

**EXPLANATORY MEMORANDUM TO**  
**THE FAMILY COURT (COMPOSITION AND DISTRIBUTION OF BUSINESS)**  
**(AMENDMENT) RULES 2024**

**2024 No. 258 (L. 6)**

**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. Declaration**

- 2.1 Lord Bellamy KC, Parliamentary Under Secretary of State at the Ministry of Justice, confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Alex Davis, Deputy Director for Rape, Serious Sexual Offences and Domestic Abuse Policy, at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

**3. Contact**

- 3.1 Sarah Roskrow at the Ministry of Justice Telephone: 07926066264 or email: sarah.roskrow@justice.gov.uk can be contacted with any queries regarding the instrument.

**Part One: Explanation, and context, of the Instrument**

**4. Overview of the Instrument**

*What does the legislation do?*

- 4.1 This instrument amends the Family Court (Composition and Distribution of Business) Rules 2014 (“the 2014 Rules”), which set out the tier of the judiciary to which particular types of proceedings should be allocated in the family court. Amendments made by rule 2(2) of this instrument to the 2014 Rules provide for how certain applications for a new Domestic Abuse Protection Order are to be allocated. Amendments made by rule 2(3) of this instrument provide for how certain applications for a declaration of parentage are to be allocated.

*Where does the legislation extend to, and apply?*

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

**5. Policy Context**

*What is being done and why?*

- 5.1 Part 3 of the DA Act makes provision for Domestic Abuse Protection Notices (DAPNs) and Domestic Abuse Protection Orders (DAPOs). These are new powers, which will be initially piloted in selected areas. DAPOs bring together the strongest elements of current orders into a new, more comprehensive order, which can be tailored to better protect victims of domestic abuse and help address perpetrator behaviour. The intention is for existing provision for Domestic Violence Protection

Notices (DVPNs) and Domestic Violence Protection Orders (DVPOs) to be repealed when DAPNs and DAPOs are rolled out across England and Wales. As proceedings for DAPOs are new, an amendment is required to the 2014 Rules to provide for which tier of the judiciary should hear DAPO applications in the family court.

- 5.2 Under the Family Law Act 1986, a person can apply to the family court or the High Court for a declaration as to whether or not a person named in the application is or was the parent of another person named in the application. This is known as a declaration of parentage.
- 5.3 In accordance with the 2014 Rules, proceedings in the family court are allocated to one of a number of “tiers” of judiciary – being to lay justice level, a judge of District Judge level, a judge of Circuit Judge level, or a judge of High Court judge level.
- 5.4 The 2014 Rules currently provide for applications for a declaration of parentage to be allocated to lay justices in the family court. The judgment in *H v An Adoption Agency (Declaration of Parentage Following Adoption)* [2020] EWFC 74 considered the issue of whether a declaration of parentage could be made in respect of a birth parent in relation to a child who has been adopted. Following on from that judgment, the Family Procedure Rule Committee established an expert Working Group to consider whether rules of court or supporting practice directions were needed to set out procedures to be followed in such cases. As part of that work, it was recommended by the Working Group that where the application is in respect of a child under the age of 18 who has been lawfully adopted, it should be allocated to a judge of High Court judge level in the family court, owing to the likely complexity of the case.

*What was the previous policy, how is this different?*

- 5.5 The DAPO is a new civil protective order introduced under Part 3 of the DA Act. Applications for a DAPO can be made by an applicant who is aged 16 years or over. An application can be made on notice to the respondent or without notice, which means that a respondent would be notified only after an order has been made. The court would consider a without notice application in urgent cases, for example when notifying the respondent could prevent an order being made in the first place. An application by someone who is aged 16 or over but under 18 years of age is considered to be an application by a child. The current rules make provision for how such applications are heard when these relate to non-molestation and occupation orders under the Family Law Act 1996; and in many respects, DAPOs are similar to those orders. Therefore, amendments are made by this instrument to bring provision for the tier of judiciary who can deal with DAPOs in line with the corresponding provision for non-molestation and occupation orders.
- 5.6 In relation to declarations of parentage, the previous policy was that these applications should be allocated to the lay justices’ level in the family court. This instrument amends the 2014 Rules so that where the application relates to a child under the age of 18 who has been lawfully adopted, it will be allocated to a judge of High Court judge level in the family court.

## **6. Legislative and Legal Context**

*How has the law changed?*

- 6.1 This instrument is made under section 31D(1) and (3) of the Matrimonial and Family Proceedings Act 1984, with the President of the Family Division acting as a as

nominee of the Lady Chief Justice under paragraph 2(2)(b) of Part 1 of Schedule 1 to the Constitutional Reform Act 2005.

