EXPLANATORY MEMORANDUM TO

THE FAMILY PROCEEDINGS (AMENDMENT) (No. 3) RULES 2009

2009 No. 2027 (L. 22)

THE FAMILY PROCEEDINGS COURTS (MISCELLANEOUS AMENDMENTS) (No. 2) RULES 2009

2009 No. 2025 (L. 21)

THE PARENTAL RESPONSIBILITY AGREEMENT (AMENDMENT) REGULATIONS 2009

2009 No. 2026

THE FAMILY LAW ACT 1996 (FORCED MARRIAGE) (RELEVANT THIRD PARTY) ORDER 2009

2009 No. 2023

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instruments

2.1 The Family Proceedings (Amendment) (No 3) Rules 2009("the FP (A) (No.3) R 2009") amend the Family Proceedings Rules 1991 ("the FPR 1991"), which apply to the High Court and county courts.

2.2 The Family Proceedings Courts (Miscellaneous Amendments) (No 2) Rules 2009 ("the FPC (Misc A) (No 2) R 2009") amend the Family Proceedings Courts (Children Act 1989) Rules 1991 ("the FPC (CA) R 2009") and the Family Proceedings Courts (Matrimonial Proceedings etc) Rules 1991("the FPC (MP etc) R 2009") which apply to the Family Proceedings Courts.

2.3 The Parental Responsibility Agreement (Amendment) Regulations 2009 ("the PRA (A) Regs 2009") amend the Parental Responsibility Agreement Regulations 1991.

2.4 The Family Law Act 1996 (Forced Marriage) (Relevant Third Party) Order 2009 ("The FLA1996(FM)(RTP)O 2009") specifies a relevant third party for the purposes of section 63C of the Family Law Act 1996.

2.5 These statutory instruments cover the following areas:

2.6 The FP(A)(No.3)R 2009 amend the FPR 1991 to:

- ensure that the court rules and court forms accommodate implementation of the provisions of the Human Fertilisation and Embryology Act 2008 ("the 2008 Act") in respect of assisted parenthood and parental responsibility for women who are parents by virtue of the provisions of the 2008 Act;
- make provision for the practice and procedure to be followed in a county court relating to appeals against orders and decisions made by the Child Maintenance and Enforcement Commission ("the Commission") in relation to deduction orders under section 32A and 32F of the Child Support Act

1991 ("the 1991 Act") and in relation to second internal appeals in a county court regarding these orders;

- substitute form C13A (supplement for an application for a special guardianship order) in the light of amendments to that form consequential on certain provisions of the Children and Young Persons Act 2008;
- substitute form C28 (warrant to assist a person to gain access to a child or entry to premises) as a consequence of the Childcare Act 2006 (some other updating amendments are also inserted in this form and in the C19 (application for a warrant of assistance) which is substituted by the amendments);
- substitute form FL401A (application for a forced marriage protection order)in the light of the amendments to that form consequential on a relevant third party being able to apply for the order on behalf of the victim of forced marriage without leave of the court).

2.7 The FPC(Misc A)(No.2)R 2009 amends the FPC(CA)R 2009 to:

- make adjustments to the rules governing the practice and procedure consequential on the implementation of the provisions of the 2008 Act which largely mirror the amendments to the FPR 1991 in this regard;
- substitute new forms C13A,C28 and C19 in the light of amendments to those forms which mirror the amendments to these forms in the FP(A)(No.3)R 2009

2.8 The FPC(Misc A)(No.2)R 2009 also amends the FPC(MP etc) R 2009 to substitute a court form in consequence of the 2008 Act-again the substituted form mirrors the substituted form in the FP(A)(No.3)R 2009.

2.9 The PRA(A)Regs 2009 amend the Parental Responsibility Agreement Regulations 1991to insert a new parental responsibility agreement form for a second female parent and mother and update existing forms for parental responsibility agreements in consequence of the 2008 Act.

2.10 The FLA1996(FM)(RTP)O 2009 enables a local authority to apply to the court for a forced marriage protection order under section 63C of the Family Law Act 1996 on behalf of a victim of a forced marriage by specifying a local authority as a relevant third party for the purposes of section 63C.

