

EXPLANATORY MEMORANDUM TO

THE FAMILY PROCEDURE (AMENDMENT No. 2) RULES 2017

2017 No. 741 (L. 9)

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 provisions in Part 8 of the FPR 2010 relating to applications to a court in England and Wales for permission to apply for a financial remedy order following an overseas divorce or civil partnership dissolution, to require such applications be made without notice;
- insert a signpost in the FPR 2010 to the rules dealing with the allocation of such proceedings in the family court, and remove existing rules about the allocation of such proceedings in the High Court;
- amend the provisions in Part 9 of the FPR 2010 relating to the Financial Dispute Resolution Appointment to require all cases to be referred for a Financial Dispute Resolution Appointment save in specified circumstances;
- amend the provisions in Part 17 of the FPR 2010 relating to statements of truth to require a statement of truth to be included in an application for a matrimonial or civil partnership order or an answer to such an application

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 negative resolution 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 The FPR 2010, and amendments to them, are made by the Family Procedure Rule Committee (“the Committee”) and formally allowed by the Lord Chancellor.
- 4.2 Rules 8.23 to 8.28 of the FPR 2010 set out the procedure for applications for permission to apply for a financial remedy under section 13 of Matrimonial and Family Proceedings Act 1984 and paragraph 4 of Schedule 7 to the Civil Partnership Act 2004, which is an application for a court in England and Wales to make an order for financial provision following an overseas divorce or dissolution of a civil partnership.

- 4.3 Under these provisions, the court has discretion to direct that applications for permission to apply for a financial remedy order be heard without notice. The amendment to rule 8.25 of the FPR 2010 provides for a default position of such permission applications being made and heard without notice, unless the court considers it appropriate for the application to be determined with notice to the respondent.
- 4.4 Rules 8.28 and 9.5 of the FPR 2010 are amended to remove provisions dealing with the allocation of such proceedings to a given level of judge in the High Court. Rule 8.23 of the FPR 2010 is amended to include a “signpost” to the other Rules which deal with the allocation of these proceedings in the family court.
- 4.5 Rule 9.15 sets out the duties of the court when considering an application for a financial remedy at the first appointment held by the court. Currently courts have discretion on whether to direct the case for a Financial Dispute Resolution Appointment. Under the proposed amendments, courts will be expected to direct all cases to a Financial Dispute Resolution Appointment unless there are exceptional reasons making such a referral inappropriate.
- 4.6 Part 17 of the FPR 2010 requires specified documents within proceedings to be verified by a statement of truth. The amendment made to rule 17.1 of the FPR 2010 means that all applications for a matrimonial or civil partnership order and all answers to such applications will need to be verified by a statement of truth.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is to family courts in 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 In June 2014 the President of the Family Division set up a Financial Remedies Working Group, chaired by Mr Justice Nicholas Mostyn and Mr Justice Steven Cobb. On 15 December 2014 the Financial Remedies Working Group published its final report with a number of recommendations. This final report builds on the interim report published 31 July 2014. Both reports (interim and final) are published on www.judiciary.gov.uk. The recommendations have been made with a view to improve the accessibility of the system for litigants in person and to identify methods of improving good practice (and procedure) in financial remedy applications.
- 7.2 Two of the recommendations involved enhancing the use of Financial Dispute Resolution Appointments within financial remedy proceedings and enabling applications for permission to apply for financial relief following an overseas divorce or dissolution to be made without notice to the other party.
- 7.3 The amendments to Part 8 of the FPR 2010 require applications for permission to be without notice. However, the court retains the discretion to direct that the application

be determined on notice to the respondent if it considers this to be more appropriate. This amendment implements the recommendation of the Working Group.

- 7.4 The amendment to rule 8.23 of the FPR 2010 provides clarity by signposting court users to the Family Court (Composition and Distribution of Business) Rules 2014, which establish which level of judge these proceedings should be allocated to in the family court.
- 7.5 The amendments to rules 8.28 and 9.5 of the FPR 2010 remove existing provisions about allocation of these proceedings in the High Court. These amendments are made because such applications to the High Court will be rare, given that these applications can also be made in the family court and the FPR 2010 already state that (with limited exceptions) where proceedings could be started in either the family court or the High Court, then they should be started in the family court. The existing provisions were considered by the Committee to be out of date and unnecessary.
- 7.6 The amendment to Part 9 of the FPR 2010 requires the court to direct the case to a Financial Dispute Resolution Appointment unless there are exceptional reasons making such a referral inappropriate.
- 7.7 Whilst a Financial Dispute Resolution Appointment will involve more court time than at the First Appointment (particularly if litigants-in-person are involved) there are benefits by longer term saving of court time. Between June 2016 and May 2017 there were a total of 527,007 financial remedy applications. Of this sum, 370,496 applications were concluded by consent which represented 70.3% of the total applications. This is in contrast to the 156,511 contested financial applications which represented 29.7% of the same total.
- 7.8 The amendments to Part 9 will require parties to consider either resolving or narrowing the issues in dispute at an early stage in the proceedings. At this hearing, the judiciary will be able to utilise individual Financial Dispute Resolution Appointment strategies tailored to each case with the aim of increasing settlement between the parties at an earlier stage in the proceedings.
- 7.9 Part 17 of the FPR 2010 makes provision in relation to statements of truth. Rule 17.1 sets out which documents must be verified by a statement of truth. Currently this does not extend to applications for matrimonial or civil partnership orders (e.g. divorce petitions) or to answers to such applications. The Committee has decided that such documents should include a statement of truth in an attempt to reduce the risk of fraudulent applications. This amendment implements one of the changes proposed by the President of the Family Division in *Rapisarda v Colladon (Irregular Divorces)* [2014] EWFC 35 to seek to counteract fraudulent applications within matrimonial proceedings.
- 7.10 Following the amendments to Part 17 of the FPR, statements of truth within an application for a matrimonial or civil partnership order or an answer to such an application will be needed where the document is filed on or after 7 August 2017. To assist court users Her Majesty's Courts and Tribunals Service (HMCTS) want to be able to accept applications / answers either with or without a statement of truth for four weeks from that date. The transitional provision in rule 9 allows for this. This will enable court staff to accept the filed documents (with or without a statement of truth) for a transitional four week period, so that cases can proceed speedily and efficiently, reducing unnecessary delay by requesting court users to submit an updated version of the same form.

Consolidation

- 7.11 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:
http://www.justice.gov.uk/courts/procedure-rules/family/rules_pd_menu.

8. Consultation outcome

- 8.1 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 either reflect recommendations of the Financial Remedies Working Group, are largely technical or seek to reduce fraudulent applications within matrimonial proceedings, 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. 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 in paragraph 7.10 Guidance to HMCTS staff will be updated to reflect the procedures in the FPR 2010 as amended by these Rules.
- 9.2 In addition the application and answer forms (known as forms D8 and D8B) used within matrimonial and civil partnership proceedings have been updated to include a statement of truth to be signed by the person completing the form or their legal representative.

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 ensure there are sufficient resources available to apply them. Further the application and answer forms (known as forms D8 and D8B) have been amended and will be made available to court staff and court users on hmctsformfinder.justice.gov.uk.
- 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.

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 Joanne Thambyrajah, Secretary to the Family Procedure Rule Committee, Ministry of Justice, (tel: 0203 334 3181 or e-mail: joanne.thambyrajah1@justice.gsi.gov.uk) who can answer any queries regarding the instrument.