

2011 No. 61

MAGISTRATES' COURTS

The Magistrates' Courts (Children (Northern Ireland) Order 1995) (Amendment) Rules (Northern Ireland) 2011

Made - - - -

1st March 2011

Coming into operation in accordance with rule 2

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 Article 165 of the Children (Northern Ireland) Order 1995(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 (Children (Northern Ireland) Order 1995) (Amendment) Rules (Northern Ireland) 2011.

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

Amendment to the Magistrates' Courts (Children (Northern Ireland) Order 1995) Rules (Northern Ireland) 1996

3. The Magistrates' Courts (Children (Northern Ireland) Order 1995) Rules (Northern Ireland) 1996(d) shall be amended as follows.

4. In rule 1 (Citation, commencement and interpretation), in paragraph (3)—

(a) after the definition of "child" insert—

(b) "'Contracting State" means a State party to the 1996 Hague Convention;";

(c) after the definition of "guardian ad litem" 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;

and then insert—

(a) S.I.1981/1675 (N.I. 26); Article 13 was amended by paragraph 65 of Schedule 5 to the Constitutional Reform Act 2005 (c.4).

(b) S.I. 1995/755 (N.I. 2).

(c) CM 77277.

(d) S.R. 1996 No.323; to which the most recent relevant amendment was made by S.R. 2005 No. 559.

“judgment” in rules 21A to 21V is to be construed in accordance with Article 2(4) of the Council Regulation where it applies and as meaning any measure taken by an authority with jurisdiction under Chapter II of the 1996 Hague Convention where that Convention applies;”;

(d) in the definition of “parental responsibility” after “Article 6” insert—

“, and in relation to proceedings under the Council Regulation, as in Article 2(7) of that Regulation and in relation to proceedings under the Hague Convention, as in Article 1(2) of that Convention”.

5. For rules 21A to 21D, substitute—

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

21A.—(1) Where a court is considering the transfer of proceedings to the court of another Member State or Contracting State under rules 21B to 21D 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 21B to 21D 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 clerk of petty sessions 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 clerk of petty sessions.

(6) In this rule and in rules 21B to 21V, 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.

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

21B.—(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 not less than 42 days before the hearing of the application.

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

21C.—(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 clerk of petty sessions 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

21D.—(1) The court having jurisdiction in relation to the proceedings may of its own motion exercise its powers 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 clerk of petty sessions will give the parties not less than 5 days notice of the hearing.”

6. After Rule 21D insert—

“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

21E.—(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 without notice.

(2) Upon receipt of an application under paragraph (1), the clerk of petty sessions must transfer the application to the Office of Care and Protection.

(3) Upon the High Court agreeing to the request under paragraph (1), 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

21F.—(1) Where the 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 court to which the proceedings are allocated must forthwith fix a directions hearing to consider the future conduct of the case.

(3) The clerk of petty sessions 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

21G. The clerk of petty sessions 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

21H.—(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 matter.

(2) The clerk of petty sessions 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

21I.—(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 clerk of petty sessions that no proceedings relating to the child are pending before a court in Northern Ireland, the clerk 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

21J.—(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.

Applications for recognition or non-recognition

21K.—(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 21L to 21Y 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 the production of documents if the court considers that it has sufficient information.

(2) In the case of an application under the 1996 Hague Convention, a translation of the judgment must be supplied.

(3) Where any document required by these rules or by the direction of the court under paragraph (1) 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 recognition of a judgment under the Council Regulation

21L. An application for recognition under the Council Regulation 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) 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 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 of the Council Regulation 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

21M. 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 21L(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 recognition of a judgment under the 1996 Hague Convention

21N. An application for recognition 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 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 21L(b) and (c).

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

21O. 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.

Stay of recognition proceedings by reason of an appeal

21P. Where recognition or non-recognition of a judgment given in another Member State or Contracting State 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

21Q. 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 be treated as a decision that the judgment be recognised.

Decision on recognition of a judgment

21R.—(1) Where the court orders that the judgment should be recognised, the clerk of petty sessions will serve a copy of the order on each party as soon as practicable.

(2) A sealed order of the court will constitute notification that the judgment has been recognised under Article 21(3) of the Council Regulation or under Article 24 of the 1996 Hague Convention.

- (3) 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.

Request for a certificate or a certified copy of a judgment

21S.—(1) An application for a certified copy of a judgment, or for a certificate under Articles 39 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 clerk of petty sessions. 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 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 of the Council Regulation

21T. An application for a certified copy of the judgment and a certificate under Article 41 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) 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;
 - (iv) a document showing that the applicant has benefited from legal aid in the proceedings to which the judgment relates;
- (b) giving details of the proceedings in which the judgment was obtained;
- (c) 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;
- (d) giving details of 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;
- (e) stating 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; and
- (f) stating the full names and dates of birth of each child to whom the judgment relates.

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

21U. 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 21T(a)(i), (ii) and (iv);
 - (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 the certificate sought relates to a parental responsibility matter or a matrimonial matter;
- (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 parental responsibility matter, stating the full name, address, place and date of birth of each person who holds parental responsibility; and
- (e) 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

21V. 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 21T(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 of the Council Regulation

21W. The clerk of petty sessions will serve—

- (a) a certificate issued under Articles 41 of the Council Regulation; or
- (b) a certificate rectified under rule 21X,

on all parties and will transmit a copy to the Central Authority for Northern Ireland.

Rectification of certificate issued under Articles 41 of the Council Regulation

21X. Where there is an error in a certificate issued under Articles 41 of the Council Regulation, 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; 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

21Y. Rules 21K to 21Y apply to an authentic instrument and an agreement to which Article 46 of the Council Regulation applies as it applies to a judgment.”

*Liam McNally
Peter Luney
John Rea
Nigel Broderick
Mervyn Bates*

Dated 1st March 2011

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Magistrates' Courts Rules (Children (Northern Ireland) Order 1995) Rules 1996 (S.R. 1996 No. 323) to:

- provide 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 (“the Convention”);
- amend the provisions for proceedings under 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 (“the Council Regulation”);
- provide the practice and procedure for applications for the recognition of judgments under the Convention; and
- amend the practice and procedure for the recognition of judgments under the Council Regulation.

© Crown Copyright 2011

Printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office being the Government Printer for Northern Ireland and the Officer appointed to print the Acts of the Northern Ireland Assembly.

2011 No. 61

MAGISTRATES' COURTS

The Magistrates' Courts (Children (Northern Ireland) Order
1995) (Amendment) Rules (Northern Ireland) 2011

£5.75