

**EXPLANATORY MEMORANDUM TO
THE FAMILY PROCEDURE (AMENDMENT) RULES 2013**

2013 No. 530 (L.4)

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 instrument amends the Family Procedure Rules 2010 (S.I. 2010/2955) (“the FPR”) in two respects—

- first, to change certain references in the FPR to rules in the Civil Procedure Rules 1998 (“the CPR”) in consequence of renumbering of those rules in the CPR;
- second, to give power, to a High Court Judge or Designated Family Judge who refuses permission to appeal without a hearing and considers the application to be totally without merit, to order that the person seeking permission may not request the decision to be reconsidered at a hearing.

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

3.1 None.

4. Legislative Context

4.1 Under the Courts Act 2003, the Family Procedure Rules may apply rules of court from the Civil Procedure Rules to family proceedings, with or without modification and as amended.

4.2 This power was used to apply certain provisions of the CPR relating to costs, with modifications and as amended from time to time. The CPR have now been amended by the Civil Procedure (Amendment) Rules 2013 (S.I. 2013/262), coming into force on 1 April 2013, which does not amend the rules applied by the FPR in any respect calling for further modification in their application by the FPR, but which does restructure the costs provisions of the CPR, so that the CPR rules which are applied by the FPR are renumbered. The SI is needed to insert the CPR renumbering into FPR.

4.3 The power is also sufficient to allow for the insertion in FPR, with modifications, of the CPR change on permission for totally without merit appeals.

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

7.1 In respect of costs, the FPR apply the costs provisions of the CPR with a number of modifications, in particular to disapply the CPR's general rule that costs follow the event, for those family proceedings where that general rule is inappropriate. The FPR do not apply any of the rules of the CPR which make provision in relation to conditional fee agreements and other funding arrangements which are not permissible in family proceedings. Most of the changes made to the CPR by the Civil Procedure (Amendment) Rules 2013, therefore, are not applicable to family proceedings. It is, however, necessary to amend the references to those rules of the CPR which are applied by the FPR, to avoid confusion in the light of the renumbering of the CPR provisions in question themselves.

7.2 The current rules in FPR on appeals include that when the appeal court refuses permission to appeal without a hearing, the person seeking permission can ask for a hearing to reconsider the refusal decision. The CPR have provided, since 2006 in civil cases following a pilot, and since 2008 in family cases, that when a person makes an application for permission to appeal to the Court of Appeal which it considers to be totally without merit, the court can bar any request for a hearing. This was extended to other levels of civil appeals in 2012 following limited specialist consultation. The provision made by this instrument mirrors closely that made in the CPR, modified for family proceedings. It was considered preferable to make self-contained provision for this issue in the FPR rather than to apply the CPR provision with modifications. This provision is introduced to enable the court to prevent the drain on court and judge time entailed by hearings in cases where the person seeking permission to appeal has no prospect of success because the application is totally without merit.

- Consolidation

7.3 Not applicable.

8. Consultation outcome

8.1 The Family Procedure Rule Committee, before making Family Procedure Rules, carries out such consultation as appears to it to be appropriate. For this instrument, which makes provision which is essentially

in consequence of, or which mirrors, that already made and consulted upon in the context of the CPR, no formal consultation was considered appropriate.

9. Guidance

9.1 The rules will be published in consolidated form on the MoJ website. No specific guidance is considered necessary.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument. It does not impose burdens for business, charities or voluntary bodies. It does not impose costs on business or civil society organisations. The impact on the public sector is below £5 million.

11. Regulating small business

11.1 The rules apply to small business only in the sense that small firms of legal representatives will need to be aware of the changes.

12. Monitoring & review

12.1 The Family Procedure Rule Committee keeps the Family Procedure Rules under review and is informed of changes made to the Civil Procedure Rules as they occur.

13. Contact

Wendi Mitchell, Ministry of Justice, tel: 020 3334 5647, email: wendi.mitchell@justice.gsi.gov.uk can answer any queries regarding the instrument.