

**EXPLANATORY MEMORANDUM TO**  
**THE FAMILY PROCEDURE (AMENDMENT) (No.2) RULES 2012**

**2012 No. 1462**

**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 This statutory instrument amends Family Procedure Rules 2010 (FPR 2010) so that enforcement under Part 31 of FPR 2010 of registered orders in urgent cases can take place at once if the court so decides, when this is necessary to ensure the welfare of the child concerned, even if the appeal period has not expired. Generally a registered order cannot be enforced until after the period for appeals has ended (Rule 31.17). The amendment is necessary to bring FPR 2010 into line with European Union law.

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

3.1 None.

**4. Legislative Context**

4.1 This instrument amends the law of England and Wales to comply with the judgment of the Court of Justice of the European Union (the Court) in Case C-92/12 on the cross-border placement of a child under Article 56 of the Council Regulation (EC) No 2201/2003 on jurisdiction, recognition and enforcement in matrimonial matters and matters of parental responsibility (the Council Regulation). The case concerned an urgent secure placement. The Court said that in urgent cases, so that the Council Regulation can operate effectively, the registration of the order must be done quickly and appeals against that registration decision must not have the effect of suspending enforcement.

4.2 FPR 2010 currently provides that a registered order cannot be enforced until the time limit for appeals has expired (Rule 31.17). The time limit for appeals is set at one or two months (two months if the person bringing the appeal is habitually resident outside the UK). This instrument makes one amendment to FPR 2010 to permit the court to enforce a registered order before the end of the appeal period when this is necessary to secure the welfare of the child concerned.

**5. Territorial Extent and Application**

5.1 This instrument applies to England and Wales.

**6. European Convention on Human Rights**

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 FPR 2010 provide the rules for the operation of the family courts in England and Wales. The amendment is made to ensure that the rules comply with the judgment of the Court. The Court said that enforcement of a registered order in urgent cases should not be delayed by waiting until the period for appeals has come to an end. This instrument changes the law so that urgent enforcement can take place within the time allowed for appeals if the court so decides. The overriding objective is to ensure that very vulnerable children from other Member States can be placed urgently in appropriate institutions in England and Wales where this is necessary for their welfare.

7.2 There is a small number of cases each year from other Member States for placement under Article 56 of the Council Regulation, the majority of them, as in the case considered by the Court, from the Republic of Ireland. While the situation of these very vulnerable children and their placement in the UK has attracted interest in the Irish press, it has not attracted media interest here and there has been no identifiable public interest in the policy. It is important to make this change so that cases of this kind can be dealt with as fast as possible.

- Consolidation

7.3 FPR 2010 provide a consolidated unified set of rules for all types of family proceedings. The 2012 Rules amend FPR 2010. There are currently no plans to undertake a consolidation exercise. The 2010 Rules as amended will be published on the Procedure Rules webpage under Family at <http://www.justice.gov.uk/courts/procedure-rules/family>.

## **8. Consultation outcome**

8.1 The Family Procedure Rule Committee has a duty under section 79 of the Courts Act 2003 to consult those people it considers appropriate. The Committee considered the draft amendment to FPR 2010 and the issue of consultation at its first meeting after the Court's judgment was published. The Committee decided not to consult as the amendment was necessary as a matter of European law.

## **9. Guidance**

9.1 The Family Procedure Rule Committee may decide to approve a Practice Direction issue guidance on the subject of cross-border placement of children at a later date, once the full impact of the Court's judgment on related matters has been addressed.

## **10. Impact**

10.1 The impact of this instrument on business, charities or voluntary bodies is likely to be minimal.

10.2 The provisions of FPR 2010 as amended by this instrument will not impose any significant additional burden on practitioners or voluntary bodies involved in family proceedings. The impact on the public sector is likely to be small and these amendments will not impose any significant additional burden on HM Courts and Tribunal Service.

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

## **11. Regulating small business**

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirement on small firms employing up to 20 people, in this instance firms of solicitors, the approach taken is to publicise the changes to FPR 2010 made by this instrument by their publication on the Family Procedure Rules webpage (see 7.3 above). The types of cases affected by this instrument are more likely to be larger specialist firms of legal practitioners.

11.3 The basis for the final decision on what action to take to assist small business is that these amendments will not add significantly to the existing requirements of FPR 2010.

## **12. Monitoring & review**

12.1 The operation of the policy and its effect will be monitored.

## **13. Contact**

Miss Gay Bailey at the Ministry of Justice Tel: 020 3334 3200 or email: [gay.bailey@justice.gsi.gov.uk](mailto:gay.bailey@justice.gsi.gov.uk) can answer any queries regarding the instrument.