**EXPLANATORY MEMORANDUM TO**

**THE FAMILY PROCEDURE (AMENDMENT) RULES 2024**

**2024 No. 1016 (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 His Majesty.

## 2. Declaration

2.1 Lord Ponsonby, Parliamentary Under Secretary of State at 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 confirms 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) 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 (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) 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. The 2024 Rules amend the FPR in the following ways:

5.2 Firstly, a new rule 6.23A is inserted in Part 6 of the FPR so that provision is made for service on a person where there are reasonable grounds to believe that person is residing in a refuge. Rule 6.23A:

(i) introduces a requirement on the court to give directions as to the method of service to be used where a party seeks to serve a document, including an application form commencing proceedings, on a person who is thought to be residing in a refuge;

(ii) specifies that personal service may not be directed, save in exceptional and urgent circumstances;

(iii) sets out the methods of service in order of preference that may be directed by the court in circumstances where the court does not direct personal service, namely e-mail service, postal service and service by an alternative method or at an alternative place;

(iv) provides that each of the above methods of service is subject to specific requirements set out in a Practice Direction (Practice Direction 6D);

(v) prohibits disclosure of the name, address or any other identifying details of the refuge where the party to be served is thought to be residing to the party to who seeks to serve or that party's legal representative;

(vi) defines the term refuge.

5.3 Consequential and associated amendments are made to Parts 6, 7, 8, 10, 11, 12, 14 and 37 of the FPR, which make provision with respect to service, to signpost or make specific rules subject to rule 6.23A.

5.4 Secondly, rule 30.3 FPR is amended so that where a Circuit Judge, who is nominated by a Designated Family Judge in consultation with a Family Presiding Judge, dismisses an application for permission to appeal as being totally without merit, that judge may order that the application for permission to appeal may not be renewed at an oral hearing.

## 6. Legislative and Legal Context

***How has the law changed?***

6.1 The general procedure regarding service in proceedings before the family court and the Family Division of the High Court is set out in Part 6 of the FPR. Specific rules governing service in particular circumstances are set out in other Parts of the FPR. However, the FPR did not previously make any express provision for service on a person where there are reasonable grounds to be believe that person is residing in a refuge.

6.2 Part 6 of the FPR applies to the service of documents except where: (i) another Part of the FPR makes different provision, or (ii) the court directs otherwise.

6.3 Rules 6.23, 6.24 and 6.26 of the FPR make provision for the available methods of service, who is to serve and address for service, respectively.

6.4 Rule 6.35 provides for service by an alternative method or at an alternative place where there is "good reason" to do so.

6.5 Part 30 FPR makes provision in relation to appeals from decisions made in family proceedings. Depending on the type of judge who made the decision of which an appeal is sought, it may be necessary to first seek and obtain permission to appeal from the court before proceeding with an appeal application. Rule 30.3 FPR makes provision for permission to appeal applications, including the ability to seek to have such an application heard at an oral hearing where it has previously been refused on the papers (that is, without a hearing).

6.6 However, where a judge of a type referred to in rule 30.3(5A) FPR dismisses an application for permission to appeal on the papers as being totally without merit, the judge may order that the permission to appeal application may not be renewed at an oral hearing. The judges referred to in rule 30.3(5A) FPR are a judge of the High Court (sitting in the High Court or the family court), or (in the family court) a Designated Family Judge or, where the application relates to financial remedy proceedings, a Nominated Financial Remedies Court (FRC) Circuit Judge.

***Why was this approach taken to change the law?***

6.7 The President of the Family Division (the President) in the case of Re P (Service on Parent in a Refuge) [2023] EWHC 471 (Fam) provided guidance on how to address matters of service upon individual residents in a refuge in the interim until such time as the FPR Committee was able to consider the issue of service on a person residing in a refuge. The President expressed the need for the FPR to be changed to ensure that court documents are able to be served on residents of refuges in a manner that balances the needs of the court and the safety of those residing in refuges.

6.8 The FPR are being amended to keep the location of refuges confidential when residents are parties to family proceedings. This is to ensure that refuges can meet their function of protecting those at risk of domestic abuse within refuges while facilitating their access to justice.

6.9 Prior to these changes, there have been concerns about a refuge address being shared with the legal representatives of another party which could compromise the refuge resident's safety. The FPR are therefore also being changed to prevent the other party or their solicitor gaining access to the address and to ensure that personal service at refuges is only undertaken in urgent and exceptional circumstances.

6.10 The secrecy of the location of refuges is necessary because they are life-saving services designed to be both physically and psychologically safe environments for adult and child victims of domestic abuse. All refuges carefully protect their residential addresses in order to protect the safety of all of the adult and child victims of abuse within the refuge. Disclosure of the address to third parties risks that safety for all residents and would result in a refuge no longer being able to function safely. All residents sign an agreement with the refuge that they will not disclose the address at risk of being evicted from the refuge and all staff similarly would be at risk of dismissal if they were to disclose the address.