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

3.1 None.

4. Legislative Context

4.1. The Family Procedure Rule Committee makes the FP (A) (No.3) R 2009 with the agreement of the Lord Chancellor.

4.2. The Lord Chief Justice makes the FPC (Misc A) (No 2) R 2009 with the concurrence of the Lord Chancellor after consulting with the Magistrates' Courts Rule Committee.

4.3. The Lord Chancellor makes the PRA (A) Regs 2009 under the powers conferred by the Children Act 1989 ("the 1989 Act"). More details relating to these amending regulations are at section 7 of this Memorandum

4.4. The Lord Chancellor makes the FLA1996 (FM) (RTP) O 2009 under the powers conferred by the Family Law Act 1996.

4.5. The 2008 Act received Royal Assent on 13 November 2008. It extends to civil partners the scope of the current provisions for the husband of a woman treated with donor sperm to be the father of any child conceived (unless he did not agree to the

treatment) and for a man, who is not the husband of the woman concerned, treated with a woman in an authorised clinic to be the father of any child conceived. The relevant provisions came into force on 6th April 2009.

4.6. The Child Maintenance and Other Payments Act 2008 received Royal Assent on 5 June 2008. It amends the 1991 Act to provide for the creation of the Commission and introduces new methods of calculation, collection and enforcement of child maintenance, not all of which is in force. Amendments to enable the Commission to make orders for regular and lump sum deductions to be made from the bank or building society accounts of persons who have failed to pay an amount of child support maintenance are included in the amendments to the 1991 Act. The relevant provisions relating to deduction orders came into force on 3rd August 2009.

4.7. The Children and Young Persons Act 2008 received Royal Assent on 13 November 2008. This Act amends the 1989 Act establishing the same position for relative carers as local authority foster carers in so far as entitlement to apply for a section 8 order and a special guardianship order are concerned. The intention is that the relevant sections on the Act will be commenced on 1 September 2009.

4.8. The Childcare Act 2006 ("the 2006 Act") introduced a new system of registration for childcare providers, and replaced the registration regime in England provided for by the 1989 Act.

4.9 The relevant provisions of the Forced Marriage (Civil Protection) Act 2007 ("the 2007 Act") came into force on 25th November 2008. The 2007 Act enables family courts to make a Forced Marriage Protection Order to prevent forced marriages from occurring or, where a forced marriage has taken place, to offer protection to victims by inserting a new Part 4A into the Family Law Act 1996. Section 63C(2) of the 2007 Act enables a relevant third party to apply for a forced marriage protection order on behalf of a victim of forced marriage. The Lord Chancellor has power to specify who should be a relevant third party.

4.10 Court rules are required to support the provisions of the Childcare Act 2006 referred to above and the coming into force of the relevant provisions of the 2008 Act and the Children and Young Persons Act 2008, the amendments to the 1991 Act relating to appeals from orders or decisions of the Commission and the specification of a local authority as a relevant third party in FLA1996 (FM) (RTP) O 2009. More detail regarding these rules is set out in sections 2 and 7 of this Memorandum.

5. Territorial Extent and 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***

Human Fertilisation and Embryology Act 2008

7.1 Section 42 of the 2008 Act provides that where a female civil partner gives birth to a child conceived as a result of donor insemination (anywhere in the world), she is the mother of the child and her civil partner will automatically be the other parent, unless her civil partner did not consent to the mother's treatment. The terminology is

different in that both women will be the child's parent, but otherwise the legal provisions are the same as for married couples.

7.2 Sections 43 and 44 of the 2008 Act make provision about same-sex female couples who are not civil partners. This is similar to the provision made about opposite-sex unmarried couples by sections 36 and 37 of the 2008 Act. Where one of the women has a child as a result of insemination in a UK licensed clinic and the couple have in place, at the time of the transfer of the sperm or embryo which results in conception, current notices of consent to the other woman being treated as a parent, then she will be a legal parent. Two persons who are within the prohibited degrees of relationship to each other cannot give notice. A notice of consent to treatment under section 44 must be in writing and signed by the person giving their consent. The requirement for a signature is waived, however, if any of the parties involved are unable to sign because of illness, injury or physical disability.

