

2011 No. 1328 (L. 9)

FAMILY PROCEEDINGS

SENIOR COURTS OF ENGLAND AND WALES

COUNTY COURTS, ENGLAND AND WALES

MAGISTRATES' COURTS, ENGLAND AND WALES

The Family Procedure (Amendment) Rules 2011

<i>Made</i> - - - -	<i>27th May 2011</i>
<i>Laid before Parliament</i>	<i>27th May 2011</i>
<i>Coming into force</i> - -	<i>18th June 2011</i>

The Family Procedure Rule Committee makes the following rules in exercise of the powers conferred by sections 75 and 76 of the Courts Act 2003(a) and section 48 of the Civil Jurisdiction and Judgments Act 1982(b), after consulting in accordance with section 79 of the Courts Act 2003(c).

Citation and commencement

1. These rules may be cited as The Family Procedure (Amendment) Rules 2011 and shall come into force on 18th June 2011.

Amendments to the Family Procedure Rules 2010

2. The Family Procedure Rules 2010(d) are amended in accordance with rules 4 to 37 of these rules.

3. In these Rules, a reference to a Part, Chapter, Section or rule by number alone means the Part, Chapter, Section or rule so numbered in the Family Procedure Rules 2010.

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- (a) 2003 c.39. Section 75 was amended by section 15(1) and 146 of and paragraphs 308 and 338 of Schedule 4 and Part 2 of Schedule 18 to the Constitutional Reform Act 2005 (c.4). Section 76 was amended by section 12(2) of and paragraph 29 of Schedule 1 to the Constitutional Reform Act 2005 and section 261(1) of and paragraph 172 of Schedule 27 to the Civil Partnership Act 2004 (c.33) and section 62(7) of the Children Act 2004 (c.31) and section 25 of and paragraph 14 of Schedule 3 to the Children, Schools and Families Act 2010 (c.26).
- (b) 1982 c.27. Section 48 was amended by section 3 of, and paragraph 23 of Schedule 2 to, the Civil Jurisdiction and Judgments Act 1991 (c.12) and Article 4 and paragraph 17 of Schedule 2 to the Civil Jurisdiction and Judgments Order 2001 (S.I. 2001/3929) and regulation 5 of the Civil Jurisdiction and Judgments (Maintenance) (Rules of Court) Regulations 2011 (S.I.2011/1215). Regulation 7 of the 2011 Regulations applies section 48 to authentic instruments and court settlements.
- (c) Section 79 was amended by sections 15(1) and 146 of and paragraphs 308 and 341 of Schedule 4 and Part 2 of Schedule 18 to the Constitutional Reform Act 2005.
- (d) S.I. 2010/2955.

4. In rule 2.3(1)—

(a) after “In these rules—” insert—

““the 1958 Act” means the Maintenance Orders Act 1958(a);”;

(b) after the definition of “litigation friend”, insert—

““the Maintenance Regulation” means Council Regulation (EC) No 4/2009(b) of 18th December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and co-operation in matters relating to maintenance obligations, including as applied in relation to Denmark by virtue of the Agreement(c) made on 19th October 2005 between the European Community and the Kingdom of Denmark;”.

5. In rule 5.1, after paragraph (4) insert—

“(5) Paragraph (2) does not apply to the forms annexed to the Maintenance Regulation.”.

6. In rule 6.44, after paragraph (3) insert—

“(4) In addition to the documents referred to in paragraph (2), the applicant may file a photograph of the person to be served if the applicant considers that it would assist in ensuring effective service.”.

7. In rule 9.3, after paragraph (2) insert—

“(3) (a) Where an application is made under Article 56 of, and using the form in Annex VII to, the Maintenance Regulation, references in this Part to “financial statement” apply to the applicant as if for the words “financial statement” were substituted “the form in Annex VII to the Maintenance Regulation”;

(b) Sub-paragraph (a) does not apply where the relief sought includes relief which is of a type to which the Maintenance Regulation does not apply.”.

8. In rule 9.12, after paragraph (3) insert—

“(4) In relation to an application to which the Maintenance Regulation applies, where the applicant does not already know the address of the respondent at the time the application is issued, paragraph (2) does not apply and the court will serve the application in accordance with paragraph (1).”.

