

EXPLANATORY MEMORANDUM TO
THE MAGISTRATES' COURTS (ENFORCEMENT OR VARIATION OF ORDERS
MADE IN FAMILY PROCEEDINGS AND MISCELLANEOUS PROVISIONS)
RULES 2011

2011 No. 1329 (L.10)

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

2. Purpose of the instrument

2.1 The Magistrates' Courts (Enforcement or Variation of Orders Made in Family Proceedings and Miscellaneous Provisions) Rules 2011 ("the Rules"):

- consolidate a number of separate provisions in court rules dealing with the enforcement of maintenance orders in the magistrates' court;
- apply the Family Procedure Rules 2010 ("the FPR"), sometimes with modifications, to various proceedings in the magistrates' courts, for example in relation to the variation of maintenance orders and the enforcement of orders relating to contact with children;
- make freestanding provision in respect of certain other applications in the magistrates' courts, for example, the enforcement of residence orders with respect to children;
- amend the Magistrates' Courts Rules 1981 to reflect the application of the Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations ("the EU Maintenance Regulation") from 18 June 2011.

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

3.1 None.

4. Legislative Context

4.1 Maintenance orders, orders relating to contact with and residence of children, and non-molestation orders and occupation orders under the Family Law Act 1996 are made in "family proceedings" (as defined in section 65 of the Magistrates' Courts Act 1980) in the magistrates' court. This being the case, provision for the procedure to be followed in respect of the making such orders is made in the FPR (which can relate only to the practice and procedure of the courts in "family proceedings"). However, proceedings for enforcement and variation of these orders in the magistrates' court are not within the definition of "family proceedings" in section 65, so provision cannot be made in the FPR for the procedure to be followed in such cases. Hence, this provision is being made in these separate Rules.

4.2 The court rules for variation and enforcement of these orders in the magistrates' court are currently contained in a number of Statutory Instruments and the Rules are intended to bring these together, so that rules for these types of proceedings will only be found in the Rules and the Magistrates' Courts Rules 1981. Where appropriate the approach taken in the Rules is in line with the FPR, so that the same procedures will apply in the magistrates' courts as in the High Court or county courts. In respect of the registration and enforcement of maintenance orders, the Rules consolidate and update the current rules.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

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

- What is being done and why

7.1 Currently the provisions for variation and enforcement of orders made in family proceedings in the magistrates' courts are contained in various separate sets of Rules, including:

Maintenance Orders Act 1950 (Summary Jurisdiction) Rules 1950;
Magistrates' Courts (Maintenance Orders Act 1958) Rules 1959;
Magistrates' Courts (Recovery Abroad of Maintenance) Rules 1975;
Magistrates' Courts (Enforcement of Children Act 1989 Contact Orders) Rules 2008.

In addition, specific provision on some matters is included within the:
Family Proceedings Courts (Matrimonial Proceedings etc) Rules 1991;
Family Proceedings Courts (Children Act 1989) Rules 1991.

7.2 The Rules bring these separate provisions into one Statutory Instrument. Where appropriate, these Rules apply the approach taken in the FPR. The intention is that this consolidation will make it easier for courts to deal with applications, and will assist applicants by reducing the number of separate statutory instruments which they have to consider.

7.3 The Rules also contain the Forms which are required to be prescribed in the Rules by the underlying primary legislation. In line with the policy approach embodied in the FPR, the forms required for completion by court users which do not have to be prescribed by Rules are listed in a Practice Direction made by the Lord Chief Justice supplementing the Rules. A copy of the Practice Direction is attached for

- 7.4 The Rules contain amendments to the Magistrates' Courts Rules 1981 to reflect the application from 18 June 2011 of the EU Maintenance Regulation.
- 7.5 A further Practice Direction (also made by the Lord Chief Justice) provides guidance on how the courts will be applying the transitional provisions in relation to those Rules which apply the FPR. A copy of this Transitional Provision Practice Direction is attached for information.

8. Consultation outcome

- 8.1 As required by section 79 of the Courts Act 2003, the Family Procedure Rule Committee carried out a public consultation on the policy behind the FPR from August to December 2006. A total of 45 responses were received to this consultation and a summary of the responses was published in February 2008. Overall, the majority of specific proposals were supported.
- 8.2 The extent of support varied according to the area, for example the strongest level of support lay in the proposed changes to the process and route of appeal.
- 8.3 The consultation and the summary of responses can be found at the following link:
<http://www.justice.gov.uk/consultations/cp1906.htm>
- 8.4 The Family Procedure Rule Committee carried out a further public consultation on the text of the draft FPR between 28 November 2008 and 27 February 2009. The Committee then considered all the comments on specific rules and amended the draft Rules as appropriate. The consultation paper can be found at the following link:
<http://www.justice.gov.uk/news/announcement281108a.htm>
- 8.5 The Government has not carried out a separate public consultation on the changes included in these Rules as they merely consolidate existing provisions in line with the policy objective of the FPR, which has already been subject to public consultation.