7.3 Paragraph 26 of Part 1 of Schedule 6 to the 2008 Act amends section 2 of the 1989 Act to provide that where a child has a parent by virtue of section 42 of the 2008 Act, or has a parent by virtue of section 43 of the 2008 Act and the parents have subsequently entered into a civil partnership, both the child's mother and the second parent will both have parental responsibility for the child. Where a child has a parent by virtue of section 43 of the 2008 Act, the parent can acquire parental responsibility for the child under the terms of the Children Act 1989. Paragraph 27 inserts new section 4ZA to the1989 Act, which provides that a woman who is a parent of child by virtue of section 43 of the 2008 Act may obtain parental responsibility for the child by jointly registering the birth, by entering into a parental responsibility agreement with the child's mother or by making an application to the court for parental responsibility. This will place her in the same position as an unmarried father who agreed to be treated as the father of the child under section 35 of 2008 Act.

7.4 The relevant provisions of the FP (A) (No.3) R 2009 and the FPC (Misc A) (No.2) R 2009 insert minor amendments into the existing court rules consequential on the implementation of the provisions of the 2008 Act in respect of assisted parenthood and parental responsibility for women who are parents by virtue of the 2008 Act. The amendments set out the procedure by which a second female parent exercises the rights conferred by the 2008 Act to apply to court for an order for parental responsibility for the child. The opportunity is also taken where applicable to add references to section 4A of the 1989 Act (acquisition of parental responsibility by step-parent).

7.5 The FP (A) (No.3) R 2009 and the FPC (Misc A) (No.2) R 2009 also amend the existing rules to substitute form FL401 (application for a non- molestation order/occupation order) in the light of the amendments to the notes to the form consequential on the 2008 Act. The amendments in the FPC(Misc A)(No.2)R 2009 mirror the amendment in relation to this form in the FP(A)(No.3)R 2009.The PRA(A)Regs 2009 amend the Parental Responsibility Agreement Regulations 1991 to:

- reflect the ability of a second female parent to acquire parental responsibility for a child by agreement with the child's mother as set out in the 2008 Act;
- introduce a new form C(PRA3) for a parental responsibility agreement between a second female parent and the child's mother into the regulations;
- for the existing form C (PRA1) for a parental responsibility agreement between a mother and a father and the existing form C

(PRA2) for a step-parent parental responsibility agreement substitute updated forms.

Child Support Act 1991

7.6 The Commission was established by section 1 of the Child Maintenance and Other Payments Act 2008. Section 13 of that Act transfers child support functions from the Secretary of State for Work and Pensions to the Commission and that section was brought into force on 1st November 2008. The changes to court rules in the FP (A) (No.3) R 2009 are required as a result of the provisions of the Child Support (Deduction Orders) (Collection and Enforcement Amendment) Regulations 2009 ("the Regulations"), which will come into force on 3rd August 2009.The relevant provisions of the FP (A) (No.3) R 2009 do not come into force until 17th August.

7.7 A significant number of liable parents will do everything they can to evade their responsibilities for paying child maintenance. The Government wishes to ensure that reliable collection of maintenance is established as quickly as possible and that fast, effective and firm action can be taken to enforce payment.

7.8 Where a liable parent has arrears and refuses to co-operate with another method of payment the Commission intends to take firm enforcement action through the use of deduction orders. The intention is to ensure that liable parents fulfil their responsibility to pay child maintenance, to collect debt that has accumulated and to encourage ongoing compliance with child maintenance liabilities.

7.9 The Regulations are intended to provide for the Commission to make orders for regular and lump sum deductions to be made from the bank or building society accounts of persons who have failed to pay an amount of child support maintenance.

7.10 Regular deduction orders may be made to secure the payment of arrears of child support maintenance payable under a maintenance calculation, amounts of child support maintenance which will become payable under that calculation or both of those amounts. This order requires payment of regular amounts from the person's account by a deposit-taker to the Commission. The amount of each deduction will not exceed 40 per cent of the liable person's income used for the maintenance calculation and must not take the account into overdraft. Both the liable person and the deposit-taker can apply for a regular deduction order to be reviewed where, for example, the amount of the maintenance calculation has changed.

7.11 Lump sum deduction orders may only be made to secure the payment of arrears of child support maintenance. There are 2 types of lump sum deduction orders, an interim order and a final order. Both orders have the effect of freezing an amount in the account specified in the order.

