

2011 No. 64

FAMILY PROCEEDINGS

COURT OF JUDICATURE

COUNTY COURTS

**The Family Proceedings (Amendment) Rules (Northern Ireland)
2011**

Made - - - - *24th February 2011*

Coming into operation - *25th March 2011*

The Family Proceedings Rules Committee makes the following Rules in exercise of the powers conferred by Article 12 of the Family Law (Northern Ireland) Order 1993(a).

Citation and commencement

1.—(1) These Rules may be cited as the Family Proceedings (Amendment) Rules (Northern Ireland) 2011 and, subject to paragraph (2), shall come into operation on 25th March 2011.

(2) These Rules, so far as they relate to the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children(b), shall come into operation on the day the Convention enters into force for the United Kingdom, which date will be notified in the London, Edinburgh and Belfast Gazettes.

Amendment to the Family Proceedings Rules (Northern Ireland) 1996

2. The Family Proceedings Rules (Northern Ireland) 1996(c) are amended as follows—

(1) in the Arrangement of Rules—

- (a) omit the entry relating to rule 4.28;
- (b) after the entry relating to rule 4.27 insert—

**“APPLICATIONS RELATING TO THE COUNCIL REGULATION AND THE 1996
HAGUE CONVENTION**

4.28. Interpretation

(a) S.I. 1993/1576 (N.I. 6), Article 12 was amended by paragraph 90 of Schedule 5 to the Constitutional Reform Act 2005 (c.4).
(b) CM 7727.
(c) S.R. 1996 No. 322.

- 4.29. Transfer of proceedings under Article 15 of the Council Regulation or under Article 8 of the 1996 Hague Convention
- 4.30. Application by a party for transfer of the proceedings
- 4.31. Application by a court of another Member State or another Contracting State for transfer of the proceedings
- 4.32. Exercise by the court of its own motion of powers to seek to transfer the proceedings
- 4.33. Application to High Court to make request under Article 15 of the Council Regulation or Article 9 of the 1996 Hague Convention to request transfer of jurisdiction
- 4.34. Procedure where the court receives a request from the authorities of another Member State or Contracting State to assume jurisdiction in a matter concerning a child
- 4.35. Service of the court's order or request relating to transfer of jurisdiction under the Council Regulation or the 1996 Hague Convention
- 4.36. Questions as to the court's jurisdiction or whether the proceedings should be stayed
- 4.37. Request for consultation as to contemplated placement of child in Northern Ireland
- 4.38. Request made by court in Northern Ireland for consultation as to contemplated placement of child in another Member State or Contracting State
- 4.39. Application for a declaration as to the extent, or existence, of parental responsibility in relation to a child under Article 16 of the 1996 Hague Convention";
- (c) in the final heading in Part VIII, after "REGISTRATION AND ENFORCEMENT UNDER THE COUNCIL REGULATION" insert "AND THE 1996 HAGUE CONVENTION";
- (d) omit the entries relating to rules 8.33 to 8.48;
- (e) after the heading insert—
 - “8.33. Application
 - 8.34. Interpretation
 - 8.35. Filing of applications
 - 8.36. Application for registration, recognition or non-recognition of a judgment
 - 8.37. Application for registration or recognition of a judgment under the Council Regulation
 - 8.38. Application for non- recognition of a judgment under the Council Regulation
 - 8.39. Application for registration of a judgment under the 1996 Hague Convention
 - 8.40. Application for non-recognition of a judgment under the 1996 Hague Convention
 - 8.41. Application for recognition only of a judgment under the 1996 Hague Convention
 - 8.42. Application for recognition of a judgment under the Jurisdiction and Recognition of Judgments Regulations
 - 8.43. Application for non-recognition of a judgment under the Jurisdiction and Recognition of Judgments Regulations
 - 8.44. Documents – supplementary
 - 8.45. Directions

8.46. Recognition and enforcement under the Council Regulation of a judgment given in another Member State relating to rights of access or under Article 11(8) for the return of the child to that State

8.47. Registration for enforcement or order for non-recognition of a judgment

8.48. Stay of recognition proceedings by reason of an appeal

8.49. Effect of refusal of application for a decision that a judgment should not be recognised

8.50. Notification of the court's decision on an application for registration or non-recognition

8.51. Effect of registration under rule 8.50

8.52. Decision on recognition of a judgment only

8.53. Appeal against the court's decision under rules 8.49, 8.50 or 8.52

8.54. Stay of enforcement where appeal pending in state of origin

8.55. Enforcement of judgments registered under rule 8.50

8.56. Request for a certificate or a certified copy of a judgment

8.57. Applications for certified copy of judgment and certificate under Article 41 or 42 of the Council Regulation

8.58. Applications for certified copy of judgment and certificate under Article 39 of the Council Regulation

8.59. Applications for certified copy of judgment under the 1996 Hague Convention

8.60. Certificates issued in Northern Ireland under Articles 41 and 42 of the Council Regulation

8.61. Rectification of certificate issued under Articles 41 or 42 of the Council Regulation

8.62. Authentic instruments and agreements under Article 46 of the Council Regulation

8.63. Application for provisional, including protective measures

MEDIATION DIRECTIVE

8.64. Application and interpretation

8.65. Relevant disputes: applications for consent orders in respect of financial remedies

8.66. Relevant disputes: financial remedies expressed in a foreign currency

8.67. Mediation evidence: disclosure or inspection

8.68. Mediation evidence: witnesses and depositions";

(2) in rule 1.3(1)—

(a) omit the definition of "Contracting State";

(b) after the definition of "financial relief", insert—

“the 1996 Hague Convention” means the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and

Measures for the Protection of Children that was signed at The Hague on 19 October 1996(a);” and

(c) after the definition of “matrimonial proceedings”, insert—

““Member State” means a Member State of the European Union which is bound by the Council Regulation or a country which has subsequently adopted the Council Regulation;”;

(3) in rule 2.72(1), after “(3)”, insert “, and rule 8.65”;

(4) for rule 4.28, substitute rules 4.28 to 4.39 set out in Schedule 1;

(5) for rules 8.33 to 8.48, substitute rules 8.33 to 8.63 set out in Schedule 2;

(6) after new rule 8.63, insert the new rules 8.64 to 8.68 set out in Schedule 3;

Declan Morgan
W.R.B. Stephens
R.E. Weir
K.H. Wells
Gemma Loughran

Dated 21st February 2011

In exercise of the powers conferred by Article 12A (2) of the Family Law (Northern Ireland) Order 1993, the Department of Justice allows these Rules.

