

EXPLANATORY MEMORANDUM TO
THE CIVIL JURISDICTION AND JUDGMENTS (MAINTENANCE)
(RULES OF COURT) REGULATIONS 2011

2011 No. 1215

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 amendments to the Magistrates' Courts Act 1980 and to the Civil Jurisdiction and Judgments Act 1982 to ensure that the powers to make Family Procedure Rules for England and Wales are wide enough to extend to making rules to support the operation in England and Wales of Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (the Maintenance Regulation).

- 2.2 The amendments include provision to enable rules of court to be made to deal with recognition and enforcement both of court decisions and of authentic instruments (these are usually documents prepared by a notary) and court settlements, which are enforceable under the Maintenance Regulation as if they were court decisions. The Maintenance Regulation has direct effect and will be applicable in the UK (and throughout the European Union) on 18 June 2011.

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

- 3.1 The main changes to domestic law necessary to ensure appropriate application of the Maintenance Regulation in the UK will be brought forward at a later date in a separate statutory instrument under s2(2) of the European Communities Act 1972 (s2(2) regulations) covering the whole of the UK. The separate statutory instrument containing the necessary rules of court for England and Wales will be made under the powers extended by this instrument.

4. **Legislative Context**

- 4.1 This statutory instrument paves the way for the rules of court which will be needed to support the operation of the Maintenance Regulation in England and Wales. The separate statutory instruments for the rules of court themselves and the s2(2) regulations to enable the operation of the Maintenance Regulation are due to be brought before Parliament by 27 May 2011.

4.2 The Maintenance Regulation was subject to Parliamentary Scrutiny in 2008, clearing House of Lords scrutiny in October and House of Commons scrutiny in November 2008.

5. Territorial Extent and Application

5.1 Where this instrument (Regulation 2) amends the Magistrates' Courts Act 1980, it applies to England and Wales. Where this instrument amends the Civil Jurisdiction and Judgments Act 1982 (Regulations 3 to 7), it applies to England and Wales and Scotland and Northern Ireland.

6. European Convention on Human Rights

The Lord Chancellor and Secretary of State for Justice has made the following statement regarding Human Rights:

"In my view the provisions of The Civil Jurisdiction and Judgments (Maintenance) (Rules of Court) Regulations 2011 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The Maintenance Regulation, which has direct effect, will apply from 18 June 2011. It aims to provide a quick and simple process for the establishment and reciprocal enforcement of maintenance decisions between EU Member States, to modernise procedures in the light of the increase in international movement of family members across EU borders. Section 2(2) regulations and rules of court are required to enable its operation and need to be in place by 18 June.

7.2 In order to give the rule-making authorities in England and Wales the power to make rules of court coming into force on 18 June without breaching the 21-day rule for the laying of statutory instruments, it is necessary to provide the rule-making power by amendment of primary legislation in this separate statutory instrument so that rules of court can be laid in parallel with the s2(2) regulations, which must be ready to the same timetable. The s2(2) regulations for the Maintenance Regulation are the subject of a limited technical consultation and have not been finalised.

Consolidation

7.3 Not applicable.

8. Consultation outcome

8.1 There has been no consultation on this enabling statutory instrument. The draft rules of court have been, and the draft s2(2) regulations are, the subject of limited technical consultations. The outcome of these consultations will be discussed in the Explanatory Memoranda to be submitted with those statutory instruments.

9. Guidance

9.1 Guidance is not required for this instrument.

10. Impact

10.1 This statutory instrument has no impact on business, charities or voluntary bodies.

10.2 This statutory instrument has no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Monitoring and review will be discussed in the Explanatory Memoranda to be submitted with the rules of court and s2(2) regulations statutory instruments.

13. Contact

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