9. After rule 9.14(2) insert—

“(2A) Where the application is made under Article 56 of, using the form in Annex VII to, the Maintenance Regulation, and the relief sought is limited to relief of a type to which that Regulation applies, the requirement of paragraph (2)(a) relating to verification by affidavit does not apply.”.

10. In rule 9.18, after paragraph (3) insert—

“(4) The requirement at paragraph (1)(b)(iii) that the court officer sends a blank financial statement to the applicant does not apply where the application has been made under Article 56 of, and using the form in Annex VII to, the Maintenance Regulation.

(5) In relation to an application to which the Maintenance Regulation applies, where the applicant does not already know the address of the respondent at the time the application is issued, paragraph (2) does not apply and the court will serve the application in accordance with paragraph (1).”.

11. After rule 9.19(2), insert—

“(2A) Where the application is made under Article 56 of, and using the form in Annex VII to, the Maintenance Regulation the requirement of paragraph (2)(a) relating to verification by affidavit does not apply.”.

(a) 1958 c.39.

(b) OJ No. L7, 10.1.2009 p.1-79.

(c) OJ No. L 299, 16.11.2005 p.61.

12. For rule 9.22 (Proceedings by or against a person outside England and Wales for orders under section 20 of the 1978 Act or paragraphs 30 to 34 of Schedule 6 to the 2004 Act other than proceedings for variation of orders), substitute—

“Application in a magistrates’ court for a maintenance order, or revocation of a maintenance order to which the 1982 Act, the Lugano Convention, the 1988 Convention or the Maintenance Regulation applies

9.22—(1) This rule applies where a person makes an application to a magistrates’ court for a maintenance order, or for the revocation of a maintenance order, in relation to which the court has jurisdiction by virtue of the 1982 Act, the Lugano Convention, the 1988 Convention or the Maintenance Regulation, and the respondent is outside the United Kingdom.

(2) Where the respondent does not enter an appearance and is not represented at the hearing—

- (a) the court will apply the provisions of Article 20 of the 1968 Convention, Article 20 of the 1988 Convention, Article 26 of the Lugano Convention, or Article 11 of the Maintenance Regulation as appropriate;
- (b) where the court proceeds to hear the application having applied the appropriate provision referred to in sub-paragraph (a), the court will take into account any written representations made and any evidence given by the respondent under these rules.

(3) This rule does not apply in relation to proceedings to vary a maintenance order.

(4) In this rule—

- (a) “the 1982 Act”, “the Lugano Convention” and “the 1988 Convention” have the meanings given to them in rule 34.1(2);
- (b) “the 1968 Convention” has the meaning given to it in the Civil Jurisdiction and Judgments Act 1982.

(Rules made under section 144 of the Magistrates’ Courts Act 1980(a) make provision for applications to vary maintenance orders made in magistrates’ courts.)”.

13. After rule 9.26, insert—

“Questions as to the court’s jurisdiction or whether the proceedings should be stayed

9.26A.—(1) This rule applies to applications for maintenance where a question as to jurisdiction arises under—

- (a) the 1968 Convention;
- (b) the 1988 Convention;
- (c) the Lugano Convention; or
- (d) the Maintenance Regulation.

(2) If at any time after the issue of the application it appears to the court that it does not or may not have jurisdiction to hear an application, or that under the instruments referred to in paragraph (1) it is or may be required to stay the proceedings or to decline jurisdiction, the court must—

- (a) stay the proceedings, and

(a) 1980 c.43. Section 144 was amended by section 125(3) of, and paragraph 25 of Schedule 18 to, the Courts and Legal Services Act 1990 (c.41), section 109(1) of, paragraph 245(1) and (2) of Schedule 8, and Schedule 10 to the Courts Act 2003 (c.39), sections 15(1) and 59(5) of, and paragraphs 99 and 102 of Schedule 4, and paragraph 4(1) and (3) of Schedule 11 to the Constitutional Reform Act 2005, and section 208(1) of, and paragraphs 42 and 43(a) of Schedule 21 to, the Legal Services Act 2007 (c. 29).

