

**2012 No. 2806 [L. 10]**

**FAMILY PROCEEDINGS**

**SENIOR COURTS OF ENGLAND AND WALES**

**COUNTY COURTS, ENGLAND AND WALES**

**MAGISTRATES' COURTS, ENGLAND AND WALES**

**The Family Procedure (Amendment No. 4) Rules 2012**

<i>Made</i>	- - - -	<i>6th November 2012</i>
<i>Laid before Parliament</i>		<i>9th November 2012</i>
<i>Coming into force</i>	- -	<i>20th December 2012</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 sections 12 and 48 of the Civil Jurisdiction and Judgments Act 1982(b), after consulting in accordance with section 79 of the Courts Act 2003.

**Citation and commencement**

1. These Rules may be cited as the Family Procedure (Amendment No.4) Rules 2012 and come into force on the 20th December 2012.

**Amendments to the Family Procedure Rules 2010**

2. The Family Procedure Rules 2010(c) are amended in accordance with rules 4 to 33 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.

4. In rule 2.3(1)—

(a) after the definition of “the 2005 Act”, insert—

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(a) 2003 c.39. Sections 75 and 79 were amended by section 15(1) and section 146 of, and paragraphs 308 and 338 of Part 1 of Schedule 4, and Part 2 of Schedule 18 to the Constitutional Reform Act 2005 (c.4).  
(b) 1982 c.27. Section 12 was amended by section 3 of, and paragraph 7 of Schedule 2 to the Civil Jurisdiction and Judgments Act 1991 (c.12). Section 48 was amended by section 3 of, and paragraph 23 of Schedule 2 to the Civil Jurisdiction and Judgments Act 1991, regulations 1, 3 and 5 of S.I. 2011/1215, and regulations 3 and 5 of S.I. 2012/1770.  
(c) S.I. 2010/2955.

“the 2007 Hague Convention” means the Convention on the International Recovery of Child Support and other forms of Family Maintenance done at The Hague on 23 November 2007(a);”;

(b) after the definition of “application notice”, insert—

““Article 11 form” means a form published by the Permanent Bureau of the Hague Conference under Article 11(4) of the 2007 Hague Convention for use in relation to an application under Article 10 of that Convention, and includes a Financial Circumstances Form as defined in rule 9.3(1) which accompanies such an application;”.

5. In rule 5.1(5)(b), after “Regulation” insert “, or to an Article 11 form”.

6. In rule 5.3, after paragraph (2), insert—

“(3) Where the application is made under Article 56 of the Maintenance Regulation(c), or under Article 10 of the 2007 Hague Convention, the applicant is deemed to have requested the issue of the application by virtue of making the application for establishment or modification of a maintenance decision forwarded on his or her behalf by the Lord Chancellor.

[The Lord Chancellor is the Central Authority for England and Wales in relation to the 2007 Hague Convention and the Maintenance Regulation]”.

7. In rule 9.3—

(a) in paragraph (1), after the definition of “FDR appointment”, insert—

““Financial Circumstances Form” means the Financial Circumstances Form published by the Permanent Bureau of the Hague Conference under Article 11(4) of the 2007 Hague Convention for use in relation to applications under Article 10 of that Convention;”;

(b) in paragraph (3)(d)—

(i) after sub-paragraph (a) insert—

“(aa) where an application for establishment or modification of maintenance is made under Article 10 of the 2007 Hague Convention, references in this Part to “financial statement” apply to the applicant as if for “financial statement” there were substituted “Financial Circumstances Form;”;

(ii) in sub-paragraph (b)—

(aa) for “Sub-paragraph (a) does” substitute “Sub-paragraphs (a) and (aa) do”;

(bb) after “Maintenance Regulation” insert “or the 2007 Hague Convention, as the case may be,”.

8. In rule 9.12(4)(e), after “Maintenance Regulation” insert “or the 2007 Hague Convention”.

9. In rule 9.14—

(a) for paragraph (2A)(f) substitute—

“(2A) The requirement of paragraph (2)(a) relating to verification by a statement of truth does not apply to the financial statement of either party where the application has been made under—

(a) Article 56 of the Maintenance Regulation, using the form in Annex VII to that Regulation; or

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(a) O.J. No L 192, 22.7.2011, p. 51-70.

(b) Rule 5.1(5) was inserted by S.I. 2011/1328 rules 2 and 5.

