EXPLANATORY MEMORANDUM TO

THE ACCESS TO JUSTICE ACT 1999 (DESTINATION OF APPEALS) (FAMILY PROCEEDINGS) ORDER 2011

2011 No. XXXX

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 This instrument makes provision consequential on the Family Procedure Rules 2010, which come into force on 6th April 2010 and provide a comprehensive set of court rules for all types of family proceedings in the High Court, the county court and the family proceedings (magistrates') courts. It amends the routes of appeal set out in section 16(1) of the Senior Courts Act 1981 and section 77(1) of the County Courts Act 1984, relating to family proceedings in the High Court and a county court respectively, for internal appeals only (that is, appeals from one level of judge to another but at the same level of court).. The purpose is to retain existing internal routes of appeal which would otherwise cease to apply.

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

3.1 None

4. Legislative Context

4.1 Currently,rules 8.1(1) and 8.2(2) of the Family Proceedings Rules 1991 and Order 58 of the Rules of the Supreme Court 1965 and Order 13,rule 1 and Order 37,rule 6 of the County Court Rules 1981, together with rule 1.3 of the 1991 Rules, make provision for internal routes of appeal in family proceedings except adoption, placement and related proceedings where internal routes of appeal are provided for by the Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) Order 2005(S.I.2005,3276) ("the 2005 Destination Order"). These existing rules will be replaced by the new Family Procedure Rules with effect from 6 April 2011, and the routes of appeal for which they provide will cease to operate unless they are preserved, with the effect that appeals in non-adoption cases from the decisions of a district judge of the High Court and from a district judge of a county court would be to the Court of Appeal rather than to a High Court Judge and Judge of the county court respectively. This instrument accordingly makes the necessary provision to preserve those internal routes of appeal.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State for Justice, Mr Jonathan Djanogly MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Destination of Appeals Order are compatible with the Convention rights."

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7. Policy background

- ***What is being done and why***

7.1 The existing internal routes of appeal have been agreed to be proportionate to the nature of the decisions made at the levels in question, and to assist in the efficient dispatch of judicial business. It is for that reason that those routes of appeal are being retained, and the necessary amendments to retain them made by this instrument.

7.2 It would have been possible to leave in place the provision for routes of appeal in adoption cases in the 2005 Destination Order, and to cover only the non-adoption routes of appeal in this instrument. However, since adoption, placement and related proceedings are assigned to the Family Division by Schedule 1 of the Senior Courts Act 1981 and are "family proceedings", and the rules of court for those proceedings are included in the new Family Procedure Rules, it is considered more helpful to bring the provision for routes of appeal in the different sorts of family proceedings together in one instrument. This instrument therefore relates to all family proceedings in the High Court and a county court and the 2005 Destination Order is evoked.

- ***Consolidation***

7.3 This instrument is part of a consolidation exercise. It will consolidate all appeals in respect of family proceedings in the High Court and a county court. Court rules supporting those proceedings are similarly consolidated in the new Family Procedure Rules

8. Consultation outcome

8.1 As required by section 79 of the Courts Act 2003, the Family Procedure Rule Committee carried out a public consultation on the policy behind the new Family Procedure Rules from August to December 2006. A total of 45 responses were received to this consultation and a summary of the responses was published in February 2008. Overall, the majority of specific proposals were supported.

8.2 The extent of support varied according to the area, for example the strongest level of support lay in the proposed changes to the process and route of appeal.

8.3 The consultation and the summary of responses can be found at the following link:
http://www.justice.gov.uk/consultations/cp1906.htm

The Government has not carried out a separate consultation on the changes included in this Order as these are predominantly minor changes arising from the policy approaches embodied in the Family Procedure Rules.

9. Guidance

9.1 The Family Procedure Rules will be published on the Ministry of Justice website three months prior to implementation with each part accompanied by the Practice Direction supporting that part of the Rules for ease of reference. All forms required by applicants will be published with the Rules and will be available to be downloaded from the same website. The Destination of Appeals Order will be published together with the Rules, Practice Directions and forms.

9.2 Training for court staff, the judiciary, magistrates and magistrates' legal advisers will be provided in the run up to implementation.

10. Impact

10.1 The will be some impact on business, charities and voluntary bodies involved in family proceedings, for example solicitors and barristers and children's charities, as they will have to familiarise themselves with the new Court Rules and terminology. This will be mitigated by the instructions and guidance issued by HM Courts Service. The Family Procedure Rule Committee and the Ministry of Justice will also carry out work in the period up to implementation to raise awareness of the new Court Rules and the Destination of Appeals Order among practitioners and court users.

10.2 The impact on the public sector will affect HM Courts Service, as this organisation supports family proceedings in court. It is not anticipated that additional resources will be required, as none of the underlying legal provisions for family proceedings are being changed and no additional cases will arise from the new Court Rules. Also it is not anticipated that there will be any additional payments in respect of legal aid, as no additional cases will arise as a result of the introduction of the new Court Rules.

10.3 An Impact Assessment was prepared for the Courts Bill, including the provisions for the Family Procedure Rules. It is not anticipated that the changes included in the Order will have any additional effects to those of the Family Procedure Rules themselves.

11. Regulating small business

11.1 The legislation applies to small business, in particular to legal practitioners.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to provide guidance for court users on the new procedures and to carry out work to raise awareness of the implementation of the new Court Rules and the major effects of the new Court Rules to assist solicitors and barristers prepare for the new procedures.

12. Monitoring & review

12.1 The Family Procedure Rule Committee will take forward an ongoing programme of amendments to the Family Procedure Rules and will consider the operation of the Rules and the need to amend the provisions both in the light of their own experience as practitioners and in the light of representations from court users, legal and other professionals .and major stakeholders. This programme will cover both the

provisions of the Family Procedure Rules themselves and amendments to other enactments.

13. Contact

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