EXPLANATORY MEMORANDUM TO

THE FAMILY COURT (CONSTITUTION OF COMMITTEES: FAMILY PANELS) RULES 2014

2014 No. 842

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1. This instrument makes provision for the formation and functions of "family panels" of lay justices and District Judge (Magistrates' Courts), as well as for the election and chairmanship of family panels. These Rules largely restate existing provision for family panels made in the Family Proceedings Courts (Constitution of Committees and Right to Preside) Rules 2007 ("the 2007 Rules"), save that in the 2007 Rules provision is made in the context of Family Proceedings Courts (being the title given to magistrates' courts when hearing family proceedings), whereas these Rules are in the context of the new family court. Provision for the family court is made in section 17 of, and Schedules 10 and 11 to, the Crime and Courts Act 2013.

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

3.1 The Committee's attention is drawn to the two matters set out below.

3.2 The first matter is that in making these Rules, reliance is placed on section 13 of the Interpretation Act 1978. There are two reasons for this. The first reason is that it is considered that the provision made by these Rules will be a necessary part of bringing into force, and of giving full effect to, section 31A of the Matrimonial and Family Proceedings Act 1984, as inserted by section 17(3) of the Crime and Courts Act 2013 when that section comes fully into force. In essence, without the provision made by these Rules, an element of the full provision that is needed for the purposes of the family court will not be able to be brought practically into operation.

3.3 The second reason for placing reliance on section 13 of the Interpretation Act 1978 is that there is a concern that if the approach were taken to commence the provisions in the Crime and Courts Act 2013 which amend the powers to make these Rules (being section 19 of the Courts Act 2003), the ability to make provision under the current powers conferred by that provisions as unamended would be lost. This could be avoided by the inclusion in any commencement order of savings provisions, but it is considered expedient to avoid this additional complexity by anticipatory exercise of the relevant powers.

3.4 The second matter drawn to the attention of the Committee is that these Rules form only part of a package of statutory instruments which will be needed for the purposes

of the family court. The intention is that all of these associated statutory instruments will come into force on the same date.

3.5 Despite the links outlined above, there is no intention to lay any negative statutory instrument which includes any provision which is dependent on the approval by Parliament of an affirmative statutory instrument, until that approval has been given.

4. Legislative context

4.1. Prior to the coming into force of these Rules, provision for family panels was made in the 2007 Rules. As noted above, these Rules largely restate the provision made in the 2007 Rules, albeit now in the context of the new family court. The 2007 Rules relate to Family Proceedings Courts, which will no longer exist when the family court comes into force. The 2007 Rules will be repealed in a consequential order to be made under section 59 of the Crime and Courts Act 2013.

4.2. The functions of family panels are to

- make recommendations to Family or Bench Training and Development Committees about the number of new family justices required to sit and preside in the family court; and
- liaise with other bodies to share information and represent the views of such justices sitting in the family court. Current provision is found in ("the 2007 Rules").

4.3. This instrument is one of a large group of instruments required to set up the new family court for England and Wales, which will be laid before Parliament. But separate Explanatory Memorandums are being published for each instrument as they cover quite different aspects of the new family court.

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 negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

- *What is being done and why*

7.1. In its response to the Family Justice Review, published in February 2012, the Government accepted the recommendations that a single family court should be created to deal with family proceedings, replacing the current three tiers of court structure. The review further recommended that the High Court should retain exclusive jurisdiction in a limited number of areas, such as the exercise of its inherent jurisdiction. In order to achieve this, primary legislation was required and provision for the establishment of a family court for England and Wales was enacted by Parliament in the Crime and Courts Act 2013.

7.2. When the new family court is implemented the county court will no longer deal with family proceedings, including matters relating to the enforcement of orders made in family proceedings. Magistrates' courts will also no longer deal with such proceedings. All such proceedings will be conducted in the family court or the High Court.

7.3. Given the fact that magistrates' courts will no longer deal with such proceedings, it is not appropriate for provision to be made for "family panels" in the context of magistrates' courts. These Rules will ensure that current provision for family panels (made in the 2007 Rules) will apply in future, but in the context of the family court. The functions of the family panels and the provision for the election of their membership, and for their chairing will remain largely as provided in the 2007 Rules.

7.4. As provided for in the 2007 Rules, family panels will, as before, consist of family justices for the local justice area to which the family panel relates. Except in the Greater London area, a District Judge (Magistrates' Courts) will be a member of a family panel.

7.5. Also as provided for in the 2007 Rules, these Rules make provision for the creation of a combined family panel in respect of two or more local justice areas. The Lord Chief Justice may give approval for the creation of a combined panel, after consultation with the relevant Delivery Director. A Delivery Director is a designated officer of Her Majesty's Courts and Tribunals Service, as referred to in section 37 of the Courts Act 2003.

8. Consultation outcome

8.1. There is a statutory obligation to consult the Family Procedure Rule Committee, the Criminal Procedure Rule Committee and the Lord Chancellor before making these Rules. That consultation was undertaken and only minor drafting changes to these Rules were made as a result of comments from one member of the Criminal Procedure Rule Committee (in that rule 6 of these Rules was recast slightly). The Family Procedure Rule Committee discussed whether a District Judge (Magistrates' Courts) should remain on a family panel, in the context of the family court where District Judge (Magistrates' Courts) will not sit with lay justices, and concluded that they should do so.

8.2. The creation of a single family court was recommended by the independently chaired Family Justice Review. The Review Panel's public consultation found there was overwhelming support for the single Family Court – 309 (75%) out of the 412 respondents agreed a single Family Court should be established, including members of the public and family justice professionals.

8.3. The Government has not carried out a separate public consultation on the changes included in these Rules as they are made as a result of changes arising from the policy approach to create a single family court, and also because they largely restate the provision for family panels made in the 2007 Rules, albeit now in the context of the family court.

9. Guidance

9.1 This instrument and all the other instruments related to the setting up of the family court will be published on the www.legislation.gov.uk.

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

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment is attached to this memorandum and has been published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring and review

12.1 The implementation of the new family court, including the effect of the transition of family panels to the family court context, will be reviewed within five years of implementation as stated in the published Impact Assessment.

13. Contact

Stella Francoise at the Ministry of Justice (Tel: 0203 334 5647 or Email: stella.francoise@justice.gsi.gov.uk) can answer any queries regarding the instrument.