(c) O.J. No L 7, 10.1.2009, p.1-79.

(d) Rule 9.3(3) was inserted by S.I. 1328/2011 rules 2 and 7.

(e) Rule 9.12(4) was inserted by S.I. 1328/2011 rules 2 and 8.

(f) Rule 9.14(2A) was inserted by S.I. 1328/2011 rules 2 and 9, and amended by S. I. 2012/679 rules 2 and 16.

(b) Article 10 of the 2007 Hague Convention, using the Financial Circumstances Form,  
and the relief sought is limited to a type to which that Regulation or that Convention, as appropriate, applies, but the court may at any time direct that the financial statement of either party shall be verified by a statement of truth.”.

**10.** In rule 9.18—

(a) for paragraph (4)(a) substitute—

“(4) The requirement in paragraph (1)(b)(iii) for the court officer to send a blank financial statement to the applicant does not apply where the application has been made under—

(a) Article 56 of the Maintenance Regulation, using the form in Annex VII to that Regulation; or

(b) Article 10 of the 2007 Hague Convention, using the Financial Circumstances Form.”;

(b) in paragraph (5), after “Maintenance Regulation” insert “or the 2007 Hague Convention”.

**11.** In rule 9.19—

(a) for paragraph (2A)(b) substitute—

“(2A) The requirement of paragraph (2)(a) relating to verification by statement of truth does not apply to the financial statement of either party where the application has been made under—

(a) Article 56 of the Maintenance Regulation, using the form in Annex VII to that Regulation; or

(b) Article 10 of the 2007 Hague Convention, using the Financial Circumstances Form,

but the court may at any time direct that the financial statement of either party shall be verified by a statement of truth.”.

**12.** In rule 9.26A(1)(c)—

(a) at the end of sub-paragraph (c), omit “or”;

(b) at the end of sub-paragraph (d), omit “.” and insert—

“; or

(e) Article 18 of the 2007 Hague Convention.”.

**13.** After rule 9.26A, insert—

**“International Maintenance Obligations: Communication with the Central Authority for England and Wales**

**9.26AA.**—(1) Where the Lord Chancellor requests information or a document from the court officer for the relevant court for the purposes of Article 58 of the Maintenance Regulation or Articles 12 or 25(2) of the 2007 Hague Convention, the court officer shall provide the requested information or document to the Lord Chancellor forthwith.

(2) In this rule, “relevant court” means the court at which an application under Article 56 of the Maintenance Regulation or Article 10 of the 2007 Hague Convention has been filed.

[The Lord Chancellor is the Central Authority for England and Wales in relation to the 2007 Hague Convention and the Maintenance Regulation].”.

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(a) Rule 9.18(4) and (5) were inserted by S.I. 2011/1328 rules 2 and 10.

(b) Rule 9.19(2A) was inserted by S.I. 2011/1328 rules 2 and 11 and amended by S.I. 2012/679 rules 2 and 17.

(c) Rule 9.26A was inserted by S.I. 2011/1328 rules 2 and 13.

**14. In rule 17.1(a)—**

- (a) the existing text becomes paragraph (1);
- (b) in sub-paragraph (b), for “.” substitute “;”;
- (c) after sub-paragraph (b) insert—
  - “(c) an application under Article 10 of the 2007 Hague Convention using the Financial Circumstances Form.”;
- (d) after paragraph (1) insert—
  - “(2) In this rule, “Financial Circumstances Form” has the meaning given to it in rule 9.3(1).”.

**15. In rule 17.2—**

- (a) in paragraph (1)(g), after “a” insert “court order,”;
- (b) in paragraph (3), for “If” substitute “Subject to paragraph (10), if”;
- (c) after paragraph (9), insert—
  - “(10) Notwithstanding paragraph (3), and subject to any direction given under rule 9.14(2A) or rule 9.19(2A), the court may permit a party to rely upon matters set out in an application form which has not been verified by a statement of truth as evidence where the application has been made under—
    - (a) Article 56 of the Maintenance Regulation on the form in Annex VI or VII to that Regulation; or
    - (b) Article 10 of the 2007 Hague Convention on an Article 11 form.”.

