EXPLANATORY MEMORANDUM TO

THE FAMILY PROCEDURE (AMENDMENT NO. 3) RULES 2015

2015 No. 1868 (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 Her Majesty.

2. Purpose of the instrument

2.1 These Rules amend the Family Procedure Rules 2010 ("the 2010 Rules"), which set out the practice and procedure to be followed in family proceedings in the High Court and the family court. The amendments are made to improve the efficiency of existing procedures including by creating a rule allowing a Practice Direction to make provision for e-mailing applications and other documents to the court, to make consequential changes required as a result of changes to the systems for people to qualify to undertake mediation and assessment meetings, and to make provision for disclosure of information from financial remedy proceedings in the family courts.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 These Rules include amendments to the 2010 Rules which:

- amend the definition of an "authorised family mediator". Section 10(1) of the Children and Families Act 2014 states that before making a relevant family application to the court, a person must attend a family mediation information assessment meeting. Section 10(2) of the Children and Families Act 2014 provides that the Family Procedure Rules may make provision about the convening and conduct of such meetings. These Rules amend the 2010 Rules to recast the definition of someone who can conduct such meeting;
- insert a new rule, which links to a new Practice Direction making provision for e-mailing applications and other documents in certain family proceedings; and which makes minor changes to existing rules for service by e-mail and inspection of documents held by the court;
- insert a new rule, which links to a new Practice Direction which makes provision for the disclosure of information from financial remedy proceedings to an appeal tribunal dealing with an appeal under the Child Support Act 1991.

5. Extent and Territorial Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the 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 The Family Procedure Rule Committee amends the 2010 Rules periodically in light of legislative and other changes, representations from court users and their own proposals for procedural improvements. These Rules include amendments to the 2010 Rules on several issues.

7.2 Firstly, these Rules amend the definition of "authorised family mediator" in the 2010 Rules. Where a person is required to attend a statutory mediation information and assessment meeting ("a MIAM") before issuing certain family proceedings, the 2010 Rules define who is able to conduct such a meeting. The amendments mean that such a person will be someone who is identified by the Family Mediation Council as qualified to do so. An associated Practice Direction supplementing the 2010 Rules (Practice Direction 3A) will include information as to where a person can find this information, via a website link. These amendments are being made because the Family Mediation Council has made changes to the ways in which people can qualify to conduct a MIAM, so consequential changes to the 2010 Rules are required.

7.3 Secondly, the 2010 Rules are amended to allow for a Practice Direction to make provision for filing and sending documents to the court by e-mail, to allow for more flexible methods of communication between family courts and court users. New Practice Direction 5B will include provision specifying the circumstances in which documents may be e-mailed, restrictions in certain cases on size and length of e-mails and provision for authorisation of payment. The 2010 Rules are also amended to make minor changes to existing rules relating to service by e-mail, essentially simplifying references to electronic communication or other means to e-mail, and are amended to facilitate court storage of documents in electronic format by making clear that inspection of documents held by the court may be inspection of copies of documents.

7.4 Finally, the 2010 Rules are amended to make provision about the communication of information from financial remedy proceedings. The new rule 9.46 of the 2010 Rules links to a new Practice Direction 9B which will clarify the information that may be communicated for the purposes of a child support appeal from financial remedy proceedings, for the purposes of the law relating to contempt of court. This amendment to the 2010 Rules, and the associated Practice Direction, is being made to ensure that child support appeals are not delayed by the need to obtain permission from the family courts for information relevant to the appeal to be disclosed from the financial remedy proceedings in the family courts to the appeal tribunal. The amendment and new Practice Direction should also ensure that parties can disclose such information to the appeal tribunal without risk of being held in contempt of court by the family courts. The amendment and new Practice Direction brings the 2010 Rules broadly in line on this issue with the rules that were in force prior to the 2010 Rules.

Consolidation

7.5 The 2010 Rules provide a consolidated unified set of rules for all types of family proceedings. These Rules amend the 2010 Rules. There are currently no plans to undertake a consolidation exercise. The 2010 Rules as amended will be published on the Family Procedure Rules website at the following link: http://www.justice.gov.uk/guidance/courts-and tribunals/courts/procedurerules/family/index.htm

8. Consultation outcome

8.1 The Family Procedure Rule Committee ("the Committee") must, before making Family Procedure Rules, consult such persons as they consider appropriate (section 79(1)(a) of the Courts Act 2003). Where amendments are required in consequence of initiatives which have themselves been the subject of consultation, the Committee will not generally undertake additional formal consultation. As the amendments contained in these Rules are minor, the Committee decided it was not appropriate to consult.

8.2 Ministry of Justice officials have discussed the proposed amendment in respect of "authorised family mediator" with a representative of the Family Mediation Council and with the Family Mediation Standards Board. Their views have been communicated to the Committee and have been taken into account in the drafting of the rule amendment.

9. Guidance

9.1 The 2010 Rules as amended will be available to the public and to practitioners on the Ministry of Justice website www.justice.gov.uk . Guidance to HMCTS staff will be updated to reflect procedural changes arising from these Rules.

10. Impact

10.1 There will be a small impact on business; solicitors and barristers will need to be aware of the amendments and how to apply them.

10.2 This statutory instrument has no impact on the public sector, charities or voluntary bodies, save that HMCTS staff will need to be aware of the amendments and how to apply them.

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

11. Regulating small business

11.1 The statutory instrument does not apply to small businesses other than as set out at 10.1 above.

12. Monitoring & review

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

13. Contact

13.1 Please contact Aaron Manku, Senior Policy Manager, Ministry of Justice, (tel: 0203 334 3480 or email: aaron.manku@justice.gsi.gov.uk) who can answer any queries regarding the instrument.