- (b) fix a date for a hearing to determine jurisdiction or whether there should be a stay or other order.
- (3) The court officer will serve notice of the hearing referred to at paragraph (2)(b) on the parties to the proceedings.
- (4) The court must, in writing—
 - (a) give reasons for its decision under paragraph (2), and
 - (b) where it makes a finding of fact, state such finding.
- (5) The court may with the consent of all the parties deal with any question as to the jurisdiction of the court, or as to whether the proceedings should be stayed, without a hearing.
- (6) In this rule—
 - (a) “the 1968 Convention” has the meaning given to it in the Civil Jurisdiction and Judgments Act 1982;
 - (b) “the 1988 Convention” and “the Lugano Convention” have the meanings given to them in rule 34.1(2).”.

14. For rule 17.1 substitute—

“Interpretation

17.1. In this Part “statement of case” has the meaning given to it in Part 4 except that a statement of case does not include—

- (a) an application for a matrimonial or a civil partnership order or an answer to such an application;
- (b) an application under Article 56 of the Maintenance Regulation made on the form in Annex VI or VII to that Regulation.

(Rule 4.1 defines “statement of case” for the purposes of Part 4.)”.

15. In rule 20.7, in paragraph (2)(a)(ii), after “Civil Jurisdiction and Judgments Act 1982”, insert “, the Maintenance Regulation”.

16. For rule 32.1(2) substitute—

“(2) In this Part, “the 1950 Act” means the Maintenance Orders Act 1950(a).”

17. In rule 34.1, in paragraph (5)—

- (a) in sub-paragraph (b), omit “and”;
- (b) in sub-paragraph (c), for “.”, substitute “; and”;
- (c) after sub-paragraph (c), insert—
 - “(d) the Maintenance Regulation.”.

18. In rule 34.3, after “rule 34.1(2)” insert “or by virtue of the Maintenance Regulation”.

19. In rule 34.12, in paragraph (3) for “1973” substitute “1993”.

20. In rule 34.13—

- (a) in paragraph (2), omit sub-paragraph (a);
- (b) after that paragraph, in the words in brackets, omit “the Republic of Ireland,”.

21. In rule 34.20, in paragraph (4), for “Secretary of State” substitute “Lord Chancellor”.

22. In Part 34, in Section 2 of Chapter 2, omit Sub-Section 1.

(a) 1950 c.37.

23. In the heading to Part 34, Chapter 3, after “the Judgments Regulation” insert “, the Maintenance Regulation”.

24. In Part 34, Chapter 3, before Section 1, insert—

“Application of this Chapter

34.28A.—(1) In this Chapter—

- (a) references to a maintenance order include reference to a decision, a court settlement or an authentic instrument within the meaning of Article 2 of the Maintenance Regulation where that Regulation applies;
- (b) references to the Hague Protocol are to the Protocol on the Law Applicable to Maintenance Obligations done at The Hague on 23 November 2007^(a).

(2) In relation to the Maintenance Regulation—

- (a) Section 1 applies to maintenance orders to which Sections 2 and 3 of Chapter IV of the Maintenance Regulation apply (decisions given in a Member State which does not apply the rules of the Hague Protocol, that is, Denmark, and decisions to which Sections 2 and 3 of Chapter IV of that Regulation apply by virtue of Article 75(2)(a) or (b));
- (b) Section 2 applies to all maintenance orders made in a magistrates’ court in England and Wales for which reciprocal enforcement is sought in any Member State of the European Union, including Denmark.

(Provision in respect of enforcement of maintenance orders to which Section 1 of the Maintenance Regulation applies (maintenance decisions given in Member States other than Denmark) is made in the Magistrates’ Courts Rules 1981^(b)”.

25. In rule 34.29—

- (a) in paragraph (a), after “that Act” insert “, subject to paragraph (b)”;
- (b) for paragraph (b) substitute—

“(b) “Regulation State” means a Member State of the European Union which does not apply the rules of the Hague Protocol, or, where registration is sought for a maintenance order to which Article 75(2)(a) or (b) of the Maintenance Regulation applies, the Member State of the European Union from which the order originated.”.