Sealed with the Official Seal of the Department of Justice on 24th February 2011



David Ford
Minister of Justice

(a) CM 7727.

**“APPLICATIONS RELATING TO THE COUNCIL
REGULATION AND THE 1996 HAGUE CONVENTION**

Interpretation

4.28.—(1) In rules 4.28 to 4.39—

“Central Authority” means, in relation to Northern Ireland, the Department of Justice;

“Contracting State” means a State party to the 1996 Hague Convention;

“judgment” has the meaning given in Article 2(4) of the Council Regulation;

“parental responsibility” has the meaning given in—

- (a) Article 2(7) of the Council Regulation in relation to proceedings under that Regulation; and
- (b) Article 1(2) of the 1996 Hague Convention in relation to proceedings under that Convention; and

“seised” has the meaning given in Article 16 of the Council Regulation.

(2) In rules 4.29 to 4.38, references to the court of another Member State or Contracting State include authorities within the meaning of “court” in Article 2(1) of the Council Regulation and authorities of Contracting States which have jurisdiction to take measures directed to the protection of the person or property of the child within the meaning of the 1996 Hague Convention.

Transfer of proceedings under Article 15 of the Council Regulation or under Article 8 of the 1996 Hague Convention

4.29.—(1) Where a court is considering the transfer of proceedings to the court of another Member State or Contracting State under rules 4.30 to 4.32 it will—

- (a) fix a date for a hearing for the court to consider the question of transfer; and
- (b) give directions as to the manner in which the parties may make representations.

(2) The court may, with the consent of all parties, deal with the question of transfer without a hearing.

(3) Directions which are in force immediately prior to the transfer of proceedings to a court in another Member State or Contracting State under rules 4.30 to 4.32 will continue to apply until the court in that other State accepts jurisdiction in accordance with the provisions of the Council Regulation or the 1996 Hague Convention (as appropriate), subject to any variation or revocation of the directions.

(4) The proper officer or chief clerk will—

- (a) take a note of the giving, variation or revocation of directions under this rule; and
- (b) as soon as practicable serve a copy of the directions order on every party.

(5) A register of all applications and requests for transfer of jurisdiction to or from another Member State or Contracting State will be kept by the proper officer.

Application by a party for transfer of the proceedings

4.30.—(1) A party may apply to the court under Article 15(1) of the Council Regulation or under Article 8(1) of the 1996 Hague Convention—

- (a) to stay the proceedings, or a specified part of the proceedings, and to invite the parties to introduce a request before a court of another Member State or Contracting State; or
 - (b) to make a request to a court of another Member State or another Contracting State to assume jurisdiction for the proceedings, or a specified part of the proceedings.
- (2) An application under paragraph (1) must be made—
- (a) to the court in which the relevant parental responsibility proceedings are pending; and
 - (b) in Form C1 or C2 as appropriate.
- (3) The applicant must file the application and serve it on the respondents—
- (a) where the application is also made under Article 11 of the Council Regulation, not less than 5 days, and
 - (b) in any other case, not less than 6 weeks,

before the hearing of the application.

Application by a court of another Member State or another Contracting State for transfer of the proceedings

4.31.—(1) This rule applies where a court of another Member State or another Contracting State makes an application under Article 15(2)(c) of the Council Regulation or under Article 9 of the 1996 Hague Convention that the court having jurisdiction in relation to the proceedings transfer the proceedings, or a specified part of the proceedings, to the applicant court.

- (2) When the court receives the application, the proper officer or chief clerk will—
- (a) as soon as practicable, notify the Central Authority for Northern Ireland of the application; and
 - (b) serve the application, and notice of the hearing on all other parties in Northern Ireland not less than 5 days before the hearing of the application.

Exercise by the court of its own motion of powers to seek to transfer the proceedings

4.32.—(1) The court having jurisdiction in relation to the proceedings may exercise its powers of its own motion under Article 15 of the Council Regulation or Article 8 of the 1996 Hague Convention in relation to the proceedings, or a specified part of the proceedings.

(2) Where the court proposes to exercise its powers, the proper officer or chief clerk will give the parties not less than 5 days notice of the hearing.

Application to High Court to make request under Article 15 of the Council Regulation or Article 9 of the 1996 Hague Convention to request transfer of jurisdiction

4.33.—(1) An application from an interested person for the court to request transfer of jurisdiction in a matter concerning a child from another Member State or another Contracting State under Article 15 of the Council Regulation or Article 9 of the 1996 Hague Convention (as the case may be) must be made to the Office of Care and Protection and heard in the High Court.

(2) An application must be made without notice to any other person and the court may give directions about joining any other party to the application.

(3) Where there is agreement between the court and the court or competent authority to which the request under paragraph (1) is made to transfer the matter to the courts of Northern Ireland, the court will consider with that other court or competent authority the specific timing and conditions for the transfer.

(4) Upon receipt of agreement to transfer jurisdiction from the court or other competent authority in the Member State or Contracting State to which the request has been made, the proper officer will serve on the applicant a notice that jurisdiction has been accepted by the courts of Northern Ireland.

(5) The applicant must attach the notice referred to in paragraph (3) to any subsequent application in relation to the child.

(6) Nothing in this rule requires an application with respect to a child commenced following a transfer of jurisdiction to be made to or heard in the High Court.

