

**EXPLANATORY MEMORANDUM TO
THE FAMILY PROCEDURE RULES 2010**

2010 No. 2955 L. 17

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 provide a single set of rules of court for family proceedings in the High Court, county courts and magistrates' courts, on the model first established by the Civil Procedure Rules. Like the Civil Procedure Rules, they are supplemented by dedicated Practice Directions and forms, establishing a comprehensive modernised code of family procedure replacing a large body of unconsolidated rules, guidance and forms for different courts and different types of proceedings. In addition to the benefits for users of bringing the procedural provisions together in a single package, future amendments and updating of the Rules will become simpler, removing the need for changes to different sets of rules.

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

3.1 None.

4. **Legislative Context**

4.1 Sections 75 to 81 of the Courts Act 2003 follow the model established for the Civil Procedure Rules and Criminal Procedure Rules, and provide for a Family Procedure Rule Committee of 17 members to make rules governing the practice and procedure to be followed in family proceedings in the High Court, county courts and magistrates' courts (but not the Court of Appeal, practice and procedure for which is governed by the Civil Procedure Rules). Section 75 requires the Committee to make rules that are simple and simply expressed, and that help make the family justice system accessible, fair and efficient.

4.2 These powers replace a variety of specific rule-making powers under which rules have been made for different types of proceedings and different levels of court, and those separate sets of rules are replaced by the unified Family Procedure Rules. The principal rules being replaced are the Family Proceedings Rules 1991 (covering family proceedings other than adoption in the High Court and county courts), the Family Proceedings Courts (Children Act 1989) Rules 1991 (covering proceedings relating to children in magistrates' courts), the Family Proceedings Courts (Matrimonial Proceedings etc.) Rules 1991 (covering matrimonial and other non-Children Act proceedings in magistrates' courts), and the Family Procedure (Adoption) Rules 2005 (which were the first set of Family Procedure Rules, implementing reforms in the Adoption and Children Act 2002 and replacing the Adoption Rules 1984), together with a series of sets of rules relating to reciprocal enforcement of maintenance orders.

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

• The Family Procedure Rules

7.1 The Family Procedure Rules fulfil the policy intention of the Courts Act 2003 to provide one set of Rules for all types of family proceedings in all types of court. Rules and procedure underpin the effective operation of the family justice system. They set out the detail of how the system works and are fundamental in ensuring that it works well. There is a high level of public interest in family proceedings, with over 100,000 private law Children Act applications, over 11,000 applications for care orders for children and over 128,000 petitions for divorce issued in 2008.

7.2 Compared with criminal and civil procedure (which have already been modernised and consolidated under powers corresponding to those used for the present Rules), current family procedure is excessively complex and difficult to use. The rules of court are fragmented, much of the language appears outdated and procedure differs unnecessarily for similar business in different levels of court.

7.3 The aim of the Family Procedure Rule Committee has been to follow the example set by the Civil Procedure Rules 1998 and produce one set of simple and simply expressed rules of court for all family proceedings. A significant first tranche of these rules, the Family Procedure (Adoption) Rules, was made in October 2005, and much of the modernising approach of that first tranche has been carried through for the fully consolidated Family Procedure Rules. In addition, full public consultation has been carried out on the policy underlying the Family Procedure Rules, and on the draft text of the Rules themselves.

7.4 The four key objectives that the Rules aim to achieve are as follows:

- modernisation of language,
- streamlining of procedure and harmonisation with the Civil Procedure Rules,
- a single unified code of practice; and
- alignment in all levels of court.

7.5 The new Rules involve a fundamental review of language and style generally. The language used for many core provisions is modernised. For example, in Part 7 of the Rules, the terminology for matrimonial and civil partnership proceedings is aligned so that the rules refer to applications for orders on a consistent basis, rather than having to replicate throughout the language of petitions and decrees alongside that of applications and orders.

