

**EXPLANATORY MEMORANDUM TO**  
**THE FAMILY PROCEDURE (AMENDMENT) RULES 2023**

**2023 No. 61 (L. 2)**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.

**2. Purpose of the instrument**

- 2.1 The Family Procedure (Amendment) Rules 2023 amend the Family Procedure Rules 2010 (“FPR”) which, with supporting Practice Directions, set out the practice and procedure to be followed in family proceedings in the High Court and the family court.

**3. Matters of special interest to Parliament**

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

- 3.1 None.

**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 FPR, and amendments to them, are made by the Family Procedure Rule Committee (“the FPR Committee”) under section 75 of the Courts Act 2003 (“the 2003 Act”). Section 76 of the 2003 Act makes further provision about the scope of the FPR, including stating at sub-section (8) that the FPR “may, instead of providing for any matter, refer to provision made or to be made about that matter by directions”. The FPR are formally allowed by the Lord Chancellor under section 79 of the 2003 Act. Section 79(1) of the 2003 Act requires the FPR Committee before making rules to meet (unless inexpedient to do so) and to consult such persons as they consider appropriate. The FPR Committee meets nine times a year and, except in very rare circumstances, considers any proposed matters for inclusion in the FPR in at least one meeting or in correspondence out of the FPR Committee. Consultation is addressed in section 10 of this memorandum.

**7. Policy background**

*What is being done and why?*

- 7.1 The FPR are amended from time to time, to reflect legislative changes and decisions of the courts or to improve the efficiency of the procedure and practice in family

proceedings within the family court and High Court: this instrument makes amendments for both purposes. Amendments are made to the FPR for the following five reasons:

- 7.2 Firstly, amendments are being made to various provisions in the FPR to reflect the accession of King Charles III, following the death of Queen Elizabeth II on 8 September 2022.
- 7.3 Secondly, amendments are made to provide for, and to cross-refer to, provision to be made in a practice direction (Practice Direction 27C) for Independent Domestic Violence Advisers (“IDVAs”) and Independent Sexual Violence Advisers (“ISVAs”) to attend proceedings without the need for an order of the court.
- 7.4 Thirdly, amendments are made to remove provision in the FPR for an application for consent to marriage of a child or to registration of civil partnership of a child.
- 7.5 Fourthly, amendments add an additional category of judge of the family court who may make an order that an application for permission to appeal may not be reconsidered at a hearing, where the judge has refused the application for permission to appeal, without a hearing, as being totally without merit.
- 7.6 Fifthly, the FPR are amended to make provision about the content of a standard order which is issued on an application for the court to order such method of enforcement as the court may consider appropriate.

*What did the law do before the changes made by this instrument?*

- 7.7 Firstly, the FPR contained various references to “Her Majesty” and to the “Queen’s Bench Division”.
- 7.8 Secondly, most proceedings to which the FPR apply are heard in private, with the FPR setting out who may attend such hearings, but the FPR did not make express provision regarding the attendance at hearings of IDVAs and ISVAs.
- 7.9 Thirdly, the FPR set out the procedure for the various circumstances in which a child aged 16 or 17 could apply to the court for permission to marry or enter a civil partnership:
  - a) under section 3 of the Marriage Act 1949 (consent of the court to the marriage of a minor)
  - b) under paragraph 3 of Schedule 2 to the Civil Partnership Act 2004 (where the required consent of a person to the registration of a civil partnership of a child is unobtainable due to absence, inaccessibility or disability and where the special procedure for registration does not apply)
  - c) under paragraph 4 of Schedule 2 to the Civil Partnership Act 2004 (where the required consent has been refused and where the special procedure does not apply)
  - d) under paragraph 10 of Schedule 2 to the Civil Partnership Act 2004 (where the required consent is unobtainable or has been refused and where the special procedure does apply)
- 7.10 Fourthly, the FPR stated that an order of the type referred to in paragraph 7.5 could only be made in the family court by a judge of the High Court or by a Designated Family Judge (“DFJ”).

7.11 Fifthly, where a person wished to enforce an order made in family proceedings, for example an order that one party should pay a lump sum of money to another in connection with divorce proceedings, the FPR made provision (rule 33.3(2)(b) FPR) for the person to whom the money was owed to apply for the court to decide which method of enforcement would be most appropriate. The court would generally hold a hearing to determine which would be the best enforcement method. It would need to know the debtor's financial position to enable it to make this decision. The FPR required an order to be made for the debtor to attend court to provide information about their means.

Why is it being changed?

- 7.12 Firstly, the existing references required amendment following the accession of King Charles III. The FPR Committee considered it appropriate to make express, textual amendments to the FPR, for ease of understanding by the court user.
- 7.13 Secondly, the FPR Committee considered it appropriate that IDVAs and ISVAs should be able to attend family proceedings held in private without the need for an order of the court permitting this.
- 7.14 There was specific reference made to the role of IDVAs and ISVAs as part of the Home Office's 'Tackling Domestic Abuse Plan' and as part of the work on the Draft Victims' Bill. The Draft Bill, which the Ministry of Justice consulted on, contains a number of provisions specifically on IDVAs and ISVAs, including a proposal to place them on a statutory footing.
- 7.15 Given this background the FPR Committee felt it would be appropriate to amend provisions to ensure IDVAs and ISVAs are permitted to attend hearings as a matter of right in the family courts.
- 7.16 Thirdly, the Marriage and Civil Partnership (Minimum Age) Act 2022 ("the 2022 Act") received Royal Assent in April 2022 and is due to come into force on 27 February 2023. It increases the minimum age at which a person may marry or enter into a civil partnership to 18. Previously, it was possible to marry, or enter into a civil partnership, at the age of 16 or 17 in specified circumstances, including with the consent of the court. As the ability to seek consent of the court to marry or enter into a civil partnership at the age of 16 or 17 has been removed, it follows that the provision in the FPR for the court procedure for such an application is no longer needed.
- 7.17 Fourthly, the FPR and supporting Practice Direction 30A make detailed procedural provision about appeals from decisions in family proceedings.
- 7.18 The FPR Committee was concerned that the provision in the FPR had created an uneven situation because appeals in matters relating to children matters are often listed before a DFJ – meaning an order of the type referred to in paragraph 7.5 above could potentially be made, whereas appeals in relation to financial remedy matters will never in practice be listed before a DFJ, meaning such orders could not be made. This meant that applications for permission to appeal in financial matters may have been more frequently renewed at an oral hearing than in children matters, even if the court considered the application for permission to appeal to be totally without merit. This in turn meant that a disproportionate amount of judges' time was being spent hearing oral renewal permission to appeal applications in financial remedy cases.
- 7.19 The FPR Committee agreed that this concern could be addressed by adding to the category of judges who can make an order of a type referred to in paragraph 7.5.

