EXPLANATORY MEMORANDUM TO

THE FAMILY PROCEDURE (AMENDMENT NO. 2) RULES 2020

2020 No. 758 (L. 18)

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") with supporting Practice Directions which set out the procedure and practice to be followed in family proceedings in the High Court and the family court

2.2 The amendments will bring in a consolidated rule relating to the procedure for contempt of court in family proceedings.

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 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") under section 75 of the Courts Act 2003 (section 76 of which makes further provision about the scope of Family Procedure Rules) and formally allowed by the Lord Chancellor under section 79 of that Act. Section 79(1) of the Court Act 2003 requires the Committee before making rules to meet (unless inexpedient to do so) and consult such persons as they consider appropriate. The Committee meets 9 times a year and except in very rare circumstances considers any proposed matters for inclusion in the rules in at least one meeting (as it did for the matters in the present instrument). Consultation is addressed in section 10 of this memorandum.

7. Policy background

What is being done and why?

7.1 The FPR 2010 are amended from time to time, to reflect legislative changes or to improve the efficiency of the procedure and practice of family proceedings within the family court and High Court: these Rules make amendments for both purposes.

7.2 These Rules codify procedural rules on contempt of court for all types of contempt in family proceedings. The principal issue to which the codification is addressed arose in *R v Stephen Yaxley-Lennon (aka Tommy Robinson)* [2018] EWCA Crim 1856, following which proposals for recasting the rules relating to contempt of court in courts to which the Civil Procedure Rules 1998 (CPR) apply were developed and put out to public consultation by the Civil Procedure Rule Committee (CPRC).

7.3 The CPRC were of the view that the Rules should be made simpler, easier to operate and more succinct, and by doing so, promote better standards of procedural fairness. The CPRC consultation therefore sought views to provide information to assist the project to review and rewrite the rules relating to contempt of court as contained in Part 81 of the CPR.

7.4 The consultation proposed a number of changes and these have been adopted and resulted in extensive revisions to Part 81 of the CPR which have been undertaken to condense the rules down and set out a uniform procedure. The new Part 81 of the CPR reduces the number of rules from 38 to 10 and dispenses with two practice directions and a Practice Guidance document. The existing Part 37 of the FPR and the associated Practice Direction 37A mirror in large part Part 81 of the CPR and the associated Practice Direction 81; and the amendments to the FPR made by this instrument similarly mirror, for Part 37 of the FPR, the new Part 81 of the CPR, save for those changes required to reflect the difference in structure between the civil and family courts.

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 unified set of rules for all types of family proceedings. There are currently no plans to undertake a consolidation exercise, instead the FPR 2010 as amended by 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).

10.2 The Committee does not always undertake a formal public consultation on proposed amendments to the rules, but does endeavour to ensure that its development of proposals and drafting is informed by relevant views from outside the Committee (such as operational experts in her Majesty's Courts and Tribunals Service, relevant

Government departments, members of the judiciary and practitioner and lay advice sector interests (for example via the Family Justice Council), as appropriate to particular proposal and the circumstances in which it arises. The proposals giving rise to this instrument were initially developed by the CPRC, which undertook a public consultation exercise from 9 March 2020 to 1 May 2020 to inform views leading to the rationalisation of the procedures. In these circumstances, the Committee did not consider it appropriate to undertake formal consultation of its own; but the Committee was a respondent to the CPRC's consultation, and in considering how Part 37 of the FPR should be amended was informed by a working group including representatives of the Bar and senior judiciary outside the Committee.

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.

12.3 An Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private, public or voluntary sectors is foreseen.

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 approach to monitoring of this legislation is for the amendments to form part of the Family Procedure Rules which are kept under continuous review by the Family Procedure Rule Committee, and may be subject to amendment accordingly

15. Contact

15.1 Simon Qasim at the Ministry of Justice. Direct email: Simon.Qasim3@justice.gov.uk can answer any queries regarding this 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 Parliamentary Under-Secretary of State Alex Chalk MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.