

**EXPLANATORY MEMORANDUM TO**  
**THE FAMILY PROCEEDINGS (AMENDMENT) RULES 2008**

**2008 No. 2446 (L. 11)**

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

**2. Description**

2.1. The Family Proceedings (Amendment) Rules 2008 (“the 2008 Rules”) amend the Family Proceedings Rules 1991 (“the 1991 Rules”), which apply to the High Court and county courts.

2.2. The 2008 Rules amend the 1991 Rules to:

- make provision for the practice and procedure to be followed in respect of proceedings following the implementation of the Forced Marriage (Civil Protection) Act 2007 (“the FM Act 2007”);
- make amendments consequential upon the coming into force of certain provisions of the Tribunals, Courts and Enforcement Act 2007 (“the TCE Act 2007”);
- make provision in respect of the transfer of certain family proceedings.

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

3.1. None

**4. Legislative Background**

4.1. The 2008 Rules are made by the Family Proceedings Rule Committee with the agreement of the Lord Chancellor.

4.2. The relevant provisions of the TCE Act will come into force on 3 November 2008. The FM Act 2007 will come into force on 25 November 2008.

**5. Extent**

5.1. The 2008 Rules apply to England and Wales.

**6. European Convention on Human Rights**

6.1. As the 2008 Rules are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

**7. Policy background**

A. The FM Act 2007

*Policy Aims*

7.1. The FM Act 2007 Act inserts new Part 4A into the Family Law Act 1996 (“the FL Act 1996”) (Forced marriage), under which the court can make orders to protect individuals against being forced to enter into marriage

without their free and full consent or individuals who have been forced into marriage without such consent. The orders may contain such prohibitions, restrictions, requirements or other terms as the court considers appropriate.

- 7.2. As under Part 4 (Family homes and domestic violence) of the FL Act 1996, orders for a limited duration will be available in emergency situations without notice being given to the respondent. Where an order is made without notice, the court must provide the respondent with an opportunity to make representations as soon as just and convenient.
- 7.3. The FM Act 2007 makes provision for the Lord Chancellor to specify relevant third parties to apply for an order on behalf of a victim, without the need for the court's permission. A public consultation on who should act as a relevant third party, when they should act and what safeguards should be in place, was conducted in during 2007 / 2008. A response to this consultation will be published in due course.
- 7.4. Sanctions will include attaching a power of arrest to an order, under new section 63H of the 1996 Act. Where a power of arrest is attached, a police constable may arrest a person whom he has reasonable cause to believe is in breach of an order or is otherwise in contempt of court. Where a power of arrest is not attached, a warrant of arrest may be applied for by an interested party. An arrested person will be dealt with under the court's powers in relation to contempt of court.
- 7.5. Court rules are needed to support the implementation of the FM Act 2007. Proceedings under that Act will only take place in the High Court or county courts, hence amendments are only needed to the 1991 Rules. No amendments are needed to Rules applicable in the magistrates' courts.
- 7.6. The amendments made to the 1991 Rules set out the procedural code for applications under Part 4A of the FL Act 1996 in relation to:
  - the making, service and hearing of applications and service of subsequent orders
  - the transfer of proceedings
  - orders for disclosure
  - appeals
  - the forms to be used in connection with the proceedings.

#### *Guidance*

- 7.7. Under new section 63Q of the FL Act 1996, the Secretary of State may issue statutory guidance. A person exercising a public function to whom the guidance is directed must have regard to it in the exercise of those functions. Currently the Forced Marriage Unit issues guidance for professionals in health, social work and education and for the police. The guidance is undergoing consultation and will be issued on a statutory basis when, or shortly after, Part 4A comes into force.

### *Consultation*

7.8. Many of the provisions in the FM Act 2007 emerged from the following Government consultations and reports:

- “A Choice by Right”, a report issued by the working group established by the Government in 2000 to look at the question of forced marriage; and
- “Forced Marriage, A Wrong Not a Right”, a consultation document issued by the Government in December 2005 and the response to that consultation dated June 2006.

7.9. The majority of respondents to the latter consultation said that forced marriage should not be made a crime, as victims did not wish to criminalize family members and this would in turn lead to the practice being driven underground, through the victim’s refusal to co-operate with the police. Following this consultation, Lord Lester introduced the Bill as a Private Member’s Bill. The Bill was supported by the Government.

7.10. The provisions also emerged from a consultation carried out by the Odysseus Trust, following the introduction into Parliament of the Bill. The Trust supports the activities of Lord Lester of Herne Hill, the Private Peer sponsor of the Bill in the House of Lords.