- 6.2 In relation to DAPOs, the amendments provide for DAPO applications made without notice where an applicant is under 18 to be reserved for paid judiciary.
- 6.3 In relation to declarations of parentage, the amendments provide for these applications to be allocated to a judge of High Court judge level in the family court where they relate to a child under the age of 18 who has been lawfully adopted. Previously, such applications would be allocated to lay justices in the family court.
- 6.4 The amendments refer to a person who has been “lawfully adopted” in order to capture not only those adopted under the law in force in England and Wales but also so as not to exclude other circumstances in which a child has been lawfully adopted, in particular under the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, to which the United Kingdom is a party.

***Why was this approach taken to change the law?***

- 6.5 In relation to DAPOs, the amendment has been made to bring provision for this new order in line with that for existing provisions on non-molestation and occupation orders when these are applied for without notice by applicants who are under 18. These cases are reserved for paid judiciary, in recognition of the potential added complexity of such cases. Therefore, lay justices will not be allowed to hear this type of DAPO application, but will be able to hear all other DAPO applications, as it is currently the case with non-molestation and occupation orders.
- 6.6 In relation to declarations of parentage, the expert Working Group established by the Family Procedure Rule Committee was clear in its recommendation that an application for a declaration of parentage should be allocated to a judge of High Court judge level in the family court where it relates to a child under the age of 18 who has been lawfully adopted. The Family Procedure Rule Committee agreed with this view. The 2014 Rules make provision for the level of judge to which proceedings in the family court should be allocated, so it follows that the 2014 Rules have to be amended when a change to the current allocation “level” is required.

## **7. Consultation**

***Summary of consultation outcome and methodology***

- 7.1 The Family Procedure Rule Committee has been consulted, in accordance with section 31D(5)(b) of the Matrimonial and Family Proceedings Act 1984; and did not propose any changes to the draft instrument.
- 7.2 In addition, DAPNs and DAPOs, as one of the measures in the DA Act, were the subject of a public consultation in 2018. The consultation, response and Impact Assessment are available from the GOV.UK website<sup>1</sup>.
- 7.3 In relation to declarations of parentage, the Family Procedure Rule Committee received, and agreed with, recommendations from the Working Group it established, which was chaired by Mr Justice MacDonald.

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<sup>1</sup> <https://www.gov.uk/government/publications/domestic-abuse-consultation-response-and-draft-bill>

## **8. Applicable Guidance**

- 8.1 No specific guidance is being prepared. Judiciary and staff in the family court will be provided with notice of the procedural changes. The Home Office will be providing statutory guidance on DAPNs and DAPOs to the police, under section 50 of the DA Act.

### **Part Two: Impact and the Better Regulation Framework**

## **9. Impact Assessment**

- 9.1 A full Impact Assessment (IA) has not been prepared for this instrument. A separate IA has been published for all the provisions of the DA Act, including Part 3 which makes provision for DAPNs and DAPOs. Copies of the IA can be obtained from the Ministry of Justice, 102 Petty France, London, SW1H 9AJ, or from the GOV.UK website<sup>2</sup>.

### *Impact on businesses, charities and voluntary bodies*

- 9.2 Beyond that, and in relation to other amendments made by this instrument, there is no, or no significant, impact on business, charities or voluntary bodies.
- 9.3 The legislation does not impact small or micro businesses.
- 9.4 The impact of DAPO on the wider public sector is set out in the DA Act's IA. This instrument provides for procedural changes that would most impact HMCTS and the judiciary. The IA sets out the impact on each agency including HMCTS, LAA, HMPPS, CPS and the police relating to process changes associated with the DAPO and scope widening. Pages 20-31 of the IA set out the associated monetised and non-monetised costs and benefits of DAPOs and net quantifiable impacts.

## **10. Monitoring and review**

### *What is the approach to monitoring and reviewing this legislation?*

- 10.1 In relation to DAPOs, the associated provisions in the 2014 Rules will be considered as part of the piloting of Part 3 of the DA Act.
- 10.2 In relation to declarations of parentage, a new practice direction is being put in place supporting the Family Procedure Rules 2010 which sets out the process to follow where an application is made in relation to a child under the age of 18 who has been lawfully adopted. That practice direction will include reference to the allocation provision in the 2014 Rules. It is anticipated that any concerns in relation to the operation of the practice direction, and the associated provisions in the 2014 Rules, will be brought to the attention of the Family Procedure Rule Committee.

### **Part Three: Statements and Matters of Particular Interest to Parliament**

## **11. Matters of special interest to Parliament**

- 11.1 None.

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<sup>2</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1007463/DA\\_Act\\_2021\\_Impact\\_Assessment.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1007463/DA_Act_2021_Impact_Assessment.pdf)

## **12. European Convention on Human Rights**

- 12.1 Lord Bellamy KC, Parliamentary Under Secretary of State at the Ministry of Justice has made the following statement regarding Human Rights:

“In my view the provisions of The Family Court (Composition and Distribution of Business) (Amendment) Rules 2024 are compatible with the Convention rights.”

## **13. The Relevant European Union Acts**

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).