Whilst the Rules are made by the Lord Chief Justice, the Family Procedure Rule Committee has been consulted in relation to the Rules. In particular, members of the Committee with expertise in the magistrates' courts have been consulted throughout the drafting process and their views are reflected in the Rules. For example, the case management provisions in Part 2 of the Rules were included as a consequence of consultation with the members of the Family Procedure Rule Committee.

In addition, in accordance with section 144 of the Magistrates' Courts Act 1980, the Magistrates' courts Rule Committee has been consulted in relation to the draft Rules.

- Consolidation

8.6 The Rules consolidate provisions from a number of current sets of rules into one set of Rules.

9. Guidance

9.1 Guidance will be provided for court staff on the Rules. The application forms which members of the public will require will be made available to court users from the HMCTS website in time for the implementation of the Rules.

10. Impact

10.1 The impact on business, charities or voluntary bodies is not expected to be significant as the Rules do not create additional cases and merely consolidate the procedures for a range of existing applications. Hopefully the consolidation of these provisions will assist applicants and make it easier for cases to be taken forward.

10.2 The impact on the public sector is also not expected to be significant as the Rules will not mean additional cases will be taken to the magistrates' court, as the Rules merely state the procedure applicable when proceedings are commenced.

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

11. Regulating small business

11.1 The legislation applies to small business in so far as such businesses may be involved in family cases, principally firms of solicitors representing people involved in cases in the magistrates' court.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to publish with free access via the Ministry of Justice website the Rules and the court forms required to enable people to take forward applications.

11.3 The basis for the final decision on what action to take to assist small business is that the Rules only state the procedure to be used in existing types of applications and do not create new causes of action or restrict the availability of existing ones.

12. Monitoring & review

12.1 The operation of the Rules will be reviewed with the general operation of provisions for orders made in family proceedings in the magistrates' court.

13. Contact

Philip Dear at the Ministry of Justice Tel: 020 3334 3125 or email:
philip.dear@justice.gsi.gov.uk can answer any queries regarding the instrument.

Annex

PRACTICE DIRECTION

This Practice Direction supplementing the Magistrates' Courts (Enforcement or Variation of Orders Made in Family Proceedings and Miscellaneous Provisions) Rules 2011 is made by the Lord Chief Justice, and is approved by the Parliamentary Under Secretary of State, by authority of the Lord Chancellor.

This Practice Direction comes into force on 18th June 2011.

This Practice Direction lists the forms to be used in proceedings to which the Magistrates' Courts (Enforcement or Variation of Orders Made in Family Proceedings and Miscellaneous Provisions) Rules 2011 (“the 2011 Rules”) apply, on or after 18th June 2011. Table 1 lists the forms against the rule in the 2011 Rules to which they are relevant, and Table 2 lists the forms individually with their description.

The forms may be –

- (a) modified as the circumstances require, provided that all essential information, especially information or guidance which the form gives to the recipient, is included;
- (b) expanded to include additional pages where that may be necessary, provided that any additional pages are verified by a statement of truth.

Table 1

Provision in the 2011 Rules	Form
Rule 48(2)(b)	MC10
Rule 48(3)	MC 10
Rule 48(6)	MC 11
Rule 57(2)	A2
Rule 63(2)	A2

Table 2

Form number	Description
MC 10	Application requesting that a warrant should not be issued – section 18(1) Maintenance Orders Act 1958
MC 11	Application requesting that warrant should be cancelled – section 18(4) Maintenance Orders Act 1958
A2	Answer to an application under section 27B of the Maintenance Orders (Reciprocal Enforcement) Act 1972

A2	Application under section 34 of the Maintenance Orders (Reciprocal Enforcement) Act 1972
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Dated: 27th May 2011

Lord Judge, C.J.
Lord Judge
Lord Chief Justice

J Djanogly
J Djanogly
Parliamentary Under Secretary of State by authority of the Lord Chancellor

THE TRANSITIONAL PROVISIONS PRACTICE DIRECTION

This Practice Direction supplementing rule 83 of the Magistrates' Courts (Enforcement or Variation of Orders Made in Family Proceedings and Miscellaneous Provisions) Rules 2011 ("the Rules") is made by the Lord Chief Justice, and is approved by the Parliamentary Under Secretary of State, by authority of the Lord Chancellor and comes into force on 18th June 2011.

