

**EXPLANATORY MEMORANDUM TO THE
FAMILY PROCEEDINGS (AMENDMENT No 4) RULES 2005**

2005 No. 1976 (L.18)

AND THE

**FAMILY PROCEEDINGS COURTS (MISCELLANEOUS AMENDMENTS)
RULES 2005**

2005 No. 1977 (L.19)

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs. It is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These instruments amend, respectively, the Family Proceedings Rules 1991 (S.I. 1991/1247) which apply to the High Court and county courts and the Family Proceedings Courts (Children Act 1989) Rules 1991 (S.I. 1991/1395) which apply to magistrates courts. The instruments specify the circumstances in which information may be disclosed in family proceedings heard in private involving children without needing to obtain the express permission of the court.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 Mr Justice Munby's judgment in *Re B (A Child)(Disclosure)* [2004] 2 FLR 142(19 March 2004) raised concerns about disclosure of information in family proceedings cases heard in private involving children. That judgment identified restrictions on a party to family proceedings involving children and heard in private being able to disclose details of their case to any other person not directly involved in their case. For instance, a party contacting their MP for help or seeking advice and support from their spouse and close family. The Court of Appeal highlighted the shortcomings of the present rules regarding disclosure of court papers to voluntary support services assisting litigants in person in Children Act 1989 proceedings in *Re G (Litigants in Person)* [2003] 2 FLR 963. The DCA has also been consulting with members of the judiciary and other professionals dealing with family and criminal matters, such as the CPS and the police and members of the probation service through the President of the Family Division's Family and Criminal Interface Committee, which promotes a more co-ordinated approach to family and criminal work.

4.2 Legislative changes have already been made. On 12 April 2005, section 62 of the Children Act 2004 came into force. This means that:

It is no longer a criminal offence for a party to family proceedings involving children to disclose orders to other individuals or bodies, so long as disclosure is not made to the general public or any section of the general public, or to the media; and

It will no longer be a contempt of court to disclose information where rules of court authorise circumstances in which specified information relating to family proceedings involving children and held in private could be communicated.

5. Extent

5.1 These instruments extend to England and Wales only.

6. European Convention on Human Rights

Not applicable.

7. Policy Background

7.1 A policy statement on disclosure of information in family proceedings was laid in the libraries of both Houses of Parliament on 14 October 2004.

7.2 Policy development has been based on the paramount principle of the welfare of the child, supported by four subsidiary principles, which are:

- Providing for the sharing of information between those with a legitimate need for that information;
- The proper functioning of Parliament and the facilitation of the discharge of MPs' and Members of the House of Lords' functions;
- The legitimacy of the law (the match between the law and what actually happens); and
- The proper administration of justice in family law cases.

7.3 The broad policy intention is to authorise disclosure of information relating to family proceedings in order to allow:

- Parties to a case to obtain appropriate advice and support;
- MPs and Members of the House of Lords to undertake their official duties and Ministers to exercise their statutory functions;
- Statutory agencies, such as the police, the Crown Prosecution Service and Social Services, to obtain access to relevant information for child protection purposes and in order to perform their functions generally;
- Complaints to be made to supervisory bodies and investigations to be carried out;
- Statutory bodies to undertake their regulatory and investigative functions; and

- Approved research to be undertaken.

7.4 There was a public consultation on the proposed content of the rules of court from 16 December 2004 to 23 March 2005. There were also a number of meetings with stakeholders; including the Law Society, Families Need Fathers, Women's Aid, Association of District Judges and the National Family and Parenting Institute. Responses to the public consultation on disclosure of information in family proceedings cases involving children have been laid as command paper 6623 simultaneously with the laying of these Statutory Instruments.

7.5 57 responses to the consultation paper were received representing a wide range of bodies and individuals involved in the family justice system. A number of responses represented the views of more than one signatory. Responses helped shape and inform the content of the rules. Particularly, due to calls in responses, those providing and receiving information have been defined where appropriate; the purpose for which disclosure can be made has been specified; and the relationship overall has been defined between the purpose, provider and recipient and the discloseable information. A number of proposed providers and recipients of information and the kind of information they can disclose has been adjusted due to responses received. For instance, disclosure of information for the purposes of regulation, quality assurance and accreditation have been provided for and closely defined as appropriate to particular bodies. Spouses, cohabitants and close family members of a party to proceedings may receive any information relating to those proceedings for the purpose of giving the party advice or assistance.

8. Impact

8.1 These Statutory Instruments clarify what information can be disclosed from family proceedings involving children, by whom and to whom and for what purpose.

9. Contact

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