EXPLANATORY MEMORANDUM TO

THE FAMILY PROCEDURE (ADOPTION) (AMENDMENT) RULES 2009

2009 No. 638 (L.7)

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 rule makes a minor amendment to the Family Procedure (Adoption) Rules 2005 to produce the effect that, in proceedings in a family proceedings court (magistrates' court) to which the rule applies, the court may proceed in the absence of an applicant or any respondent who fails to attend the hearing. This is already the case in relation to such proceedings in the High Court and county courts, and the amendment aligns the position across the three tiers of court.

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

3.1. None

4. Legislative Context

4.1. These rules are made under section 75(2) and (4) of the Courts Act 2003, which provide for the Family Procedure Rule Committee to make rules in relation to family proceedings. They amend the Family Procedure (Adoption) Rules 2005 ("the Adoption Rules"), which were made under the same power.

5. Territorial Extent and Application

5.1. This statutory instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

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

7.1 Rule 95 of the Adoption Rules makes provision in relation to the powers of a court hearing an application in adoption proceedings when the applicant or any respondent fails to attend the hearing. Paragraph (1) allows for the court to proceed in the absence of the party who fails to attend; and paragraph (2) allows the court, where the applicant or any respondent fails to attend and the

court so proceeds and makes an order, to re-list the application, either on application or of its own motion.

7.2 SI 2008/2447 included an amendment to the Adoption Rules which disapplied rule 95 in relation to family proceedings courts, on the basis that its application was misleading, since those courts do not have power to restore a hearing where, for example, a respondent has not attended due to making a mistake about the date of a hearing (magistrates' courts do have power to reopen a hearing in criminal proceedings (by virtue of section 142 of the Magistrates' Courts Act 1980), but this does not extend to civil proceedings).

7.3 It subsequently became apparent that the amendment, in disapplying rule 95 in its entirety, went too far since, absent the amendment, family proceedings courts would have power to proceed in the absence of an applicant or respondent; but as the rules stand, the implication is that a family proceedings court which receives an application for leave to apply to revoke or oppose an application can no longer proceed to deal with the application for leave if the applicant or respondent fails to attend the hearing. This was not the intention of the Committee in making the amendment contained in SI 2008/2447, and the present SI is accordingly intended to rectify the position.

7.4 Paragraph (2) of rule 95 of the Adoption Rules makes provision, in relation to the powers of the court to re-list applications in given circumstances, which is not appropriate for family proceedings courts because they do not have such a power. The policy aim is that paragraph (2) should not apply to family proceedings courts, but that paragraph (1) should so apply; so that family proceedings courts may still not re-list in the circumstances outlined in paragraph (2), but may now proceed in the absence of a party as provided in paragraph (1). This will correct an oversight in the rule as previously amended.

- ***Consolidation***

7.5 This is a minor correcting amendment which does not, in the Department's view, call for consideration of consolidation. It is intended that in due course the Adoption Rules as a whole will be included in consolidated Family Procedure Rules, which it is intended should come into force in late 2010 or early 2011.

8. Consultation outcome

8.1 Given the corrective nature of the change a full public consultation was not carried out, however, a small informal consultation was undertaken with those stakeholders who are most likely to be effected by this error. The consultees included:

- Resolution,
- Justices Clerks Society,
- Law Society
- Family Law Bar Association
- Council of HM District Judges (Magistrates' Courts) Legal Committee

8.2 A nil response was taken to mean there was no comment on the amendment. No responses were received.

9. Guidance

9.1 No additional guidance has been issued. The amendment is corrective and makes no change to current practice. `

10. Impact

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

10.2 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12 Monitoring and review

12.1 None.

13 Contact

13.1 Angela Muir at the Ministry of Justice (Tel: 0203 334 8737 or e-mail: angela.muir@justice.gsi.gov.uk) can answer any queries regarding the instrument.