**16. In rule 20.7—**

- (a) in paragraph (2)(a)(ii)(b), after “Lugano Convention,” insert “a State bound by the 2007 Hague Convention which is an EEA State,”;
- (b) after the words in parentheses at the end of the rule, insert—
  - “(“EEA State” is defined in Schedule 1 to the Interpretation Act 1978(c)).”.

**17. In rule 22.7(2), at the end insert “or if the court gives that party permission to do so without such verification”.**

**18. In rule 34.1(5)—**

- (a) in sub-paragraph (c), omit “and”;
- (b) in sub-paragraph (d)(d), for “.” substitute—
  - “; and
- (e) the 2007 Hague Convention.”.

**19. In rule 34.3(e)—**

- (a) after “Maintenance Regulation” insert “or the 2007 Hague Convention”;
- (b) in sub-paragraph (b), after “statutory provision” insert “or international instrument”.

**20. In the heading(f) to Part 34, Chapter 3, after “the Maintenance Regulation” insert “, the 2007 Hague Convention”.**

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- (a) Rule 17.1 was substituted by S.I. 2011/1328 rules 2 and 14.
  - (b) Rule 20.7(2)(a)(ii) was amended by S.I. 2011/1328 rules 2 and 15, and by S.I. 2012/679 rules 2 and 24.
  - (c) 1978 c. 30. The definition of “EEA State” was inserted by section 26(1) of the Legislative and Regulatory Reform Act 2006 (c.51).
  - (d) Rule 34.1(5)(d) was inserted by S.I. 2011/1328 rules 2 and 17.
  - (e) Rule 34.3 was amended by S.I. 2011/1328 rules 2 and 18, and S.I. 2012/679 rules 2 and 27.
  - (f) The chapter heading was amended by S.I. 2011/1328 rules 2 and 23.

**21.** In rule 34.28A(1)(a), for sub-paragraph (a) substitute—

“(a) references to a maintenance order include—

- (i) a decision, a court settlement or an authentic instrument within the meaning of Article 2 of the Maintenance Regulation where that Regulation applies;
- (ii) a maintenance decision to which Chapter V of the 2007 Hague Convention applies by virtue of Article 19(1) of that Convention;
- (iii) a maintenance arrangement (as defined in Article 3(e) of the 2007 Hague Convention) which is to be recognised and enforceable in the same way as a maintenance decision by virtue of Article 30 of that Convention;”.

**22.** In the heading to Part 34, Chapter 3, Section 1, after “Regulation State” insert “, a State bound by the 2007 Hague Convention other than a Member State of the European Union”.

**23.** In rule 34.29A(b)—

- (a) in the heading, after “Maintenance Regulation” insert “or under Article 23 of the 2007 Hague Convention”;
- (b) for “decision” substitute “order, or under Article 23(2) or (3) of the 2007 Hague Convention for registration of a maintenance order;”.

**24.** In rule 34.30—

(a) In paragraph (2)—

- (i) in sub-paragraph (c)(c), omit “or”;
- (ii) in sub-paragraph (d), omit “.” and insert—  
“; or

(e) an application under Article 23 of the 2007 Hague Convention for registration of a maintenance order made in a State bound by that Convention other than a Member State of the European Union.”.

(b) In paragraph (6)—

- (i) in sub-paragraph (a), omit “and”;
- (ii) in sub-paragraph (b) omit “.” and insert—  
“; and

(c) in the case of an application under Article 23(2) or (3) of the 2007 Hague Convention, Article 22(a) of that Convention applies.”.

(c) In paragraph (9)(b), after “may apply” insert “, or may request the court officer to apply;”.

**25.** In rule 34.31(1)(d)—

- (a) in sub-paragraph (c) omit “or”;
- (b) in sub-paragraph (d) omit “.” and insert—  
“; or
- (e) Article 23(5) of the 2007 Hague Convention.”.

**26.** In rule 34.32(1)(e)—

- (a) for “or” in the first place where it occurs substitute “;”;
- (b) after “Lugano Convention” insert “or Article 23 of the 2007 Hague Convention”.

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(a) Rules 34.28A was inserted by S.I. 2011/1328 rules 2 and 24.  
(b) Rule 34.29A was inserted by S.I. 2011/1328 rules 2 and 26.  
(c) Rule 34.30(2)(c) was substituted by S.I. 2011/1328 rules 2 and 27.  
(d) Rule 34.31(1) was amended by S.I. 2011/1328 rules 2 and 28.  
(e) Rule 34.32(1) was amended by S.I. 2011/1328 rules 2 and 29.

