

EXPLANATORY MEMORANDUM TO
THE FAMILY PROCEDURE (AMENDMENT No.2) RULES 2015

2015 No. 1420 (L. 15)

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 These Rules amend the Family Procedure Rules 2010 (“the 2010 Rules”), which set out the practice and procedure to be followed in family proceedings in the High Court and the family court. The amendments are made to improve the efficiency of existing procedures, to make changes required as a result of the coming into force of other legislation and to reflect changes in the way certain cases are dealt with administratively.

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

- 3.1 These Rules are made in part under paragraph 14(2) of Part 1 of Schedule 2 to the Female Genital Mutilation Act 2003 (Schedule 2 is inserted by section 73 of the Serious Crime Act 2015) and reliance is therefore placed on section 13 of the Interpretation Act 1978 in this regard. It is considered that the provision in these Rules amending Part 11 of the 2010 Rules, for Female Genital Mutilation Protection Orders (“FGM Protection Orders”) under paragraph 14(2) is necessary for the purpose both of bringing fully into force and of giving full effect to the new provision in the 2003 Act. Paragraph 14(2) allows for a recognizance fixed when a person is remanded to be taken later, by a person prescribed by rules of court, and this cannot operate without rules being made to specify the persons prescribed to take the recognizances. Paragraph 14(2) will come into force on 17 July 2015, as provided by the Serious Crime Act 2015 (Commencement No. 2) Regulations 2015 but could not operate for the reasons given without the amendments made to Part 11 of the 2010 Rules by these Rules. The anticipatory exercise of the power in paragraph 14(2) is therefore necessary and expedient for the purpose of bringing Part 1 of Schedule 2 to the Female Genital Mutilation Act 2003 into force.

4. **Legislative Context**

- 4.1 These Rules make amendments to the 2010 Rules in three areas. The first is to clarify and make adjustments to the procedure to be followed on an application for a judgment summons, so that it mirrors more closely the procedure followed in county courts as set out in Schedule 1 to the Civil Procedure Rules 1998.

4.2 The second area of amendment is to provide for the procedure to be followed on an application for an FGM Protection Order in the family court. This provision is part of wider provision across four related statutory instruments to implement FGM Protection Orders, the other instruments being—

- The Family Court (Composition and Distribution of Business) (Amendment) Rules 2015;
- The Female Genital Mutilation Protection Order (Relevant Third Party) Regulations 2015;
- The Serious Crime Act 2015 (Commencement No. 2) Regulations 2015.

4.3 Thirdly, these Rules make minor amendments to two rules in the 2010 Rules which set out procedures in relation to the enforcement in England and Wales of maintenance obligations made outside of the United Kingdom.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As this instrument is subject to the 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 2010 Rules periodically in light of legislative changes, representations from court users and their own proposals for procedural improvements.

7.2 These Rules make amendments in three areas—

- in Part 11 of the 2010 Rules to make provision for the practice and procedure to be followed on an application for a FGM protection order under Part 1 of Schedule 2 to the Female Genital Mutilation Act 2003 (the FGM Protection Order is a new type of order for the purpose of protecting actual or potential victims of Female Genital Mutilation);
- in Part 33 of the 2010 Rules to make changes to the procedure in respect of an application for a judgment summons. Practical experience of the operation of the current provisions in the family court (which came into force on 22 April 2014) has shown there to be difficulties in operating the rules as currently in force. The amendments made by these Rules are intended to make the judgment summons procedure clearer and easier to follow and apply. In particular, the amendments alter the provision for the payment or offer of a sum to cover the debtor's travelling expenses to attend court, to align the provision in the 2010 Rules more

closely with the provision made in section 110 of the County Courts Act 1984 and in the Civil Procedure Rules 1998;

- in rules 34.35 and 34.36 of the 2010 Rules to reflect operational changes made by Her Majesty's Courts and Tribunals Service (HMCTS) in dealing with the reciprocal enforcement of maintenance orders. These changes mean that the administration of such cases will be dealt with at particular locations of the family court in England and Wales, known as Maintenance Enforcement Business Centres. The movement of work to Maintenance Enforcement Business Centres is intended to improve the service delivered by HMCTS by pooling knowledge and experience through concentrating the administration of maintenance enforcement cases in a limited number of locations.

7.3 *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 (“the Committee”) must, before making Family Procedure Rules, consult such persons as they consider appropriate (section 79(1)(a) of the Courts Act 2003). Where amendments are required in consequence of initiatives which have themselves been the subject of consultation, the Committee will not generally undertake additional formal consultation. As the amendments contained in these Rules are minor or consequential upon primary legislation which had itself been the subject of consultation, the Committee decided it was not appropriate to carry out a separate consultation.

8.2 In July 2014, the Government consulted on the creation of a new civil law measure (the FGM Protection Order), the aim of which would be to provide an additional tool to prevent and/or help eliminate FGM. This consultation, and the Government's response to it, can be found at: <https://consult.justice.gov.uk/digital-communications/female-genital-mutilation-proposal-to-introduce-a>.

That consultation did not relate specifically to rules of court. However, a significant majority of those who responded to the consultation supported the introduction of a civil protection order for potential FGM victims and agreed that the existing Forced Marriage Protection Order regime would be a good model for this purpose. Respondents felt that the current criminal legislation was not enough and considered a civil protection order would deter the practice of FGM and provide additional protection to victims. The Government did not consider that it was appropriate to consult on these rules. The approach they take in relation to the rules for FGM

Protection Orders follows the approach for Forced Marriage Protection Orders and is therefore consistent with general views of respondents to the consultation.

9. Guidance

9.1 The 2010 Rules as amended will be available to the public and to practitioners on the Ministry of Justice website . www.justice.gov.uk/courts/procedure-rules/family

9.2 Guidance to HMCTS staff will be updated to reflect procedural changes arising from these Rules.

10. Impact

10.1 No impact assessment has been produced for this instrument because no, or minimal, impact is anticipated to result from its provisions. There will be a small impact on business, on the public sector and on charities or voluntary bodies involved in child protection, in that they will need to be aware of the amendments and how to apply them. There will be a small impact on the police as a result of copies of FGM protection orders being sent to them. These impacts are, however, considered to be minimal.

10.2 In relation to FGM Protection Orders, an overarching Regulatory Impact Assessment was produced for the passage of the Serious Crime Act 2015 Act through Parliament. This can be found at: <http://services.parliament.uk/bills/2014-15/seriouscrime/documents.html>. This considered the impacts and rationale of introducing the FGM Protection Order, generally.

11. Regulating small business

11.1 This legislation does not apply to small businesses other than set out in 10.1 above.

12. Monitoring & 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

Please contact Aaron Manku, Senior Policy Manager, Ministry of Justice, (tel: 0203 334 3480 or email: aaron.manku@justice.gsi.gov.uk) who can answer any queries regarding the instrument.