

**EXPLANATORY MEMORANDUM TO
THE FAMILY PROCEDURE (ADOPTION) RULES 2005**

2005 No. 2795 (L.22)

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 instrument contains the rules which govern the practice and procedure to be followed in proceedings under the Adoption and Children Act 2002. The rules are divided into 19 separate parts. Part 1 covers the overriding objective enabling the court to deal justly with cases. Part 2 covers interpretation and application of the Rules. Part 3 covers the court's powers of case management. Parts 4 and 5 cover how to start proceedings and the procedure to be followed in applications. Part 6 deals with service, Part 7 contains rules on appointments of litigation friends and officers of CAFCASS. Part 8 contains rules concerning documents and disclosure of documents and information. Parts 9 and 10 contain rules about procedure when applications are made to which Part 5 does not apply. Part 11 contains miscellaneous provisions. Part 12 sets out the procedure for disputing the court's jurisdiction. Part 13 covers Human Rights, Part 14 interim injunctions, Parts 15 and 16 evidence, Part 17 experts, Part 18 change of solicitor and Part 19 appeals.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 The Family Procedure Rule Committee was established by section 77 of the Courts Act 2003. By virtue of section 75 of the 2003 Act, the Family Procedure Rule Committee has power to make Family Procedure Rules. Section 76(4) of the 2003 Act gives power for Family Procedure Rules to apply any rules of court (including in particular Civil Procedure Rules 1998 (the "CPR")). The CPR rules relating to costs and enforcement are applied by rule 5(3) and (5). The CPR costs rules have been applied with specific modifications so that they mirror as far as possible the application of the CPR costs rules in family proceedings as contained in rule 10.27(1) of the Family Proceedings Rules 1991 (S.I. 1991/1247). The CPR rules relating to enforcement are applied with necessary modifications. These rules are only of marginal use to proceedings under the Adoption and Children Act 2002. Many of the rules, for example, those relating to admissions and evidence (Part 15) and appeals (Part 19) have been modelled on similar ones in the CPR.
 - 3.2 Section 78(6) of the 2003 Act gives power for the rules to refer to provision made or to be made about a matter by directions instead of by rules. This power has been used throughout the rules.
 - 3.3 The powers in section 75, 76 and 79 of the 2003 Act have been commenced

for adoption purposes only (see S.I. 2005/2744 (C.111)). The intention is that those powers will be commenced for all purposes once the drafting of Family Procedure Rules for all family proceedings has been completed. The Family Procedure (Adoption) Rules will then form part of the Family Procedure Rules.

4. Legislative Background

4.1 The rules replace the Adoption Rules 1984 (S.I. 1984/265) and the Magistrates' Courts (Adoption) Rules 1984 (S. I. 1984/611) with a single set of rules for the High Court, county courts and magistrates' courts. They are the first Family Procedure Rules to be made by the Family Procedure Rule Committee (FPRC).

5. Extent

5.1 This instrument applies to England and Wales only.

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

7.1 In December 2000 the Government published a White Paper on adoption (*Adoption - a new approach*). This set out the Government's plans to promote greater use of adoption, improve performance of the adoption service and put the best interest of children at the centre of the adoption process.

7.2 The Adoption and Children Act 2002 received Royal Assent on the 7 November 2002. It replaces the Adoption Act 1976 and will provide a single legislative framework for adoption across all levels of court.

7.3 It updates adoption law, including that on inter-country adoption and implements the proposals in the White Paper that require primary legislation. Among other measures it aims to ensure that birth parents understand the impact of consenting to adoption, there is early resolution of disputes, there is effective case management with decisions made without delay, that adoption cases are heard in courts with appropriately trained and experienced judges and magistrates and adoption orders are only made when they are in the child's best interest with the court having alternatives to suit a child's particular needs.

7.4 The final stages of the Act will be implemented on the 30th December 2005. Other provisions have already been implemented including restrictions on adoptions from overseas, parental responsibility for unmarried fathers who jointly register the birth of their child with the mother, the introduction of Independent Reviewing Officers to local authorities to review every care plan.

7.5 These rules govern the practice and procedure to be followed in applications under the Act and are the first section of the single code for family proceedings, following the precedent set by the Civil Procedure Rules.

7.6 They have been extensively consulted on, with drafts being sent out to stakeholders including judiciary, legal practitioners, government departments and the British Association for Adoption and Fostering. There were approximately 50 responses which were generally welcoming and supportive. Following the initial consultation phase, stakeholders were engaged on specific details, the President's Adoption Committee met to review recommendations and was further consulted by the Family Procedure Rule Committee before the rules were approved.

7.7 These rules are the first to be made by the Family Procedure Rule Committee.

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 as it is about updating existing court procedures, not imposing new burdens.

9. Contact

Jean Waygood of the Children's Proceedings Branch, 0207 210 8315 or jean.waygood@hmcourts-service.gsi.gov.uk can answer any queries regarding the instrument.