

## THE TRANSITIONAL PROVISIONS PRACTICE DIRECTION

*This Practice Direction supplementing rule 83 of the Magistrates' Courts (Enforcement or Variation of Orders Made in Family Proceedings and Miscellaneous Provisions) Rules 2011 ("the Rules") is made by the Lord Chief Justice, and is approved by the Parliamentary Under Secretary of State, by authority of the Lord Chancellor and comes into force on 18<sup>th</sup> June 2011.*

### Content of this Practice Direction

- 1.1 This Practice Direction gives guidance about the application of rule 83 of the Rules. Rule 83 deals with the application of rules 50 to 53, 69, 71, 74 to 76, 78 and 80 of the Rules ("the new rules") to proceedings to which those rules apply which have been started but have not been concluded by 18th June 2011 ("existing proceedings").
- 1.2 In this Practice Direction "the rules in force immediately before 18<sup>th</sup> June 2011" means, as appropriate —
  - the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) Rules 1974;
  - Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Republic of Ireland) Rules 1975;
  - the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Hague Convention Countries) Rules 1980;
  - the Magistrates' Courts (Civil Jurisdiction and Judgments Act 1982) Rules 1986;
  - the Magistrates' Courts (Family Law Act 1986) Rules 1988;
  - the Family Proceedings Courts (Children Act 1989) Rules 1991;
  - the Family Proceedings Courts (Matrimonial Proceedings etc.) Rules 1991;
  - the Magistrates' Courts (Costs Against Legal Representatives in Civil Proceedings) Rules 1991;
  - the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (United States of America) Rules 1995 (subject to the saving in Schedule 5 of the Rules);
  - the Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999; and
  - the Magistrates' Courts (Enforcement of Children Act 1989 Contact Orders) Rules 2008

as in force immediately before 18<sup>th</sup> June 2011.

## **General transitional arrangements**

2.1 Rule 83 of the Rules provides that the new rules shall apply, so far as practicable, to existing proceedings. Where this is not practicable, the rules in force immediately before 18<sup>th</sup> June 2011 are to apply to such proceedings.

### **Where the rules in force immediately before 18<sup>th</sup> June 2011 will normally apply**

#### *General principle*

3.1 Where an initiating step has been taken in a case before 18<sup>th</sup> June 2011, in particular a step using forms or other documentation required by the rules in force immediately before 18th June 2011, the case will proceed in the first instance under those rules. Where a party must take a step in response to something done by another party in accordance with the rules in force immediately before 18th June 2011, that step must also be in accordance with those rules.

#### *Pre-commencement order inconsistent with the new rules*

3.2 Where a court order has been made before 18th June 2011, that order must still be complied with on or after that date.

#### *Steps taken before commencement*

3.3 Where a party has, before 18th June 2011, taken any step in the proceedings in accordance with the rules in force immediately before 18th June 2011, that step will remain valid on or after that date, and a party will not normally be required to take any action that would amount to taking such a step again under the new rules.

## **Where the new rules will normally apply**

### *General principle*

- 4.1 Where a new step is to be taken in any existing proceedings on or after 18th June 2011, it is to be taken under the new rules.

### *Part 1 (Overriding objective) to apply*

- 4.2 The Overriding Objective in Part 1 of the Family Procedure Rules 2010 (the FPR) which is applied by the new rules will apply to all existing proceedings from 18th June 2011 onwards.

### *Issuing of application forms after the new rules come into force*

- 4.3
- (1) The general rule is that—
    - (a) only application forms under the new rules will be issued by the court on or after 18th June 2011; and
    - (b) if a request to issue an old type of form is received at the court on or after 18th June 2011, it will be returned unissued.
  - (2) By way of exception to the general rule, the court may in cases of urgency direct that the form or process is to be issued as if the request to issue it had been a request to issue an application form under the new rules and, if it does so, the court may make such supplementary directions as it considers appropriate.
  - (3) In this paragraph “application form” includes a “complaint”.

### *First time before a court on or after 18th June 2011*

- 4.4
- (1) When proceedings come before a court (whether at a hearing or on paper) for the first time on or after 18th June 2011, the court may direct how the new rules are to apply to the proceedings and may disapply certain provisions of the new rules. The court may also give case management directions.
  - (2) The general presumption will be that the new rules will apply to the proceedings from then on unless the court directs or this practice direction provides otherwise.
  - (3) If an application has been issued before 18th June 2011 and the hearing of the application has been set on or after that date, the general presumption is that the application will be decided having regard to the new rules.
  - (4) When the first occasion on which existing proceedings are before a court on or after 18th June 2011 is a hearing of a substantive issue, the general presumption is that the hearing will be conducted according to the new rules.

## Costs

4.5 Subject to section 64 of the Magistrates' Courts Act 1980 -

- (1) Any assessment of costs that takes place on or after 18th June 2011 will be in accordance with the new rules which apply FPR Part 28 and the provisions of the Civil Procedure Rules as applied by that Part.
- (2) The decision as to whether to allow costs for work undertaken on or after 18th June 2011 will generally be taken in accordance with the new rules (FPR Part 28 and the provisions of the Civil Procedure Rules as applied by that Part.)

Dated

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Lord Chief Justice

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Parliamentary Under Secretary of State by authority of the Lord Chancellor