EXPLANATORY MEMORANDUM TO

THE FAMILY PROCEEDINGS (AMENDMENT) RULES 2010

2010 No. 768 (L. 6)

AND

THE FAMILY PROCEEDINGS COURTS (CHILDREN ACT 1989) (AMENDMENT) RULES 2010

2010 No. 767 (L. 7)

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 instrument

2.1 The purpose of these statutory instruments is to:

- support the revision of the Practice Direction, *'Guide to Case Management in Public Law Proceedings'* (April 2008) by adjusting rules relating to proceedings for a care or supervision order;
- support applications for orders under section 32L of the Child Support Act 1991(orders preventing avoidance);
- clarify provisions for attendance at court by providing for a single justice or a justices' clerk to permit under rule 16A(1)(g) of the Family Proceedings Courts (Children Act 1989) Rules 1991, a McKenzie friend and any other person to be present at a directions appointment or hearing which that justice or justices' clerk is conducting.

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

3.1 None.

4. Legislative Context

4.1 Different rules of court apply in family proceedings, depending on whether they are in county courts or the High Court, or in family proceedings courts (magistrates' courts).

4.2 For the High Court and county court, the relevant rules are The Family Proceedings (Amendment) Rules 2010 which amend the Family Proceedings Rules 1991. These amending rules contain the rules relating to care and supervision orders and those relating to orders preventing avoidance. Orders preventing avoidance can only be made by the High Court.

4.3 For family proceedings courts (magistrates' courts), the relevant rules are The Family Proceedings Courts (Children Act 1989)(Amendment) Rules 2010 which amend the Family Proceedings Courts (Children Act 1989) Rules 1991.

These amending rules contain rules relating to care and supervision orders which mirror the rules on this matter for the High Court and county courts. In addition,they contain the rules relating to the clarification of the powers of the single justice and justices' clerk relating to attendance. A single justice and a justices' clerk may only perform certain functions of a family proceedings court (magistrates' court) and so the amending rules on this matter are not relevant to the High Court and county courts.

4.4 It is necessary to make amendments to both sets of rules (the amending rules for the High Court and county courts and those for the family proceedings courts) at the same time, as is done with the two present instruments as the rules for care and supervision orders in the High Court and county courts mirror those in the family proceedings courts.

The Family Proceedings (Amendment) Rules 2010

4.5 The Family Proceedings Rule Committee makes these Rules with the agreement of the Lord Chancellor

The Family Proceedings Courts (Children Act 1989) (Amendment) Rules 2010

4.6 The Lord Chief Justice makes these Rules with the concurrence of the Lord Chancellor after consulting the Magistrates' Courts Rule Committee.

5. Territorial Extent and Application

5.1 These instruments apply to England and Wales.

6. European Convention on Human Rights

6.1 As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

Care and Supervision proceedings

7.1 The Practice Direction *Guide to Case Management in Public Law Proceedings* came into force on 1 April 2008 to help reduce unnecessary delays in care and supervision proceedings. A year after its implementation, the case management tools and guidance outlined in the Practice Direction were reviewed to ensure that the process for obtaining a care or supervision order was operating effectively. It was considered necessary to make changes to the Practice Direction to reduce the documentary requirements and improve the forms. In addition, it was considered that greater emphasis needed to be given to the Timetable for the Child, and further guidance given in relation to this. The Practice Direction is being reissued with adjustments reflecting those changes. Some amendments to the rules for the High Court and county courts and family proceedings courts (the magistrates' courts) are also needed to implement the changes.

7.2 The rule amendments make provision for the use of a new application form for care and supervision orders, Form C110. In addition, the rules provide that only such of the documents which are specified in the Annex to the Form C110 as are available should be filed with the court at the same time as the Form C110.The aim is to ensure that proceedings aimed at protecting children are not delayed by reason of a missing document. The revisions to the Practice Direction support the new application form by, for example, referring to the documents set out in the Annex to Form C110 and when the court should give directions relating to any missing Annex documents.. By introducing the C110 form, there will no longer be a requirement to use the existing prescribed application forms C1 and C13 to apply for a care or supervision order. It will also not be necessary to use forms recommended under the original Practice Direction, which results in an overall reduction in forms.

