

EXPLANATORY MEMORANDUM TO
THE FAMILY PROCEDURE (AMENDMENT) RULES 2016

2016 No. 355 (L. 4)

1. Introduction

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

2. Purpose of the instrument

2.1 These Rules amend the Family Procedure Rules 2010 (“the FPR 2010”), which set out the practice and procedure to be followed in family proceedings in the High Court and in the family court. These Rules:

- amend the FPR 2010 to clarify a point of detail in relation to taking evidence into account when deciding whether to strike out a statement of case;
- insert new Parts into the FPR 2010 to make fresh and freestanding procedural provision for applications for attachment of earnings orders, charging orders, stop orders and stop notices, and make associated consequential amendments; and
- update a cross-reference in one provision of the FPR 2010.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Rule 4.4 of the FPR 2010 sets out the circumstances in which a court may strike out a statement of case, for example, if it appears that the statement of case discloses no reasonable grounds for bringing or defending the application. Rule 4.1(1) of the FPR 2010 makes clear that “a statement of case” means the whole, or part of, an application form or answer.

4.2 The case of *Wyatt v Vince* [2015] UKSC 14 (a decision of the Supreme Court) identified a difficulty in seeking to strike out a statement of case when the form of application contained no grounds for making the application.

4.3 The Family Procedure Rule Committee is of the view that, particularly given the terms of rule 4.1(1) of the FPR 2010, any evidence filed in relation to the application which is sought to be struck out should be considered by the court when considering whether or not to strike out the application. This is in addition to any evidence filed by the parties in support of or in opposition to the strike-out application. That would allow the court to strike out an application made by a form which itself could not disclose

any grounds for bringing the application because of the nature of the application form, but where the evidence in support of the application or filed in relation to the application showed that there were no reasonable grounds for bringing the application.

- 4.4 To add clarity to this matter, the Family Procedure Rule Committee has concluded that it is appropriate to amend the FPR 2010 to insert at rule 4.4(1A) an express provision to say that when the court is considering whether to exercise the power to strike out a statement of case, it must take into account any written evidence filed in relation to the application or answer.
- 4.5 These Rules also make amendments to the FPR 2010 which insert a new Part 39 setting out the procedures to be followed where an application is made to the family court for an attachment of earnings order to secure payments under a family court or High Court maintenance order, or where an application is made to the High Court for an attachment of earnings order to secure payments under a High Court maintenance order. (Section 1 of the Attachment of Earnings Act 1971 sets out which court should be applied to for an attachment of earnings order to enforce a given type of order.)
- 4.6 These Rules also amend the FPR 2010 to insert a new Part 40 setting out the procedures to be followed where an application is made for:
- (a) a charging order to the High Court to enforce a maintenance order of the High Court or an order for costs made in family proceedings in the High Court;
 - (b) a charging order to the family court to enforce an order of a type set out at (a) above, or an order of the family court;
 - (c) a stop order (being a court order prohibiting a person from taking steps in relation to securities specified in the order, for example transferring those securities to another person); or
 - (d) a stop notice (being a notice requiring a person to refrain from taking any steps regarding the securities specified in the notice without first notifying the person who served the notice, or on whose behalf the notice was served).
- (In relation to (a) and (b) above, section 1 of the Charging Orders Act 1979 sets out which court should be applied to for a charging order to enforce a given type of order.)
- 4.7 Finally, these Rules make amendments to the 2010 Rules which are consequential upon the insertion of the two new Parts referred to above, and make one minor, tidying, amendment to an out of date cross-reference in rule 37.35 of the FPR 2010.

5. Extent and Territorial Application

- 5.1 This instrument extends to England and Wales.
- 5.2 The territorial application of this instrument is 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

What is being done and why

- 7.1 The Family Procedure Rule Committee amends the FPR 2010 periodically in light of legislative and other changes.
- 7.2 As explained in paragraphs 4.1 to 4.4 above, the amendment to rule 4.4 of the FPR 2010 is made to clarify a point of detail in relation to the striking out of statements of case.
- 7.3 The majority of the provisions in these Rules relate to the procedure to be followed on certain enforcement applications. Prior to the coming into force of these Rules, the FPR 2010 did not make freestanding provision for the procedures to be followed when applying for an attachment of earnings order, a charging order, a stop notice or a stop order. Instead, the FPR 2010 applied provisions of the Civil Procedure Rules 1998 (“the CPR 1998”) or the predecessor County Court Rules 1984 (which were preserved in Schedule 2 to the CPR 1998) on these matters, with modifications.
- 7.4 The CPR 1998 are being amended to make new provision for attachment of earnings orders and charging orders. Those new provisions are being made in part to reflect the fact that Her Majesty’s Courts and Tribunals Service (“HMCTS”) will be largely centralising its handling of applications for such orders into a limited number of “County Court Money Claims Centres”. Applications for such orders made in family proceedings, to which the FPR 2010 apply, are not being centralised.
- 7.5 In light of the changes to the CPR 1998, this opportunity has been taken to draft new, freestanding provisions in respect of applications for such orders for the FPR 2010. These Rules insert new Parts 39 and 40 into the FPR 2010. The new provisions set out how applications should be dealt with in the family court and High Court in family proceedings. Largely, the new Parts reflect the provisions that were in place before these Rules came into force, but the wording of the provisions has been simplified and modernised. The wording has also been modified as appropriate to reflect operational practice in the courts. Where the procedure to be followed under the FPR 2010 is intended to mirror that to be followed under the revised CPR 1998, the wording of the FPR 2010 largely mirrors that used in the revised CPR 1998.

Consolidation

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

https://www.justice.gov.uk/courts/procedure-rules/family/rules_pd_menu.

8. Consultation outcome

- 8.1 The Family Procedure Rule Committee (“the Committee”) must, before making Family Procedure Rules, consult such persons as they consider appropriate (section 79(1)(a) of the Courts Act 2003). As the amendments to the FPR 2010 contained in these Rules are largely technical, and largely reflect the current provisions (albeit now in a more accessible way), the Committee did not undertake formal consultation in relation to these Rules.

8.2 In preparing these Rules for the Committee, Ministry of Justice officials did liaise closely with HMCTS and court staff expert in enforcement of financial orders made in family proceedings, as well as members of the Committee (legal practitioners and judges) with long experience of dealing with such applications. Their views were taken into account in the drafting of these Rules.

9. Guidance

9.1 The FPR 2010 as amended by these Rules will be available to the public and legal practitioners on the website referred to at paragraph 7.6. Guidance to HMCTS staff will be updated to reflect the procedures in the FPR 2010 as amended by these Rules.

10. Impact

10.1 These Rules will have a small impact on business, charities or voluntary bodies, in that those providing legal advice, such as solicitors and barristers, will need to be aware of the amendments made by these Rules and how to apply them.

10.2 These Rules have no impact on the public sector, save that HMCTS staff will need to be aware of the amendments made by these Rules and how to apply them.

10.3 An Impact Assessment has therefore not been prepared for this instrument.

11. Regulating small business

11.1 These Rules do not apply to activities that are undertaken by small businesses, save as outlined at paragraph 10.1 above.

12. Monitoring & review

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

13. Contact

13.1 Please contact Aaron Manku, Senior Policy Manager, Ministry of Justice, (tel: 0203 334 3480 or email: aaron.manku@justice.gsi.gov.uk) who can answer any queries regarding the instrument.