(7) Upon allocation, the court to which the proceedings are allocated must forthwith fix a directions hearing to consider the future conduct of the case.

Procedure where the court receives a request from the authorities of another Member State or Contracting State to assume jurisdiction in a matter concerning a child

4.34.—(1) Where any court other than the High Court receives a request to assume jurisdiction in a matter concerning a child from a court or other authority which has jurisdiction in another Member State or Contracting State, that court must forthwith refer the request to a judge of the High Court for a decision regarding acceptance of jurisdiction to be made.

(2) Upon the High Court agreeing to the request under paragraph (1), the proper officer will notify the parties to the proceedings before the other Member State or Contracting State of that decision, and the case must be allocated as if the application had been made in Northern Ireland.

(3) Upon allocation, the court to which the proceedings are allocated must forthwith fix a directions hearing to consider the future conduct of the case.

(4) The proper officer will serve notice of the directions hearing on all parties to the proceedings in the other Member State or Contracting State no later than 5 days before the date of that hearing.

Service of the court's order or request relating to transfer of jurisdiction under the Council Regulation or the 1996 Hague Convention

4.35. The proper officer will serve an order or request relating to transfer of jurisdiction on all parties, the Central Authority of the other Member State or Contracting State, and the Central Authority for Northern Ireland.

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

4.36.—(1) If at any time after issue of an application it appears to the court that under any of Articles 16 to 18 of the Council Regulation it does not or may not have jurisdiction to hear the application, or that under Article 19 of the Council Regulation or Article 13 of the 1996 Hague Convention it is or may be required to stay the proceedings or to decline jurisdiction, the court must—

- (a) stay the proceedings; and
- (b) fix a date for a hearing to determine jurisdiction or whether there should be a stay or other order.

(2) The proper officer or chief clerk will serve notice of the hearing referred to at paragraph (1)(b) on the parties to the proceedings.

(3) The court must, in writing—

- (a) give reasons for its decision under paragraph (1); and
- (b) where it makes a finding of fact, state such finding.

(4) 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.

Request for consultation as to contemplated placement of child in Northern Ireland

4.37.—(1) This rule applies to a request made—

- (a) under Article 56 of the Council Regulation, by a court in another Member State; or
- (b) under Article 33 of the 1996 Hague Convention by a court in another Contracting State

for consultation on or consent to the contemplated placement of a child in Northern Ireland.

(2) Where the court receives a request directly from a court in another Member State or Contracting State, the court must, as soon as practicable after receipt of the request, notify the Central Authority for Northern Ireland of the request and take the appropriate action under paragraph (4).

(3) Where it appears to the proper officer or chief clerk that no proceedings relating to the child are pending before a court in Northern Ireland, the proper officer or chief clerk, as the case may be, must inform the Central Authority for Northern Ireland of that fact and forward to the Central Authority all documents relating to the request sent by the court in the other Member State or Contracting State.

(4) Where the court receives a request forwarded by the Central Authority for Northern Ireland, the court must, as soon as practicable after receipt of the request, either—

- (a) where proceedings relating to the child are pending before the court, fix a directions hearing; or
- (b) where proceedings relating to the child are pending before another court in Northern Ireland, send a copy of the request to that court and notify the Central Authority for Northern Ireland of this action.

Request made by court in Northern Ireland for consultation as to contemplated placement of child in another Member State or Contracting State

4.38.—(1) This rule applies where the court is contemplating the placement of a child in another Member State under Article 56 of the Council Regulation or another Contracting State under Article 33 of the 1996 Hague Convention, and proposes to send a request for consultation with or for the consent of the Central Authority or other authority having jurisdiction in the other State in relation to the contemplated placement.

(2) In this rule, a reference to “the request” includes a reference to a report prepared for the purposes of Article 33 of the 1996 Hague Convention where the request is made under that Convention.

(3) Where the court sends the request directly to the Central Authority or other authority having jurisdiction in the other State, it must at the same time send a copy of the request to the Central Authority for Northern Ireland.

(4) The court may send the request to the Central Authority for Northern Ireland for onward transmission to the Central Authority or other authority having jurisdiction in the other Member State.

(5) The court should give consideration to the documents which should accompany the request.

Application for a declaration as to the extent, or existence, of parental responsibility in relation to a child under Article 16 of the 1996 Hague Convention

4.39.—(1) Any interested person may apply for a declaration—

- (a) that a person has, or does not have, parental responsibility for a child; or

(b) as to the extent of a person's parental responsibility for a child, where the question arises by virtue of the application of Article 16 of the 1996 Hague Convention.

(2) An application for a declaration as to the extent, or existence of a person's parental responsibility for a child by virtue of Article 16 of the 1996 Hague Convention must be made in the Office of Care and Protection and heard in the High Court.

(3) An application under paragraph (1) may not be made where the question raised is otherwise capable of resolution in any other family proceedings in respect of the child.”

“REGISTRATION AND ENFORCEMENT UNDER THE
COUNCIL REGULATION AND THE 1996 HAGUE
CONVENTION

Application

8.33. Rules 8.33 to 8.63 apply to proceedings for the recognition, non-recognition and registration of—

- (a) judgments to which the Council Regulation applies;
- (b) measures to which the 1996 Hague Convention applies; and
- (c) judgments to which the Jurisdiction and Recognition of Judgments Regulations apply, and which relate to dissolution, annulment or legal separation of overseas relationships entitled to be treated as a civil partnership.

