

**EXPLANATORY MEMORANDUM TO**  
**THE FAMILY PROCEDURE (AMENDMENT) RULES 2011**

**2011 No. No. 1328 (L. 9)**

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 Family Procedure Rules 2010 (SI 2010/2955) (the FPR) 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 rules of court to deal with recognition and enforcement 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 None.

4. **Legislative Context**

4.1 This statutory instrument amends the existing rules of court for the reciprocal enforcement of maintenance obligations contained in the FPR to support the operation of the Maintenance Regulation in England and Wales. Three further instruments are connected because they relate to the application of the Maintenance Regulation:

(a) The Magistrates' Courts (Enforcement or Variation of Orders made in Family Proceedings and Miscellaneous Provisions) Rules 2011 will (in part) make amendments to the Magistrates' Courts Rules 1981 (SI 1981/552) required by reason of application of the Maintenance Regulation. That provision cannot be made by amendment to the FPR because the *vires* (rule-making power) applicable to the FPR do not extend to enforcement in the Magistrates' courts. It is intended that instrument will be laid before Parliament at the same time as this one;

(b) the main changes to domestic law to ensure appropriate application of the Maintenance Regulation in the UK will be brought forward in a separate statutory instrument under s2(2) of the European Communities Act 1972 (s2(2) regulations) covering the whole of the UK;

(c) The Community Legal Service (Financial) (Amendment) Regulations 2011 will deal with legal aid provision in England and Wales in relation to the Maintenance Regulation and are due to be laid before Parliament by 27 May 2011.

4.2 This instrument facilitates the application of Chapter IV of the Maintenance Regulation in particular. Chapter IV deals with recognition and enforcement of decisions from one Member State in another. The amendments to FPR Part 34 contained in this instrument relate primarily to the process by which an order is enforceable under Section 2 of Chapter IV of the Regulation (decisions from a Member State which does not apply applicable law rules under the 2007 Hague Protocol on the Law Applicable to Maintenance). Amendments to the Magistrates' Courts Rules 1981 (see 4.1(a) above) make the necessary changes for the process under Section 1 of Chapter IV (direct enforcement of decisions from Member States which do apply Protocol rules).

4.3 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 This instrument applies to England and Wales.

## **6. European Convention on Human Rights**

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 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.

7.2 Rules of court are required to facilitate the application of the Maintenance Regulation. The Regulation is a directly applicable EU legal requirement and lesser measures, such as guidance, will not bind courts and court users as required to achieve the effects of the Regulation. The Family Procedure Rules 2010 for England and Wales include provision to support the reciprocal enforcement of maintenance obligations across international borders under existing legislation covering both EU and non-EU countries. This provision needs amendment to facilitate proper application of the Maintenance Regulation, in relation to recognition and enforcement of orders from other EU Member States, recognition and enforcement of orders made in England and Wales in other Member States and certain provisions relating to the exercise of jurisdiction by the courts of England and Wales to make orders to which the Maintenance Regulation applies.

7.3 The main areas of amendment are as follows:

(a) amendments to enable an applicant to use Maintenance Regulation standard forms (contained in Annexes to the Regulation) instead of domestic court forms when seeking to establish a maintenance claim (rules 5, 7, 9-11 and 17);

(b) provision to ensure that the information access regime under the Maintenance Regulation cannot be abused by an applicant to establish the whereabouts of a respondent in the guise of serving the application themselves, at a stage in the process

when the existence of a risk of domestic violence has yet to be established (rules 8 and 10);

(c) substitution of existing rule 9.22 of the FPR to clarify the obligation of the court under the international instruments cited when a respondent who is outside the United Kingdom fails to attend a hearing relating to the establishment of a maintenance claim (rule 12);

(d) provision of new rule 9.26A to establish a specific procedure for challenges to the international jurisdiction of the court in maintenance cases (rule 13);

(e) amendment of Part 34 of the FPR (reciprocal enforcement of maintenance orders) to reflect the application of the Maintenance Regulation This includes omission of Part 34 Chapter 2, Section 2, Sub-section 1, dealing with reciprocal enforcement of orders from Ireland (rule 22). This reciprocal enforcement regime between the UK and Ireland is replaced by the Maintenance Regulation.

### ***Consolidation***

7.4 Not applicable.

## **8. Consultation outcome**

8.1 The Family Procedure Rule Committee conducted a limited specialist technical consultation on the draft rules of court, consulting with judiciary and practitioners including interested organisations in the family justice field, between 10 March and 14 April. There was a very small response. These rules of court make limited amendments to the Family Procedure Rules 2010, which were themselves subject to full public consultation between August and December 2006, as required by section 79 of the Courts Act 2003.

8.2 The rules to disapply certain domestic procedures dealing with forms to be used for financial statements were improved and expanded as a result of consultation responses.

## **9. Guidance**

9.1 Information will be provided for court staff on the rules of court. The annexes to the Maintenance Regulation which are application forms required by members of the public will be made available to court users from the HM Courts and Tribunals Service (HMCTS) website in time for the implementation of the Regulation.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is slight. The business sector of legal practitioners may experience a limited impact. In the small number of reciprocal enforcement of maintenance orders cases which involve lawyers, law firms and practitioners will need to be aware of the changes to procedure. As stated in the Impact Assessment to be attached to the memorandum to the s2(2) regulations statutory instrument, qualitative evidence from court staff is that solicitors are not often involved in reciprocal enforcement of maintenance cases in the magistrates' courts (where the overwhelming majority of these cases are heard).

10.2 The impact on the public sector is on the courts and HMCTS which will be required to apply these rules.

10.3 An Impact Assessment has not been prepared specifically for this statutory instrument. An Impact Assessment will be attached to the memorandum to the s2(2) regulations statutory instrument.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 As with all EU legislation, the Maintenance Regulation itself provides for a review. Article 74 of the Maintenance Regulation provides that the EU Commission must produce a report by five years from 18 June 2011 including an evaluation of the practical experience of Central Authorities, the administrative bodies in Member States responsible for operating the Regulation. If necessary the review can lead to legislative change at EU level.

12.2 As part of its review process, the EU Commission plans to hold regular meetings with officials from EU Member States to review the operation of the Maintenance Regulation, under the auspices of the European Judicial Network in Civil and Commercial Matters (Civil EJM). The first meeting is due to take place in September 2011. It is expected that meetings will thereafter be not less than 18 months apart.

12.3 As part of the implementation of the Maintenance Regulation in England and Wales operational procedures will be put in place to collect monitoring information for the policy review, including the number and nature of cases under the Regulation.

## **13. Contact**

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