7.12 The orders will be sent to a deposit taker, normally a bank or building society, instructing them to deduct either a lump sum or regular amount from a specific account held on behalf of the liable person. In the case of a lump sum deduction order, the Commission will initially send the deposit-taker an interim order stating that it proposes to make the final order and instructing it to secure the amount specified on the order. This will give both the liable person and the deposit-taker the opportunity to make representations

about the proposals in the interim order or to apply for consent for some or all of the funds to be released before a final order is made. This might happen where, for example, the liable person will suffer hardship without the funds or the deposit-taker is holding the funds as security against a loan.

7.13 The Regulations establish the rights of appeal relating to regular and lump sum deduction orders and they also provide for the route of appeal to be from the Commission to a county court

7.14 Deduction and payment of an amount under a lump sum deduction order does not take place until the appeal time limit in respect of a final appeal has expired or where an appeal is made, until proceedings (or proceedings on a further appeal) have been concluded or until the appeal time limit on a further appeal has expired

Appeals

7.15 Sections 32C (4), 32J (5) and 32I (4) of the 1991 Act make provision requiring the Regulations to make provision for a right of appeal against:

- the making of an order under section 32A of the 1991 Act (a regular deduction order),
- any decision of the Commission on an application for a review of such an order,
- the making of an order under section 32F of the 1991 Act (a final lump sum deduction order)', and
- the withholding of consent by the Commission where that consent is required for the disapplication of section s32G (1) and 32H (2) (b) of the 1991 Act.

7.16 These appeals against both the orders and decisions of the Commission are referred to in this paper (and in the Rules) as "deduction order appeals".

7.17 The primary legislation in the 1991 Act provides that those appeals are made to a court, and the court designated by regulation 25AB (1) of the Regulations is a county court (except in Scotland where appeals are to the sheriff's court).

7.18 On an appeal against an order under section 32A or 32F of the 1991 Act the court is prohibited from questioning the maintenance calculation by reference to which those orders were made.

7.19 Court rules are needed to provide a court process for deduction order appeals from the Commission to a county court and a process for second appeals from the decision of a district judge to a judge of a county court relating to these appeals. The amendments in the FP(A)(No.3)R 2009 to the FPR 1991 are to the rules in Part 8 of the FPR 1991 which were inserted recently into the FPR 1991 by the Family Proceeding (Amendment) Rules 2009 (S.I. 2009/636) to accommodate appeals coming to a county court from a magistrates' court.

7.20 These existing rules for appeals from the decision of a magistrates' court to a county court and for certain internal appeals in a county court are applied to deduction order appeals and second appeals relating to them. The relevant rule amendments in the FP (A) (No.3) R 2009 are focused on adjustments to these existing appeals rules which are needed mainly in consequence of the appeal from the orders or decisions of the

Commission not being from a court and the relevant provisions of the 1991 Act (for example, the provisions relating to stay of lump sum deduction orders pending appeal and provisions affecting the appeal court's powers relating to the maintenance calculation). Provision is made in the rules for information and evidence about the Commission's orders and decisions to be given by the Commission to the court. A rule adjustment is also inserted to add the hearing of deduction order appeals to the powers of a district judge

Children and Young Persons Act 2008

7.21 At present, local authority foster carers, who have had the child living with them for one year immediately preceding the application, are entitled to apply for a residence order *without* the leave of the court. Relative carers are only able to do so *with* the leave of the court, unless:

- They are local authority foster carers who have had the child living with them for one year immediately preceding the application (who are subject to child protection checks);
- Have had the child living with them for three out of the last five years; or
- Have the consent of everyone with parental responsibility for the child.

7.22 Sections 36 to 38 of the 2008 Act adjust the 1989 Act:

- Entitling all relative carers to apply for a residence order and special guardianship orders under the 1989 Act if the child has lived with him/her for a period of at least one year immediately preceding the application; and
- Raising the age at which a residence order automatically ends from 16 to 18 years of age.