Interpretation

8.34.—(1) In rules 8.33 to 8.63—

- (a) “Central Authority” means, in relation to Northern Ireland, the Department of Justice;
- (b) “Contracting State” means a State, other than a Member State, in relation to which the 1996 Hague Convention is in force as between that State and the United Kingdom;
- (c) “judgment” is to be construed—
 - (i) in accordance with the definition in Article 2(4) of the Council Regulation where it applies;
 - (ii) in accordance with regulation 6 of the Jurisdiction and Recognition of Judgments Regulations where they apply; or
 - (iii) as meaning any measure taken by an authority with jurisdiction under Chapter II of the 1996 Hague Convention where that Convention applies;
- (d) “the Jurisdiction and Recognition of Judgments Regulations” means the Civil Partnership (Jurisdiction and Recognition of Judgments) Regulations 2005^(a);
- (e) “Member State” includes, where recognition is sought of a judgment to which the Jurisdiction and Recognition of Judgments Regulations apply, a Member State of the European Union to which Part II of those Regulations applies;
- (f) “parental responsibility”—
 - (i) where the Council Regulation applies, has the meaning given in Article 2(7) of that Regulation; and
 - (ii) where the 1996 Hague Convention applies, has the meaning given in Article 1(2) of that Convention; and
- (g) “the Service Regulation” means Regulation (EC) No 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and

^(a) S.I. 2005/3334.

extrajudicial documents in civil and commercial matters (service of documents) and repealing Council Regulation (EC) No.1348/2000.

(2) References in rules 8.33 to 8.63 to registration are to the registration of a judgment in accordance with the provisions of those rules.

Filing of applications

8.35.—(1) Every application under rules 8.33 to 8.63, except for an application under rule 8.56, for a certified copy of a judgment or certificate, or under rule 8.61, for rectification of a certificate issued under Articles 41 or 42 of the Council Regulation, must be filed with the Office of Care and Protection.

(2) Notwithstanding paragraph (1), where recognition of a judgment is raised as an incidental question in proceedings under the Council Regulation, 1996 Hague Convention or the Jurisdiction and Recognition of Judgments Regulations the court hearing those proceedings may determine the question of recognition.

Application for registration, recognition or non-recognition of a judgment

8.36.—(1) Any interested person may apply to the court for an order that the judgment be registered, recognised or not recognised.

(2) Except for an application under rule 8.46, an application for registration, recognition or non-recognition must be made to the Master.

(3) In the case of an application under the Jurisdiction and Recognition of Judgments Regulations or the 1996 Hague Convention, a translation of the judgment must be supplied.

(4) Where any document required by rules 8.33 to 8.63 or by the direction of the court under rule 8.44 is not in the English language, the applicant must supply a translation of each such document into English by a notary public or a person qualified for the purpose, authenticated by witness statement or affidavit.

Application for registration or recognition of a judgment under the Council Regulation

8.37. An application for registration or recognition under the Council Regulation must be accompanied by a statement that is sworn to be true or an affidavit—

- (a) exhibiting—
 - (i) the judgment, or a verified, certified or otherwise duly authenticated copy of the judgment;
 - (ii) the certificate, in the form set out in Annex I or Annex II of the Council Regulation, issued by the Member State in which judgment was given;
 - (iii) in the case of a judgment given in default, the documents referred to in Article 37(2) of the Council Regulation;
 - (iv) where it is appropriate under Article 56 of the Council Regulation, evidence of the consent of the relevant authority or authorities;
- (b) stating—
 - (i) whether the judgment provides for the payment of a sum or sums of money;
 - (ii) whether interest is recoverable on the judgment or part of it in accordance with the law of the Member State in which the judgment was given, and if so, the rate of interest, the date from which the interest is recoverable, and the date on which interest ceases to accrue;
- (c) giving an address within the jurisdiction of the court for service of process on the party making the application and stating, so far as is known to the witness, the name and the usual or last known address or place of business of the person against whom judgment was given;

- (d) stating, where appropriate, whether Article 56 has been complied with and giving the identity and address of the authority or authorities from whom consent has been obtained.

Application for non- recognition of a judgment under the Council Regulation

8.38. An application for an order that a judgment should not be recognised under the Council Regulation must be supported by a statement that is sworn to be true or an affidavit—

- (a) exhibiting—
 - (i) the documents referred to in rule 8.37(a)(i) and (ii);
 - (ii) in the case of a judgment given in default, the documents referred to in Article 37(2) of the Council Regulation or a statement that no service or acceptance of service has occurred if that is the case;
 - (iii) the documents to support the statement referred to in paragraph (c);
- (b) giving an address within the jurisdiction of the court for service of process on the party making the application and stating, so far as is known to the witness, the name and the usual or last known address or place of business of the person in whose favour judgment was given;
- (c) stating, to the best of the information or belief of the witness, the ground or grounds under Articles 22 or 23 of the Council Regulation (as the case may be) on which it is requested that the judgment should not be recognised and the reasons why the witness asserts that such ground or grounds is or are made out.

Application for registration of a judgment under the 1996 Hague Convention

8.39.—(1) An application for registration under the 1996 Hague Convention must be supported by a statement that is sworn to be true or an affidavit—

- (a) exhibiting—
 - (i) the judgment, or a verified, certified or otherwise duly authenticated copy of the judgment;
 - (ii) those documents necessary to show that the judgment is enforceable according to the law of the Contracting State in which it was given;
 - (ii) any documents to support the statements referred to paragraph (d);
- (b) giving a description of the opportunities provided by the authority which gave the judgment in question for the child to be heard, except where that judgment was given in a case of urgency;
- (c) giving details of any measures taken in a non-Contracting State of the habitual residence of the child, if applicable, specifying the nature and effect of the measure, and the date on which it was taken;
- (d) in so far as not apparent from the copy of the judgment provided, stating the grounds on which the authority which gave the judgment has based its jurisdiction;
- (e) where appropriate, stating whether Article 33 of the 1996 Hague Convention has been complied with, and the identity and address of the authority or authorities from which consent has been obtained;
- (f) giving the information referred to in rule 8.37(b) and (c).

