

2012 No. 301

JUDGMENTS

**The International Recovery of Maintenance (Hague Convention
2007) (Scotland) Regulations 2012**

Made - - - - - *6th November 2012*

Laid before the Scottish Parliament *8th November 2012*

Coming into force in accordance with regulation 1(b)

The Scottish Ministers make the following Regulations, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and all other powers enabling them to do so.

Citation, commencement and extent

1. These Regulations—

- (a) may be cited as the International Recovery of Maintenance (Hague Convention 2007) (Scotland) Regulations 2012;
- (b) come into force on the day on which the Convention enters into force in respect of the European Union, which day is to be notified in the Edinburgh Gazette; and
- (c) extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“Contracting State” means a State bound by the Convention other than an EU Member State;

“the Convention” means the Convention on the International Recovery of Child Support and other forms of Family Maintenance done at The Hague on 23rd November 2007(b);

“court”, in relation to a maintenance decision given in a Contracting State, includes a tribunal, and any administrative authority (within the meaning of Article 19(3)) with competence to make a decision of a maintenance obligation; and

“maintenance decision” means a decision, or part of a decision, made by a court in a Contracting State, to which Chapter V of the Convention applies by virtue of Article 19(1).

(a) 1972 c.68 (“the 1972 Act”). Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the Scotland Act”), Schedule 8, paragraph 15(3) (which was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(4)) and the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1. The functions conferred on the Minister of the Crown under section 2(2) of the 1972 Act, in so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act.

(b) OJ L 192, 22.07.2011, p.51-70.

(2) In these Regulations, any reference to a numbered Article is a reference to the Article so numbered in the Convention and any reference to a sub-division of a numbered Article is to be construed accordingly.

Central Authority in relation to Scotland

3. The Scottish Ministers are designated for the purposes of Article 4 as the Central Authority in relation to Scotland.

Recognition and enforcement in Scotland of maintenance decisions made by courts in Contracting States

4.—(1) The court in Scotland to which an application for registration of a maintenance decision under the Convention is to be made is the sheriff court.

(2) Jurisdiction in relation to an application for registration of a maintenance decision lies with the courts of Scotland if—

- (a) the person against whom enforcement is sought is resident in Scotland; or
- (b) assets belonging to that person and which are susceptible to enforcement are situated or held in Scotland.

(3) Where jurisdiction in relation to an application for registration of a maintenance decision lies with the courts of Scotland, the Scottish Ministers are to transmit it to the sheriff court having jurisdiction in Scotland in accordance with Schedule 8 to the Civil Jurisdiction and Judgments Act 1982^(a).

(4) An application for registration is to be determined by the sheriff clerk of the registering court.

(5) The determination of the sheriff clerk under paragraph (4) may be appealed to the sheriff by way of summary application.

(6) The determination of the sheriff of a summary application under paragraph (5) may be subject to a final appeal on a point of law to the Inner House of the Court of Session.

(7) For the purposes of enforcement of a maintenance decision registered under the Convention in the registering court—

- (a) the decision is of the same force and effect;
- (b) the registering court has in relation to its enforcement the same powers; and
- (c) proceedings for or with respect to its enforcement may be taken,

as if the decision had originally been made by the registering court.

(8) Paragraph (7) is subject to—

- (a) regulation 5 (interest on debts under a maintenance decision); and
- (b) any provision made by rules of court as to the procedure for the enforcement of maintenance decisions registered in accordance with this regulation.

Interest on debts under a maintenance decision

5.—(1) Where a person applying for registration of a maintenance decision shows that—

- (a) the decision provides for the payment of money; and
- (b) in accordance with the law of the Contracting State in which the maintenance decision was given and the terms of the decision, interest on that sum is recoverable at a particular rate and from a particular date or time,

(a) 1982 c.27.

the debt resulting from registration of the decision is to carry interest at that rate and from that date or time.

(2) Interest is not recoverable under paragraph (1) unless the rate of interest and the date or time referred to in paragraph (1)(b) are registered with the decision.

(3) Debts under a maintenance decision registered in a court in Scotland under the Convention are to carry interest only as provided for in this regulation.

Currency of payments under a maintenance decision

6.—(1) Sums payable under a maintenance decision registered in a court in Scotland under the Convention, including any arrears so payable, are to be paid in sterling.