27. In rule 34.34(1), after “Lugano Convention” insert “or by the 2007 Hague Convention”.

28. In rule 34.35(3)—

- (a) in sub-paragraph (d), omit “or”;
- (b) in sub-paragraph (e)(a), omit “.” and insert—
  - “; or
  - (f) Article 25 or 30 of the 2007 Hague Convention.”.

29. In rule 34.36A(b)—

- (a) in sub-paragraph (a)—
  - (i) in sub-paragraph (iii) omit “or” in the second place where it occurs;
  - (ii) in sub-paragraph (iv) omit “;” and insert—
    - “, or
    - (v) Article 30(6) of the 2007 Hague Convention;”;
- (b) in sub-paragraph (b)—
  - (i) in sub-paragraph (iii) omit “or”;
  - (ii) in sub-paragraph (iv) omit “;” and insert—
    - “, or
    - (v) Article 25 or 30 of the 2007 Hague Convention;”;
- (c) in sub-paragraph (c)—
  - (i) in sub-paragraph (iii) omit “or”;
  - (ii) in sub-paragraph (iv) omit “.” and insert—
    - “, or
    - (v) in relation to an application under this Section relating to the 2007 Hague Convention, without prejudice to Article 44 of that Convention.”.

30. After rule 34.36A, insert—

**“International Maintenance Obligations; Communication with the Central Authority for England and Wales**

**34.36B.**—(1) Where the Lord Chancellor requests information or a document from the court officer for the relevant court for the purposes of Article 58 of the Maintenance Regulation, or Article 12 or 25(2) of the 2007 Hague Convention, the court officer shall provide the requested information or document to the Lord Chancellor forthwith.

(2) In this rule, “relevant court” means the court at which an application under Article 56 of the Maintenance Regulation or Article 10 of the 2007 Hague Convention has been filed.

[The Lord Chancellor is the Central Authority for the 2007 Hague Convention and the Maintenance Regulation].”.

31. In rule 34.38(c)—

- (a) in paragraph (1), after “Lugano Convention,” insert “or by the 2007 Hague Convention,”;
- (b) in paragraph (2)(c)—
  - (i) after “Judgments Regulation” for “or” substitute “;”;
  - (ii) after “Maintenance Regulation” insert “or the 2007 Hague Convention”;
- (c) in paragraph (3)—

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(a) Rule 34.35(3)(e) was inserted by S.I. 2011/1328 rules 2 and 31.

(b) Rule 34.36A was inserted by S.I. 2011/1328 rules 2 and 32.

(c) Rule 34.38 was amended by S.I. 2011/1328 rules 2 and 35.

- (i) after “Judgments Regulation” for “or” substitute “;”;
- (ii) after “Maintenance Regulation” insert “or the 2007 Hague Convention”;
- (d) For paragraph (7) substitute—
 

“(7) Any request by a magistrates’ court in England and Wales for the taking or providing of evidence by a court in a State listed in paragraph (8) for the purposes of proceedings to which an instrument listed in that paragraph applies, or by a court in another part of the United Kingdom, shall be communicated in writing to the court in question.

(8) The States and instruments referred to in paragraph (7) are—

  - (a) a Contracting State to the 1968 Convention;
  - (b) a Contracting State to the 1988 Convention;
  - (c) a State bound by the Lugano Convention;
  - (d) Denmark, in relation to proceedings to which the Maintenance Regulation applies;
  - (e) a State bound by the 2007 Hague Convention,

but this paragraph and paragraph (7) do not apply where the State in question is a Member State of the European Union to which the Taking of Evidence Regulation (as defined in rule 24.15) applies.”.

**32. In rule 34.39(a)—**

- (a) for paragraphs (1) and (2), substitute—
 

“(1) A person who wishes to enforce a maintenance order obtained in a magistrates’ court in a State to which paragraph (2) applies must apply for a certified copy of the order and, where required by Practice Direction 34A, a certificate giving particulars relating to the judgment and proceedings in which it was given.

