EXPLANATORY MEMORANDUM TO THE

FAMILY PROCEEDINGS (AMENDMENT) RULES 2005

2005 No. 264

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 The Family Proceedings (Amendment) Rules 2005 amend the Family Proceedings Rules 1991 to give effect to Council Regulation (EC) No 2201/2003 of 27 November 2003 (the new Council Regulation) on jurisdiction and the recognition and enforcement of Judgments in matrimonial matters and the matters of parental responsibility.

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

3.1 The Regulation has direct effect from 1 March 2005. Although prepared in time to meet the 21-day rule, a technical query to the Instrument caused it to be laid only 20 days before coming into force.

4. Legislative background

4.1 The new Council Regulation is directly effective in the United Kingdom. The new Council Regulation reproduces and repeals Council Regulation (EC) No 1347/2000 of 29th May 2000 (the previous Council Regulation) extending it to include matters of parental responsibility where there are no matrimonial proceedings. Therefore, many of the alterations made in the rules are to update the existing Family Proceedings Rules 1991 to make reference to the new Council Regulation and the correct Article therein.

4.2 The following new rules have been provided to take into account the extension of the new Council Regulation:

- New rule 4.47A (Stay under the Council Regulation) is a replication of rule 2.27A. The necessity for the repetition is because the new Council Regulation extends matters of parental responsibility to apply in all children cases.
- Rule 6.4 is extended so that, where relevant, an originating summons shall include information to meet the requirements of the new Council Regulation.
- New rule 6.11A ensures that a stay under the new Council Regulation can also be applied in cases under the Child Abduction and Custody Act 1985 if required.

- New rule 6.18 inserts a rule to ensure that decisions made under section 16 of the Child Abduction and Custody Act 1985 are registered.
- The amendment to rule 7.48 extends the rule to include non-recognition of judgments as well as recognition of them.
- The amendments to 7.49 are so that certified copies of certificates can be obtained in the same way as certified copies of judgments.
- New rules 7.51 and 7.52 have been inserted to cater for the service and registration of certificates made under Articles 41 and 42 of the new Council Regulation.
- New rule 7.53 has been inserted to deal with the procedure required for Article 15 of the new Council Regulation to operate where parties may apply for their case, or part of their case, to be heard in another Member State.
- New rule 7.54 has been inserted to deal with the procedure required for Article 15 of the new Council Regulation to operate where a court of another Member State applies for a case, or part of a case, to be heard in that other Member State.
- New rule 7.55 allows for rectification of certificates made under Articles 41 or 42 of the new Council Regulation, where there is an error in them.

5. Extent

5.1 The Rules apply to England and Wales.

6. European Convention on Human Rights

6.1 These rules are being made pursuant to a European Regulation which is believed to be Human Rights Convention compliant.

7. Policy background

7.1 The new Council Regulation is based on the EU Council Regulation (EC) 1347/2000 which established grounds of jurisdiction in relation to proceedings for divorce nullity and judicial separation and for parental responsibility orders made ancillary to those proceedings in relation to the joint biological children of the spouses. The new Council Regulation extends those provisions to all children of the family. In addition, the new Council Regulation makes provision for new proceedings concerning child abduction and custody and for enforcement. These represent no change to Government policy but extend the provisions available to achieve it.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 No significant impact on the public sector is anticipated.

9. Contact

Colin Pipe or Paul Ahearn in Family Justice Division, Department for Constitutional Affairs can answer any queries relating to the instrument. Tel 020 7210 8837 / 8321, email Colin.Pipe@dca.gsi.gov.uk or Paul.Ahearn@dca.gsi.gov.uk.