Application for non-recognition of a judgment under the 1996 Hague Convention

8.40. An application for an order that a judgment should not be recognised under the 1996 Hague Convention must be supported by a statement that is sworn to be true or an affidavit—

- (a) exhibiting —
 - (i) the judgment, or a verified, certified or otherwise duly authenticated copy of the judgment;
 - (ii) any documents to support the statements referred to in paragraph (b);
- (b) stating the ground or grounds under Articles 23 of the 1996 Hague Convention on which it is requested that the judgment should not be recognised and the reasons why the applicant asserts that such ground or grounds is or are made out; and
- (c) giving an address within the jurisdiction of the court for service of process on the applicant and stating, so far as is known to the applicant, the name and usual or last known address or place of business of the person in whose favour the judgment was given.

Application for recognition only of a judgment under the 1996 Hague Convention

8.41. Where it is sought to apply for recognition only of a judgment under the 1996 Hague Convention, the provisions of rule 8.39 apply with the exception that the applicant is not required to produce the document referred to in rule 8.39(a)(ii).

Application for recognition of a judgment under the Jurisdiction and Recognition of Judgments Regulations

8.42. An application for recognition of a judgment under regulation 7 of the Jurisdiction and Recognition of Judgments Regulations must be supported by a statement that is sworn to be true or an affidavit—

- (a) exhibiting the judgment, or a verified, certified or otherwise duly authenticated copy of the judgment;
- (b) exhibiting, where the judgment was obtained otherwise than by means of proceedings—
 - (i) an official document certifying that the judgment is effective under the law of the country in which it was obtained;
 - (ii) where either civil partner was domiciled in another country from that in which the judgment was obtained at the relevant date, an official document certifying that the judgment is recognised as valid under the law of that country.
- (c) exhibiting, where the judgment was obtained by means of proceedings and given in default, the document which establishes that the party who did not respond was served with the document instituting the proceedings or with an equivalent document, or any document indicating that the respondent has accepted the judgment unequivocally;
- (d) giving—
 - (i) the information referred to in rule 8.37(b) and (c); and
 - (ii) where applicable, details of any decision determining the question of the substance or validity of the civil partnership previously given by a court of civil jurisdiction in Northern Ireland, or by a court elsewhere.

Application for non-recognition of a judgment under the Jurisdiction and Recognition of Judgments Regulations

8.43. An application for an order that a judgment should not be recognised under regulation 8 of the Jurisdiction and Recognition of Judgments Regulations must be supported by a statement that is sworn to be true or an affidavit—

- (a) exhibiting—

- (i) the judgment, or a verified, certified or otherwise duly authenticated copy of the judgment;
 - (ii) any documents to support the statements referred to in paragraphs (b) and (c);
 - (iii) where the judgment was obtained by means of proceedings and given in default, the document referred to in rule 8.42(c) or a statement that no such service or acceptance occurred if that is the case.
- (b) giving an address within the jurisdiction of the court for service of process on the applicant and stating, so far as is known to the applicant, the name and usual or last known address or place of business of the person in whose favour judgment was given;
 - (c) stating the ground or grounds under regulation 8 on which it is requested that the judgment should not be recognised and the reasons why the applicant asserts that such ground or grounds is or are made out.

Documents – supplementary

8.44.—(1) Except as regards a copy of a judgment required by Article 37(1)(a) of the Council Regulation, where the person making an application under rules 8.33 to 8.63 does not produce the documents required by those rules, the court may—

- (a) fix a time within which the documents are to be produced;
- (b) accept equivalent documents; or
- (c) dispense with production of the documents if the court considers it has sufficient information.

(2) This rule does not apply to applications under rule 8.46.

Directions

8.45.—(1) As soon as practicable after an application under rules 8.33 to 8.63 has been made, the court may (subject to the requirements of the Council Regulation) give such directions as it considers appropriate, including as regards the following matters—

- (a) whether service of the application may be dispensed with;
- (b) expedition of the proceedings or any part of the proceedings (and any direction for expedition may specify a date by which the court must give its decision);
- (c) the steps to be taken in the proceedings and the time by which each step is to be taken;
- (d) the service of documents; and
- (e) the filing of evidence.

(2) The proper officer or chief clerk will—

- (a) record the giving, variation or revocation of directions under this rule; and
- (b) as soon as practicable serve a copy of the directions order on every party.

Recognition and enforcement under the Council Regulation of a judgment given in another Member State relating to rights of access or under Article 11(8) for the return of the child to that State

8.46.—(1) This rule applies where a judgment has been given in another Member State—

- (a) relating to rights of access: or
- (b) under Article 11(8) of the Council Regulation for the return of a child to that State,

which has been certified, in accordance with Article 41(2) or 42(2) as the case may be, by the judge in the court of origin.

- (2) An application for recognition or enforcement of the judgment must be—
 - (a) made in writing to the Master; and
 - (b) accompanied by a copy of the certificate issued by the judge in the court of origin.
- (3) The application may be made without notice.
- (4) Rules 8.44 and 8.47 to 8.55 do not apply to an application made under this rule.
- (5) Nothing in this rule prevents a holder of parental responsibility from seeking recognition and enforcement of a judgment in accordance with the provisions of rules 8.47 to 8.55.

Registration for enforcement or order for non-recognition of a judgment

8.47.—(1) This rule applies where an application is made for an order that a judgment given in another Member State, or a Contracting State, should be registered, or should not be recognised, except where rule 8.46 applies.