26. After rule 34.29 insert—

“Application under Article 30 of the Maintenance Regulation for a declaration of enforceability

34.29A. An application under Article 30 of the Maintenance Regulation for a declaration of enforceability of a maintenance decision will be determined by the justices’ clerk for the local justice area in which the court is situated.”.

27. In rule 34.30, for paragraph (2)(c), substitute—

“(c) an application under Article 26 of the Maintenance Regulation for a declaration of enforceability of a maintenance order made in a Regulation State other than the United Kingdom; or”.

28. In rule 34.31, for paragraph (1)(c), substitute—

“(c) Article 32 of the Maintenance Regulation; or”.

(a) OJ L 331, 16.12.2009 p.17-23.

(b) S.I 1981/552.

29. In rule 34.32, in paragraph (1)—

- (a) after “section 5(3) of the 1982 Act”, for “or” substitute “,”;
- (b) after “Article 38 of the Lugano Convention” insert “or declared enforceable under Article 26 of the Maintenance Regulation by virtue of registration.”.

30. In rule 34.34, after paragraph (2) insert—

“(3) Where the court officer for a registering court receives notice that a maintenance order registered in that court by virtue of the provisions of the Judgments Regulation^(a) has been varied or revoked by a competent court in another Member State of the European Union, the court officer must—

- (a) note against the entry in the register that the original order so registered has been varied or revoked, as the case may be; and
- (b) send notice of the noting of the variation or revocation, as the case may be, by post to the payer and payee under the order.”.

31. In rule 34.35, in paragraph (3)—

- (a) in sub-paragraph (c) omit “or”;
- (b) after sub-paragraph (d) omit “.” and insert “; or”
- (c) after sub-paragraph (d) insert—
 - “(e) Article 28 or 29 of the Maintenance Regulation.”.

32. After rule 34.36, insert—

“Directions as to stays, documents and translations

34.36A. At any stage in proceedings for registration of a maintenance order under this Section of this Chapter, the court may give directions about the conduct of the proceedings, including—

- (a) staying of proceedings in accordance with—
 - (i) Article 30 or 38 of the 1968 Convention,
 - (ii) Article 30 or 38 of the 1988 Convention,
 - (iii) Article 37 or 46 of the Lugano Convention, or
 - (iv) Article 25 or 35 of the Maintenance Regulation;
- (b) the provision of documents in accordance with—
 - (i) Article 48 of the 1968 Convention,
 - (ii) Article 48 of the 1988 Convention,
 - (iii) Article 55 of the Lugano Convention, or
 - (iv) Article 29 of the Maintenance Regulation;
- (c) the provision of translations in accordance with—
 - (i) Article 48 of the 1968 Convention,
 - (ii) Article 48 of the 1988 Convention,
 - (iii) Article 55 of the Lugano Convention, or
 - (iv) Article 28 of the Maintenance Regulation.”.

33. In Part 34, Chapter 3, in the subheading to Section 2, for “Regulation State” substitute “a Member State of the European Union”.

34. Omit rule 34.37.

(a) OJ L 12, 16.1.2001 p.1-23.

35. In rule 34.38—

- (a) in paragraph (1), for “Regulation State” substitute “Member State of the European Union”;
- (b) in paragraph (2)—
 - (i) in sub-paragraph (a), for “in” substitute “to”;
 - (ii) in sub-paragraph (b), after “evidence” insert “to”;
 - (iii) in sub-paragraph (c), after “1982 Act”, insert “, the Judgments Regulation or the Maintenance Regulation”;
- (c) in paragraph (3), after “the 1982 Act”, insert “, the Judgments Regulation or the Maintenance Regulation”;
- (d) in paragraph (7), after “to which the 1982 Act applies”, insert, “or by a court in Denmark for the purpose of proceedings to which the Maintenance Regulation applies,”;
- (e) in the words in brackets after paragraph (7), for “Regulation State” substitute “Member State of the European Union”.

36. In rule 34.39—

- (a) in paragraph (1), for sub-paragraph (b) substitute—
 - “(b) Article 40(2) of the Maintenance Regulation; or”;
- (b) in paragraph (2), for “Regulation State” substitute “Member State of the European Union”;
- (c) in paragraph (3)(c), for “Regulation State” substitute “Member State of the European Union”;
- (d) in paragraph (4), after “practice direction”, insert, “, and where the Maintenance Regulation applies, a completed extract from the decision in the form of Annex II to that Regulation”;
- (e) in paragraph (5) (b) (iii), for “Regulation State” substitute “Member State of the European Union”.