(2) The States referred to in paragraph (1) are—

  - (a) a Contracting State to the 1968 Convention;
  - (b) a Contracting State to the 1988 Convention (other than a Member State of the European Union);
  - (c) a Member State of the European Union;
  - (d) a State bound by the Lugano Convention (other than a Member State of the European Union); or
  - (e) a State bound by the 2007 Hague Convention (other than a Member State of the European Union).”;
  - (b) in paragraph (4)—
    - (i) omit “a” in the second place where it occurs;
    - (ii) after “practice direction” insert “34A”;
    - (iii) for “and where” to “that Regulation” substitute “together with a copy of any certificate required by that practice direction”;
  - (c) in paragraph (5)(b)—
    - (i) omit “or” in sub-paragraph (iv);
    - (ii) in sub-paragraph (v), for “.” substitute—
 

“; or

      - (vi) another State bound by the 2007 Hague Convention (other than a Member State of the European Union).”.

**33. For rule 34.40(b) substitute—**

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(a) Rule 34.39 was amended by S.I. 2011/1328 rules 2 and 36, and paragraph (3)(c) by S.I. 2012/679 rules 2 and 20.  
 (b) Rule 34.40 was inserted by S.I. 2011/1328 rules 2 and 37.

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

**34.40.**—(1) This rule applies where a person wishes to enforce a maintenance order obtained in the High Court or a county court (including the principal registry when treated as a divorce county court or, where the enforcement application relates to a civil partnership matter and the Maintenance Regulation, a civil partnership proceedings county court) in a Member State of the European Union or a State bound by the 2007 Hague Convention (other than a Member State of the European Union).

(2) Subject to the requirements of Practice Direction 34A, rules 74.12 (application for a certified copy of a judgment) and 74.13 (evidence in support) of the CPR apply in relation to—

- (a) an application under Article 40(2) of the Maintenance Regulation for a certified copy of a judgment and an extract relating to that judgment in the form of Annex II to that Regulation;
- (b) an application for a certified copy of a judgment and a certificate giving particulars relating to the judgment and the proceedings in which it was given.”.

*Timothy Becker  
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Angela Finnerty  
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Sunita Mason  
David Salter  
Lucy Theis, J  
Philip Waller*

I allow these Rules.

Signed by authority of the Lord Chancellor

6th November 2012

*McNally*  
Minister 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 the Convention on the International Recovery of Child Support and other forms of Family Maintenance done at The Hague on 23 November 2007 (“the 2007 Hague Convention”) in England and Wales. By virtue of Council Decision 2011/432/ EU, the 2007 Hague Convention will be concluded by the European Union on behalf of all Member States at a date after the 10th December 2012 to be determined, and that conclusion will bind Member States (except for Denmark) to apply the Convention.

Further provision is also made in relation to applications through Central Authorities under 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”).



Rules 5, 7, 9, 10, 11, 14, 15 and 17 amend the FPR 2010 to enable an applicant wishing to establish or modify a maintenance decision in England and Wales to apply using the standard forms prepared by the Permanent Bureau of the Hague Conference (“the Hague forms”) for use with the 2007 Hague Convention rather than the usual court forms. The Hague forms, like the Maintenance Regulation forms, do not contain a statement of truth, and rules 9, 11, 14 and 15 ensure, firstly, that neither the applicants nor the respondent in such cases is automatically required to verify their financial statements by a statement of truth; but secondly, that the court can at its discretion require such verification during the course of proceedings. Rules 15 and 17 also ensure that the court has a discretion to allow a party to rely on evidence contained in an application form which has not been verified by a statement of truth.

Rule 6 addresses the problem that a foreign applicant applying for establishment or modification of maintenance through the Central Authority system of the Convention or the Maintenance Regulation will probably not be in a position to request specifically that the Court Officer issues his or her application. The request is therefore deemed to be made in cases where the Lord Chancellor (as Central Authority for England and Wales) forwards an application under either instrument.

Rules 8 and 10 amend the 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 adds questions of jurisdiction under Article 18 of the 2007 Hague Convention to the procedure for determining disputes as to the court’s jurisdiction in international cases.

Rules 13 and 30 make provision to ensure that the court will provide necessary information or documents to the Lord Chancellor (as Central Authority) when requested for purposes of Central Authority functions under the Maintenance Regulation or the 2007 Hague Convention.

Rules 18 to 33 make amendments to Part 34 (concerning reciprocal enforcement of maintenance orders) to ensure that proceedings for recognition and enforcement under the 2007 Hague Convention are covered.

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STATUTORY INSTRUMENTS

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