(2) Where the maintenance decision is expressed in any other currency, the amounts are to be converted on the basis of the exchange rate prevailing on the date on which the application for registration was received by the Scottish Ministers for transmission to a court.

(3) For the purposes of this regulation, a written certificate purporting to be signed by an officer in any bank in Scotland and stating the exchange rate prevailing on a specified date is sufficient evidence of those facts.

Proof and admissibility of certain maintenance decisions and related documents

7.—(1) For the purposes of proceedings relating to the Convention, a document that is duly authenticated and which purports to be a copy of a maintenance decision given by a court in a Contracting State is without further proof deemed to be a true copy, unless the contrary is shown.

(2) A document purporting to be a copy of a maintenance decision given by a court in a Contracting State is duly authenticated for the purposes of this paragraph if it purports—

- (a) to bear the seal of that court; or
- (b) to be certified by any person in that person's capacity as a judge or officer of that court to be a true copy of a maintenance decision given by that court.

(3) Nothing in this regulation is to prejudice the admission in evidence of any document which is admissible apart from this regulation.

Maintenance arrangements

8.—(1) References in this regulation to maintenance arrangements are to those maintenance arrangements (as defined in Article 3(e)) which are to be recognised and enforceable in the same way as maintenance decisions by virtue of Article 30.

(2) In relation to a maintenance arrangement which is enforceable as a maintenance decision in the Contracting State of origin, these Regulations apply, subject to the modifications in paragraph (3), as if that maintenance arrangement was a maintenance decision given by a court of that State.

(3) The modifications are as follows—

- (a) regulation 4 (recognition and enforcement in Scotland of maintenance decisions made by courts in Contracting States) applies to maintenance arrangements as if—
 - (i) in paragraph (7), for “as if the decision had originally” there were substituted “as if it were a decision which had originally”; and

(ii) after paragraph (8)(b), there were inserted—

“(c) Article 30(6) (restriction on enforcement where there is a challenge to a maintenance arrangement in the Contracting State of origin).”;

(b) regulation 5 (interest on debts under a maintenance decision) applies to maintenance arrangements as if, in paragraph (1)(b), for the word “given” there were substituted “concluded”; and

(c) regulation 7 (proof and admissibility of certain maintenance decisions and related documents) applies to maintenance arrangements as if—

(i) in paragraph (1), for “given by a court” there were substituted “formally drawn up or registered as an authentic instrument by, or authenticated by, or concluded, registered or filed with a competent authority”; and

(ii) for paragraph (2) there were substituted—

“(2) A document purporting to be a copy of a maintenance arrangement drawn up or registered as an authentic instrument by, or authenticated by, or concluded, registered or filed with a competent authority in a Contracting State is duly authenticated for the purposes of this paragraph if it purports to be certified to be a true copy of such an arrangement by a person duly authorised in that State to do so.”.

(4) Section 18 (enforcement of U.K. judgments in other parts of U.K.) of the Civil Jurisdiction and Judgments Act 1982 does not apply to maintenance arrangements.

Consequential Amendments

9. The Schedule (which makes amendments consequential to the Convention and further amendments consequential to Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations^(a) including as applied in relation to Denmark by virtue of the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark^(b)) has effect.

KENNY MACASKILL

A member of the Scottish Government

St Andrew’s House,
Edinburgh
6th November 2012

^(a) OJ L 7, 10.01.2009, p.1-79.

^(b) OJ L 299, 16.11.2005, p.62-70.