37. After rule 34.39, insert—

“Enforcement of orders of the High Court or a county court

34.40. Rules 74.12 (application for a certified copy of a judgment) and 74.13 (evidence in support) of the CPR(a) apply in relation to an application under Article 40(2) of the Maintenance Regulation for a certified copy of a judgment relating to maintenance obtained in the High Court or a county court (including the principal registry when treated as a divorce county court or a civil partnership proceedings county court), or for an extract relating to that judgment in the form of Annex II to that Regulation, as they do to applications under section 12 of the 1982 Act or article 54 of the Lugano Convention.”.

Transitional provisions

38.—(1) In relation to proceedings for the registration of a maintenance order under the Judgments Regulation which have been commenced prior to, and are continuing on the 18th June 2011—

- (a) rules 34.30 and 34.31 apply as if the amendments to those rules made above had not been made;
- (b) rule 34.36A inserted by rule 32 above applies as if—

(a) S.I.1998/3132.

- (i) sub-paragraph (a) included a reference to Articles 37 and 46 of the Judgments Regulation;
 - (ii) sub-paragraphs (b) and (c) included a reference to Article 55 of that Regulation.
- (2) Rule 34.26 applies as if the amendment to that rule made above had not been made—
- (a) where proceedings to which rule 34.26 applies have been commenced before, and are continuing on, the 18th June 2011, except that where those proceedings relate to a provisional order which is made and confirmed by a court in England and Wales, rule 34.26 does not apply to any subsequent proceedings for the enforcement of that order in the Republic of Ireland;
 - (b) in relation to a maintenance order registered before the 18th June 2011 by virtue of the Maintenance Orders (Reciprocal Enforcement) Act 1972^(a) as modified by Schedule 2 to the Reciprocal Enforcement of Maintenance Orders (Republic of Ireland) Order 1993^(b).
- (3) In this rule, “the Judgments Regulation” means Council Regulation (EC) No 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

*Nicholas Wall, P.
John Baker
Timothy Becker
Jill Black, L.J.
Paul Carr
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Lucy Theis, J.
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John Wilson*

I allow these rules
Signed by the authority of the Lord Chancellor

27th May 2011

J Djanogly
Parliamentary Under Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Family Procedure Rules 2010 (“the FPR 2010”) to take account of the application of Council Regulation (EC) No 4/2009 of 18th December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and co-operation in matters relating to maintenance obligations (“the Maintenance Regulation”) in the United Kingdom from 18th June 2011.

These Rules also make minor amendments to the FPR 2010 procedures regarding international jurisdiction and enforcement of maintenance decisions.

(a) 1972 c.18.
(b) S.I.1993/594.

Rules 5, 7, 9, 10, 11, and 14 amend existing rules to enable an applicant for maintenance from another Member State to apply using Maintenance Regulation forms rather than the usual court forms.

Rules 8 and 10 amend existing rules on service of documents to reduce potential risks of familial violence to the respondent resulting from the applicant discovering the respondent's whereabouts as part of the process of service.

Rule 12 provides a procedure for cases where a respondent fails to attend a hearing to establish maintenance in cross border cases.

Rule 13 provides a procedure for cases where questions as to the court's jurisdiction to make a maintenance decision arise, or a stay of proceedings is sought.

Rules 17 to 31 make amendments to Part 34 of the FPR 2010 (concerning the reciprocal enforcement of maintenance orders) to ensure that proceedings under the Maintenance Regulation are covered.

Rule 32 makes provision regarding stays, documents and translations required by the courts of England and Wales in relation to enforcement of certain international maintenance decisions.

Rules 33 to 37 make amendments regarding procedures in England and Wales for the enforcement of maintenance decisions in other Member States (and States party to the Lugano Conventions).

Rule 38 makes transitional provision.

A full regulatory impact assessment has not been prepared for this instrument as no impact on the private or voluntary sectors is foreseen.