

**EXPLANATORY MEMORANDUM TO**  
**THE FAMILY PROCEDURE (CIVIL PARTNERSHIP: STAYING OF**  
**PROCEEDINGS) RULES 2010**

**2010 No. 2986 (L.18)**

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 instrument concerns the relationship between domestic proceedings in relation to civil partnerships (proceedings for a dissolution order, a separation order, and declarations as to validity or subsistence) and proceedings in another jurisdiction. It makes provision for the staying of the domestic proceedings if it appears to the court that proceedings are continuing in another jurisdiction.

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

- 3.1 None

4. **Legislative Context**

- 4.1 The Civil Partnership Act 2004 provides civil partners with parallel rights to those of married people. The provisions for staying of matrimonial proceedings in respect of divorce, judicial separation and declarations of marital status, to which this instrument corresponds, are contained not in rules of court but in primary legislation, Schedule 1 to the Domicile and Matrimonial Proceedings Act 1973. This approach was not followed by the 2004 Act, which provides instead a power to make corresponding rules (s.223). The current rules, which this instrument replaces, are contained in the Family Proceedings (Civil Partnership: Staying of Proceedings) Rules 2005 (“the 2005 Rules”), and operate in the context of the Family Proceedings Rules 1991. This instrument replicates the provisions of the 2005 Rules, which are revoked by article 12 of the instrument, in the context of the Family Procedure Rules 2010, which replace the Family Proceedings Rules 1991 (and numerous other sets of rules) with a consolidated code.

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**

- *What is being done and why*

7.1 This instrument provides parallel provisions for the staying of proceedings in respect of civil partnerships in the context of the Family Procedure Rules, fulfilling the policy intention of the Courts Act 2003 in respect of the court rules and the provision of parallel rights for civil partners under the Civil Partnership Act 2004 to those of married people.

7.2 The policy context is provided by the new Family Procedure Rules, which 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. The Family Procedure Rules cannot, however, include provisions for staying of domestic matrimonial proceedings on account of proceedings in another jurisdiction, because those provisions are contained in primary legislation outside the scope of the Rules. The existing Family Proceedings Rules 1991 faced the same problem, and the decision was taken to make the provision for staying of civil partnership proceedings in separate rules rather than to insert them in the main rules without any corresponding provision for matrimonial proceedings.

7.3 The provision for staying of civil partnership proceedings needs to be reproduced in the context of the new Family Procedure Rules, and the question arose in that context whether the provision should once again be contained in separate rules or in the main body of rules. Full public consultation (summarised below) was carried out on the policy underlying the Family Procedure Rules, and on the draft text of the Rules themselves, and in relation to the staying of civil partnership proceedings, that consultation proceeded on the basis that there would continue to be separate civil partnership staying rules. No objections were raised by respondents to the consultation, so the approach of separate rules has been maintained. The opportunity has been taken to modernise the drafting of the rules in line with the approach of the main rules, but their substance remains the same.

- *Consolidation*

7.4 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. As explained above, it was not thought appropriate for the provisions in this instrument to be consolidated directly into the body of the Family Procedure Rules, as they replicate the provisions of primary legislation in matrimonial matters. Moreover, the 2005 Rules are familiar to court users as a separate instrument from the Family Proceedings Rules 1991 (where they might otherwise have been inserted) and so it was considered appropriate to continue the same approach with this instrument.

## **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 lay in the proposed changes to the process and route 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>

8.5 The Government has not carried out a separate consultation on the provisions of this instrument as they replicate existing provisions for civil partners within the context of the Family Procedure Rules and do not represent a change in policy; but the consultation did proceed on the basis that there would be separate rules replicating the 2005 Rules in the new context.

## **9. Guidance**

9.1 The Family Procedure Rules and the related Practice Directions provide guidance on the procedure for family proceedings. The Guidance will include information about the provisions of this instrument. 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.

9.1 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. Related rules, including this instrument, will be published as part of that package. 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 This instrument will have some impact on business, charities and voluntary bodies involved in civil partnership proceedings, for example, barristers and solicitors who will have to familiarise themselves with its terms; but the impact is considered likely to be minimal because of the similarity to the existing rules. There will also be some impact on HM Courts Service, again considered likely to be minimal. It is not anticipated that additional resources will be required, because these provisions already substantially exist in the form of the 2005 Rules, and so no new types of cases will be presented to the courts. There will be no additional impact on legal aid for the same reasons. The numbers of cases in question (civil partnership

matters with a cross border dimension) are in any event very small, by reference to other types of family proceeding.

10.3 An Impact Assessment was prepared for the Courts Bill, including the provisions for the Family Procedure Rules. A separate impact assessment has not been completed for this instrument as it does not introduce any new requirements beyond those already existing in the 2005 Rules. It is not envisaged that this instrument will have any additional impact to that of the Family Procedure Rules themselves.

## **11. Regulating small business**

11.1 The legislation applies to small business, in particular to legal practitioners, but does not create any additional burden and the requirements for staying civil partnership proceedings already exist.

11.2 To minimise the impact of the requirements of the Rules themselves 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 Court Rules and the major effects of the new Court Rules to assist solicitors and barristers prepare for the new procedures.

## **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. The provisions contained in this instrument will be considered within that process.

## **13. Contact**

**Philip Dear** at the Ministry of Justice Tel: 020 3334 3125 or email: philip.dear@justice.gsi.gov.uk can answer any queries regarding the instrument.