EXPLANATORY MEMORANDUM TO

THE FAMILY COURT (COMPOSITION AND DISTRIBUTION OF BUSINESS) (AMENDMENT) RULES 2015

2015 No. 1421 (L. 16)

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 provide for the levels of judge of the family court who are to deal with certain types of proceedings relating to Female Genital Mutilation Protection Orders ("FGM Protection Orders").

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

3.1 None.

4. Legislative Context

4.1 FGM Protection Orders are a new type of order introduced by new section 5A of and Schedule 2 to the Female Genital Mutilation Act 2003 (inserted into the 2003 Act by section 73 of the Serious Crime Act 2015)

4.2 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. They provide for the levels of judge and composition of the court for different sorts of proceedings in the family court. Since proceedings relating to FGM Protection Orders are a new sort of proceedings, the 2014 Rules are being amended to provide for their allocation. These amendments are part of a package of statutory instruments to facilitate the implementation of FGM Protection Orders, the other instruments being:

- 4.2.1 The Family Procedure (Amendment No. 2) Rules 2015;
- 4.2.2 The Female Genital Mutilation Protection Order (Relevant Third Party) Regulations 2015;
- 4.2.3 The Serious Crime Act 2015 (Commencement No. 2) Regulations 2015.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

7.1 The new FGM Protection Order, a civil law measure, is modelled on the Forced Marriage Protection Order ("FMPOs"), which are provided for in Part 4A of the Family Law Act 1996.

7.2 The FGM Protection Order, will enable certain courts, including the family court, to make an order with the purpose of protecting a girl or woman against the commission of a genital mutilation offence or to protect a girl or woman against whom such an offence has been committed. Applications can be made, without the leave of the court, by the victim or a relevant third party, which is defined in paragraph 2(7) of Schedule 2 to the 2003 Act as a person or category of persons specified by the Secretary of State for the purpose of such applications.

7.3 Because of the way in which the FGM Protection Order is modelled on the FMPO, it was considered appropriate for FGM Protection Order proceedings to be dealt with by the same levels of judge in the family court as FMPO proceedings. This instrument amends the 2014 Rules to provide for FGM Protection Order applications made without leave in the family court to be allocated to the same level of judge to which applications without leave for FMPOs are allocated. This is achieved by making an addition to rule 16(5), to include 'applications under Part 1 of Schedule 2 to the FGM Act 2003, which are made without notice'.

7.4 Applications to the family court for FGM Protection Orders that are made on notice, or other applications to the family court related to FGM Protection Orders, will also be allocated in the same way as analogous FMPO applications in the family court, under existing provision in the 2014 Rules (and so no amendment is required in that regard).

Consolidation

7.5 This is the third instrument made under section 31D of the 1984 Act. There are currently no plans to undertake a consolidation exercise.

8. Consultation outcome

8.1 In July 2014, ahead of introducing the provisions into Parliament, the Government consulted on the creation of a new civil law measure (the FGM Protection Order), the aim of which would be to provide an additional tool to prevent and/or help eliminate FGM. This consultation, and the Government's response to it, can be found at:

https://consult.justice.gov.uk/digital-communications/female-genital-mutilation-proposal-to-introduce-a.

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

9. Guidance

9.1 These Rules and the other instruments related to the implementation of FGM Protection Orders will be published on www.legislation.gov.uk. No specific guidance on these Rules is considered necessary.

10. Impact

10.1 An overarching Regulatory Impact Assessment was produced for the passage of the 2015 Act through Parliament. This can be found at: http://services.parliament.uk/bills/2014-15/seriouscrime/documents.html. This considered the impacts and rationale of introducing the FGM Protection Order. This did not consider expressly the effect of amendments to the 2014 Rules, but that impact is anticipated to be minimal, limited to the need for court staff and the judiciary to familiarise themselves with these amendments. An Impact Assessment has accordingly not been prepared for this instrument.

11. Regulating small business

11.1 This legislation does not apply to small businesses.

12. Monitoring & review

12.1 The effect of these amendments will be reviewed in the light of experience.

13. Contact

Aaron Manku, Senior Policy Manager, Ministry of Justice, (tel: 0203 334 3480 or email: aaron.manku@justice.gsi.gov.uk) can answer any queries regarding the instrument.