#### EXPLANATORY MEMORANDUM TO

### THE FAMILY PROCEDURE (AMENDMENT No. 3) RULES 2012

#### 2012 No. 2046 (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 This statutory instrument makes two changes to the Family Procedure Rules 2010 (FPR) to ensure that they operate appropriately in the light of changes made elsewhere than in the FPR. The first change ensures that the FPR continue to operate as at present in relation to committal for contempt and are not inadvertently amended in their operation by changes in the Civil Procedure Rules (CPR). The second change amends provisions relating to the 1996 Hague Protection of Children Convention (the 1996 Hague Convention) to reflect the fact that there are separate Central Authorities for England and for Wales in relation to that Convention.

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

3.1 The changes in the CPR on account of which the first change in these Rules is made are made by the Civil Procedure (Amendment No. 2) Rules 2012.

### 4. Legislative Context

4.1 The amendments made by these Rules are technical. The first change arises out of changes being made to the CPR. The powers to make the FPR in section 76 of the Courts Act 2003 allow them to be made by applying other rules. In respect of the procedure for applications for committals to custody for contempt, etc., the FPR do this by applying the Rules of the Supreme Court (RSC) Order 52 and County Court Rules (CCR) Order 29 as preserved in the CPR (in Schedules 1 and 2 to the CPR). The CPR are being amended to remove RSC Order 52 and CCR Order 29 from the Schedules and replace them with consolidated and modernised provision in a new CPR Part 81, with effect from 1 October 2012. Where the FPR apply the CPR, they apply them "as amended from time to time" (FPR rule 2.3(3)), and so if nothing were done, the CPR changes on the procedure for committals would be applied in the FPR too. The Family Procedure Rule Committee (FPRC) which makes the FPR has, however, not yet had the opportunity to consider the amended CPR provisions and whether they should be applied with or without modifications for the family proceedings context. The FPRC has therefore concluded that the existing RSC 0.52 and CCR 0.29 should continue to be applied as they are at present

while the appropriate amendments are considered. Rules 2 and 3 of these Rules therefore provide for an exception to the general position so that in relation to procedure for committals, the CPR are applied not as amended from time to time but as they stand on the day before the CPR amendments come into effect, namely 30 September. That will preserve the existing procedural provision for committals in family proceedings until the FPRC has decided what changes should be made.

4.2 The second change concerns references in the FPR to the Central Authority for England and Wales under the 1996 Hague Convention. The Convention provides (as is usual in international cooperation Conventions of this sort) for various administrative processes to be carried out by a Central Authority. For this Convention, there are to be separate Central Authorities for England (the Lord Chancellor) and Wales (the Welsh Ministers). The relevant rules in the FPR refer to a single Central Authority for England and Wales, and so rules 4 and 5 of these Rules amend those references so that they reflect the fact that there are separate Central Authorities for England and for Wales.

## 5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

## 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

- What is being done and why
- 7.1 The amendments are technical, to ensure that the FPR do not inadvertently become inappropriate in their operation. The changes in respect of committals in family proceedings are intended to preserve the existing procedural position for family proceedings until such time as the Family Procedure Rule Committee have been able to consider what amendments are required as a result of the revised provisions of the CPR and those amendments have been made.
- 7.2 The amendments relating to the 1996 Hague Convention are intended to ensure that the FPR refer to the correct Central Authority so that confusion does not arise requiring redirection from the Lord Chancellor to the Welsh Ministers.

#### Consolidation

7.3 The Family Procedure Rules 2010, which this Statutory Instrument amends, already provide a consolidated set of Rules for all types of family proceedings in all family courts.

#### 8. Consultation outcome

8.1 There has been no formal public consultation on the provisions in these Rules given their limited technical nature; but the Civil Procedure Rule Committee and the Welsh Ministers respectively were informally consulted and indicated agreement with the approach adopted.

#### 9. Guidance

- 9.1 No guidance is required on committals as the current procedure, with which practitioners are familiar, remains in place.
- 9.2 No guidance is required on the narrow amendments in respect of the 1996 Hague Convention. More widely, the President of the Family Division of the High Court has agreed to issue practice guidance for the legal profession and court users to support operation of the Convention.

## 10. Impact

- 10.1 There will be no impact on business, charities, voluntary bodies or the public sector either from the amendments on committals (since the existing provisions remain in force and there will be no changes in the volume or conduct of cases) or from the amendments on the 1996 Hague Convention (which merely reflect the designation under the Convention of a separate Central Authority for Wales).
- 10.2 An Impact Assessment has not been prepared for this instrument.

### 11. Regulating small business

- 11.1 The legislation applies to small business, specifically legal practitioners.
- 11.2 The provisions will not affect small business as the existing provisions in relation to committals are being continued without change, and the provisions on the 1996 Hague Convention reflect the existing designation of a separate Central Authority for Wales..

## 12. Monitoring & review

- 12.1 The Family Procedure Rule Committee will consider over the next year the revised provisions of the CPR on committals and will decide what amendments to Family Procedure Rules 2010 are required to reflect those revised provisions for family proceedings.
- 12.2 While no review is planned of the changes on the 1996 Hague Convention in themselves, the operation of the Convention more widely will be reviewed in line with

UK treaty obligations. In particular, the UK jurisdictions will participate fully in the review mechanisms of the Hague Conference on Private International Law and any prior review requirements of the European Union. The UK authorities in England and in Wales will review the operation of these provisions domestically from time to time as appropriate and bring forward any necessary amending rules of court as needed.

## 13. Contact

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