appropriate. Forms contained in legislation have been deliberately omitted because it has been found that practitioners tend to use their own printed versions. However, guidance on the appropriate form to be used is included in the relevant annotations. **Part IV** comprises a collection of practice directions of special importance to the family lawyer. Since there is no other definitive distinguishing feature, the practice directions are arranged by the date on which they were given. Consequently, the Practice offers four methods of access: direct to the provision, set out in **Part II** or **III**, which the user wishes to consult; by reference to the index; by reference to the table of statutes, statutory instruments, cases or practice directions; or by identifying the appropriate provision by reference to the procedural guides in **Part I**.

We have gone to press at a challenging time for practitioners. The flood of new rules and amendments continues unabated. As the contributors strove to integrate, for example, amendments to the Family Proceedings Rules 1991, the Lord Chancellor's Department was busily drafting further amendments in the light of the Child Support Act 1991. These eventually became the Family Proceedings (Amendment) Rules 1993 and have been included in this work. The result of this flood of subordinate legislation has been that certain provisions introduced to implement the new system of child maintenance under the Child Support Act have had to be based on draft statutory instruments. These amount to less than ten instruments in a total of more than 1,700 pages of text. In such instances, the fact that a draft text has been used is indicated, and readers should refer to the finalised statutory instrument when it is available.

The Child Support Act itself has presented us with a considerable challenge. In deciding which parts of the legislation we should reproduce, we have applied the same criterion as for other legislation: does the section relate to procedural issues? If it does, we have included it. In view of the constraints of time, the texts of the subordinate legislation are included, unannotated, in **Part III**, and their impact is considered in the annotations to the Act itself in **Part II**.

I must mention the herculean efforts of my fellow contributors and editors. As the procedural guides and our researches uncovered an increasing number of statutes and statutory instruments which demanded inclusion and annotation, the team expanded to no fewer than ten. Without exception, they have performed magnificently and in an extraordinarily short time – the final team was only in place in the New Year of 1992. The drawing together of the contents and their annotation has proved to be an enormous undertaking, and to have completed the task in little more than a year deserves considerable admiration.

I am anxious not to single out one or other for special mention, since Jordans have been extraordinarily fortunate to find such well-qualified members for our team, but I cannot let the occasion of the first edition pass without making particular reference to the skill shown by those responsible for the annotations to the Children Act and Child Support Act, and the mastery of the team which put together the reciprocal enforcement table, which is as close to a work of art as one may hope to achieve in a work of this nature.

However, this is to be an annual publication, and our work continues for the next edition. Not only are costs rates revised annually, and the Family Division continues to guide courts and practitioners alike through well-trodden paths as well as virgin territory, but also changes are afoot for the law of adoption and personal protection. Likewise, the Lord Chancellor has challenged the profession to consider mediation as a route to the resolution of disputes, and procedure may have to adapt to take account of, for example, conciliation if this or other innovation is the consequence of the increasing pressures on the provision of legal aid. Accordingly, this work in future editions will evolve to meet practitioners' needs as they too evolve.

I do hope that users will be free with their criticism, be it constructive or otherwise. In the white heat produced by the effort surrounding this first edition, attention might have wandered, and gaps might exist, with the result that a practice direction here, or a circular there, may be missing. In some instances, this will have been intentional, because of the constraints of space. However, I am conscious that the book will be successful only to the extent that it is perceived as complete; if we have hit the target without finding the bullseye, we look to our readers to correct our aim.

A S L Cleary
Birmingham

February 1993

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