

**EXPLANATORY MEMORANDUM TO THE
COURTS ACT 2003 (REVOCATIONS, SAVINGS AND TRANSITIONAL
PROVISIONS) ORDER 2005**

2005 No. 2804

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 revokes the Magistrates' Courts (Adoption) Rules 1984 (S.I. 1984/611), and parts of other instruments to the extent that they have amended those Rules. It also sets out the circumstances in which the Magistrates' Courts (Adoption) Rules 1984 and the Adoption Rules 1984 (S.I. 1984/265), which are revoked by virtue of the repeal of the Adoption Act 1976 by Schedule 5 to the Adoption and Children Act 2002, will continue to apply despite their revocation.

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

3.1 None.

4. Legislative Background

4.1 This instrument is linked to the implementation of the Adoption and Children Act 2002, which comes into force on 30 December. New rules of court have been made setting out the practice and procedure to be followed in proceedings under the Act.

4.2 Those Rules are made by the Family Procedure Rule Committee under the power contained in sections 75 and 76 of the Courts Act 2003.

4.3 Section 109(4) of the Courts Act 2003 permits the Lord Chancellor to make any supplementary, incidental or consequential provision and any transitory, transitional or saving provision which he considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to any provision of this Act. Subsection (5) says that an Order under subsection (4) may amend, repeal or revoke any enactment other than one contained in an Act passed in a Session after that in which the Courts Act 2003 was passed. By virtue of section 108(6), the Order may also contain any other supplementary, incidental or consequential provision and any transitory, transitional or saving provision which the Lord Chancellor considers necessary or expedient.

4.4 As a consequence of using the power in sections 75 and 76 to make new rules of court, transitional and savings provisions are needed in relation to the existing rules, namely the Adoption Rules 1984 and the Magistrates' Courts

(Adoption) Rules 1984. The Magistrates' Courts (Adoption) Rules 1984 also need to be revoked.

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 The Adoption Act 1976 will be repealed, with effect from 30 December 2005, by Schedule 5 to the Adoption and Children Act 2002. The Adoption Rules 1984 will lapse when the 1976 Act is repealed (since they are made under the enabling powers in the 1976 Act). The Magistrates' Courts (Adoption) Rules 1984 will not automatically lapse since they are made under a different enabling power which is not being repealed. This instrument revokes those Rules.

7.2 Despite the revocation of the Adoption Rules 1984 and the Magistrates' Courts (Adoption) Rules 1984, the instrument provides that those rules will still apply to certain proceedings under the 1976 Act, namely applications for an adoption order (including adoption of a child abroad), an annulment of an overseas adoption or a freeing order, applications to revoke or vary a freeing order, applications for leave to remove a child and applications for a recovery order.

7.3 The rules are saved for the purpose of those proceedings because those proceedings are saved, in certain circumstances, by Schedule 4 to the 2002 Act or by virtue of an Order to be made by the Secretary of State for Education and Skills within the next week.

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

Joanne Howell of Legal Group on 0207 210 8937 or joanne.howell@dca.gsi.gov.uk can answer any queries regarding the instrument.