

EXPLANATORY MEMORANDUM TO
THE FAMILY COURT (COMPOSITION AND DISTRIBUTION OF BUSINESS)
(AMENDMENT) RULES 2021

2021 No. 505 (L. 7)

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 The purpose of the instrument is to amend existing rules to:
- a) provide for the levels of judge of the family court to which appeals from decisions of certain other judges in financial remedy proceedings should be allocated; and
 - b) change provision about the levels of judge of the family court to which applications for financial relief following an overseas divorce or dissolution of civil partnership should be allocated.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The Family Court (Composition and Distribution of Business) Rules 2014 (the “2014 Rules”) were made under section 31D of the Matrimonial and Family Proceedings Act 1984 (the “1984 Act”), as inserted by Schedule 10 to the Crime and Courts Act 2013, and commenced on 22 April 2014, as part of the package of legislation to set up the single family court. Part 5 of the 2014 Rules sets out detailed provision about the level of judge in the family court to which different types of family proceedings should be allocated to be heard.

- 6.2 The President of the Family Division, as nominee of the Lord Chief Justice under paragraph 2(2)(b) of Part 1 of Schedule 1 to the Constitutional Reform Act 2005, may exercise powers conferred by section 31D of the 1984 Act to amend the 2014 Rules. Such amendments must be made with the agreement of the Lord Chancellor in accordance with paragraph 2 of Part 1 of Schedule 1 to the Constitutional Reform Act 2005.
- 6.3 The amendments made to the 2014 Rules by this instrument are made in the interests of ensuring that judicial resources in the family court are allocated effectively and proportionately.

7. Policy background

What is being done and why?

- 7.1 Following statutory consultation with the Family Procedure Rule Committee, the President of the Family Division, with the agreement of the Lord Chancellor, seeks to amend the 2014 Rules to achieve two ends.
- 7.2 The first end is to remove the requirement for appeals to be heard by a judge of High Court level in the family court, where the appeal relates to a decision of a District Judge of the Principal Registry of the Family Division (PRFD) in financial remedy proceedings. (Within the 2014 Rules, this provision extends to appeals relating to decisions from Deputy District Judges of the PRFD.) The effect of this amendment is that such appeals will in future usually be allocated to a judge of Circuit level sitting in the family court.
- 7.3 Under rule 6 of the 2014 Rules, appeals against decisions of district judges (including District Judges of the PRFD and their deputies) are routinely heard by a judge of Circuit level sitting in the family court, except when there is a need for a judge of High Court level to hear the appeal to make most effective and efficient use of judicial resources.
- 7.4 Rule 7(1)(b) of the 2014 Rules makes an exception to this general allocation rule, requiring appeals against the decision of a District Judge of the PRFD (or deputy) in financial remedy proceedings to be allocated to a judge of High Court level. The justification for this deviation from the general allocation rule was presented as follows in the Explanatory Memorandum accompanying the original 2014 Rules:
- “Appeals from decisions of these judges [District Judges of the PRFD and their deputies] in financial remedy proceedings are routed to a judge of High Court level sitting in the family court. The policy behind this change is to align the position of district judges as much as possible while acknowledging the specialist expertise of these judges in financial remedy proceedings which justifies appeals against decisions in those matters only being routed to a judge of High Court level.”*
- 7.5 Following consultation with the Family Procedure Rule Committee – and in recognition that there are currently no sitting District Judges of the PRFD – the President of the Family Division considers that the original justification behind rule 7(1)(b) of the 2014 Rules no longer applies. Complex and high value financial remedy proceedings are now routinely heard by District Judges across the family court, with appeals arising from such proceedings usually being allocated to judges of Circuit Judge level sitting in the family court in line with rule 6 of the 2014 Rules. The specific exemption that routes appeals from decisions of District Judges of the PRFD

(and their deputies) to judges of High Court level is no longer thought to be warranted, or conducive to the efficient and effective allocation of High Court judicial resources.

- 7.6 The second end achieved through the amendments made to the 2014 Rules is to remove the requirement that, in the family court, applications (whether substantive applications or applications for permission to apply) for a financial remedy following an overseas divorce, or an overseas dissolution of a civil partnership, must be heard by a judge of High Court Judge level, unless the application is made with the consent of both parties.
- 7.7 This instrument amends provisions in Schedule 1 to the 2014 Rules, to the effect that all applications under section 12 or 13 of the 1984 Act (financial remedy after overseas divorce) or Schedule 7 to the Civil Partnership Act 2004 (“the 2004 Act”) (financial remedy after overseas dissolution) will initially be allocated to a judge of District Judge level in the family court, except where the effective and efficient use of judicial resource is best served by an application being allocated to a different level of judge (in accordance with rule 15(2) of the 2014 Rules).
- 7.8 Non-contested applications (applications for permission to apply and substantive applications) for financial relief following an overseas divorce or dissolution of a civil partnership are already allocated as routine to a judge of District Judge level in the family court.
- 7.9 Feedback from family judges of High Court level has been that a large proportion of the applications currently allocated to the judges of High Court level in the family court, on the basis that either the permission or substantive application is contested, are modest and routine in nature. Managing these applications is considered to consume a disproportionate amount of time for the High Court judiciary and staff.
- 7.10 These amendments to the 2014 Rules will not impact on allocation decisions taken before the amendments come into force, so will not require any proceedings that are already ongoing to be re-allocated.
- 7.11 It is acknowledged that these changes will have an impact on judges below High Court Judge level in the family court, and that judges of District Judge level, in particular, already face a heavy workload. However, on balance it is considered that amending the 2014 Rules is in the interests of enabling the most overall effective and efficient allocation of judicial resources.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This is the third instrument to amend the 2014 Rules. There are currently no plans to undertake a consolidation exercise.

10. Consultation outcome

- 10.1 Amendments to the 2014 Rules may be made only after consultation with the Family Procedure Rule Committee, in accordance with section 31D(5)(b) of the 1984 Act.

10.2 The Family Procedure Rule Committee was consulted on the amendments to the 2014 Rules and its content.

11. Guidance

11.1 This instrument will be published on www.legislation.gov.uk and will be shared directly with regular stakeholders and consultees of the Family Procedure Rule Committee.

11.2 The provisions on allocation of proceedings in the 2014 Rules are applied by the judiciary and court staff. Her Majesty's Courts and Tribunals Service will provide guidance on the practical impact of the amendments to those making allocation decisions in the family court.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies, or the public sector.

12.2 An Impact Assessment has not been prepared for this instrument, given the nil or negligible impact anticipated from these amendments to the 2014 Rules.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of legislation is for the implications of the amendments on judicial capacity, and the throughput of relevant proceedings, to be kept under review by the President of the Family Division.

15. Contact

15.1 Simon Qasim at the Ministry of Justice (simon.qasim3@justice.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Neal Barcoe, Deputy Director for Family Justice Policy, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 Parliamentary Under-Secretary of State Lord Wolfson MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.