7.23 Raising the age limit, at which a residence order automatically ends, from 16 to 18 years, will provide greater stability for the child. The changes will also facilitate continued financial support where applicable through a residence order allowance for carers, which ceases at the end of the residence order (normally 16 years old at present). Prior to the 2008 Act, a residence order ceases to have effect when the child reaches 16 unless the court is satisfied the circumstances are exceptional. The 2008 Act changes this so that a residence order will last until the child reaches 18 unless the court directs.

7.24 The rule amendments in the FP (A) (No.3) R 2009 and the FPC (Misc A) (No.2) R 2009 substitute a new form C13A (supplement for an application for a special guardianship order) for the existing one in the light of amendments to that form consequential on relatives being able to apply without the leave of the court for a special guardianship order if the child has lived with the relative for a period of at least one year immediately preceding the application.

Childcare Act 2006

7.25 The 2006 Act introduced a new system of registration for childcare providers, and replaced the registration regime provided for by the 1989 Act in England. In Wales the provisions of the 1989 Act continue to apply.

7.26 The 2006 Act requires the Chief Inspector of Education, Children's Services and Skills (the Chief Inspector) to maintain two registers: the early years register and the general childcare register, which is divided into two parts. Persons providing "early

years provision" for children aged 0-5 are required to register on the early years register. Those providing "later years provision" for children aged 5 to 8 are required to register on Part A of the general childcare register. These registers came into force on 1 September 2008. Part B of the general childcare register is a voluntary register for providers who are not required to be registered, and it came into force on 6 April 2007.

7.27 Chapter 5 of Part 3 of the 2006 Act sets out common provisions, which apply to all childcare providers. In particular, there are provisions dealing with the protection of children in an emergency (section 72) and powers of entry (sections 77 and 79).

7.28 Section 72 empowers the Chief Inspector to apply to a justice of the peace for an order to cancel a person's registration or to vary, remove, or impose a new condition on the person's registration, and provides that the order may be made if it appears that the child is suffering or likely to suffer significant harm. This section is, in essence, a carry over from section 79K of the 1989 Act, which in turn replaced section 75 of the 1989 Act (section 75 is no longer in force). Section 72 applies in England; section 79K still applies in Wales.

7.29 Section 77 of the 2006 Act gives the Chief Inspector powers of entry if he has reasonable cause to believe that a person is providing early years provision or later years provision without being registered (section 77(1)), and for the purpose of conducting certain inspections or determining whether conditions or requirements imposed on the provider are being complied with (section 77(2)). For Wales section 102 of the 1989 Act contains similar provisions.

7.30 Following the coming into force of the 2006 Act, consequential rule changes and changes to the court application form C19 (Application for a warrant of assistance) were made by the Family Proceedings (Amendment) Rules 2009 (SI 2009/636) and the Family Proceedings Courts (Children Act 1989) (Amendment) Rules 2009 (SI 2009/637). The form C19 that had previously been used for an application for a warrant under section 102 of the 1989 Act was amended to make provision for an application for a warrant under section 79 of the 2006 Act. It was also updated to make provision for an application under section 102 of the 1989 Act in relation to the exercise of powers, in Wales, under section 79U of that Act.

7.31 The FP (A) (No.3) R 2009 and the FPC (Misc A) (No.2) R 2009, make further such consequential amendments. These amendments are primarily the substitution of the C28 Form (Warrant to assist a person to gain access to a child or entry to premises) for the existing form to allow the form to be used for warrants granted pursuant to applications under section 79 of the 2006 Act, and in Wales under section 79U of the 1989 Act. The amendments are similar to those to the C19 (Application for a warrant of assistance) as discussed above. Some updating amendments such as the removal of the reference to the Adoption Act 1976 are also included. In addition, the opportunity is taken in the rules to update the form C19 further by removing the reference to the Adoption Act 1976 and also references to the 1989 Act are inserted where appropriate.

The Forced Marriage (Civil Protection) Act 2007

7.32 The 2007Act offers protection to those faced with forced marriage and provides recourse for those who may have already been forced into marriage by giving the courts a wide discretion to issue Forced Marriage Protection Orders (Mops). An important element of the Act is to enable Mops to be made in circumstances when victims are unable to make

an application themselves. Therefore, as well as allowing the person to be protected by the FMPO to make an application, the Act allows anyone to make an application on behalf of a victim with the leave of the court. 'Relevant third parties' can also make an application without needing to seek the court's permission.