- 7.6 Like the Civil Procedure Rules, the Rules open in Part 1 with a statement of their overriding objective. As with the Civil Procedure Rules, the overriding objective is to enable the court to deal with cases justly; but the particular nature of the issues raised in family proceedings is addressed by highlighting welfare issues, so that the overriding objective is that of enabling the court to deal with cases justly, *having regard to any welfare issues involved*. The Rules go on in the next five Parts to follow the structure of the Civil Procedure Rules, but with a further family-specific modification in having a Part (Part 3) devoted to the court's powers in relation to alternative dispute resolution.
- 7.7 As with the Civil Procedure Rules, the Rules provide for two standard "generic" forms of procedure, but the nature of family proceedings means that it has not been possible to make these as widely applicable as are the Part 7 and Part 8 procedure for civil claims. The approach adopted therefore differs from the Civil Procedure Rules in that it makes specific, dedicated provision for the procedure for major areas of business (in Parts 7 to 14), with the two generic procedures available for other matters. Part 18 accordingly sets out the "Part 18 procedure", which is the procedure to be used to start proceedings where no specific procedure is prescribed, for applications in existing proceedings, and in relation to proceedings which have been concluded. Part 19 similarly sets out the "Part 19 procedure", which is for cases where the Part 18 procedure does not apply (for example, because a rule or practice direction provides that it is not to apply), and either there is no prescribed form for the application, or the applicant is seeking the court's decision on a matter unlikely to involve a substantial dispute of fact, or a rule or practice direction requires its use.
- 7.8 The dedicated procedural provision for the major areas of business is made as follows—
- Part 7 provides for the procedure for matrimonial and civil partnership proceedings;
 - Part 8 provides for the procedure for various miscellaneous sorts of proceedings (which are to be undertaken by either the Part 18 or Part 19 procedure, with certain modifications, depending on the sort of proceedings);
 - Part 9 provides for the procedure for applications for a financial remedy (this procedure equates to the procedure for "ancillary relief" under existing rules but the scope of the procedure is extended in the Rules to, for example, proceedings under Schedule 1 of the Children Act 1989);
 - Parts 10 and 11 provide for the procedure for domestic violence and forced marriage remedies respectively;
 - Part 12 provides for the procedure for proceedings relating to children except for parental orders, adoption and placement;
 - Part 13 provides for the procedure for proceedings for parental orders under the Human Fertilisation and Embryology Act 2008; and
 - Part 14 provides for the procedure for adoption, placement and related proceedings.
- 7.9 Parts 15 and 16 make provision corresponding to that in Part 21 of the Civil Procedure Rules for the representation of, and other issues relating to, children who are not the subject of the proceedings and protected parties.. Part 16 also contains provision for representation of children who are the subject of the proceedings, which is modelled on the existing family rules for the High Court and county courts save that the representative of the child is called "the children's guardian" and not a "guardian ad litem" even in private law proceedings. Part 17 makes provision about

statements of truth (replacing affidavits) and when they are required to verify documents, which corresponds to the provision in Part 22 of the Civil Procedure Rules. There is no equivalent to the Civil Procedure Rules provision for allocation of proceedings to different tracks, but the Rules again make provision which corresponds, with differences reflecting factors specific to family proceedings, to the Civil Procedure Rules for interim remedies and security for costs (Part 20); disclosure and inspection of documents (Part 21); evidence (Parts 22 to 24); experts and assessors (Part 25); change of solicitor (Part 26); and hearings and directions appointments (Part 27). In respect of costs (Part 28), the main costs provisions of the Civil Procedure Rules are applied to family proceedings with modifications reflecting principles settled in family practice, such as a general rule in financial remedy proceedings that the court will not make any order for costs (so that the parties bear their own costs). Provision for appeals (Part 30) differs from the corresponding provision in the Civil Procedure Rules because of the different court structure involved, and because proceedings in the Court of Appeal are not covered by these Rules but by the Civil Procedure Rules. Part 33 applies certain parts of the Civil Procedure Rules (including Part 50 and Schedules 1 and 2), with appropriate modifications to the enforcement of orders in family proceedings made in the High Court and county courts.