- 7.20 Fifthly, the FPR Committee considered that a first hearing of an enforcement application would be more likely to be productive if the debtor were required to provide details of their financial position, in a standard form, to the court and the other party in advance of the first hearing.

*What will it do now?*

- 7.21 Firstly, references to “Her Majesty’s” are amended to “His Majesty’s” and references to “Queen’s” are amended to “King’s”.
- 7.22 Secondly, the FPR (rule 27.11) will state that any person who is required by any practice direction to be present may attend a hearing held in private. The FPR will also refer to Practice Direction 27C, which will make provision for the attendance of IDVAs and ISVAs at hearings.
- 7.23 Thirdly, Chapter 9 of Part 8 of the FPR will no longer be relevant once the 2022 Act is implemented and the age of marriage and civil partnership is raised to 18, and therefore that Chapter is to be omitted from the FPR.
- 7.24 Fourthly, the FPR will provide that, in appeals relating to financial remedy proceedings, a Nominated FRC Circuit Judge (as defined in new rule 30.3(5C) FPR) may also make an order that an application for permission to appeal may not be reconsidered at a hearing, where the judge has refused the application for permission to appeal, without a hearing, as being totally without merit.
- 7.25 Fifthly, the FPR will state that the court must issue an order which includes a requirement to file and serve a financial statement, in a form provided with the order, ahead of the first hearing.

## **8. European Union Withdrawal and Future Relationship**

- 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 The FPR provide a unified set of rules for all types of family proceedings. There are currently no plans to undertake a consolidation exercise, instead the FPR as amended by this instrument will be published on the Family Procedure Rules website at the following link set out in the footnote.<sup>1</sup>

## **10. Consultation outcome**

- 10.1 The FPR Committee must, before making Family Procedure Rules, consult such persons as they consider appropriate (section 79(1)(a) of the Courts Act 2003).
- 10.2 The Committee consults, as it considers appropriate to the rules or amendments to rules in question, in a number of ways of differing degrees of formality, including specific correspondence with bodies considered appropriate to be consulted; involving representatives of interested organisations in reviewing particular aspects of the FPR; inviting and reviewing suggestions and observations solicited by its members from among the groups from which each is drawn; and inviting and reviewing suggestions from relevant Government Departments and other authorities affected by rules of family procedure.

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<sup>1</sup> [https://www.justice.gov.uk/courts/procedurerules/family/rules\\_pd\\_menu](https://www.justice.gov.uk/courts/procedurerules/family/rules_pd_menu)

- 10.3 In relation to the amendments being made to reflect the accession of King Charles III, the FPR Committee did not undertake any formal consultation, as the changes are purely consequential upon the death of Queen Elizabeth II.
- 10.4 In relation to the changes relating to the attendance of IDVAs and ISVAs the FPR Committee did not formally consult on these changes outside of liaising with Ministry of Justice and His Majesty's Courts and Tribunals Service, but it is expected they will be welcomed by the Domestic Abuse Commissioner and the wider domestic abuse support sector.
- 10.5 The FPR Committee did not formally consult on the changes relating to the legal age of marriage, as these are purely consequential upon provision in primary legislation.
- 10.6 In relation to the permission to appeal changes, the FPR Committee consulted key stakeholders, including representative bodies of the legal professionals, in July 2022. Respondents were broadly supportive of the proposed changes. Other issues in relation to permission to appeal were raised by respondents, which the FPR Committee will be considering separately.
- 10.7 In relation to the provision for standard orders on certain enforcement applications, the Committee included questions about this in a public consultation undertaken in 2020. Respondents were supportive of the proposal for a standard order as a way of ensuring more timely and adequate information about the debtor's financial means was provided.

## **11. Guidance**

- 11.1 Amendments to the FPR are drawn to the attention of participants, to members of the judiciary, to other relevant representative bodies (for example the Law Society, Bar Council, advice sector) and to the editors of relevant legal publications by the FPR Committee secretariat; as well as by publicity within His Majesty's Courts and Tribunals Service. News of changes affecting the family jurisdiction are published on the Ministry of Justice website referred to in paragraph 9.1.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been submitted with this memorandum because no, or no significant, impact on the private, public or voluntary sectors is foreseen.

## **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 this legislation is for the amendments to form part of the FPR which are kept under continuous review by the FPR Committee and may be subject to amendment accordingly.
- 14.2 The instrument does not include a statutory review clause.

## **15. Contact**

- 15.1 Joy Teddy-Jimoh, Senior Policy Advisor at the Ministry of Justice: Telephone: 07759700008 or email: [joy.teddy-jimoh1@Justice.gov.uk](mailto:joy.teddy-jimoh1@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 Lord Bellamy, Parliamentary Under Secretary of State in the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.