7.33 Relevant third party is defined in section 63(7) of the 2007 Act as a person specified, or falling within, a description of persons specified, by order of the Lord Chancellor. Local authorities will be specified as relevant third parties from 1 November 2009 by the FLA1996(FM)(RTP)O 2009. As local authorities will no longer need to complete the application form for leave to apply for a forced marriage protection order (form FL430), a change to the application form FL401A has been made by the FP(A)(No.3)R 2009 to ensure local authorities are able to explain what they know about the background to a case the circumstances of the person to be protected; and the wishes and feelings of the person to be protected.

Consolidation

7.34 The FP (A) (No.3) R 2009 and the FPC (Misc A) (No.2) R 2009 referred to in this Memorandum amend existing Rules. Work is currently ongoing to produce a new, single set of Family Procedure Rules which will apply to all levels of family courts. This is a large-scale project. It has proved necessary, in light of the coming into force of the legislative changes described in section 4 and in the paragraphs above of this section of this Memorandum to make amendments to existing Rules in the meantime.

8. Consultation outcome

Human Fertilisation and Embryology Act 2008

8.1 The Government conducted an extensive consultation on the policy underlying the Human Fertilisation and Embryology Act 2008. The Human Fertilisation and Embryology Act 2008 were subject to considerable public scrutiny. The Science and Technology Select Committee carried out an inquiry into reproductive technologies and the law and made recommendations many of which were reflected in the Bill. In addition, the draft Bill was scrutinised by a Committee of both Houses prior to introduction.

8.2 A public consultation on the key policies in the Bill and how they may be updated ran from August to November 2005. A total of 535 responses were received from a wide range of stakeholders and individuals. The consultation and response document are available from the Department of Health on the following link:

http://www.dh.gov.uk/en/Healthcare/Fertility/DH_080475

8.3 In view of the fact that the rule amendments in FP(A)(No.3)R 2009, the FPC(Misc A)(No.2)R 2009 and the amendments to the Parental Responsibility Agreement Regulations 1991 in the PRA(A)Regs 2009 in respect of the 2008 Act are limited and are purely consequential it was considered that a full public consultation on the amendments themselves was not required on this occasion. The Government intends to hold a public consultation on the more significant rule changes required for implementation of the provisions of the 2008 Act in respect of parental orders.

Child Support Act 1991

8.4 The power to deduct money direct from the accounts of non-payers of child maintenance was included in proposals set out in the White Paper: *A new system of child maintenance* published by the Department of Work and Pensions in December 2006. In relation to deduction orders, the White Paper proposed that the Government would explore the scope for legislation to enable the Commission, once established, to authorise financial institutions to pay maintenance owed from a non-resident parent's account. Responses were invited from a number of organisations including the Justices Clerks Society, Resolution, the Law Society of England and Wales and the Magistrates' Association. Comments were also invited from members of the public. There was a mixed response to the proposal: some welcomed the proposal whilst others raised concerns over possible implications for human rights.

8.5 The British Bankers Association and the Building Societies Association were also informally consulted separately and had no objections to the proposals.

8.6 The Government decided to proceed with its proposals for deduction orders on the basis that both the primary legislation and regulations would provide safeguards in order to ensure that human rights are protected and these are set out in paragraphs 7.10 to 7.15 above. The following legislation is needed to give effect to the proposals on deduction orders:

- The Child Maintenance and Other Payments Act 2008:
  In relation to regular deduction orders, section 32A of this Act provides that where a person has failed to pay an amount of child maintenance and holds an account with a deposit taker the Commission may make an order against that person to secure the payment of child maintenance and/or arrears through regular deductions from the account. In relation to lump sum deduction orders, section 32E of this Act provides that where a person has failed to pay an amount of child maintenance and an amount stands to the credit of an account held by the liable person with a deposit holder the Commission may make an interim order against that person. This instructs the deposit taker to secure an amount up to the amount on the order. Section 32F of the Act provides that the Commission may make a final order to secure the payment of child maintenance arrears.

- The Child Support Collection and Enforcement (Deduction Orders) Amendment Regulations 2009, (Regulations):
  These Regulations will support the use by the Commission of the powers in the Child Support Act 1991 to make regular and lump sum deduction orders to collect child maintenance from an account held by a person in default of payment of Child Maintenance. The Regulations have been approved by Parliament and will come into force on 3 August 2009.

