EXPLANATORY MEMORANDUM TO

THE FAMILY PROCEDURE (AMENDMENT NO. 2) RULES 2024

2024 No. 1322 (L. 21)

1. Introduction

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

2. Declaration

2.1 Lord Ponsonby, Parliamentary Under Secretary of State in the Ministry of Justice, confirms that this Explanatory Memorandum meets the required standard.

2.2 Luke Taylor, Deputy Director for Family Justice System Improvement, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 FPRC Secretariat at the Ministry of Justice, email: FPRCSecretariat@justice.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Family Procedure (Amendment No. 2) Rules 2024 ("the 2024 Rules") amend the Family Procedure Rules 2010 ("FPR") which, with supporting Practice Directions, set out the practice and procedure to be followed in family proceedings in the High Court and the family court.

Where does the legislation extend to, and apply?

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

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

5. Policy Context

What is being done and why?

5.1 The FPR are amended from time to time, to reflect legislative changes and decisions of the courts or to improve the efficiency of the procedure and practice in family proceedings within the family court and High Court.

5.2 The 2024 Rules amend the FPR to insert new rules enabling provision to be made in Practice Directions in relation to the court giving permission to communicate information from proceedings relating to children. The 2024 Rules also make associated consequential amendments to provisions in the FPR.

5.3 These amendments are being made to enable Practice Directions to make provision about the court giving permission to communicate information from proceedings. The intention is for new Practice Directions to be made to set out when the court should

consider making orders detailing what information may be disclosed from proceedings relating to children to, or by, journalists or legal bloggers, and the procedure that should be followed by the courts. This is being done to increase public transparency in relation to court proceedings regarding children.

What was the previous policy, how is this different?

5.4 Prior to the amendments made by the 2024 Rules, the FPR did not make express provision for Practice Directions to set out details about when the court may give permission to communicate information from proceedings relating to children.

5.5 The position following the amendments made by the 2024 Rules will be different as the amendments will enable new Practice Directions to be made setting out those details.

6. Legislative and Legal Context

How has the law changed?

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

6.2 The FPR state that family proceedings relating to children are usually to be heard in private. This is to safeguard the privacy of children and their families. In circumstances specified in the FPR, accredited journalists and legal bloggers (referred to in the FPR as "duly authorised lawyers") are able to attend hearings that are held in private: this is provided for in rule 27.11 FPR.

6.3 Communicating information from such proceedings can amount to a contempt of court (section 12 Administration of Justice Act 1960) or a criminal offence (section 97 Children Act 1989), depending on the circumstances. It is not a contempt of court or a criminal offence to communicate information from these proceedings if the court has made an order permitting that communication.

6.4 The amendments made by the 2024 Rules to the FPR will not change the position regarding hearings being in private or regarding attendance at hearings in proceedings relating to children. They will not change the provisions in the Administration of Justice Act 1960 or the Children Act 1989 about the potential consequences which could result from communicating information from proceedings. However, the amendments will enable Practice Directions to make provision about the court giving permission to communicate information from proceedings. The associated Practice Directions will make the position clearer so that all parties to cases, and any journalists or legal bloggers who attend hearings, will know what they can, and cannot, communicate to others about the court proceedings.

Why was this approach taken to change the law?

6.5 Concerns have arisen that restrictions on communicating information from court proceedings relating to children, and uncertainty about what can be communicated, limits public understanding of these proceedings and of the decisions being made. There has been criticism that public trust in the family justice system is undermined by the lack of transparency.

6.6 In October 2021, the President of the Family Division ("the President") published Confidence and Confidentiality: Transparency in the Family Court, a review of the

issue of transparency in the family justice system[1] The President made several recommendations for achieving better and purposeful transparency. The Government is supportive of greater transparency in the family courts, provided that the anonymity of children is preserved (unless the court orders differently on a case specific basis).

6.7 In November 2021, the President set up the Transparency Implementation Group (TIG) to implement his Review. Part of the work of the TIG resulted in the launch of a Reporting Pilot in January 2023 in three Designated Family Judge (DFJ) areas of the family court. The pilot was then extended in January 2024 bringing the total to 19 DFJ areas over England and Wales. The pilot was evaluated in 2024.

