

EXPLANATORY MEMORANDUM TO
THE FAMILY PROCEDURE (ADOPTION) (AMENDMENT) RULES 2007

2007 No. 2189 (L.19)

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Description

2.1. These Rules make minor amendments to the Family Procedure (Adoption) Rules 2005, arising from the Mental Capacity Act 2005.

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

3.1. None.

4. Legislative Background

4.1. These Rules are made under sections 75(2) and (4) of the Courts Act 2003, which provide for the Family Procedure Rule Committee to make rules in relation to family proceedings. The Rules amend the Family Procedure (Adoption) Rules 2005 (the Adoption Rules). The need for amendment arises from the Mental Capacity Act 2005 (the MCA), which received Royal Assent on 7 April 2005.

5. Extent

5.1. These Rules apply to England and Wales only.

6. European Convention on Human Rights

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

7. Policy Background

Policy aims

7.1. The amendments are consequential in nature, and are intended to ensure that the procedures set out in the Adoption Rules, particularly those with respect to the appointment of a litigation friend for a person who lacks capacity to conduct family proceedings, are consistent with the concepts and terminology of the MCA (which comes into force on 1 October 2007). In particular, the amendments ensure that the Adoption Rules reflect the new concepts created by the MCA such as deputies and lasting powers of attorney, as well as ensuring that the new test for capacity (which

is decision- and time-specific) is reflected in the procedures set out for family courts in respect of adoption matters.

Consultation

- 7.2. The Ministry conducted an extensive consultation process before the passing of the MCA, including publishing a draft Mental Incapacity Bill in 2003 for public comment and pre-legislative scrutiny by a Joint Committee of both Houses. For the MCA-related amendments to the Adoption Rules, no formal consultation was undertaken as the amendments are relatively minor and limited to reflecting the new terminology and institutions of the MCA. However, drafts of the proposed amendments were provided to a group comprising members of the judiciary and legal profession, who were brought together under the auspices of the President of the Family Division (the President designate of the new Court of Protection), to comment on the draft rules of court for the Court of Protection. Their feedback was incorporated into the proposed amendments to the Adoption Rules.

8. Impact

- 8.1. A full Regulatory Impact Assessment (RIA) was produced for the passage of the Act, considering the benefits, cost and risks of setting up a statutory framework for decision making. The Ministry has also produced an Equality Impact Assessment to cover the MCA and its implementation.

9. Contact

- 9.1. Any enquiries about the contents of this memorandum should be addressed to: Ben Luscombe, Mental Capacity Implementation Programme, Ministry of Justice, email: Ben.Luscombe@justice.gsi.gov.uk tel: 020 7210 0051.