

2012 No. 414

MAGISTRATES' COURTS

The Magistrates' Courts (Civil Jurisdiction and Judgments Act 1982) (Amendment) Rules (Northern Ireland) 2012

Made - - - - *20th November 2012*

Coming into operation in accordance with rule 1

The Magistrates' Courts Rules Committee makes the following Rules in exercise of the powers conferred by Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981(a) and section 48 of the Civil Jurisdiction and Judgments Act 1982(b) after consultation with the Department of Justice and with the agreement of the Lord Chief Justice.

Citation and Commencement

1. These Rules may be cited as the Magistrates' Courts (Civil Jurisdiction and Judgments Act 1982) (Amendment) Rules (Northern Ireland) 2012 and shall come into operation on the day on which the Convention on the International Recovery of Child Support and other forms of Family Maintenance done at The Hague on 23 November 2007 comes into force in respect of the European Union, which day will be notified in the London, Edinburgh and Belfast Gazettes.

Amendments to the Magistrates' Courts (Civil Jurisdiction and Judgments Act 1982) Rules (Northern Ireland) 1986

2. The Magistrates' Courts (Civil Jurisdiction and Judgments Act 1981) Rules (Northern Ireland) 1986(c) are amended as follows.

3. In rule 2 —

(1) after the definition of “the 1988 Convention”, insert —

““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;”;

(2) for from “references to a maintenance order” to “where that regulation applies”, substitute —
“references to a maintenance order include reference to—

(a) S.I. 1981/1675 (N.I. 26); Article 13 was amended by paragraph 133 of Schedule 18 to the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976); and paragraph 65 of Schedule 5 to the Constitutional Reform Act 2005 (c.4).

(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), Article 4 and paragraph 17 of Schedule 2 to the Civil Jurisdiction and Judgments Order 2001 (S.I. 2001/3929), regulation 5 of the Civil Jurisdiction and Judgments (Maintenance) (Rules of Court) Regulations 2011 (S.I. 2011/1215) and regulation 5 of the International Recovery of Maintenance (Hague Convention 2007) (Rules of Court) Regulations 2012 (S.I. 2012/1770).

(c) S.R. 1986/359 to which the most recent amendments were made by S.R. 2011/225.

- (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;”.

4. In rule 3, for “the Civil Jurisdiction and Judgments Order 2001 and the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011” substitute “the Civil Jurisdiction and Judgments Order 2001, the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011 and the International Recovery of Maintenance (Hague Convention 2007 etc) Regulations (Northern Ireland) 2012(a)”.

5. After rule 3 insert —

“Applications under Article 30 of the Maintenance Regulation or Article 23 of the 2007 Hague Convention

3A. An application under Article 30 of the Maintenance Regulation for a declaration of enforceability of a maintenance order or under Article 23(2) or (3) of the 2007 Hague Convention for registration of a maintenance order shall be determined by the clerk of petty sessions.”.

6. In rule 4 —

(1) After paragraph 1A insert —

“(1B) Where the clerk of petty sessions receives 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, he shall, subject to Article 22(a) of that Convention and to paragraphs (3) and (4) of this Rule, cause the order to be registered in his court by means of a minute or memorandum entered and signed by him in the Order Book.”

(2) in paragraph 5, after “Maintenance Regulation” insert “or Article 23 of the 2007 Hague Convention”;

(3) in paragraph (6), for “or (1A)” substitute “, (1A) or (1B)”;

(4) in paragraph (7) —

(a) for “or (1A)” substitute “, (1A) or (1B)”;

(b) at the end, insert “or that the applicant may request the clerk of petty sessions to apply”.

7. In rule 5(1), for “or under Article 32 of the Maintenance Regulation” substitute “, under Article 32 of the Maintenance Regulation or under Article 23(5) of the 2007 Hague Convention”.

8. In rule 7, for “or a Regulation State” substitute “, or a Regulation State or a State bound by the 2007 Hague Convention other than a Member State of the European Union”.