- (2) Where the application is made for an order that the judgment should be registered—
 - (a) upon receipt of the application, and subject to any direction given by the court under rule 8.45, the proper officer will serve the application on the person against whom registration is sought;
 - (b) the court will not accept submissions from either the person against whom registration is sought or any child in relation to whom the judgment was given.
- (3) Where the application is for an order that the judgment should not be recognised—
 - (a) upon receipt of the application, and subject to any direction given by the court under rule 8.45, the proper officer or the chief clerk will serve the application on the person in whose favour judgment was given;
 - (b) the person in whose favour the judgment was given must file an answer to the application and serve it on the applicant—
 - (i) within one month of service of the application; or
 - (ii) if the applicant is habitually resident in another Member State, within two months of service of the application.
- (4) In cases to which the 1996 Hague Convention applies and the Council Regulation does not apply, the court may extend the time set out in paragraph (3)(b)(ii) on account of distance.
- (5) The person in whose favour the judgment was given may request recognition or registration of the judgment in their answer, and in that event must comply with these rules, to the extent that such documents, information and evidence are not already contained in the application for non-recognition.
- (6) If, in a case to which the Council Regulation applies, the person in whose favour the judgment was given fails to file an answer as required by paragraph (3), the court will act in accordance with the provisions of Article 18 of the Council Regulation.
- (7) If, in a case to which the 1996 Hague Convention applies and the Service Regulation does not, the person in whose favour the judgment was given fails to file an answer as required by paragraph (3)—
 - (a) where the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters applies, the court must apply Article 15 of that Convention; and
 - (b) in all other cases, the court will not consider the application unless—
 - (i) it is proved to the satisfaction of the court that the person in whose favour judgment was given was served with the application within a reasonable period of time to arrange his or her answer; or

- (ii) the court is satisfied that the circumstances of the case justify proceeding with consideration of the application.

(8) In a case to which the Jurisdiction and Recognition of Judgments Regulations apply, if the person in whose favour judgment was given fails to file an answer as required by paragraph (3), the court will apply the Service Regulation where that Regulation applies, and if it does not—

- (a) where the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters applies, the court must apply Article 15 of that Convention; and
- (b) in all other cases, the court will apply the provisions of paragraph (7)(b).

Stay of recognition proceedings by reason of an appeal

8.48. Where recognition or non-recognition of a judgment given in another Member State or Contracting State is sought, or is raised as an incidental question in other proceedings, the court may stay the proceedings—

- (a) if an ordinary appeal against the judgment has been lodged; or
- (b) if the judgment was given in the Republic of Ireland, if enforcement of the judgment is suspended there by reason of an appeal.

Effect of refusal of application for a decision that a judgment should not be recognised

8.49.—(1) Where the court refuses an application for a decision that a judgment should not be recognised, the court may direct that the decision to refuse the application is to be treated as a decision that the judgment be recognised.

(2) Where the High court refuses an application for a decision that a judgment should not be recognised, that court may—

- (a) treat the answer under rule 8.47(3)(b) as an application that the judgment be registered for enforcement if rule 8.47(5) is complied with; and
- (b) order that the judgment be registered for enforcement in accordance with rule 8.50.

Notification of the court's decision on an application for registration or non-recognition

8.50.—(1) Where the court has—

- (a) made an order on an application for an order that a judgment should be registered for enforcement; or
- (b) refused an application that a judgment should not be recognised and ordered under rule 8.49(2) that the judgment be registered for enforcement,

the proper officer will as soon as practicable take the appropriate action under paragraph (2) or (3).

(2) If the court refuses the application for the judgment to be registered for enforcement, the proper officer will serve the order on the applicant and the person against whom judgment was given in the state of origin.

(3) If the court orders that the judgment should be registered for enforcement, the proper officer will—

- (a) register the judgment in the register of judgments kept by the Office of Care and Protection;
- (b) confirm on the order that the judgment has been registered; and
- (c) serve on the parties the court's order endorsed with the proper officer's confirmation that the judgment has been registered.

(4) A sealed order of the court endorsed in accordance with paragraph (3)(b) will constitute notification that the judgment has been registered under Article 28(2) of the Council Regulation or under Article 26 of the 1996 Hague Convention, as the case may be, and in this rule and rules 8.53 and 8.54 “notice of registration” means a sealed order so endorsed.

(5) The notice of registration must state—

- (a) full particulars of the judgment registered and the order for registration;
- (b) the name of the party making the application and that party’s address for service within the jurisdiction;
- (c) the right of the person against whom judgment was given to appeal against the order for registration; and
- (d) the period within which an appeal against the order for registration may be made.

Effect of registration under rule 8.50

8.51. Registration of a judgment under rule 8.50 will serve for the purpose of Article 21(3) of the Council Regulation, Article 24 of the 1996 Hague Convention, or regulation 7 of the Jurisdiction and Recognition of Judgments Regulations (as the case may be) as a decision that the judgment is recognised.

Decision on recognition of a judgment only

8.52.—(1) Where an application is made seeking recognition of a judgment only, the provisions of rules 8.47 and 8.48 apply to that application as they do to an application for registration for enforcement.

(2) Where the court orders that the judgment should be recognised, the proper officer or chief clerk will serve a copy of the order on each party as soon as practicable.

(3) A sealed order of the court will constitute notification that the judgment has been recognised under Article 21(3) of the Council Regulation, Article 24 of the 1996 Hague Convention or regulation 7 of the Jurisdiction and Recognition of Judgments Regulations, as the case may be.

(4) The sealed order must indicate—

- (a) full particulars of the judgment recognised;
- (b) the name of the party making the application and that party’s address for service within the jurisdiction;
- (c) the right of the person against whom judgment was given to appeal against the order for recognition; and
- (d) the period within which an appeal against the order for recognition may be made.

Appeal against the court’s decision under rules 8.49, 8.50 or 8.52

8.53.—(1) An appeal against the court’s decision under rules 8.49, 8.50 or 8.52 must be made to a judge of the High Court—

- (a) within one month of the date of service of the notice of registration; or
- (b) if the party bringing the appeal is habitually resident in another Member State, or a Contracting State, within two months of the date of service.

(2) The court may not extend time for an appeal on account of distance unless the matter is one to which the 1996 Hague Convention applies and the Council Regulation does not apply.

(3) If, in a case to which the 1996 Hague Convention applies and the Service Regulation does not, the appeal is brought by the applicant for a declaration of enforceability or registration and the respondent fails to appear—

- (a) where the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters applies, the court must apply Article 15 of that Convention; and
 - (b) in all other cases, the court will not consider the appeal unless—
 - (i) it is proved to the satisfaction of the court that the respondent was served with notice of the appeal within a reasonable period of time to arrange his or her response; or
 - (ii) the court is satisfied that the circumstances of the case justify proceeding with consideration of the appeal.
- (4) This rule is subject to rule 8.54.

