

EXPLANATORY MEMORANDUM TO
THE INTERNATIONAL RECOVERY OF MAINTENANCE (HAGUE CONVENTION
2007) (RULES OF COURT) REGULATIONS 2012

2012 No. 1770

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 the 2007 Hague Convention on the International Recovery of Child Support and other forms of Family Maintenance (the 2007 Convention).

2.2 The amendments include provision to enable rules of court to be made to deal with recognition and enforcement of court decisions, authentic instruments and maintenance arrangements sent to England and Wales under the 2007 Convention. The Convention will apply in the UK on the first of the month after three complete months after the date the European Union concludes the Convention.

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

3.1 The main changes to the law of England and Wales necessary to ensure appropriate application of the 2007 Hague Convention will be brought forward at a later date in a separate statutory instrument under s2(2) of the European Communities Act 1972 in s2(2) Regulations covering the whole of the UK. The Scotland and Northern Ireland Devolved Administrations will bring forward their own legislation for this instrument, although the s2(2) Regulations to be laid by the Ministry of Justice will, by agreement, include amendments where the primary legislation applies to 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 2007 Convention 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 Convention are due to be brought before Parliament in the autumn of 2012.

4.2 The Proposal for a Council Decision on the conclusion by the European Community of the 2007 Convention was subject to Parliamentary Scrutiny in 2009, clearing House of Commons scrutiny in November and House of Lords scrutiny in December 2009.

5. Territorial Extent and Application

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

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 International Recovery of Maintenance (Hague Convention 2007) (Rules of Court) Regulations 2012 are compatible with the Convention rights.

7. Policy background

- *What is being done and why*

7.1 The 2007 Convention, which has direct effect, will apply from the first of the month three complete months after the date the European Union concludes the Convention on behalf of the Union. (The Convention provides for the European Union to do this, as a Regional Economic Integration Organisation.) The Convention is intended to provide a simpler, quicker and more efficient global system for the reciprocal enforcement of family maintenance and will replace two earlier Hague and UN Conventions for those Contracting States which are using the 2007 Convention for the same matters. EU Member States will use the 2007 Convention with non-EU Contracting States only, since Council Regulation (EC) No 4/2009 comprehensively governs this subject between EU Member States. Section 2(2) Regulations and rules of court are required to facilitate the operation of the 2007 Convention.

7.2 In order to give the rule-making authorities in England and Wales the power to make rules of court in the autumn of 2012, it is necessary to provide the rule-making power by the 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.

- ***Consolidation***

7.3 Not applicable.

8. Consultation outcome

8.1 There has been no consultation on this enabling statutory instrument. The draft s2(2) Regulations will be the subject of a limited technical consultation. The rule-making authorities may decide to conduct a limited consultation on the draft rules of court. The outcome of such 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

Miss G BAILEY at the Ministry of Justice Tel: 020 3334 3200 or email:
gay.bailey@justice.gsi.gov.uk can answer any queries regarding the instrument.