7.10 Parts 31, 32 and 34 cover procedure in relation to international recognition and enforcement of certain orders in family matters, and reciprocal enforcement of maintenance orders, and have no Civil Procedure Rules counterpart, while Part 35 corresponds to provision which is in a number of locations in the Civil Procedure Rules. Part 36 makes provision for transitional arrangements which mirrors that in Part 51 of the Civil Procedure Rules.

7.11 As with the Civil Procedure Rules, the new Rules form part of a comprehensive package, together with the dedicated Practice Directions and new forms, and should not be viewed entirely in isolation from the other elements of the package (which will be published together with them on the MoJ and HMCS website, as has been done with the Civil and Criminal Procedure Rule packages).

Consolidation

7.12 The Family Procedure Rules are themselves a consolidation, replacing the existing separate sets of rules and providing a new, single set of Rules which will apply to all levels of family courts. The need for any additional consolidation in future will be considered as appropriate.

8. Consultation outcome

8.1 As required by section 79 of the Courts Act 2003, the Family Procedure Rule Committee carried out a public consultation on the policy behind the new Family Procedure Rules from August to December 2006. A total of 45 responses were received to this consultation and a summary of the responses was published in February 2008. Overall, the majority of specific proposals were supported.

8.2 The extent of support varied according to the area; for example the strongest level of support was for the proposed changes to the process of appeal.

8.3 The consultation and the summary of responses can be found at the following link:
<http://www.justice.gov.uk/consultations/cp1906.htm>

8.4 The Family Procedure Rule Committee carried out a further public consultation on the text of the draft Family Procedure Rules between 28 November 2008 and 27 February 2009. The Committee then considered all the comments on specific rules and amended the Rules as appropriate. The consultation paper can be found at the following link:

<http://www.justice.gov.uk/news/announcement281108a.htm>

9. Guidance

9.1 The Family Procedure Rules and the related Practice Directions in themselves provide guidance on the procedure for family proceedings, and cross-referencing and explanatory material is included in the text in the form of “signposts”, following the model pioneered by the Civil Procedure Rules. A number of the new application forms have notes included to assist applicants in completing the forms and identifying the information required. In addition HM Courts Service provide a series of leaflets to assist court users involved in family proceedings and these leaflets will be updated as required by the provisions of the new rules.

9.2 The Family Procedure Rules will be published on the Ministry of Justice website with each part accompanied by the Practice Direction supporting that part of the Rules for ease of reference. All forms required by applicants will be published with the Rules and will be available to be downloaded from the same website. The Rules will be published in December 2010 in advance of implementation to assist practitioners and court users in preparation for the Rules to come into force.

10. Impact

10.1 There will be some impact on business, charities and voluntary bodies involved in family proceedings, for example solicitors and barristers and children’s charities, as they will have to familiarise themselves with the new Rules and terminology. This will be mitigated by the instructions and guidance issued by HM Courts Service. The Family Procedure Rule Committee and the Ministry of Justice will also carry out work in the period up to implementation to raise awareness of the new Court Rules among practitioners and court users.

10.2 The impact on the public sector will affect HM Courts Service and Cafcass and CAF/CASS CYMRU, as these organisations all support family proceedings in court. It is not anticipated that additional resources will be required, nor any additional payments in respect of legal aid, as none of the underlying legal provisions for family proceedings is being changed and no additional cases will arise from the new Rules.

10.3 An Impact Assessment was prepared for the Courts Bill, including the provisions for the Family Procedure Rules.

11. Regulating small business

11.1 The legislation applies to small business, in particular to legal practitioners.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to provide guidance for court users on the new procedures and to carry out work to raise awareness of the implementation of the new Rules and their major effects to assist solicitors and barristers in preparing for them.

12. Monitoring & review

12.1 The Family Procedure Rule Committee will take forward an ongoing programme of amendments to the Family Procedure Rules and will consider the operation of the Rules and the need to amend the provisions both in the light of their own experience as practitioners and in the light of representations from court users, legal and other professionals and major stakeholders.

13. Contact

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