

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

**2006 No. 352 (L.1)**

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 This instrument amends the Family Proceedings Rules 1991 to make provision about cost orders in ancillary relief proceedings.

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

- 3.1 None

4. **Legislative Background**

- 4.1 The Family Proceedings Rules 1991 govern the court procedure relating to family proceedings in county courts and the High Court. This includes the procedure for applications for ancillary relief following the breakdown of a marriage or civil partnership.

5. **Extent**

- 5.1 This instrument applies to England and Wales.

6. **European Convention on Human Rights**

The Lord Chancellor has made the following statement regarding Human Rights:

In my view the provisions of the Family Proceedings (Amendment) Rules 2006 are compatible with the Convention rights.

## **7. Policy background**

7.1 The purpose of these rule amendments is to make changes to the courts' power to make cost orders in ancillary relief proceedings. The new rules will only give the court power to make cost orders in ancillary relief proceedings where it is justified by the litigation conduct of a party. The policy objective is to discourage the making of costs orders in ancillary relief cases other than because of the conduct of one of the parties. Cost orders have a destabilising effect on financial settlements that have been carefully constructed by the court.

The rules also provide that courts will no longer be able to consider any "without prejudice" or "without prejudice save as to costs" offers (also known as *Calderbank* offers) when making decisions on cost orders to avoid the procedural gamesmanship and uncertainty for the parties which these can produce.

The rules provide that two forms (Form H and H1) should now be completed. Form H to provide more detailed cost estimates at interim hearings, to show a realistic estimate of the costs incurred to date. Form H1 to provide a detailed statement of costs at a final ancillary relief hearing. This will enable the court to take account of the impact of each party's cost liability on their financial situations.

## **8. Impact**

8.1 A full Regulatory Impact Assessment has not been produced for this statutory instrument as it does not impose any new burdens on businesses or public authorities.

## **9. Contact**

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