EXPLANATORY MEMORANDUM TO

THE FAMILY PROCEDURE (AMENDMENT NO. 2) RULES 2018

2018 No. 1172 (L. 14)

1. Introduction

1.1 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 These Rules amend the Family Procedure Rules 2010 ("the FPR 2010"), which is made up of 40 parts, with supporting Practice Directions, which set out the practice and procedure to be followed in family proceedings in the High Court and the family court.

The Rules:

- amend Parts 1 and 5 to incorporate principles concerning use of the Welsh language, established in the Welsh Language (Wales) Measure 2011 and the Welsh Language Act 1993, into rules of court
- amend Part 7 to define proceedings in another jurisdiction and provide for when proceedings are continuing in another jurisdiction for the purposes of that Part
- amend Part 30 to allow appeals heard in the High Court to be heard in public subject to an order for restrictions on reporting to avoid identification of children in particular.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is to the family court in England and Wales.

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

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The FPR 2010 and amendments to them, are made by the Family Procedure Rule Committee ("the Committee") and formally allowed by the Lord Chancellor.

7. Policy background

What is being done and why?

7.1 The Family Procedure Rule Committee amends the FPR 2010 to reflect legislative changes or to improve efficiency of the practice and procedures of family proceedings within the family court and High Court

Parts 1 and 5 FPR 2010

7.2 Two new rules explicitly confirm the principles established by the Welsh Language (Wales) Measure 2011 and the Welsh Language Act 1993 that the Welsh language has official status in the administration of justice in Wales. The amendments provide that in legal proceedings in Wales the Welsh language may be spoken by any person who desires to use it and that any document placed before the court in family proceedings in or having a connection with Wales may be in the English or Welsh language.

7.3 This statement of principles has been considered desirable for some time. Similar amendments, which came into force on 1 October 2018, have been made to the Civil Procedure Rules.

Part 7 FPR

7.4 The amendment to Part 7 addresses a lacuna in the rules. The background is that the Family Procedure Rules 2010 removed the requirement to include in a divorce petition reference to proceedings continuing in any other jurisdiction. This amendment removed the definition of "proceedings in another jurisdiction", which remains relevant in the rules to the question of when proceedings may or must be stayed because proceedings are continuing in another jurisdiction. Paragraphs 5 and 6 of Schedule 1 of the Domicile and Matrimonial Proceedings Act 1973 together allow that rules of court may prescribe proceedings in another jurisdiction and provide for when proceedings in another jurisdiction are continuing for the purposes of Part 7.

Part 30 FPR 2010

7.5 The issues of access to courts hearing family proceedings and disclosure (or "publication") of information from those proceedings have had a reasonably high profile in recent years, given that the family courts in England and Wales take decisions which impact in the most fundamental way on the lives of families. The "default" position in the Family Procedure Rules 2010 (FPR) is that family proceedings will be held "in private". There are some exceptions to this general rule. This is in contrast to the open justice principle but generally accepted due to the issues under consideration by the family court and taking into account the interests of the parties involved, and particularly children involved in such proceedings. This "default" position applies to family appeals heard in the family court and in the High Court. However, family appeals heard by the Court of Appeal are generally heard in public (subject in appropriate cases to anonymisation so that children involved are not

identified). The Court of Appeal is governed by the Civil Procedure Rules and the general rule is that proceedings are heard in public.

7.6 In 2016, the Lord Chancellor (having consulted senior judiciary and the FPRC) amended routes of appeal, so that appeals from certain decisions of a Circuit Judge or Recorder of the family court now lie to the High Court instead of the Court of Appeal. These amendments were introduced through the Access to Justice Act (Destination of Appeals) (Family Proceedings) (Amendment) Order 2016. This had an unintended consequence of reducing transparency of such appeals which would previously have been heard in public in the Court of Appeal.

7.7 To remedy this, new Rule 30.12A permits appeals heard in the High Court to be heard in open court, subject to appropriate reporting restrictions imposed by the Judge hearing the individual case. This removes the distinction between types of appeal heard in the High Court and the Court of Appeal, subject to judicial discretion based on the circumstances of individual cases.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The FPR 2010 provide a consolidated unified set of rules for all types of family proceedings. There are currently no plans to undertake a consolidation exercise, instead these rules will be published on the Family Procedure Rules website at the following link:

https://www.justice.gov.uk/courts/procedure-rules/family/rules_pd_menu

10. Consultation outcome

10.1 The Committee must, before making Family Procedure Rules, consult such persons as they consider appropriate (section 79(1)(a) of the Courts Act 2003). As the amendments to the Family Procedure Rules 2010 contained in these Rules are to give effect to existing primary legislation in respect of the Welsh language, to restore transparency in relation to certain types of appeal, and to add a definition to Part 7, the Committee did not undertake formal consultation in relation to these Rules.

10.2 In relation to amendments introduced to incorporate the legislative principles in relation to the Welsh language, the Committee liaised with the Civil Procedure Rule Committee and HMCTS to ensure consistency in rules of court across the jurisdictions as far as it is possible to do so. The rules were also the subject of informal consultation with members of the judiciary in Wales, in particular the Welsh language liaison judges, who were strongly in support.

10.3 In respect of the Part 7 amendments, the issue was drawn to the Committee's attention by a practising Barrister who submitted a detailed note for the Committee's consideration. Having considered the points in that note, the Committee endorsed the need for change and as this amendment is technical in nature, the Committee concluded that it was not necessary to consult any other persons.

10.4 In relation to amendments to Part 30 FPR, the Committee liaised with HMCTS and members of the judiciary hearing such appeals to ensure these changes were capable of being implemented operationally.

11. Guidance

11.1 The FPR 2010 as amended by these Rules will be available to the public and legal practitioners on the website referred to in paragraph 9.1. Guidance to HMCTS staff will be updated to reflect the procedures in the FPR 2010 as amended by these Rules.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector although HMCTS staff will need to be aware of the amendments made by these rules and how to apply them.

12.3 An Impact Assessment has therefore not been prepared for this instrument.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The Family Procedure Rule Committee will monitor the effects of these amendments as part of its ongoing consideration of the FPR 2010.

15. Contact

15.1 Simon Qasim at the Ministry of Justice, Telephone: 0203 334 3552 or email: simon.qasim3@justice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Neal Barcoe, Deputy Director for Family Justice Policy, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lucy Frazer QC MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.