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STATUTORY INSTRUMENTS

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**2013 No. 3204**

**The Family Procedure (Amendment No.3) Rules 2013**

**Amendments to the Family Procedure Rules 2010**

124. After rule 34.28, insert—

*“SECTION 3*

*Proceedings in a Hague Convention Country or in the United States of America*

**Notification of proceedings in a Hague Convention Country or in the United States of America**

**34.28ZA.** Practice Direction 34E applies where the court officer receives from the Lord Chancellor notice of the institution of proceedings, including notice of the substance of a claim, in a Hague Convention Country or in the United States of America in relation to the making, variation or revocation of a maintenance order.

*SECTION 4*

*Reciprocal enforcement of claims for the recovery of maintenance*

**Interpretation**

**34.28ZB.** In this Section—

“convention country” means a country or territory specified in an Order in Council made under section 25 of the 1972 Act; and  
an expression defined in the 1972 Act has the meaning given to it in that Act.

**Dismissal of an application under section 27A of the 1972 Act or application for variation**

**34.28ZC.**—(1) Where the family court dismisses an application under—

- (a) section 27A of the 1972 Act (application for recovery of maintenance); or
- (b) an application by a person in a convention country for the variation of a registered order,

the court officer will send a written notice of the court’s decision to the Lord Chancellor.

- (2) The notice will include a statement of the court’s reasons for its decision.

### **Application for recovery of maintenance in England and Wales: section 27B of the 1972 Act**

**34.28ZD.**—(1) Where the family court receives an application for the recovery of maintenance sent from the Lord Chancellor under section 27B of the 1972 Act, the court will—

- (a) fix the date, time and place for a hearing or directions appointment, allowing sufficient time for service under this rule to be effected at least 21 days before the date fixed; and
- (b) serve copies of the application and any accompanying documents, together with a notice stating the date, time and place so fixed, on the respondent.

(2) Within 14 days of service under this rule, the respondent must file an answer to the application in the form referred to in Practice Direction 5A.

### **Application under section 26(1) or (2) of the 1972 Act and certificate under section 26(3A) of the 1972 Act: registration**

**34.28ZE.** Where—

- (a) an application under section 26(1) or (2) of the 1972 Act; or
- (b) a certificate under section 26(3A) of the 1972 Act,

is required to be registered in the family court by virtue of the Recovery of Maintenance (United States of America) Order 2007, the court officer will enter a minute or memorandum of the application or certificate in the register.

### **Registration of an order: sections 27C(7) and 32(3) and (6) of the 1972 Act**

**34.28ZF.**—(1) Where the family court makes an order which is required under section 27C(7) of the 1972 Act to be registered, the court officer will enter a minute or memorandum of the order in the register.

(2) Where a court officer receives under section 32(3) of the 1972 Act a certified copy of an order, the court officer will register the order by means of a minute or memorandum in the register.

(3) Every minute or memorandum entered under paragraph (1) or (2) will specify the section and subsection of the 1972 Act under which the order in question is registered.

(4) Where a court officer registers an order as required by section 27C(7) or 32(3) of the 1972 Act, the court officer will send written notice to the Lord Chancellor that the order has been registered.

(5) Where a court officer is required by section 32(6) of the 1972 Act to give notice of the registration of an order, the court officer will do this by sending written notice to the officer specified in that subsection that the order has been registered.

### **Payments made to the family court**

**34.28ZG.**—(1) Where payments are made to the family court by virtue of section 27C or 34A of the 1972 Act, the court officer will send those payments by post to such person or authority as the Lord Chancellor may from time to time direct.

(2) Subject to paragraph (3), if it appears to a court officer that any sums payable under a registered order are in arrears, the officer may proceed in the officer's own name for the recovery of those sums.

(3) Where it appears to the officer that sums payable under the order are in arrears to an amount equal—

- (a) in the case of payments to be made monthly or less frequently, to twice the sum payable periodically; or
- (b) in any other case, to four times the sum payable periodically,

the officer will proceed in the officer's own name for the recovery of those sums, unless it appears to the officer that it is unreasonable in the circumstances to do so.

