

**EXPLANATORY MEMORANDUM TO**  
**THE FAMILY PROCEDURE (AMENDMENT NO.3) RULES 2013**

**2013 No. 3204 (L. 26)**

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 The Family Procedure Rules 2010 (“the 2010 Rules”) set out the practice and procedure to be followed in the High Court, county courts and magistrates' courts in family proceedings. Upon the implementation of the provisions in the Crime and Courts Act 2013 establishing a family court for England and Wales, the 2010 Rules will govern the practice and procedure to be followed in family proceedings in the High Court and the family court. The purpose of the instrument is to reflect the creation of the family court.

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

- 3.1 The Committee’s attention is drawn to the four matters set out below.

- 3.2 The first matter relates to the coming into force provision in the Family Procedure (Amendment No.3) Rules 2013. These Rules are stated to come into force on the date on which section 17(3) of the Crime and Courts Act 2013 is brought fully into force. This drafting device has been used as at the time of making these Rules a final decision as to the commencement date has yet to be made, so it would not have been appropriate to include a calendar date in the coming into force provision of these Rules.

- 3.3 The second matter is that in making these Rules, reliance is placed on section 13 of the Interpretation Act 1978. There are two reasons for this:

- a) The first reason is that it is considered that the provision made by these Rules will all be necessary for the purpose both of bringing into force, and of giving full effect to, section 31A of the Matrimonial and Family Proceedings Act 1984, as inserted by section 17(3) of the Crime and Courts Act 2013 when that section comes fully into force. In essence, without the provision made by these Rules, the family court will not be able to be brought practically into operation.

- b) The second reason for placing reliance on section 13 of the Interpretation Act 1978 is that there is a concern that if the approach were taken to commence the provisions in the Crime and Courts Act 2013 which amend the powers to make these Rules, the ability to

make provision under the current powers conferred by those provisions as unamended would be lost. This could be avoided by the inclusion in any commencement order of some complex savings provisions, but it is considered expedient to avoid this additional complexity by anticipatory exercise of the relevant powers.

- 3.4 The third matter drawn to the attention of the Committee is that these Rules form only part of a package of statutory instruments which will be needed for the purposes of the family court. For example, amendments made in these Rules to Part 34 of the 2010 Rules will link to amendments to be made to other statutory instruments in a planned order (which will be subject to the negative procedure) to be made under the power to make consequential provision in section 59 of the Crime and Courts Act 2013. The intention is that all of these associated statutory instruments will come into force on the same date.
- 3.5 Despite the links outlined above, there is no intention to lay any negative statutory instrument which includes any provision which is dependent on the approval by Parliament of an affirmative statutory instrument, until that approval has been given.
- 3.6 In the light of comments on the use in rules of court of the expression “will” in the Committee’s 31st and 41st reports of the 2010-2012 session of Parliament, the fourth matter drawn to the Committee’s attention is the fact that there are various amendments to the 2010 Rules made by these Rules which include reference to things that the court “will” do. As these Rules make largely consequential amendments to the 2010 Rules, and as the 2010 Rules already include numerous references to “will” in this context, it was not considered appropriate to alter the drafting approach for the purposes of these Rules. In addition, as explained to the Committee on past occasions, it is considered by the Family Procedure Rule Committee that the use of “will” remains appropriate in the contexts in which it is used in the 2010 Rules (and therefore in the amendments made to them by these Rules).

#### **4. Legislative Context**

- 4.1 Family Procedure Rules are made by the Family Procedure Rule Committee and allowed by the Lord Chancellor in accordance with section 79 of the Courts Act 2003. Amendments to the 2010 Rules are necessary because the matters for which they provide have changed. County courts and magistrates’ courts will cease to have jurisdiction to deal with family proceedings which will instead be dealt with in the family court and the High Court.
- 4.2 As noted in paragraph 3.6 above these Rules will form part of a package of statutory instruments needed to bring the family court into practical operation.

#### **5. Territorial Extent and Application**

- 5.1 This instrument applies to England and Wales.