Stay of enforcement where appeal pending in state of origin

8.54.—(1) A party against whom enforcement is sought of a judgment which has been registered under rule 8.50 may apply to the court with which an appeal is lodged under rule 8.53 for the proceedings to be stayed where—

- (a) that party has lodged an ordinary appeal in the Member State or Contracting State of origin; or
- (b) the time for such an appeal has not yet expired.

(2) Where an application for a stay is filed in the circumstances described in paragraph (1)(b), the court may specify the time within which an appeal must be lodged.

Enforcement of judgments registered under rule 8.51

8.55.—(1) The court will not enforce a judgment registered under rule 8.50 until after—

- (a) the expiration of any applicable period under rules 8.53 or 8.54; or
- (b) if that period has been extended by the court, the expiration of the period so extended.

(2) A party applying to the court for the enforcement of a registered judgment must produce to the court a certificate of service of—

- (a) the notice of registration of the judgment; and
- (b) any order made by the court in relation to the judgment.

Request for a certificate or a certified copy of a judgment

8.56.—(1) An application for a certified copy of a judgment, or for a certificate under Articles 39, 41 or 42 of the Council Regulation, must be made to the court which made the order and without giving notice to any other party.

(2) The certified copy of the judgment will be an office copy sealed with the seal of the court and signed by the Master or by the chief clerk where the application is made to the county court. It will be issued with a certified copy of any order which has varied any of the terms of the original order.

(3) Where the application is made for the purposes of applying for recognition or recognition and enforcement of the order in another Contracting State, the court must indicate on the certified copy of the judgment the grounds on which it based its jurisdiction to make the order, for the purposes of Article 23(2)(a) of the 1996 Hague Convention.

Applications for certified copy of judgment and certificate under Article 41 or 42 of the Council Regulation

8.57. An application for a certified copy of the judgment and a certificate under Article 41 or 42 of the Council Regulation must be supported by a statement that is sworn to be true or an affidavit—

- (a) exhibiting—
 - (i) a copy of the application by which the proceedings were begun;
 - (ii) a copy of all pleadings filed in the proceedings;
 - (iii) a document showing that the applicant has benefited from legal aid in the proceedings to which the judgment relates;
 - (iv) evidence of service of the application on all respondents, and if no such service occurred, evidence of all opportunities provided to each respondent to put their case before the court;
- (b) giving details of the proceedings in which the judgment was obtained;
- (c) stating—
 - (i) whether the certificate is sought under Article 41 or Article 42;
 - (ii) the full names, addresses and dates and places of birth (where available) of all persons holding parental responsibility in relation to the child or children to whom the judgment relates;
 - (iii) the full names and dates of birth of each child to whom the judgment relates;
 - (iv) the age of the child at the time of the judgment and the opportunities given during the proceedings, if any, for the child's wishes and feelings to be ascertained;
 - (v) whether the judgment provides for the payment of a sum or sums of money; and
 - (vi) whether interest is recoverable on the judgment or part of it in accordance with the law of the Member State in which the judgment was given, and if so, the rate of interest, the date from which the interest is recoverable, and the date on which interest ceases to accrue.

Applications for certified copy of judgment and certificate under Article 39 of the Council Regulation

8.58. An application for a certified copy of the judgment and a certificate under Article 39 of the Council Regulation must be supported by a statement that is sworn to be true or an affidavit—

- (a) exhibiting—
 - (i) the documents referred to in rule 8.57(a)(i) to (iii);
 - (ii) in relation to a parental responsibility matter, evidence that the judgment has been served on the respondent;
 - (iii) in the case of a judgment given in default, a document which establishes that the respondent was served with the application by which the proceedings were commenced, or any document indicating that the respondent accepted the judgment unequivocally;
- (b) stating whether—
 - (i) the certificate sought relates to a parental responsibility matter or a matrimonial matter;
 - (ii) the judgment provides for the payment of a sum or sums of money; and
 - (iii) interest is recoverable on the judgment or part of it in accordance with the law of the Member State in which the judgment was given, and if so, the rate of interest, the date from which the interest is recoverable, and the date on which interest ceases to accrue.
- (c) stating that the time for service has expired, or the date on which it will expire, as appropriate, and whether a notice of appeal against the judgment has been given;

- (d) in relation to a matrimonial matter, stating the full name, address, country and place of birth, and date of birth of each party and the country, place and date of the marriage;
- (e) in relation to a parental responsibility matter, stating the full name, address, place and date of birth of each person who holds parental responsibility; and
- (f) as appropriate, the name, address, and date of birth of the person with access rights or to whom the child is to be returned.

Applications for certified copy of judgment under the 1996 Hague Convention

8.59. An application for a certified copy of the judgment for the purposes of recognition and enforcement of the judgment under the 1996 Hague Convention must be supported by a statement that is sworn to be true or an affidavit—

- (a) exhibiting—
 - (i) the documents referred to in rule 8.57(a)(i) and (ii);
 - (ii) evidence of service of the proceedings, if any;
- (b) stating the grounds on which the court based its jurisdiction to make the orders in question;
- (c) stating the age of the child at the time of the judgment and the measures taken, if any, for the child’s wishes and feelings to be ascertained; and
- (d) stating which persons were provided with notice of the proceedings.

Certificates issued in Northern Ireland under Articles 41 and 42 of the Council Regulation

8.60. The proper officer or chief clerk, as the case may be, will serve—

- (a) a certificate issued under Articles 41 or 42;
- (b) a certificate rectified under rule 8.61,

on all parties and will transmit a copy to the Central Authority for Northern Ireland which will keep a register of those certificates.