7.11. A consultation draft of the proposed new court rules relating to the FM Act 2007, approved by the Family Proceedings Rule Committee, was published on 31 January 2008. Responses were received from 9 respondents including CAF/CASS CYMRU, the Family Bar Association, the Family Justice Council, the Association of District Judges and the Institute of Legal Executives, and were considered by the Committee and amendments were made to the draft Rules as a result. The response to the consultation will be available at <http://www.justice.gov.uk/publications/consultations-with-response.htm>.

## B. TCE Act 2007

### *Policy aims*

7.12. The Government’s response to Sir Andrew Leggatt’s recommendation of a single tribunal system was to enact the TCE Act 2007 which creates two new, generic tribunals, the First-tier Tribunal and the Upper Tribunal, into which existing tribunal jurisdictions can be transferred. The Upper Tribunal is primarily, but not exclusively, an appellate tribunal from the First-tier Tribunal. The Government’s policy is that in the future, when a new tribunal jurisdiction is required to deal with a right of review or appeal, that right of appeal or review will be to these new tribunals.

7.13. The TCE Act 2007 received Royal Assent in July 2007. Part 1 of the TCE Act 2007 creates a new two tier tribunal system into which existing tribunals can be transferred or new appeal rights directed. Chapter 3 of Part 1 provides a number of order making powers to effect the transfer of existing tribunals into this system. The first tribunals are due to transfer on 3rd

November 2008 and a Transfer of Tribunals Functions Order 2008 is currently before Parliament to effect that transfer. The 2008 Order is an affirmative order and has been debated in the Commons. It is due to be debated in the House of Lords in October.

- 7.14. Amongst other things, the 2008 Order transfers the functions of the appeal tribunal into the First-tier Tribunal. Appeals in relation to the Child Support Act 1991 are currently directed to the appeal tribunal. Once the functions of the appeal tribunal are transferred into the new tribunal system on 3rd November 2008 those appeals will be heard in First-tier Tribunal and the appeal tribunal will be abolished. The amendments made by the 2008 Rules to the 1991 Rules are a consequence of the implementation of the TCE Act 2007 transferring the functions of the appeal tribunal into the new system and abolishing that tribunal.

#### *Consultation*

- 7.15. Consultation was carried out on the implementation of Part 1 of the TCE Act 2007 (Consultation Paper called "Transforming Tribunals" Code Number: CP 30/07, published on 28 November 2007 and ending on 22 February 2008). This paper consulted on the transfer of various existing tribunal jurisdictions into new chambers to be set up in the First-tier and Upper Tribunal. 140 responses were received. A response paper was published and can be found at <http://www.justice.gov.uk/publications/cp3007.htm> .

### C. Transfer of certain proceedings

#### *Policy aim*

- 7.16. Rule 4 of the 2008 Rules amends the existing provision in the 1991 Rules relating to the transfer of proceedings under Part 4 of the FL Act 1996 so as to align it with the new provision in the 1991 Rules dealing with the transfer of proceedings under Part 4A of the FL Act 1996.

#### *Consultation*

- 7.17. As this is a minor provision, there has been no public consultation.

#### Consolidation

- 7.18. The 2008 Rules amend existing Rules. Work is currently ongoing to produce a new, single set of Family Procedure Rules which will apply to all levels of family courts. This is a large-scale project. It has proved necessary, in light of the coming into force of the FM Act 2007 and the TCE Act 2007 to make amendments to existing Rules in the meantime.

## **8. Impact**

### A. The FM Act 2007

8.1. A full Regulatory Impact Assessment was produced for the passage of the FM Act 2007, considering the benefits, costs and risks of introducing the forced marriage provisions. It is expected that they will strengthen the Government's ability to tackle forced marriage by sending out a clear signal that forced marriage will not be tolerated. On the basis of advice from the Forced Marriage Unit, which offers advice to victims, it is anticipated that the Act will act as a deterrent and that there will be low volumes of applications to the courts.

B. The TCE Act 2007

8.2. There are no financial implications.

C. Transfer of proceedings

8.3. There are no financial implications.

**9. Contact**

9.1. In relation to proceedings under Part 4A (Forced Marriage) of the 1996 Act, please contact: Gillian Brooks, Forced Marriage Act Implementation Project, Ministry of Justice, 4<sup>th</sup> Floor Selborne House, 54 Victoria Street, London SW1E 6QW. Tel: 020 7210 8702. Email: [Gillian.brooks@justice.gsi.gov.uk](mailto:Gillian.brooks@justice.gsi.gov.uk)

9.2. In relation to the TCE Act 2007, please contact Andrew Moseley, Tribunals, Courts and Enforcement (TCE) Act Implementation, Tribunals Service, 5<sup>th</sup> Floor, 102 Petty France, London SW1H 9AJ. Tel: 020 3334 6553. Email: [andy.moseley@tribunals.gsi.gov.uk](mailto:andy.moseley@tribunals.gsi.gov.uk)

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