

EXPLANATORY MEMORANDUM TO
THE FAMILY PROCEDURE (AMENDMENT NO. 4) RULES 2012

2012 No. 2806 (L. 10)

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 rules of court to enable the operation of the 2007 Hague Convention on the International Recovery of Child Support and other forms of Family Maintenance (the 2007 Convention), which facilitates the acquisition and enforcement of family maintenance with an international element. It implements the European Union (EU) confirmation that Member States should use the standard forms prepared by the Permanent Bureau of the Hague Conference on Private International Law for applications under the 2007 Convention by making the necessary changes to procedure in the courts of England and Wales. The rules also provide for an applicant from abroad to be deemed to have requested the issue of proceedings by their application through the Central Authority (the administrative body responsible for processing cases under the 2007 Convention). It amends the existing rules on the enforcement of overseas maintenance decisions in Family Procedure Rules (FPR) 2010 to apply them to enforcement of maintenance under the 2007 Convention and also makes further amendments relating to the Council Regulation (EC) No 4/2009 (the Maintenance Regulation).

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

3.1 Rules 6, 9, 11, 13, 15 and 30 also include further provision for the operation of the Maintenance Regulation, in line with that for the 2007 Convention. As the Maintenance Regulation is already in force, it is appropriate that these rules should be brought into force promptly. The rules applying to the 2007 Hague Convention do not need to operate until the Convention itself is in force. The date from which these rules will operate will follow from the date the EU concludes the Convention. The date of conclusion has not yet been decided. As the rules listed apply to both the Maintenance Regulation and the 2007 Convention, it has been decided to bring them into force after 40 days. The rules will therefore be in force from 20 December 2012 and those applying to the 2007 Convention will lie dormant until the Convention is in force.

4. Legislative Context

4.1 The Proposal for a Council Decision on the conclusion by the European Community of the 2007 Convention provides for the European Union to conclude the Convention on behalf of Member States, thereby binding them to comply with the Convention. This Decision was subject to Parliamentary Scrutiny in 2009, clearing House of Commons scrutiny in November and House of Lords scrutiny in December 2009.

4.2 Statutory Instrument 2012/1770, The International Recovery of Maintenance (Hague Convention 2007) (Rules of Court) Regulations 2012 provided the power for the Family Procedure Rule Committee to make this statutory instrument. The statutory instrument submitted to Parliament with this one, The International Recovery of Maintenance (Hague Convention 2007 etc.) Regulations 2012 consists of Regulations under section 2(2) of the European Communities Act 1972 to facilitate the operation of the 2007 Convention.

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 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 This statutory instrument makes the necessary provision in rules of court to enable the operation of the 2007 Convention in England and Wales.

- Consolidation

7.3 Not applicable.

8. Consultation outcome

8.1 The draft statutory instrument was the subject of a limited specialist technical consultation. The form of statement of financial circumstances in domestic financial provision proceedings requires confirmation by a statement of truth. The Hague Conference form for the 2007 Convention does not require such a declaration. Respondents to the consultation supported the proposal that the court should be able subsequently to require the applicant to confirm the information in a 2007 Convention Financial Circumstances form by a statement of truth. This was later agreed by the Family Procedure Rule Committee. The Government intends to ask the Hague Conference to consider including verification by a statement of truth in forms relating to individuals' financial circumstances in future.

9. Guidance

9.1 Separate guidance will be prepared for the assistance of members of the public and of the legal profession in England and Wales. The Permanent Bureau of the Hague Conference is preparing guidance for the use of Central Authorities which will also be publicly available.

10. Impact

10.1 There will be a small impact on business; solicitors and barristers will need to be aware of the new legislation and will need to know how to apply it as for any other legislation, in particular as regards establishment and modification of decisions, to the limited extent that practitioners are involved in the reciprocal enforcement of maintenance orders.

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

10.3 An Impact Assessment is attached to the accompanying statutory instrument containing the s2(2) Regulations (see 4.2 above) and will be published alongside that instrument's Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation does not apply to small business other than as set out at 10.1 above.

12. Monitoring & review

12.1 This statutory instrument inserts rules of court into FPR 2010. FPR 2010 are subject to continuous review by the Family Procedure Rule Committee in the light

of experience. The Convention itself is subject to review by the Hague Conference on Private International Law and by the European Union.

13. Contact

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