9. In rule 8(1), for “under Articles 28 or 29 of the Maintenance Regulation” substitute “, under Articles 28 or 29 of the Maintenance Regulation or Articles 25 or 30 of the 2007 Hague Convention”.

10. In rule 9, for “or under Articles 28 or 29 of the Maintenance Regulation” substitute “, under Articles 28 or 29 of the Maintenance Regulation or Articles 25 or 30 of the 2007 Hague Convention”.

11. In rule 12 —

(a) S.R. 2012 No. 413

(1) in paragraph (1), for “Contracting State or Regulation State” substitute “in a State to which paragraph (1A) applies”;

(2) after paragraph (1), insert —

“(1A) This paragraph applies to —

- (a) a Contracting State;
- (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);
- (e) a State bound by the 2007 Hague Convention (other than a Member State of the European Union).

(1B) In an application under paragraph (1) —

- (a) under the Maintenance Regulation, the certificate will be in the form of Annex II to that Regulation;
- (b) under the 2007 Hague Convention, the certificate will be comprised of the following forms published under Article 11(4) of that Convention duly completed by the clerk of petty sessions —
 - (i) the Abstract of the Decision;
 - (ii) the Statement of Enforceability;
 - (iii) the Statement of Proper Notice.”;

(3) in paragraph (2)(c), omit “Contracting State or the Regulation”;

(4) in paragraph (5) for “another Contracting State or in another Regulation State” substitute “a State to which paragraph (1A) applies”.

12. In rule 13 —

(1) in paragraph (1), in each place, for “or another Contracting State or another Regulation State” substitute “in a State to which rule 12(1A) applies”;

(2) in paragraph (1), in each place, for “or the Regulation” substitute “, the Maintenance Regulation or the 2007 Hague Convention”;

(3) in paragraph (2), omit “Contracting State or the other Regulation”;

(4) in paragraph (8) —

- (a) omit “Contracting State or another Regulation”;
- (b) for “or the Regulation” substitute “, the Maintenance Regulation or the 2007 Hague Convention”.

13. In rule 14 —

(1) in paragraph (1), after “other than the United Kingdom” insert “or a State bound by the 2007 Hague Convention (other than a Member State of the European Union)”;

(2) in paragraph (1)(a), after “European Union” insert “or a State bound by the 2007 Hague Convention (other than a Member State of the European Union)”;

(3) in paragraph (6), for “Contracting State or the Member State of the European Union” substitute “State”.

14. In rule 16, in paragraph (1) —

(1) for “or” substitute “,.”;

(2) after “Regulation” insert —

“(e) the 2007 Hague Maintenance Convention”.

15. In rule 19, after “Regulation” insert “and published under Article 11(4) of the 2007 Hague Convention”.

16. After rule 19, insert —

“Communication with the Department of Justice

20.—(1) This rule applies where the Department of Justice requests information or a document from the clerk 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.

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

(3) Where a request under paragraph (1) is made, the clerk shall provide the requested information or document to the Department of Justice forthwith.”.

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Peter Luney
John Rea
Nigel Broderick
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Dated 20th November 2012

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Magistrates' Courts (Civil Jurisdiction and Judgments Act 1982) Rules (Northern Ireland) 1986 (S.R. 1986 No. 359) to take account of the application in Northern Ireland 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"). 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 10 December 2012 at a date to be determined. That conclusion will bind Member States (except for Denmark) to apply the Convention. The amendments are required to prescribe the procedure to be followed when making an application under the 2007 Hague Convention.

Further provision is also made in relation to applications under Council Regulation (EC) No. 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and co-operation in matters relating to maintenance obligations ("the Maintenance Regulation").

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STATUTORY RULES OF NORTHERN IRELAND

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The Magistrates' Courts (Civil Jurisdiction and Judgments Act
1982) (Amendment) Rules (Northern Ireland) 2012

£4.00

N5635 11/2012 425635T 19585

ISBN 978-0-337-98961-2



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