#### **Method of payment**

**34.28ZH.**—(1) This rule applies where the family court exercises its duties or powers under section 27C or 34A of the 1972 Act.

(2) Where the court orders that payments under the order are to be made by a particular means—

- (a) the court will record on the copy of the order the means of payment that the court has ordered; and
- (b) the court officer will, as soon as practicable, notify, in writing, the person liable to make the payments under the order how payments are to be made.

(3) Paragraph (4) applies where the court orders that payments be made to the court by a method of payment falling within section 1(5) of the Maintenance Enforcement Act 1991.

(4) The court officer will notify the person liable to make the payments under the order of sufficient details of the account into which the payments should be made to enable payments to be made into that account.

#### **Application under section 34 of the 1972 Act: variation or revocation**

**34.28ZI.**—(1) This rule applies in relation to an application under section 34 of the 1972 Act for the variation or revocation of a registered order.

(2) An application which is made directly to the registering court must be filed in the form referred to in Practice Direction 5A.

(3) Where the court receives an application, either filed in accordance with paragraph (2) or sent from the Lord Chancellor under section 34(3) of the 1972 Act—

- (a) the court will set the date, time and place for a hearing or directions appointment; and
- (b) the court officer will notify the applicant of the date, time and place.

#### **Application under section 35 of the 1972 Act: variation or revocation**

**34.28ZJ.**—(1) This rule applies in relation to an application under section 35 of the 1972 Act for the variation or revocation of a registered order.

(2) Notice under section 35(3)(b) of the 1972 Act of the time and place appointed for the hearing of the application will be in the form specified in Practice Direction 34D.

(3) The court officer will send the notice by post to the Lord Chancellor for onward transmission to the appropriate authority in the convention country in which the respondent is residing.

(4) The time appointed for the hearing of the application will not be less than six weeks later than the date on which the notice is sent to the Lord Chancellor.

### **Request under section 38(1) of the 1972 Act to the family court**

**34.28ZK.**—(1) This rule applies where the family court receives from the Lord Chancellor a request under section 38(1) of the 1972 Act (taking evidence at the request of a court in a convention country) to take the evidence of any person.

(2) Subject to paragraph (3)—

- (a) the evidence will be taken in the same manner as if the person concerned were a witness in family proceedings;
- (b) any oral evidence so taken will be put into writing and read to the person who gave it, who must sign the document; and
- (c) the judge who takes any such evidence of any person will certify at the foot of the document setting out the evidence of, or produced in evidence by, that person that such evidence was taken, or document received in evidence, as the case may be, by that judge.

(3) Where the request referred to in section 38(2) of the 1972 Act includes a request that the evidence be taken in a particular manner, the court by which the evidence is taken will, so far as circumstances permit, comply with that request.

### **Request under section 38(1) of the 1972 Act to the officer of the court**

**34.28ZL.**—(1) This rule applies where an officer of the court receives from the Lord Chancellor a request under section 38(1) of the 1972 Act to take the evidence of any person.

(2) Subject to paragraph (3)—

- (a) the person whose evidence is to be taken will be examined on oath by or before a justices' clerk or any other court officer determined by the Lord Chancellor;
- (b) any oral evidence will be put into writing and read to the person who gave it, who must sign the document; and
- (c) the justices' clerk or other officer will certify at the foot of the document setting out the evidence of, or produced by, that person, that such evidence was taken, or document received in evidence, as the case may be, by that justices' clerk or other officer.

(3) Where the request referred to in section 38(1) of the 1972 Act includes a request that the evidence be taken in a particular manner, the justices' clerk or other officer by whom the evidence is taken will, so far as circumstances permit, comply with that request.

(4) For the purposes of this rule, the justices' clerk or other officer has the same power to administer oaths as a single justice of the peace.

### **Onward transmission of documents**

**34.28ZM.** Any document mentioned in rule 34.28ZK(2)(c) or rule 34.28ZL(2)(c) will be sent to the Lord Chancellor for onward transmission to the appropriate authority in the convention country in which the request referred to in section 38(1) of the 1972 Act originated.”