- The FP (A) (No.3) R 2009 Amendments to these Rules are the subject of this explanatory memorandum. They will provide the procedures to enable the right of appeal in the Regulations.

8.7 The Department for Works and Pension and the Ministry of Justice consider that no further consultation on the contents of this instrument is required because the amendments are a consequence of an Act of Parliament (the Child Maintenance and Other Payments Act 2008). The Department for Works and Pension has consulted closely with major stakeholders, including the British Bankers' Association, the Building Societies Association and individual banks and building societies in the development of both the Regulations and supporting processes.

8.8 A copy of the White Paper and the response document are at: White Paper – A new system of child maintenance and Summary of responses to the White Paper

Children and Young Persons Act 2008

8.9 The Children and Young Persons Act provides legislative reforms to implement the Care Matters programme. The changes to residence orders and special guardianship orders are in sections 36-38 of the Act. The Act followed extensive public consultation about the Care Matters programme overall in the green paper *Care Matters: transforming the lives of children and young people in care,* and the white paper *Care Matters: Time to deliver for children in care.*

8.10 In particular, the *Care Matters* white paper sets out the planning framework for ensuring that as many children in care as possible have the opportunity to experience a loving family and strong connections to adults who have a long term commitment to them. This is described as providing children with permanence. Residence orders provide an important route to permanence by which relative carers can acquire parental responsibility for a child for whom they are caring on a long term basis. Responses to the consultation indicated support for the broad proposals to encourage and support the use of family and friends care. The amendments to Form C13A in FP (A) (No.3) R 2009 and the FPC (Misc A) (No.2) R 2 are consequential only on the provisions of the primary legislation and it is considered that no further consultation on these amendments is necessary.

Childcare Act 2006

8.11 There has been extensive public consultation on the arrangements for the new regulatory framework for childcare. The consultations showed that many respondents thought that the proposed arrangements struck the right balance between providing reassurance that the provision will safeguard children and being proportionate and manageable. The consultation report can be found at:

www.**dcsf**.gov.uk/**consultations**/downloadableDocs/**Childcare**%20**Bill**%20**Consultation**.pdf

o

8.12 In view of the fact that the amendments to the Form C28 in respect of section 79 of the 2006 Act simply carry through, for the purposes of applications under section 79 of the 2006 Act, the provisions in the rules which already apply to applications under section 102 of the 1989 Act, it was considered that a full public consultation on the amendments themselves was not required.

Forced Marriage (Civil Protection) Act 2007

8.13 The Ministry of Justice issued a consultation in 2008 *Forced Marriage (Civil Protection) Act 2007 – Relevant Third Party* about the role of the relevant third party under the 2007 Act. The consultation asked for responses on what need there was for relevant third parties, what type of people or organisations should act and what safeguards were needed. A consultation response was issued in November 2008, which set out those local authorities would be specified to act as relevant third parties. The FLA1996 (FM) (RTP) O 2009 gives effect to this intention .In view of the fact that the rule amendment in the FP (A) (No.3) R 2009 substituting the application form (the FL401A) for a forced marriage protection order with one which contains provision for relevant third party applications in respect of the 2007 Act is limited it was considered that a full public consultation on this amendment was not required on this occasion.

9. Guidance

9.1 Information about these changes will be published on the judicial website and the HMCS website when the Statutory Instrument is laid in Parliament.

9.2 Guidance was issued as to making an application under section 79 of the 2006 Act and completion of the amended form C19 when the changes to the C19 form were made in April 2009. No further guidance is therefore considered necessary as the changes to the C28 Form are consequential to those made to the C19 form.

10. Impact

The Human Fertilisation and Embryology Act 2008

10.1 A regulatory impact assessment was completed for the Human Fertilisation and Embryology Bill when it was first introduced into Parliament and a link to the assessment is attached below:
http://www.dh.gov.uk/en/Publicationsandstatistics/Legislation/Regulatoryimpactassessment/DH_080209

10.2 It is not anticipated that the consequential amendments included in the three Statutory Instruments (the FP (A) (No.3) R 2009, the FPC (Misc A) (No.2) R 2009 and the PRA (A) Regs 2009) will have a significant impact on any single group or will have any significant impact on public expenditure. It is not anticipated that any large number of additional applications to court will arise from the implementation of these provisions of the 2008 Act.