6.8 The underlying principle behind the pilot was that accredited journalists and legal bloggers who attend hearings pursuant to rule 27.11 FPR should be allowed to report on what they see and hear, subject to protecting the identities of the parties and children involved. This was achieved in cases in pilot areas by the court making a Transparency Order in relevant cases, outlining what information from the proceedings may be communicated to, and by, accredited and legal bloggers.

6.9 The Reporting Pilot is considered to have been successful (see paragraph 7.2 regarding evaluation), such that it has been agreed by the FPR Committee that it should be rolled out across England and Wales in relation to family proceedings held in private relating to children.

6.10 The amendments made to the FPR in the 2024 Rules will enable new Practice Directions to be put in place to underpin the use of Transparency Orders on the roll out, and to set out the procedures to be followed by the courts when deciding what information may be communicated from proceedings heard in private relating to children.

6.11 The approach of including the detail on this issue in Practice Directions was taken in order to enable the general principle around communication of information from proceedings relating to children to be provided for in the FPR, with the detail then being provided for in a Practice Direction. This approach is expressly provided for in section 76(8) Courts Act 2003, which states that the FPR may, "instead of providing for any matter, refer to provision made or to be made about that matter by directions". It avoids the FPR becoming too detailed or prescriptive and will enable the President, with the Lord Chancellor, to modify the Practice Directions as needs be in light of ongoing monitoring of the use of Transparency Orders.

7. Consultation

Summary of consultation outcome and methodology

7.1 The FPR Committee must, before making FPR, consult such persons as they consider appropriate (section 79(1)(a) of the Courts Act 2003).

7.2 The FPR Committee consults as it considers appropriate to the rules or amendments to rules in question, in a number of ways of differing degrees of formality, including specific correspondence with bodies considered appropriate to be consulted, involving representatives of interested organisations in reviewing particular aspects of the FPR, inviting and reviewing suggestions and observations solicited by its members from among the groups from which each is drawn, and inviting and reviewing suggestions

[1] Confidence and Confidentiality: Transparency in the Family Court, a review of the issue of transparency in the family justice https://www.judiciary.uk/wp-content/uploads/2021/10/Confidence-and-Confidentiality-Transparency-in-the-Family-Courts-final.pdf

from relevant Government Departments and other authorities affected by the rules of family procedure. As regards the 2024 Rules, the Committee has been guided by the TIG, which has led and overseen the Reporting Pilot. The TIG has a broad membership with representatives from across the family justice system, including the judiciary, legal practitioners and journalists. The TIG's terms of reference and meeting minutes are all published, as was the evaluation of the Reporting Pilot[2]. The evaluation recommended further communication, training and guidance be provided. The TIG worked closely with the Ministry of Justice and with His Majesty's Courts and Tribunals Service in developing the Reporting Pilot and putting it into operation. Training was given by TIG members to the judiciary, court staff, legal practitioners, journalists and legal bloggers involved in cases in the pilot court areas.

7.3 During the course of the Reporting Pilot, operational changes have been made to make cases more accessible to journalists and legal bloggers, for example, the inclusion of "case codes" on the published court lists of public law proceedings relating to children (such as care proceedings), so that journalists and legal bloggers can identify the issues that have arisen in the case before they determine whether they wish to attend a hearing.

7.4 Given the work of the TIG and the progress and evaluation of the Reporting Pilot, the FPR Committee concluded that no further specific consultation need be undertaken before making the 2024 Rules.

8. Applicable Guidance

8.1 Amendments to the FPR are drawn to the attention of members of the judiciary and other relevant representative bodies (for example the Law Society, Bar Council, advice sector) and to the editors of relevant legal publications by the FPR Committee secretariat, as well as by publicity within His Majesty's Courts and Tribunals Service (HMCTS). News of changes affecting the family jurisdiction are published on the Ministry of Justice website[3]. The TIG will be coordinating communications regarding this amendment to the Rules.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been submitted with this memorandum because no, or no significant, impact on the private or public sector is foreseen.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charity or voluntary bodies.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no significant impact on the public sector foreseen.

10. Monitoring & review

10.1 The approach to monitoring of this legislation is for the amendments to form part of the FPR which are kept under continuous review by the FPR Committee and may be subject to amendment accordingly.

[2] https://www.judiciary.uk/about-the-judiciary/our-justice-system/jurisdictions/family-jurisdiction/transparency-implementation-group/

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

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").