Rectification of certificate issued under Articles 41 or 42 of the Council Regulation

8.61.—(1) Where there is an error in a certificate issued under Articles 41 or 42, an application to rectify that error must be made to the court which issued the certificate.

(2) A rectification under paragraph (1) may be made—

- (a) by the court of its own motion; or
- (b) on application by—
 - (i) any party to the proceedings;
 - (ii) the Central Authority for Northern Ireland; or
 - (ii) the court or Central Authority of another Member State.

(3) An application under paragraph (2)(b) may be made without notice being served on any other party.

Authentic instruments and agreements under Article 46 of the Council Regulation

8.62. Rules 8.33 to 8.63 apply to an authentic instrument and an agreement to which Article 46 of the Council Regulation applies as they apply to a judgment.

Application for provisional, including protective measures

8.63. An application for provisional, including protective measures, under Article 20 of the Council Regulation or Articles 11 or 12 of the 1996 Hague Convention may be made notwithstanding that the time for appealing against an order for registration of a judgment has not expired or that a final determination of any issue relating to enforcement of the judgment is pending.”

SCHEDULE 3

Rule 2(6)

“MEDIATION DIRECTIVE”

Application and interpretation

8.64.—(1) This rule and rules 8.65 to 8.68 apply to mediated cross-border disputes that are subject to Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters^(a).

(2) In this rule and rules 8.65 to 8.68—

- (a) “Mediation Directive” means Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters;
- (b) “cross-border dispute” has the meaning given by article 2 of the Mediation Directive;
- (c) “mediation” has the meaning given by article 3(a) of the Mediation Directive;
- (d) “mediation administrator” means a person involved in the administration of the mediation process;
- (e) “mediation evidence” means evidence arising out of or in connection with a mediation process;
- (f) “mediator” has the meaning given by article 3(b) of the Mediation Directive; and
- (g) “relevant dispute” means a cross-border dispute that is subject to the Mediation Directive.

Relevant disputes: applications for consent orders in respect of financial remedies

8.65.—(1) This rule applies in relation to proceedings for a financial remedy where the applicant, with the explicit consent of the respondent, wishes to make an application that the content of a written agreement resulting from mediation of a relevant dispute be made enforceable by being made the subject of a consent order.

(2) The court will not include in a consent order any matter which is contrary to the law of Northern Ireland or which is not enforceable under that law.

(3) The applicant must file two copies of a draft of the order in the terms sought.

(4) Subject to paragraph (5), the application must be supported by evidence of the explicit consent of the respondent.

(5) Where the respondent has written to the court consenting to the making of the order sought, the respondent is deemed to have given explicit consent to the order and paragraph (4) does not apply.

(6) Where this rule applies, rule 2.72 shall apply to the extent that it is consistent with this rule.

Relevant disputes: financial remedies expressed in a foreign currency

8.66. Where an application is made under rule 8.65 in respect of a financial remedy which is expressed in a foreign currency, the application must contain a certificate of the sterling equivalent of the sums or sums concerned at the close of business on the day before the date of the application.

(a) OJ No. L136, 24.05.2008

Mediation evidence: disclosure or inspection

8.67.—(1) Where a party to proceedings seeks disclosure or inspection of mediation evidence that is in the control of a mediator or mediation administrator, that person must first apply to the court for permission to seek the disclosure or inspection.

(2) Where an application is made under paragraph (1), the mediator or mediation administrator who has control of the mediation evidence must be named as a respondent to the application and must be served with a copy of the application.

(3) Evidence in support of the application under paragraph (1) must include evidence that—

- (a) all parties to the mediation agree to the disclosure or inspection of the mediation evidence;
- (b) disclosure or inspection of the mediation evidence is necessary for overriding considerations of public policy, in accordance with article 7(1)(a) of the Mediation Directive; or
- (c) disclosure or inspection of the mediation settlement is necessary to implement or enforce the mediation settlement agreement.

(4) Where this rule applies, rules 2.24, 2.25, 2.40 to 2.45, 2.60 to 2.63, 4.18, 4.24, 4B.9, 4C.7, 7.8A, 7.12, 7.13 and 7.13A apply to the extent they are consistent with this rule.

Mediation evidence: witnesses

8.68.—(1) This rule applies where a party wishes to obtain mediation evidence from a mediator or mediation administrator by—

- (a) a witness summons;
- (b) cross-examination with permission of the court under rule 2.41(5) or (6) or rule 2.45; or
- (c) an order under rule 2.41(4) (order for the examination on oath of any person).

(2) When applying for a witness summons, permission under rule 2.41(5) or (6) or rule 2.45, or an order under rule 2.41(4), the party must provide the court with evidence that—

- (a) all parties to the mediation agree to the obtaining of the mediation evidence;
- (b) obtaining the mediation evidence is necessary for overriding considerations of public policy, in accordance with article 7(1)(a) of the Mediation Directive; or
- (c) the disclosure or inspection of the mediation settlement is necessary to implement or enforce the mediation settlement agreement.

(3) When considering a request for a witness summons, permission under rule 2.41(5) or (6) or rule 2.45, or an order under rule 2.41(4), the court may invite any person, whether or not a party, to make representations.

(4) Where this rule applies, rules 2.24, 2.25, 2.40 to 2.45, 2.60 to 2.63, 4.18, 4.24, 4B.9, 4C.7, 7.8A, 7.12, 7.13 and 7.13A apply to the extent they are consistent with this rule.”

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Family Proceedings Rules (Northern Ireland) 1996 [S.R. 1996 No. 322] to make provision:

- enabling the transposition of article 6 (enforceability of agreements resulting from mediation) and article 7 (confidentiality of mediation) of Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, by inserting new rules under the heading “Mediation Directive” in Part VII (Enforcement of Orders); and
- for proceedings under the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children; Council Regulation (EC) No.2201/2003 of 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility; and the Civil Partnership (Jurisdiction and Recognition of Judgments) Regulations 2005 (SI 2005/3334).

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