7.3 A new rule is added to make express reference to the court setting the timetable for the proceedings for a care or a supervision order in accordance with the Timetable for the Child defined in the rule. For the High Court and county courts, this is rule 8 (new rule 4.14A) of the Family Proceedings (Amendment) Rules 2010 and for the family proceedings courts (magistrates' courts), rule 7 (new rule 14A) of the Family Proceedings Courts (Children Act 1989) Rules 2010. The revisions to the Practice Direction support this rule by giving greater emphasis to the Timetable for the Child. The key feature of the Timetable for the Child, is that it is a timetable which takes into account dates of the significant steps in the life of the child who is the subject of the proceedings and is appropriate for that child.

Child Support Act 1991

7.4 Section 32L of the Child Support Act 1991 was introduced by a Government amendment, with the support of the Opposition, during the passage of the Child Maintenance and Other Payments Act 2008 through Parliament. Section 32L of the Child Support Act 1991 gives the Child Maintenance and Enforcement Commission power to apply to the High Court for two types of orders. The first is an order restraining the person who has not paid child support maintenance from disposing of property with the intention of avoiding payment of that maintenance. The second is an order setting aside the disposition of property to a third party by the person who has not paid child support maintenance with the intention of avoiding payment of that maintenance. Rule amendments are needed to the Family Proceedings Rules 1991 to provide for a court process for obtaining these orders.

Attendance at court-powers of the single justice and justices' clerk

7.5 The need to clarify that a single justice and justices' clerk can exercise the powers of the court in rule 16A(1)(g) of the Family Proceedings Courts (Children Act 1989) Rules 1991 to permit a Mckenzie friend and any other person to be present at a directions appointment or hearing which that justice or clerk is conducting stemmed from issues arising in practice in courts applying rule 16A relating to attendance at court in family proceedings.

- ***Consolidation***

7.6 The two statutory instruments 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 and other changes described in the paragraphs above to make amendments to existing Rules in the meantime.

8. Consultation outcome

Care and Supervision Proceedings

8.1 To inform the development of the new application form C110 , a targeted two week consultation was carried out in January 2010, with a range of family justice agencies: Local Authorities, Cafcass, CAFCASS CYMRU, HMCS, Justices Clerks/ Legal Advisers, children and family lawyers, and the Family Justice Council.

8.2 The new form C110 has a specific section for information relating to the Timetable for the Child, and this was also included in the consultation version of the draft C110. There was a high level of interest, and 51 responses were received. Overall, the comments were positive and welcomed the introduction of a bespoke application form.

8.3 Revision of the Practice Direction Guide to Case Management in Public Law Proceedings, was also informed by the work of an inter-agency Implementation Steering Group (ISG). This group was specifically tasked with reviewing the documentary requirements of the original Practice Direction. A sub-group (comprising representatives from local authority legal services, local authority Director of Children and Young People Services, Cafcass, CAFCASS CYMRU, Welsh Assembly Government, Department for Children Schools and Families, and the Legal Services Commission) was established, which undertook consultation with their own organisations in England Wales. Comments were received from 26 local authority legal departments, which were taken into account by the ISG sub-group, when making the recommendation to streamline the existing documentary requirements.

Child Support Act 1991

8.4 A targeted consultation with major stakeholders on the draft rules and forms to support applications made under section 32L of the Child Support Act 1991 was carried out in December 2009. One response was received from Resolution which was considered by the Family Procedure Rule Committee with the majority of suggestions put forward being taken on board.

