EXPLANATORY MEMORANDUM TO

THE FAMILY PROCEDURE (AMENDMENT) RULES 2025

2025 No. 1242 (L. 10)

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 Baroness Levitt KC, 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, Family Justice System Improvement, at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 The Family Procedure Rule Committee 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 2025 ("the 2025 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 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.

5.2 The 2025 Rules amend the FPR to introduce several targeted changes aimed at improving clarity, privacy, and procedural efficiency in family court and High Court proceedings. The 2025 Rules also make associated consequential amendments to provisions in the FPR.

5.3 Rule 16.4 FPR concerns the appointment of a children's guardian in certain proceedings relating to children. This rule is amended by the 2025 Rules to remove a cross-reference to rule 8.42 FPR.

5.4 This amendment is being made in consequence of the fact that rule 8.42 FPR was itself omitted by the Family Procedure (Amendment) Rules 2023 (S.I. 2023/61).

5.5 Rule 29.1 FPR is amended by the 2025 Rules to allow one party to indicate that another party's contact details should be kept confidential to the court. There is no requirement to provide justification. This change builds on the current provision in rule 29.1 FPR which already allows a party to indicate that their own contact details should be kept confidential.

5.6 The amendment is being made to ensure there is an appropriate approach to safeguarding personal information in cases which may involve several parties, some of whom may need safeguarding from others.

5.7 Rule 30.3 FPR is amended by the 2025 Rules in respect of appeals against a decision made by lay justices or a bench of lay justices in the family court, or decisions of a type specified in Practice Direction 30A. The amendments provide that, in such cases, a person must first seek permission to appeal, and that the application for permission must be made to the appeal court (as defined in the FPR) rather than the court that made the original decision.

5.8 Prior to these amendments, permission to appeal was not required before appealing against a decision of lay justice(s) in the family court. These amendments are being made to rule 30.3 FPR as it is considered appropriate that a permission to appeal "filter" should be introduced in respect of appeals from decisions of lay justice(s) in the family court, in the same circumstances in which permission is already needed to appeal from a decision of any other judge sitting in the family court.

5.9 Provision is made for the application for permission to be made to the "appeal court" (which in practice means to a judge of a specified more senior level in the family court) rather than to the "lower court" (which in practice means to the lay justice(s) who made the decision which it is sought to appeal). This approach has been taken to avoid the practical difficulties which could otherwise arise when dealing with permission applications, for example by having to reconvene the same panel of lay justices as made the original decision.

What was the previous policy, how is this different?

5.10 Previously, rule 16.4 FPR included a cross-reference to rule 8.42 FPR. Rule 8.42 FPR made provision in relation to applications for consent to marriage or civil partnership of a child. However, rule 8.42 FPR was repealed in 2023, making the cross-reference to it in rule 16.4 FPR obsolete.

5.11 Previously, rule 29.1 FPR permitted a party to indicate that their own contact details—such as home address or phone number – should be kept confidential to the court, unless the court directed otherwise. However, there was no provision for one party to indicate that another party's details be kept confidential.

5.12 Previously, rule 30.3 FPR did not require that permission to appeal be sought where a decision was made by a lay justice, a bench of lay justices, in the family court or where the decision was of a type specified in Practice Direction 30A.

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 Rule 16.4 FPR governs the appointment of a children's guardian in certain proceedings relating to children. The 2025 Rules change the law to make a minor technical amendment to this rule by removing an obsolete cross-reference to rule 8.42 FPR, which was omitted by the Family Procedure (Amendment) Rules 2023 (S.I. 2023/61). It does not alter the purpose or operation of rule 16.4 FPR, create any new legal obligations, or affect the process for appointing a children's guardian.

6.3 The amendment to rule 29.1 FPR introduces a new provision allowing one party to indicate that another party's contact details be kept confidential to the court. Previously, this provision applied only to a party's own contact details. The change ensures that one party is able to indicate the need for another's details to be kept confidential to the court, subject to the court's discretion to direct otherwise. In cases which may involve several parties, this strengthens the safeguards around personal information in family proceedings and addresses operational concerns around the possibility of disclosure of information which may put one party at risk of harm from another.

