EXPLANATORY MEMORANDUM TO

THE FAMILY PROCEEDINGS (AMENDMENT) (No.2) RULES 2006

2006 No. 2080 (L. 8)

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These rules amend the Family Proceedings Rules 1991 ("the 1991 Rules") in order to make changes to the procedure governing family proceedings following the implementation of the Pensions Act 2004 and the commencement of the Child Abduction and Custody Act (Jersey) Order 2006 and to make other minor amendments.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 Changes consequent on the implementation of the Pensions Act 2004

The Pensions Act 2004 established the Pension Protection Fund (PPF). The Fund pays compensation to members of certain pension schemes when a qualifying insolvency event occurs and where there are insufficient assets in the pension scheme to cover the levels of compensation which would be payable by the PPF under the Act. When a qualifying insolvency event occurs in relation to a pension scheme an assessment period is triggered during which the assets and liabilities of the scheme are valued to determine whether the PPF should assume responsibility for the scheme. If it is decided that the PPF should assume responsibility then the Board of the PPF issue a transfer notice.

4.2 These events may be relevant to applications for ancillary relief where a party is applying for a pension sharing or a pension attachment order. Once the PPF assumes responsibility for a scheme no new pension orders may be made since the Fund is not itself a pension scheme but is a compensation fund. Where an assessment period is triggered or the Board issues a transfer notice the pension scheme member is entitled to receive information in accordance with the Pension Protection Fund (Provision of Information) Regulations 2005 (S.I. 2005/674). Rule 6 introduces new rule 2.70A into the 1991 Rules which makes provision for the scheme member to pass on such information to the other party to an application for ancillary relief. Rule 5 provides that, when Form E is exchanged (which occurs before the date of the first appointment) any notification or document referred to in rule 2.70A which has been receive by the party submitting the form should be attached to the form.

4.3 Changes consequent on the commencement of the Child Abduction and Custody Act (Jersey) Order 2006

Jersey is a Crown Dependency. It is not part of the United Kingdom and has its own legislature, judicial and legal system, although the United Kingdom is responsible for its international relations. When the United Kingdom ratified the Hague Convention on the Civil Aspects of International Child Abduction and The European Convention on the Recognition and Enforcement of Decisions Concerning Custody of Children, Jersey was excepted from being bound by these Conventions. Jersey has now enacted legislation to give effect to these two Conventions.

4.4 The Child Abduction and Custody Act 1985 gives effect in the United Kingdom to both these Conventions. The Child Abduction and Custody Act 1985 (Jersey) Order 2006 modifies that Act so as to extend to Jersey the provisions applying between the United Kingdom jurisdictions in respect of the transmission of Convention applications between courts. Accordingly, rules 7 to 9 of these Rules amend the 1991 Rules to provide for the stay of proceedings and the transfer of proceedings between courts in England and Wales and in Jersey.

4.5 Other minor changes

Rule 3 of these rules inserts into rule 2.51C of the 1991 Rules a reference to section 5A(1) of the Gender Recognition Act 2004. Rule 2.51C deals with an application under section 6 the Gender Recognition Act 2004 for correction of an error in a full gender recognition certificate. The rule refers only to a gender recognition certificate granted under section 5(1). A certificate under that section is granted to a person who has been married. Section 5A(1) of the Gender Recognition Act 2004 was inserted by the Civil Partnership Act 2004 and provides for a full gender recognition certificate to be granted to a person who has been a civil partner. It is therefore necessary to amend rule 2.51C to refer also to a certificate granted under section 5A(1).

4.6 Rule 4 corrects a minor error in the rules by omitting incorrect references.

5. Extent

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 it does not amend primary legislation, no statement is required

7. Policy Background

7.1 Changes consequent on the implementation of the Pensions Act 2004

Policy lead for the PPF lies with the DWP. These rules are concerned with ensuring that both parties have all relevant information when they attend court to allow them to make an equitable and appropriate order in the circumstances.

7.2 Currently, orders cannot be made against PPF compensation but the PPF Board will honour any orders made before a scheme transferred to the PPF, with the exception of death in service (DIS) benefits.

7.3 Pension shares and attachment order benefits will be paid out at the same percentage of compensation as the percentage of pension rights stated on the order.

7.4 Following a 'qualifying insolvency event', a scheme enters an "assessment period'. The assessment period must last for a minimum of one year, but can last much longer. During this period the scheme's assets and liabilities will be valued to see if there are sufficient funds to meet those liabilities to at least the level of PPF compensation. In the majority of the cases, PPF compensation will be at least 90% of the pension benefits the member would be due. If the scheme cannot meet it's liabilities to this level, the PPF Board will assume responsibility for the scheme and pay out compensation in place of pension benefits.

7.5 During the assessment period, although the pension scheme remains in existence, any pension benefits that become due are paid at the level of PPF compensation. DIS benefit is not payable from PPF compensation because there is no 'service' in respect of the compensation. This means that any DIS benefit that becomes due during the assessment period will not be paid out unless the scheme subsequently withdraws from the assessment period without the PPF taking over responsibility.

7.6 If a scheme withdraws from the PPF it will continue as a closed scheme, be wound up or be rescued. To date, more than 90% of schemes that have entered an assessment period are expected to transfer to the PPF.

7.7 These rules place a duty on the member to disclose any notification they may receive with regard to the status of the scheme. Because of the way a scheme's involvement with the PPF affects the value of the benefit it is vital that where a member of such a scheme is a party to an application for ancillary relief, both parties have access to up-to-date information so that they can receive the most appropriate advice.

7.8 Under the DWP's Pension Protection Fund (Provision of Information) Regulations 2005, the PPF Board has two months from the date a scheme transfers into the PPF. We are currently negotiating with DWP and the PPF Board to improve the provision of information from the PPF Board. The primary concern is to reduce the amount of time between transfer and notification in order to minimise the risk of orders being made in respect of a pension that no longer exists.

7.9 By June 2006, 80 schemes had entered an assessment period. The first schemes to transfer to the PPF are expected to do so on or after 1 August 2006.

8. Impact

8.1 The impact will be to try to avoid orders being made that are based on incorrect information and the parties having to subsequently return to court.

9. Contact

9.1 Any enquiries about the contents of this memorandum should be addressed to: Clive Buckley, Department for Constitutional Affairs, email: clive.buckley@dca.gsi.gov.uk , telephone 020 7210 1202.