

EXPLANATORY MEMORANDUM TO
THE FAMILY PROCEDURE (AMENDMENT No. 2) RULES 2014

2014 No. 667 (L. 11)

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, county courts and magistrates' courts. Upon the implementation of the provisions in the Crime and Courts Act 2013 establishing a family court for England and Wales, the 2010 Rules will govern the practice and procedure to be followed in family proceedings in the High Court and the family court. The main purpose of this instrument is to reflect the creation of the family court.

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

- 3.1 The Committee’s attention is drawn to the three matters set out below.
- 3.2 The first matter is that in making these Rules, reliance is placed on section 13 of the Interpretation Act 1978. There are two reasons for this.
- 3.3 The first reason is that it is considered that the provision made by these Rules will all be necessary for the purpose both of bringing into force, and of giving full effect to, section 31A of the Matrimonial and Family Proceedings Act 1984, as inserted by section 17(3) of the Crime and Courts Act 2013 when that section comes fully into force. In essence, without the provision made by these Rules, the family court will not be able to be brought practically into operation.
- 3.4 The second reason for placing reliance on section 13 of the Interpretation Act 1978 is that there is a concern that if the approach were taken to commence the provisions in the Crime and Courts Act 2013 which amend the powers to make these Rules, the ability to make provision under the current powers conferred by those provisions as unamended would be lost. This could be avoided by the inclusion in any commencement order of some complex savings provisions, but it is considered expedient to avoid this additional complexity by anticipatory exercise of the relevant powers.

- 3.5 The second matter drawn to the attention of the Committee is that these Rules form only part of a package of statutory instruments which will be needed for the purposes of the family court. The intention is that all of these associated statutory instruments will come into force on the same date.
- 3.6 Despite the links outlined above, there is no intention to lay any negative statutory instrument which includes any provision which is dependent on the approval by Parliament of an affirmative statutory instrument, until that approval has been given.
- 3.7 In the light of comments on the use in rules of court of the expression “will” in the Committee’s 31st and 41st reports of the 2010-2012 session of Parliament, the third matter drawn to the Committee’s attention is the fact that there are various amendments to the 2010 Rules made by these Rules which, following the drafting convention adopted by the Family Procedure Rule Committee, include reference to things that the court “will” do. As these Rules make largely consequential amendments to the 2010 Rules, and as the 2010 Rules already include numerous references to things which the court “will” do in this context, it was not considered appropriate to alter the drafting approach for the purposes of these Rules. In addition, as explained to the Committee on past occasions, it is considered by the Family Procedure Rule Committee that the use of “will” remains appropriate in the contexts in which it is used in the 2010 Rules (and therefore in the amendments made to them by these Rules).

4. Legislative Context

- 4.1 Family Procedure Rules are made by the Family Procedure Rule Committee and allowed by the Lord Chancellor in accordance with section 79 of the Courts Act 2003. Amendments to the 2010 Rules are necessary because the matters for which they provide have changed. County courts and magistrates’ courts will cease to have jurisdiction to deal with family proceedings which will instead be dealt with in the family court and the High Court. The Family Procedure (Amendment No.3) Rules 2013 SI 2013 No. 3204 contained amendments consequential upon the creation of the family court. The Family Procedure (Amendment No.2) Rules 2014 (“the Amendment Rules”) include further amendments consequential upon the creation of the family court.
- 4.2 As noted in paragraph 3.5 above the Amendment Rules will form part of a package of statutory instruments needed to bring the family court into practical operation.