6.11 The purpose of the new FPR r. 6.23A is to set out a framework for the service of documents where a person or party is thought to be residing in a refuge. The effect of the rule is to prevent the address of the refuge where the party to be served is thought to be residing from becoming known to the party who seeks to serve or that party's solicitor. It requires that, in these circumstances, the court serves the documents rather than the party, and that the court directs the method of service to be used. It makes personal service a method of service to be used only in exceptional and urgent circumstances. It also sets out a hierarchy of preference of other methods of service to be used in the circumstances within the scope of the rule. The new rule also enables a Practice Direction to set out specific requirements which apply to each method of service that may be used to achieve protection of the confidentiality of the address of a refuge and to ensure the safety of its residents.

6.12 As regards the amendment to rule 30.3 FPR: the FPR were amended in 2023 to make provision for a Nominated FRC Circuit Judge to order that an application for permission to appeal may not be renewed at an oral hearing, where that judge has

dismissed an application for permission to appeal in financial remedy proceedings on the papers as being totally without merit. When the FPR Committee consulted before making those amendments, concern was expressed that other Circuit Judges should also have the ability to make such decisions, including in proceedings other than for a financial remedy. These concerns arose due to workload concerns raised by Circuit Judges because of the number of unmeritorious permission to appeal applications being considered at oral hearings. The FPR Committee set up a sub-group to consider this issue which, after detailed consideration, recommended that a further category of judge be added to those who can make such decisions, namely a circuit judge who has been nominated by a Designated Family Judge in consultation with the Family Presiding Judge.

6.13 The amendments to rule 30.3 FPR will allow for a Circuit Judge nominated by a Designated Family Judge, in consultation with the Family Presiding Judge, who has dismissed an application for permission to appeal on the papers as being totally without merit, to order that the application may not be renewed at an oral hearing. This will help to ensure that unmeritorious applications for permission to appeal are dealt with expeditiously, and will mean that Circuit Judges spend less time dealing with oral hearings in such cases, giving them more time to deal with other matters.

## 7. Consultation

***Summary of consultation outcome and methodology***

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

7.2 The 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 from relevant Government Departments and other authorities affected by rules of family procedure.

7.3 The FPR Committee referred the matter of service of court documents at refuges to their Domestic Abuse Working Group. The Working Group includes senior members of the judiciary, legal practitioners and Cafcass. The Working Group also consulted the Domestic Abuse Commissioner and key members of the refuge sector including Women's Aid, Refuge and Latin American Women's Aid, who were all interveners in the Re P case. His Majesty's Courts and Tribunals Service (HMCTS) have worked closely with the Ministry of Justice to develop the provisions contained in the 2024 Rules.

7.4 Those consulted were supportive of the need to introduce changes to enable service to those at refuges, especially the inclusion of the directive that personal service should only be undertaken in exceptional and urgent circumstances. Concerns remained however that the implementation of a new process to provide the court with alternative contact details for refuges (to enable alternative means of service to take place) could increase the risk of the refuge address(es) being disclosed. The Ministry of Justice has introduced safeguards to address these concerns, including only accepting requests from a justice.gov.uk email address and the provision of a unique ID code to verify that requests are legitimate. These safeguards have been accepted by

the FPR Committee's Domestic Abuse Working Group as well as by Women's Aid Federation England and Welsh Women's Aid (who will manage the new process).

7.5 Before making the amendments to rule 30.3 FPR, the FPR Committee referred this matter to a specialist Working Group which consisted of judges of the Court of Appeal and the family court as well as family law practitioners and representatives of the Ministry of Justice. Before making its recommendations to the FPR Committee, the Working Group consulted with Designated Family Judges. Those who responded were supportive of the proposal now embodied in the amendments to rule 30.3 FPR. The Working Group also sought the views of HMCTS, who were content with the proposed amendments to the FPR.

## 8. Applicable Guidance

8.1 Amendments to the FPR are drawn to the attention to 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 HMCTS. News of changes affecting the family jurisdiction are published on the Ministry of Justice website[1]. Guidance and information about new rule 6.23A will also be disseminated to the refuge sector.

## 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 While there will be an impact on the voluntary sector (as MoJ is working with Women's Aid Federation England and Welsh Women's Aid to implement a new process to ensure court staff are able to access alternative contact details for refuges and/or their residents (email addresses and/or phone numbers) to enable other forms of service), this is not judged to be a significant impact as MoJ will fund the required work. This funding (for the set up of the new process) amounts to a total of £30,804, which will be covered through the existing Ministry of Justice budgets for domestic abuse work. Funding for the ongoing costs for future years will be met by HMCTS.

9.3 The legislation does not impact small or micro businesses.

9.4 As regards the provisions relating to service of documents, there is no, or no significant, impact on the public sector because the provisions refer to a process established between the courts and the voluntary sector only. While local authorities are involved in some family law cases (particularly public law cases), these provisions will not introduce any significant changes to how such cases are handled. There will be an impact on HMCTS as the change in process will require amendments to their digital processes, the costs of these changes will be met by the Ministry of Justice.

9.5 As regards the amendments relating to permission to appeal, there is no, or no significant, impact on the public sector. The amendments will not mean that new procedures need to be implemented by HMCTS. The amendments will simply mean that an existing procedure (to direct that permission to appeal applications may not be

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

renewed at an oral hearing, in specified circumstances) will be exercisable by more judges than was previously the case.

## 10. Monitoring and review

***What is the approach to monitoring and reviewing this legislation?***

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.

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").