EXPLANATORY MEMORANDUM TO

THE FAMILY PROCEEDINGS (AMENDMENT) RULES 2004
No. 3375 (L.25)

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

2. Description

2.1 The instrument amends the Family Proceedings Rules 1991 (S.I. 1991/1247) and provides for the addition of a new family proceeding form C1A. The instrument also substitutes the existing family proceeding forms C1, C2 and C7 with revised forms and amends family proceeding forms C11, C12, C19, C25 and C28. Corresponding amendments are made to the Rules so as to require the applicant and respondent to complete form C1A in certain circumstances.

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

3.1 None

4. Legislative Background

4.1 The changes to these forms are linked to the commencement of section 120 of the Adoption and Children Act 2002 which is also being commenced on 31st January 2005. Corresponding amendments are also being made to the Family Proceedings Courts (Children Act 1989) Rules 1991 (S.I. 1991/1395).

5. Extent

5.1 The instrument extends to England and Wales only.

6. European Convention on Human Rights

Not applicable.

7. Policy Background

7.1 Section 120 of the Adoption and Children Act 2002 amends the definition of 'harm' contained in section 31 Children Act 1989 (care and supervision orders) so as to include 'impairment suffered from seeing or hearing the ill-treatment of another'. This includes emotional or physical harm.

7.2 The Safety Stakeholder Group considered how amendments to the Family Proceedings Rules 1991 and the Family Proceedings Courts (Children Act 1989) Rules 1991 would ensure that incidence of harm could be identified and taken into account from an early stage in applications under section 8 of the Children Act 1989.

7.3 The application forms, C1 and C2, and the acknowledgement form, C7, have been amended to include an additional question related to harm which must be completed

where an application is made for a section 8 order (an application for contact with a child) or an order for parental responsibility. The question (question 7 on Form C1, question 4 on C2 and question 7 on C7) asks whether the child, who is the subject of such an application, has suffered or is at risk of suffering any harm from (a) any form of domestic abuse; (b) violence within the household; (c) child abduction; or (d) other conduct or behaviour. If this question is answered in the affirmative, supplemental form C1A must also be completed.

7.4 To reflect this, the Rules have been amended to require an applicant and a respondent to complete Form C1A if any of the questions above are answered in the affirmative.

7.5 Forms C11, C12, C19, C25 and C28 have also been amended to substitute "registered health visitor" for "registered midwife".

8. Impact

8.1 The impact of this change will be that the family procedure forms are amended to take account of the clarification of the definition of harm; resulting from the commencement of section 120 of the Adoption and Children Act 1989. Whilst more cases may involve the allegation of harm, these cases should be identified earlier in the court process.

9. Contact

Andrew McNeill of Relationship Breakdown Branch, 020 7210 8648 or andrew.mcneill.dca.gsi.gov.uk can answer queries in relation to the instrument.