Content of this Practice Direction

- 1.1 This Practice Direction gives guidance about the application of rule 83 of the Rules. Rule 83 deals with the application of rules 50 to 53, 69, 71, 74 to 76, 78 and 80 of the Rules ("the new rules") to proceedings to which those rules apply which have been started but have not been concluded by 18th June 2011 ("existing proceedings").
- 1.2 In this Practice Direction "the rules in force immediately before 18th June 2011" means, as appropriate —
- the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) Rules 1974;
 - Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) Republic of Ireland) Rules 1975;
 - the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Hague Convention Countries) Rules 1980;
 - the Magistrates' Courts (Civil Jurisdiction and Judgments Act 1982) Rules 1986;
 - the Magistrates' Courts (Family Law Act 1986) Rules 1988;
 - the Family Proceedings Courts (Children Act 1989) Rules 1991;
 - the Family Proceedings Courts (Matrimonial Proceedings etc.) Rules 1991;
 - the Magistrates' Courts (Costs Against Legal Representatives in Civil Proceedings) Rules 1991;
 - the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (United States of America) Rules 1995 (subject to the saving in Schedule 5 of the Rules);
 - the Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999; and
 - the Magistrates' Courts (Enforcement of Children Act 1989 Contact Orders) Rules 2008
- as in force immediately before 18th June 2011.

General transitional arrangements

2.1 Rule 83 of the Rules provides that the new rules shall apply, so far as practicable, to existing proceedings. Where this is not practicable, the rules in force immediately before 18th June 2011 are to apply to such proceedings.

Where the rules in force immediately before 18th June 2011 will normally apply

General principle

3.1 Where an initiating step has been taken in a case before 18th June 2011, in particular a step using forms or other documentation required by the rules in force immediately before 18th June 2011, the case will proceed in the first instance under those rules. Where a party must take a step in response to something done by another party in accordance with the rules in force immediately before 18th June 2011, that step must also be in accordance with those rules.

Pre-commencement order inconsistent with the new rules

3.2 Where a court order has been made before 18th June 2011, that order must still be complied with on or after that date.

Steps taken before commencement

3.3 Where a party has, before 18th June 2011, taken any step in the proceedings in accordance with the rules in force immediately before 18th June 2011, that step will remain valid on or after that date, and a party will not normally be required to take any action that would amount to taking such a step again under the new rules.

Where the new rules will normally apply

General principle

4.1 Where a new step is to be taken in any existing proceedings on or after 18th June 2011, it is to be taken under the new rules.

Part 1 (Overriding objective) to apply

4.2 The Overriding Objective in Part 1 of the Family Procedure Rules 2010 (the FPR) which is applied by the new rules will apply to all existing proceedings from 18th June 2011 onwards.

Issuing of application forms after the new rules come into force

4.3 (1) The general rule is that—

- (a) only application forms under the new rules will be issued by the court on or after 18th June 2011; and
 - (b) if a request to issue an old type of form is received at the court on or after 18th June 2011, it will be returned unissued.
- (2) By way of exception to the general rule, the court may in cases of urgency direct that the form or process is to be issued as if the request to issue it had been a request to issue an application form under the new rules and, if it does so, the court may make such supplementary directions as it considers appropriate.
 - (3) In this paragraph “application form” includes a “complaint”.

First time before a court on or after 18th June 2011

- 4.4 (1) When proceedings come before a court (whether at a hearing or on paper) for the first time on or after 18th June 2011, the court may direct how the new rules are to apply to the proceedings and may disapply certain provisions of the new rules. The court may also give case management directions.
- (2) The general presumption will be that the new rules will apply to the proceedings from then on unless the court directs or this practice direction provides otherwise.
- (3) If an application has been issued before 18th June 2011 and the hearing of the application has been set on or after that date, the general presumption is that the application will be decided having regard to the new rules.
- (4) When the first occasion on which existing proceedings are before a court on or after 18th June 2011 is a hearing of a substantive issue, the general presumption is that the hearing will be conducted according to the new rules.

Costs

4.5 Subject to section 64 of the Magistrates’ Courts Act 1980 -

- (1) Any assessment of costs that takes place on or after 18th June 2011 will be in accordance with the new rules which apply FPR Part 28 and the provisions of the Civil Procedure Rules as applied by that Part.
- (2) The decision as to whether to allow costs for work undertaken on or after 18th June 2011 will generally be taken in accordance with the new rules (FPR Part 28 and the provisions of the Civil Procedure Rules as applied by that Part.)

Dated: 27th May 2011

Lord Judge, C.J.
Lord Judge
Lord Chief Justice

J Djanogly
J Djanogly
Parliamentary Under Secretary of State by authority of the Lord Chancellor