EXPLANATORY MEMORANDUM TO THE

FAMILY PROCEEDINGS COURTS (CHILDREN ACT 1989) (AMENDMENT) RULES 2005

2005 No. 229

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 Courts (Children Act 1989) (Amendment) Rules 2005 amend the Family Proceedings Courts (Children Act 1989) 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 None

4. Legislative background

4.1 The new Council Regulation is directly effective in the United Kingdom and comes into force on 1st March 2005. 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. This has meant that new rules had to be created to implement the new Council Regulation for all proceedings concerning parental responsibility.

4.2 The Amendment SI provides new rules for the correct procedures to be applied in accordance with the Articles of the new Council Regulation for the following:

- Applications by a party to transfer proceedings to a court of another Member State in accordance with Article 15.
- Applications by a court of another Member State for transfer of proceedings to them in accordance with Article 15
- Applications for a certified copy of a judgment or certificate that can be used for enforcement in another Member State.
- Application for certified copies of certificates where a judgment for right of access has been made in accordance with Article 41.
- For a court to be able to rectify an error in an Article 41 certificate.

5. Extent

5.1 The Rules apply to England and Wales.

6. European Convention on Human Rights

6.1 The 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.