6.4 Rule 30.3 FPR sets out the requirement for obtaining permission to appeal in family proceedings. Previously, the FPR did not require parties seeking to appeal decisions made by a lay justice or a bench of lay justices in the family court to obtain permission to appeal The amendments to rule 30.3 FPR made by the 2025 Rules provide that permission to appeal is required where the decision under challenge was made by a lay justice or a bench of lay justices, or where the decision was of a type specified in Practice Direction 30A. The 2025 Rules also insert a new paragraph (3A) into rule 30.3 FPR, providing that such applications must be made directly to the appeal court rather than to the lower court. The law has changed to provide that there is to be a permission to appeal filter from a decision of a judge of any level in the family court, including lay justices (save where the FPR provide that a particular type of decision does not require permission to appeal, irrespective of the level of judge).

Why was this approach taken to change the law?

6.5 The approach taken in relation rule 16.4 FPR was to remove an obsolete cross-reference within the rule and ensure the accuracy and internal consistency of the FPR following earlier amendments made in 2023. Removing the obsolete reference was therefore the only way to maintain the coherence of the Rules. No alternative approach was appropriate or required, as the amendment is purely technical.

6.6 The approach taken in the 2025 Rules to amending rule 29.1 FPR was taken to ensure that one party can indicate that another party's contact details should be kept confidential to the court, unless the court directs otherwise. In cases involving several parties, this could assist in ensuring one party is protected from harm which may result from another party discovering their whereabouts. This change aligns with the overarching objective to protect vulnerable individuals. It was considered the most proportionate and legally sound method to enhance privacy protections while preserving judicial discretion.

6.7 In relation to the amendments to rule 30.3 FPR, this approach was taken to provide consistency on the matter of whether permission to appeal is required to appeal

against a decision of the family court, irrespective of the level of judge whose decision it is sought to appeal. Prior to this amendment, the FPR did not require permission to appeal where a decision was made by lay justice(s) in the family court. Amending rule 30.3 FPR was the most proportionate way to resolve this issue.

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) 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 from relevant Government Departments and other authorities affected by the rules of family procedure.

7.3 The FPR Committee did not consult in relation to the amendment to rule 16.4 FPR, as this is a minor consequential amendment.

7.4 As regards rule 29.1 FPR, the FPR Committee consulted with Ministry of Justice and His Majesty's Courts and Tribunals Service, but did not consider a wider consultation to be necessary.

7.5 As regards the amendments to rule 30.3 FPR, the FPR Committee established an expert Working Group in 2023, whose members included judges of the Court of Appeal and the family court (including a lay justice and a justices' legal adviser), family law practitioners and representatives of the Ministry of Justice.

7.6 The Working Group conducted a consultation with magistrates (lay justices) and justices' legal advisers in December 2023 seeking views on whether the lack of a permission to appeal filter from decisions of lay justices was problematic. After that consultation, the Working Group sought views from other stakeholders, including Designated Family Judges.

7.7 The responses received from lay justices, justices' legal advisers and Designated Family Judges reflected a range of views. The majority of Designated Family Judges who responded were supportive of introducing a permission to appeal filter for appeals from decisions of lay justices in the family court, citing factors such as the increasing volume of private family work undertaken by lay justices, the desirability of consistency with appeals from other judicial tiers in the family court, and the potential to reduce unmeritorious appeals and conserve court resources. Some consultees, however, raised concerns regarding the absence of statistical evidence of a widespread issue, the adequacy of existing case management powers, and the implications for training and support for lay justices and their advisers. These perspectives were considered alongside the views of other stakeholders as set out below.

7.8 The Working Group and then the FPR Committee considered all responses from consultees. It was concluded that a permission to appeal filter should be introduced, but that decisions on whether to grant permission should be made by the "appeal

court" (most likely a circuit judge in the family court), not by the lay justices or their justices' legal advisers.

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[1].

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument 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, charities or voluntary bodies.

9.3 The legislation does not impact small or micro businesses.

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

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring 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.

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

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").