

EXPLANATORY MEMORANDUM TO

THE FAMILY PROCEDURE (AMENDMENT No. 3) RULES 2016

2016 No. 1013 (L. 18)

1. Introduction

- 1.1 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 These Rules amend the Family Procedure Rules 2010 (“the FPR 2010”), which govern the practice and procedure to be followed in family proceedings in the High Court and in the family court.
- 2.2 These Rules amend the FPR 2010 to provide for the automatic assignment (rather than assignment on request) of serial numbers to adoptive parents or prospective adoptive parents in proceedings for adoption and certain other proceedings in order to keep their identity confidential.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The FPR 2010, and amendments to them, are made under section 75 of the Courts Act 2003 to govern the practice and procedure to be followed in family proceedings in the family court and High Court. They are made by the Family Procedure Rule Committee (“the Committee”) and formally allowed by the Lord Chancellor, in accordance with section 79 of the Courts Act 2003.
- 4.2 Rule 14.2 of the FPR 2010 sets out the circumstances in which a prospective adoptive parent in adoption proceedings, or an adoptive parent in certain other proceedings relating to the adopted child, may request the court to assign a serial number to identify them, in order to keep their identity confidential. When a serial number is assigned, the identity of the person to whom it is assigned will not be disclosed to any other person, including any other party to the proceedings, without their consent.
- 4.3 The court retains a discretion to direct that a serial number so assigned to a person be removed at any time.
- 4.4 The Committee is of the view that, given the serious implications for the adoptive family in the event of data loss resulting in breach of confidentiality, Rule 14.2 should be amended to provide for automatic assignment of serial numbers rather than

assignment on request, but retaining the court's discretion to direct that a serial number assigned to a person be removed in appropriate circumstances.

5. Extent and Territorial Application

5.1 This instrument extends to England and Wales.

5.2 The territorial application of this instrument is 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 The Committee amends the FPR 2010 periodically in light of legislative and other changes.

7.2 As explained in paragraphs 4.1 to 4.4 above, rule 14.2 of the FPR presently provides for a serial number to be assigned, in relation to adoption proceedings or certain other proceedings relating to an adopted child, to prospective adoptive parents or adoptive parents in whose favour an adoption order has been made, to keep their identity confidential. When a serial number is requested, it is assigned as a matter of course, but subject to a discretion for the court to remove the serial number in appropriate circumstances.

7.3 Under this arrangement of mandatory assignment on request, but only on request, there have been cases where serial numbers have not been assigned, or not assigned sufficiently early, to adoptive parents, and names and addresses have been inadvertently revealed to the birth parents. While such cases are rare, the impact on the child and adoptive family is far-reaching, leading in some cases to the adoptive family having to be re-located and even to the breakdown of the adoptive placement.

7.4 The move to a system of automatic assignment of a serial number in cases covered by the rule, rather than assignment requiring action on the basis of a request, would remove the possibility of applicants inadvertently failing to request a serial number, or of transactional error in failing to process the request, and so minimise the possibility of such inadvertent disclosure of identifying information. The Committee considers that the change is needed to protect the child and applicants in high risk cases where confidentiality needs to be preserved, and that in straight-forward cases, such as step-parent adoptions, the information will already be known to other parties and will therefore not be affected by the assigning of a serial number; and that the retention of the court's discretion to remove a serial number will enable confidentiality to be relaxed where appropriate..

Consolidation

7.5 The FPR 2010 provide a consolidated unified set of Rules for all types of family proceedings. These Rules amend the FPR 2010. There are currently no plans to undertake a consolidation exercise. The FPR 2010 as amended will be published on the Family Procedure Rules website at the following link:

https://www.justice.gov.uk/courts/procedure-rules/family/rules_pd_menu

8. Consultation outcome

- 8.1 The Committee must, before making Family Procedure Rules, consult such persons as they consider appropriate (section 79(1) (a) of the Courts Act 2003).
- 8.2 The Committee did not consider it necessary to undertake a formal consultation in relation to this amendment. Ministry of Justice officials did liaise closely with Her Majesty's Courts and Tribunals Service when developing this amendment.

9. Guidance

- 9.1 The FPR 2010 as amended by these Rules will be available to the public and legal practitioners on the website referred to at paragraph 7.9. Guidance to HMCTS staff will be updated to reflect the procedures in the FPR 2010 as amended by these Rules.
- 9.2 Forms used in applications for adoptions and the associated guidance notes will need amendment for the proposed implementation date.

10. Impact

- 10.1 These Rules will have a small impact on business, charities or voluntary bodies, in that those providing legal advice, such as solicitors and barristers, will need to be aware of the amendments made by these Rules and how to apply them.
- 10.2 These Rules have no impact on the public sector, save that HMCTS staff will need to be aware of the amendments made by these Rules and how to apply them.
- 10.3 An Impact Assessment has therefore not been prepared for this instrument.

11. Regulating small business

- 11.1 These Rules do not apply to activities that are undertaken by small businesses, save as outlined at paragraph 10.1 above.

12. Monitoring & review

- 12.1 The Committee will monitor the effects of these amendments as part of its ongoing consideration of the FPR 2010.

13. Contact

- 13.1 Please contact Joanne Thambyrajah, Secretary to the Family Procedure Rule Committee, Ministry of Justice, (tel: 0203 334 3181 or e-mail: joanne.thambyrajah1@justice.gsi.gov.uk) who can answer any queries regarding the instrument.