

EXPLANATORY MEMORANDUM TO
THE FAMILY PROCEDURE (AMENDMENT NO. 4) RULES 2014

2014 No. 3296 (L. 34)

- 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 Family Procedure Rules 2010 (“the 2010 Rules”) set out the practice and procedure to be followed in family proceedings in the High Court and the family court. The Family Procedure (Amendment No.4) Rules 2014 (“the 2014 Rules”) amend the 2010 Rules. The main purposes of the amendments made to the 2010 Rules by the 2014 Rules are to improve procedures, to make amendments consequential upon the coming into force of other legislation, and to make amendments to facilitate the implementation of the Regulation (EU) No 606/2013 on mutual recognition of protection measures in civil matters¹ (the “Protection Measures Regulation”), which comes into force on 11th January 2015.

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

- 3.1 Rule 10 of the 2014 Rules inserts a new rule 12.42A into the 2010 Rules. That new rule cross-refers to Part 87 of the Civil Procedure Rules 1998 (“the CPR”). Part 87 of the CPR will be inserted into the CPR by an amending set of Rules (subject to the negative resolution procedure), which will come into force on the same date as rule 10 of the 2014 Rules.

4. Legislative Context

- 4.1 Family Procedure Rules are made by the Family Procedure Rule Committee and allowed by the Lord Chancellor. Amendments to the 2010 Rules are necessary to, amongst other things, support the implementation of the Protection Measures Regulation. The U.K. opted in to the negotiation of the Protection Measures Regulation and is bound by it. The 2014 Rules are part of a package of statutory instruments to facilitate the implementation of the Protection Measures Regulation, the other instruments being –
- The Civil Jurisdiction and Judgments (Protection Measures) Regulation 2014 (S.I. 2014/3298)
 - The Family Court (Composition and Distribution of Business) (Amendment) Rules 2014 (S.I. 2014/3297 (L.35))
 - The Civil Procedure (Amendment No.8) Rules 2014 (S.I. 2014/3299 (L.36))

¹ OJ No L181, 29.06.2013, p4.

4.2 In addition to making provision for the Protection Measures Regulation in the 2010 Rules, the 2014 Rules make other amendments to the 2010 Rules, brief details of which are set out in section 7 of this Memorandum.

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 The Family Procedure Rule Committee amends the Family Procedure Rules 2010 periodically in light of legislative changes, representations from court users and their own proposals for procedural improvements. The amendments made by the 2014 Rules include provision to—

- (a) remove references to proceedings for an application for a decree of presumption of death and dissolution of a marriage, consequential on repeal of the legislation which provided for such decrees (now replaced by the Presumption of Death Act 2013).;
- (b) prescribe the circumstances in which, and procedure for, a person applying for a matrimonial order or a civil partnership order to add further particulars or allegations by way of a supplemental application;
- (c) introduce a new rule governing the procedure for obtaining a writ of habeas corpus for release of a minor;
- (d) allow for the court to adjourn proceedings where appropriate in order to enable parties to consider using non-court dispute resolution.

7.2 The 2014 Rules also insert a new part, Part 38, into the 2010 Rules, and make related amendments, to provide rules for proceedings under the Protection Measures Regulation in the family court of England and Wales and the High Court (Family Division). The Regulation requires that “protection measures” issued in one Member State of the European Union will be automatically recognised and enforceable in any other Member State (except Denmark, which is not bound by the Regulation) provided the measure has been certified. A “protection measure” is defined in the Protection Measures Regulation and essentially involves an obligation on a “person causing the risk” to stay away from or not to contact a “protected person”. Examples in the law of England and Wales include prohibitions on activities or restrictions on contact contained in non-molestation orders issued in domestic violence cases. The new Part 38 includes procedures both for a protected person to have her or his protection measure recognised in another Member State (except Denmark), and for a protected person to bring a protection measure from

another EU Member State (except Denmark) to the court in England and Wales for enforcement here.

7.3 Consolidation

The 2010 Rules provide a consolidated unified set of rules for all types of family proceedings. The 2014 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/procedurerules/family/index.htm>

8. Consultation outcome

8.1 The Family Procedure Rule Committee consulted the International Family Law Committee, including the senior family judges who lead the Committee, on the draft amendment rules for the Protection Measures Regulation and received two responses concerning technical details which have been considered.

9. Guidance

9.1 The 2010 Rules as amended, and the associated Practice Directions, will be available to the public and to practitioners on the Ministry of Justice website www.justice.gov.uk.

10. Impact

10.1 There will be a small impact on business; solicitors and barristers will need to be aware of the amendments and how to apply them.

10.2 This statutory instrument has no impact on the public sector, charities or voluntary bodies, save to the extent that charities or voluntary bodies who support individuals when going to court and assist in other legal matters may also need to familiarise themselves with the amendments.

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

11. Regulating small business

11.1 The statutory instrument does not apply to small businesses other than as set out at 10.1 above

12. Monitoring and review

12.1 The Family Procedure Rule Committee will monitor the effects of these amendments as part of its ongoing consideration of the 2010 Rules.

13. Contact

Clive Buckley, Secretary to the Family Procedure Rule Committee, Ministry of Justice,
Tel: 020 3334 3181 or email: clive.buckley@justice.gsi.gov.uk; can answer any queries regarding the instrument.