## **6. European Convention on Human Rights**

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

- 7.1 In its response to the Family Justice Review, published in February 2012, the Government accepted the recommendations that a single family court should be created to deal with family proceedings, replacing the current three tiers of court structure. The High Court should retain exclusive jurisdiction in a limited number of areas, such as the exercise of its inherent jurisdiction. In order to achieve this, primary legislation was required and provision for the establishment of a family court for England and Wales was enacted by Parliament in the Crime and Courts Act 2013.
- 7.2 The amendments to the 2010 Rules include provision that where both the High Court and the family court have jurisdiction to deal with a matter, with certain exceptions, proceedings shall be issued in the family court. This reflects the facts that, save for certain matters reserved exclusively to the High Court, the family court will have jurisdiction to deal with all family proceedings and all High Court judges shall be judges of the family court.
- 7.3 Additionally, proceedings for the variation and enforcement of certain family orders, which currently in the magistrates' courts are not treated as family proceedings for the purpose of making rules, will be issued in the family court. The amendments to the 2010 Rules prescribe procedures for such cases.
- 7.4 Where procedures currently differ between family proceedings pending in a county court and those pending in a magistrates' court, amendments are made to the 2010 Rules to prescribe the procedure to be followed in the family court.
- 7.5 Insofar as the 2010 Rules make provision for the transfer of proceedings from one court to another, they have been amended to provide for the possibility of transfers between the family court and the High Court, albeit such transfers will be required less frequently, given the family court's wide jurisdiction.
- 7.6 Proceedings for a financial remedy in the magistrates' court follow a separate, shorter procedure than those proceedings for a financial remedy heard in the High Court and county courts. Amendments have been made to prescribe the appropriate procedure for each type of financial remedy in the family court.
- 7.7 In other respects, the amendments to the 2010 Rules contained in this instrument are largely consequential upon the creation of the family court, in that the procedures prescribed for proceedings in the county courts and magistrates' courts will in future apply to proceedings in the family court.

## 7.8 *Consolidation*

The 2010 Rules provide a consolidated unified set of rules for all types of family proceedings. These Rules amend the 2010 Rules. There are currently no plans to undertake a consolidation exercise. The 2010 Rules as amended will be published on the Family Procedure Rules website at the following link:

[www.justice.gov.uk/courts/procedure-rules/family](http://www.justice.gov.uk/courts/procedure-rules/family)

## **8. Consultation outcome**

8.1 The Family Procedure Rule Committee conducted a targeted consultation from July to September 2013 on those provisions going beyond the purely consequential. Seven responses were received. A full analysis of the responses has not been made available as consultees were broadly supportive of the proposals and only minor adjustments were made to the rules as a result.

## **9. Guidance**

9.1 The 2010 Rules as amended, and the associated Practice Directions, will be available to the public and to practitioners on the Family Procedure Rules website [www.justice.gov.uk/courts/procedure-rules/family](http://www.justice.gov.uk/courts/procedure-rules/family) upon implementation of the family court. The Family Procedure (Amendment No.3) Rules 2013 and the Practice Direction amending document will appear on that website in advance of the implementation of the single family court. Information on the location of centres that will receive applications lodged in the family court in accordance with the 2010 Rules will also be provided on the website of Her Majesty's Courts and Tribunals Service upon implementation of the family court.

## **10. Impact**

10.1 There will be some need for businesses (particularly legal services providers), charities and voluntary bodies providing legal advice to familiarise themselves with the changes to the Family Procedure Rules and other legislation.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **11. Regulating small business**

11.1 The legislation will affect small firms of solicitors dealing with family proceedings. The changes brought about by these amendments will be specifically drawn to the attention of family lawyer associations.

**12. Monitoring and review**

- 12.1 The Family Procedure Rule Committee will monitor the effects of these amendments as part of its ongoing consideration of the 2010 Rules.

**13. Contact**

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Tel: 020 3334 3181 or email: [clive.buckley@justice.gsi.gov.uk](mailto:clive.buckley@justice.gsi.gov.uk); can answer any queries regarding the instrument.