

**EXPLANATORY MEMORANDUM TO
THE FAMILY PROCEDURE (AMENDMENT) RULES 2012**

2012 No. 679 (L.3)

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 The Family Procedure Rules 2010 (“the 2010 Rules”) set out the practice and procedure to be followed in the High Court, county courts and magistrates' courts in family proceedings. The Family Procedure (Amendment) Rules 2012 (“the 2012 Rules”) amend the 2010 Rules to insert some new procedural provisions and to make minor tidying or clarifying amendments.

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

3.1 None.

4. Legislative Context

4.1 The 2010 Rules are made by the Family Procedure Rule Committee and allowed by the Lord Chancellor. The Family Procedure Rule Committee intends to amend the 2010 Rules over time as necessary in the light of legislative changes, representations by practitioners and stakeholders and their own proposals for improvements.

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 Consideration of the 2010 Rules and their operation since they came into force on 6th April 2011 has shown the need for some amendments to ensure that the 2010 Rules

7.2 Some of the amendments made are simply for clarification or to correct minor errors in the 2010 Rules. For example, the 2010 Rules are amended by the 2012 Rules to:

- make clear who should be the respondent to an application for a declaration of parentage;
- remove two references to the need to pay a fee to obtain a copy document. These amendments do not mean that fees are no longer payable. Rather, they are made to reflect the fact that no other references to the need to pay fees are included in the 2010 Rules in respect of other applications which attract a court fee, as provision for when, and what, fees are payable is made in secondary Orders, not in the 2010 Rules.

7.3 Other amendments are made to the 2010 Rules to make substantive additions or alterations. For example, the 2012 Rules amend the 2010 Rules to insert provision in respect of:

- the addition or removal of parties to family proceedings;
- the inspection and disclosure of documents in family proceedings;
- the use of statements of truth to verify documents, rather than (or as an alternative to) the use of sworn affidavits;
- the ability to disclose information from certain family proceedings held in private to the Independent Safeguarding Authority without the need to first obtain the permission of the court.

- Consolidation

7.4 The 2010 Rules provide a consolidated unified set of rules for all types of family proceedings. The 2012 Rules amend the 2010 Rules. There are currently no plans to undertake a consolidation exercise. The 2010 Rules as amended will be published on the Family Procedure Rules website at the following link: <http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/family/index.htm>

8. Consultation outcome

8.1 Given the minor and technical nature of the amendments to the 2010 Rules in the 2012 Rules, the Family Procedure Rule Committee carried out a targeted consultation on the draft Rules with major stakeholders (predominantly legal practitioners). The consultation took place over a period of 6 weeks in October and November 2011. Three responses were received and were considered by the Family Procedure Rule Committee. The draft Rules were slightly amended in the light of the responses received (for example, where a minor typing error was identified). The most significant comments were in response to a question as to whether the provision that the general rule in financial remedy proceedings is that there should

be “no order for costs” should continue to apply to certain applications for permission, as well as to the substantive application (this provision is in rule 28.3 of the 2010 Rules). Two of the three respondents agreed that this should remain the case, and the Committee concluded that the 2010 Rules should not be amended to alter the current position.

8.2 Given the technical nature of the amendments and the limited nature of the consultation no response to the consultation was published. Replies were sent to the three respondents.

8.3 The version of the 2012 Rules which was the subject of the targeted consultation exercise did not include the provisions amending the 2010 Rules to allow for the use of statements of truth to verify documents, rather than (or as an alternative to) the use of sworn affidavits. However, such provisions were included in the draft Family Procedure Rules when they were the subject of a wide consultation exercise in 2008 before being made. This followed a consultation in 2006 on the principle involved in which 66% of respondents were in favour of replacing affidavits with statements of truth. In light of this, and of the general agreement to such provisions at that time, the Family Procedure Rule Committee concluded that it need not consult again on this issue. The response to the 2006 consultation can be found at the following link: www.justice.gov.uk/consultations/docs/cp1307resp.pdf

9. Guidance

9.1 Guidance to judiciary, court staff, practitioners and court users as to the effect of the amendments made to the 2010 Rules by the 2012 Rules will be provided. The 2010 Rules as amended, and the associated forms for court users, will be available to the public and to practitioners from the Family Procedure Rules website.

10. Impact

10.1 The impact on business, charities or voluntary bodies is likely to be minimal. The provisions of the 2010 Rules amended by the 2012 Rules will not impose any significant additional burden on practitioners or voluntary bodies involved in family proceedings.

10.2 The impact on the public sector is likely to be small. These amendments will not impose any significant additional burden on HMCTS.

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

11. Regulating small business

11.1 The legislation will have some impact on small businesses as it will affect firms of solicitors, which firms are often small businesses, dealing with family proceedings.

It is intended to publicise the changes to the 2010 Rules made by the 2012 Rules and to provide and guidance to assist practitioners.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to provide guidance so that legal practitioners will be able to operate the provisions of the 2010 Rules as amended by the 2012 Rules with minimal impact.

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 the 2010 Rules.

12. Monitoring & review

12.1 The Family Procedure Rule Committee will consider the effects of the amendments made to the 2010 Rules by the 2012 Rules in the context of the ongoing consideration of the operation of the 2010 Rules.

13. Contact

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