Child Support Act 1991

10.3 An Impact Assessment has not been prepared for this instrument because it has no impact on businesses, charities or voluntary bodies.

10.4 This instrument has no impact on the public sector.

Child and Young Persons Act 2008

10.5 An overall impact assessment for the Children and Young Persons Bill was published in 2007. It is available in the impact assessment library at http://www.ialibrary.berr.gov.uk/ .

10.6 DCSF and the Ministry of Justice will analyse changes to the profile of applications and the impact on the courts and legal aid budgets.

Childcare Act 2006

10.7 The amendments are not anticipated to have any significant impact on the sector as they are not new but instead carry through, for the purposes of warrants under section 79 of the 2006 Act, the provisions in the rules which already apply to applications under section 102 of the 1989 Act. During consultations on the arrangements for the new childcare registration system there were no comments on these provisions.

10.8 The Regulatory Impact Assessment for the Childcare Bill can be found at the following link:

http://www.dcsf.gov.uk/everychildmatters/publications/0/1476/

Forced Marriage (Civil Protection) Act 2007

10.9 A full Regulatory Impact Assessment was produced for the passage of the 2007 Act through Parliament. This considered the benefits, costs and risks of introducing the forced marriage provisions. This also considered the impact of local authorities being specified as relevant third parties and is still up to date.

11. Regulating small business

Human Fertilisation and Embryology Act 2008

11.1 The legislation does not apply to small business.

Child Support Act 1991

11.2 A full impact assessment was published with with the affirmative statutory instrument which implements deduction orders.

Children and Young Persons Act 2008

11.3 The legislation does not apply to small businesses.

Childcare Act 2006

11.4 The legislation does not apply to small businesses.

Forced Marriage (Civil Protection) Act 2007

11.5 The legisaltion does not apply to small businesses.

12. Monitoring & review

Human Fertilisation and Embryology Act 2008

12.1 The operation of the policy and its effect will be monitored, including applications brought to court.

Child Support Act 1991

12.2 The intention is to carry out a full evaluation of policy on deduction orders and this will include monitoring and analysing appeals brought in a county court.

Childcare Act 2006

12.3 The childcare registration arrangements will be reviewed in 2010. Arrangements for how this will be conducted have not been finalised but will include work with childcare provider stakeholder organisations.

Children and Young Persons Act 2008

12.4 MoJ and DCSF will conduct an internal review of the impact of the changes to residence orders and special guardianship orders in the Children and Young Persons Act 2008 on the number of applications for residence orders and special guardianship orders, the number of children who cease to be looked after by virtue of a residence order or special guardianship order and the number of children between 16 and 18 for whom residence orders continue to apply.

Forced Marriage (Civil Protection) Act 2007

12.5 Forced marriage cases are already subject to monitoring, and applications made by relevant third parties will be monitored as part of that. The impact of the relevant third party provisions will be subject to internal review 12 months following implementation and any necessary changes to the application form will be considered as part of that process

13. Contact

In relation to the Human Fertilisation and Embryology Act 2008, the Child Support Act 1991 (Court Rules), the Childcare Act 2006 and the Children and Young Persons Act 2008 please contact Philip Dear, Matrimonial and Children's Proceedings Branch, Family Law and Justice, Ministry of Justice, 4.23, 102 Petty France London SW1H 9AJ. Tel: 020 3334 3125. e-mail: philip.dear@justice.gsi.gov.uk.

Jodie Smith at the Ministry of Justice Tel: 020 3334 5232 or email: Jodie.smith@justice.gsi.gov.uk can answer any queries regarding the Forced Marriages (Civil protection) Act 2007.

For the Child Support Act 1991 and the Child Maintenance and Enforcement Commission please contact Holly Greig, Child Maintenance and Enforcement Commission, Room 612, 6th Floor, Stockley House 130 Wilton Road,, London SW1V 1LQ 02078538073 or e-mail: holly.greig1@childmaintenance.gsi.gov.uk