9. Guidance

Care and Supervision Proceedings

9.1 Information about these changes will be published on the website for Her Majesty's Courts Service, at: http://www.hmcourts-service.gov.uk/

Child Support Act 1991

9.2 There will be a press release on the Child Maintenance and Enforcement Commission's website announcing the commencement of the new provisions. Information about these new powers will also be published on the judicial website and the HMCS website when the Statutory Instruments are laid in Parliament.

10. Impact

Care and Supervision Proceedings

10.1 Fewer documents will be filed with the application at issue stage, which will help to relieve the documentary burdens on local authorities making care and supervision applications, and make less work for the family courts when processing these applications.

10.2 The requirement in the rules for the court to set the timetable of the proceedings in accordance with the Timetable for the Child, emphasises the importance of the Timetable for Child, which is only referred to in the Practice Direction Guide to Case Management in Public Law Proceedings, at the moment. It also emphasises that the court process for obtaining care and supervision orders is child focused.

10.3 A series of overly prescriptive and cumbersome forms supporting the Practice Direction, are replaced by a new bespoke application Form C110. Form C110 is specially tailored for making an application for care and supervision order, and is therefore more user-friendly. Use of Form C110 means it will no longer be necessary to use Forms C1 and C13, and a number of other forms recommended for use under the original Practice Direction (PLO 1, PLO 2, PLO 4). The overall impact is a substantial reduction in documentation.

10.4 These changes are designed to make improvements in care proceedings by helping to streamline and simplify processes, with the aim of reducing unnecessary delays. The development of these changes has been informed by feedback from a range of family justice agencies, and research to help better understand how the Practice Direction was operating: 'An early process evaluation of the Public Law Outline in family courts' (July 2009). http://www.justice.gov.uk/guidance/careproceedings.htm

10.5 Given that care cases currently take about a year to complete, the full impact of the new procedures would not be apparent until a least a year after implementation.

Child Support Act 1991

10.6 The Child Maintenance and Enforcement Commission already has at its disposal a considerable range of powers to enforce child maintenance liabilities. The Government envisages that circumstances that will merit orders preventing avoidance will occur rarely. In granting the power to apply for these orders Parliament decided that it should only be exercised through the High Court and not either administratively or through lower courts, precisely because of the complexity and the potential impact on individuals and possibly "future families". Following the implementation of this change the High Court will be

the only route to exercise this power and it will therefore be in a position to consider the impact and decide the course of action upon the basis of the evidence before it. In view of the very small number of incidences where such an order would be applicable, there will be a negligible impact on the legal profession, court business and the legal aid fund. There is no anticipated impact on the rest of the private or voluntary sectors.

Attendance at court-powers of single justice and justices' clerk

10.7 It is not envisaged that the amendment to the Rules on attendance at court will have any effect other than to remove the need for hearings before a full court to permit a person to attend a hearing or directions appointment conducted by a single justice or a justices' clerk.

11. Regulating small business

11.1 The legislation does not apply to small business

12. Monitoring and Review

Care and Supervision Proceedings

12.1 There are no specific plans to review these changes, although we are developing monitoring mechanisms for a system wide approach to reducing unnecessary delays in care proceedings.

Child Support Act 1991

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

13. Contact

In relation to care and supervision proceedings, please contact Surinder Sawali, Family Law and Justice Division, Ministry of Justice, 4.20, 102 Petty France, London SW1H 9AJ. Tel: 0203 334 3142. Email: surinder.sawali@justice.gsi.gov.uk;

In relation to the Child Support Act 1991, please contact Angela Muir, Family Law & Justice, Ministry of Justice, 4.25, 102 Petty France, London SW1H 9AJ.
Tel: 0203 334 3117. E-mail: angela.muir@justice.gsi.gov.uk

In relation to attendance at court, please contact Philip Dear, Matrimonial and Children's Proceedings Branch, Family Law and Justice, Ministry of Justice, 4.25, 102 Petty France, London SW1H 9AJ. Tel: 0203 334 3125.
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