

**EXPLANATORY MEMORANDUM TO
THE INTERNATIONAL RECOVERY OF MAINTENANCE (HAGUE CONVENTION
2007 etc.) REGULATIONS 2012**

2012 No. 2814

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 enables 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 designates the Lord Chancellor as the Central Authority for England and Wales, provides for the establishment, recognition and enforcement of maintenance decisions under the Convention (including by provision for driving disqualification orders for enforcement of child maintenance), and provides for access to, and the transmission and use of, information for Convention purposes. It amends existing legislation to apply it 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 Regulation 9 and Schedule 5 paragraph 8 amend the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011 (SI 2011/1484) to meet concerns raised in considering that instrument: by the JCSI relating to the identification of persons subject to the disclosure offence and its defence; by the then Merits Committee, now the Secondary Legislation Scrutiny Committee to remove the non-specific ground of jurisdiction to hear enforcement applications.

4. **Legislative Context**

4.1 This statutory instrument consists of Regulations under section 2(2) of the European Communities Act 1972 to facilitate the operation of the 2007 Convention.

4.2 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.

4.3 An accompanying statutory instrument, The Family Procedure (Amendment No.4) Rules 2012, consists of amendments to rules of court (The Family Procedure Rules 2010) to facilitate the operation of the 2007 Convention.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales. Regulations 1 to 3, 4(2), 6, 7 and 10 and Schedules 2 and 3 also apply to Scotland. Regulations 1 to 3, 4(2), 7 and 10 and Schedule 3 also apply to Northern Ireland. Any amendment, appeal and revocation in these Regulations applies to the territories of the United Kingdom to the same extent as the legislation to which it relates.

6. European Convention on Human Rights

The Lord Chancellor and Secretary of State for Justice has made the following statement regarding Human Rights:

In my view the provisions of the International Recovery of Maintenance (Hague Convention 2007 etc) Regulations 2012 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 The 2007 Convention will be concluded by the European Union and conclusion binds Member States. The Convention has direct effect and 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. It is intended to provide a simpler, quicker and more efficient global system for the reciprocal enforcement of family maintenance. EU Member States will use the 2007 Convention with non-EU Contracting States only, since the Maintenance Regulation governs international maintenance matters 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 designates the Central Authority for the 2007 Convention in England and Wales and makes provision for establishment of maintenance decisions and recognition and enforcement of overseas maintenance decisions in England and Wales. Schedule 2 makes provision for driving disqualification orders in England and Wales and Scotland, it is modelled on the scheme in the Child Support Act, with the intention that it should be a remedy of last resort. This ensures that the same range of enforcement methods is available for 2007 Convention and certain other international cases as is available for domestic child maintenance cases. Provisions on information sharing by public authorities for Convention purposes with the Central Authorities in

Schedule 3 apply in England and Wales, Scotland and Northern Ireland. Sanctions for wrongful disclosure of information by Central Authority staff replicate the existing sanctions on the staff of the public authorities providing the information. Schedule 4 amends existing UK legislation for 2007 Convention purposes. Schedule 5 makes further provision for the Maintenance Regulation.

- Consolidation

7.3 Not applicable.

8. Consultation outcome

8.1 The draft statutory instrument was the subject of a limited specialist technical consultation. In the light of the views of respondents that there should be a specific procedure for applications for the establishment of a maintenance decision under the 2007 Convention, regulation 5 and paragraph 7 of Schedule 1 provide such a procedure for the Convention and regulation 9 and paragraph 8 of Schedule 5 provide a like procedure for the Maintenance Regulation, also covering modification of decisions. Adjustments were also made in the light of consultation responses to the conditions for the application for a driving disqualification order under regulation 6 and Schedule 2.

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 this memorandum and will be published alongside the 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 provides in regulation 10 for review from time to time by the Secretary of State, and for reports arising from those reviews to be published. The first report will be in 5 years from the date of the 2007 Convention coming into force for the United Kingdom. The operation of the 2007 Convention will be reviewed by the Hague Conference on Private International Law. The European Union has committed to review its application of the scope of the Convention to consider extending it to maintenance obligations arising all forms of family relationship within 7 years from its approval of the Convention.

13. Contact

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