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 its response to the Family Justice Review, published in February 2012, the Government accepted the recommendation that a single family court should be created to deal with family proceedings, replacing the current three tiers of court structure, with the High Court retaining exclusive jurisdiction in just a limited number of areas. In order to achieve this, primary legislation was required and provision for the establishment of a family court for England and Wales was enacted in the Crime and Courts Act 2013.
- 7.2 The Amendment Rules further amend the 2010 Rules as a consequence of the creation of the family court following previous amendments made in the Family Procedure (Amendment No.3) Rules 2013. Additionally, these rules make new provision regarding the time allowed to appeal against a case management decision in family proceedings (paragraph 7.7 below), introduce a permission requirement to appeal from a decision of a District Judge (Magistrates' Courts) and prescribe procedures to be followed in relation to contempt of court and committal (paragraph 7.9 below).
- 7.3 The Amendment Rules prescribe procedures relating to the methods of payment under certain maintenance orders. These are based on rules governing the practice and procedure of the magistrates' courts, which will cease to exercise family jurisdiction upon the introduction of the family court.
- 7.4 The 2010 Rules enable prescribed functions of magistrates' courts in family proceedings to be performed by a single justice of the peace. The rule amendments will enable prescribed functions of the family court to be performed by a single justice of the peace.
- 7.5 The Crime and Courts Act 2013 provides that the judges of the family court shall include High Court, county court and magistrates' courts judiciary. In the family court, when seeking to have proceedings moved to a different level of judge, it will therefore not be necessary for a party to apply for proceedings to be transferred to another court. Instead, where proceedings have been allocated without a hearing, the Amendment Rules prescribe a procedure for requesting re-consideration by the court of the allocation to a particular level of judge.
- 7.6 Except in certain circumstances, the 2010 Rules require permission of the court to appeal against a decision of a district judge of the High Court or county court. Permission to appeal is not required from a decision of a magistrates' court. By extending the definition of district judge for the purposes of the rule relating to permission to appeal, in the family court permission will also be required to appeal against a decision of a district judge (magistrates' courts). This reflects the Government's acceptance of the recommendation of the Family Justice Review that the powers of district judges in the family court be aligned.
- 7.7 The 2010 Rules provide generally that an appeal against a decision shall be made within 21 days of the decision, unless the court directs otherwise. A shorter period of seven days is prescribed for appeals against an interim care order or interim supervision order made under Part 4 of the Children Act 1989. The Amendment Rules provide that the seven day

period shall also apply to all appeals against case management decisions in family proceedings. This amendment balances the need to avoid unnecessary delay in family proceedings while preserving a party's right to appeal.

7.8 The Amendment Rules contain amendments relating to the enforcement of orders consequential upon the creation of the family court.

7.9 The power to make Family Procedure Rules includes a power to apply other rules. The 2010 Rules make provision in relation to contempt of court and committal by application, with modifications, of the relevant parts of the Civil Procedure Rules 1998. The Family Procedure Rule Committee decided that in this important area of procedure litigants should be able to access clear rules without the need to refer to other instruments. Therefore, the Amendment Rules introduce a new Part 37 containing free-standing rules for family proceedings on contempt and committal, modelled on the provisions contained in Part 81 of the Civil Procedure Rules (Part 81 was inserted into the Civil Procedure Rules by S.I. 2012/2208).

7.10 ***Consolidation***

The 2010 Rules provide a consolidated unified set of rules for all types of family proceedings. These 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 conducted a targeted consultation from July to September 2013 on those provisions going beyond the purely consequential, including the change of the time limit for appealing against case management decisions and the imposition of a permission requirement to appeal against a decision of a district judge (Magistrates' Courts). Seven responses were received. A full analysis of the responses has not been made available as consultees were broadly supportive of the proposals and only minor adjustments were made to the rules as a result.

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 Family Procedure Rules website. Information on the location of centres that will receive applications lodged in the family court in accordance with the 2010 Rules will be provided on the website of Her Majesty's Courts and Tribunals Service.

10. Impact

- 10.1 An Impact Assessment covering this and other statutory instruments being made to support the family court is annexed to this memorandum and will be published alongside the Explanatory Memorandum.

11. Regulating small business

- 11.1 The legislation will affect small firms of solicitors dealing with family proceedings. The changes brought about by these amendments will be specifically drawn to the attention of family lawyer associations.

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.