SCHEDULE

Regulation 9

CONSEQUENTIAL AMENDMENTS

The Debtors (Scotland) Act 1987

- 1.—(1) The Debtors (Scotland) Act 1987(a) is amended as follows.
- (2) In section 54 (current maintenance arrestment to be preceded by default)—
- (a) in subsection (1)(a)(ii), for “or (h)” substitute “, (h) or (k)”; and
 - (b) in subsection (2)(a), for “or (ga)” substitute “, (ga) or (k)”.
- (3) In section 55 (review and termination of current maintenance arrestment), in subsection (9), for “or (ga)” substitute “, (ga) or (k)”.
- (4) In section 66 (recall and variation of conjoined arrestment order), in subsection (5), for “or (ga)” substitute “, (ga) or (k)”.
- (5) In section 73 (interpretation of Part 3), in subsection (1), in the definition of “decree or other document”—
- (a) at the end of paragraph (d), omit “or”; and
 - (b) after paragraph (e) insert—
 - “(f) a court settlement or authentic instrument (within the meaning of Article 2 of the Maintenance Regulation) which is—
 - (i) registered in the sheriff court under the 2011 Regulations; or
 - (ii) otherwise enforceable in Scotland by virtue of the Maintenance Regulation and the 2011 Regulations; or - (g) a maintenance arrangement (within the meaning of Article 3(e) of the Hague Convention) which is registered in the sheriff court under the Hague Convention,”.
- (6) In section 73A (arrestment and action of furthcoming to proceed only on decree or document of debt), in subsection (4)—
- (a) in the definition of “decree”, omit paragraph (da); and
 - (b) in the definition of “document of debt”—
 - (i) at the end of paragraph (a), omit “or”;
 - (ii) after paragraph (b) insert—
 - “(c) a court settlement or authentic instrument (within the meaning of Article 2 of the Maintenance Regulation) which is—
 - (i) registered in the sheriff court under the 2011 Regulations; or
 - (ii) otherwise enforceable in Scotland by virtue of the Maintenance Regulation and the 2011 Regulations; or - (d) a maintenance arrangement (within the meaning of Article 3(e) of the Hague Convention) which is registered in the sheriff court under the Hague Convention,”; and
 - (iii) for “being a document or settlement”, substitute “being a document, settlement, instrument or arrangement”.

(a) 1987 c.18.

- (7) In section 106 (interpretation)—
- (a) before the definition of “current maintenance”, insert—
 - ““the 2011 Regulations” means the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011 (S.I. 2011/1484);”;
 - (b) after the definition of “enactment”, insert—
 - ““the Hague Convention” means the Convention on the International Recovery of Child Support and other forms of Family Maintenance done at The Hague on 23rd November 2007;”;
 - (c) in the definition of “maintenance order”—
 - (i) in paragraph (aa) for “Civil Jurisdiction and Judgments (Maintenance) Regulations 2011” substitute “2011 Regulations”;
 - (ii) in paragraph (ga) for “Civil Jurisdiction and Judgments (Maintenance) Regulations 2011” substitute “2011 Regulations”;
 - (iii) at the end of paragraph (h), omit “or”; and
 - (iv) after paragraph (j) insert—
 - “; or
 - (k) a maintenance decision (within the meaning of regulation 2 of the International Recovery of Maintenance (Hague Convention 2007) (Scotland) Regulations 2012 (S.S.I. 2012/301) or maintenance arrangement (within the meaning of Article 3(e) of the Hague Convention) which is registered in the sheriff court under the Hague Convention.”.

The Debt Arrangement and Attachment (Scotland) Act 2002

- 2.—(1) The Debt Arrangement and Attachment (Scotland) Act 2002(a) is amended as follows.
- (2) In section 10 (attachment), in subsection (5)—
- (a) before the definition of “debt advice and information package” insert—
 - ““the 2011 Regulations” means the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011 (S.I. 2011/1484);”;
 - (b) in the definition of “document of debt”—
 - (i) at the end of paragraph (a), omit “or”;
 - (ii) after paragraph (b) insert—
 - “(c) a court settlement or authentic instrument (within the meaning of Article 2 of the Maintenance Regulation) which is—
 - (i) registered in the sheriff court under the 2011 Regulations; or
 - (ii) otherwise enforceable in Scotland by virtue of the Maintenance Regulation and the 2011 Regulations; or
 - (d) a maintenance arrangement (within the meaning of Article 3 of the Hague Convention) which is registered in the sheriff court under the Hague Convention;”;
 - and
 - (c) for “being a document, bill or settlement”, substitute “being a document, bill, settlement, instrument or arrangement”; and
 - (d) after the definition of “document of debt” insert—
 - ““the Hague Convention” means the Convention on the International Recovery of Child Support and other forms of Family Maintenance done at The Hague on 23rd November 2007; and

(a) 2002 asp 17.

“the Maintenance Regulation” means Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations including as applied in relation to Denmark by virtue of the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark.”.

The Bankruptcy and Diligence etc. (Scotland) Act 2007

3.—(1) The Bankruptcy and Diligence etc. (Scotland) Act 2007(a) is amended as follows.

(2) In section 221 (interpretation)—

(a) after the definition of the “2002 Act” insert—

““the 2011 Regulations” means the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011 (S.I. 2011/1484);”;

(b) in the definition of “document of debt”—

(i) at the end of paragraph (b), omit “or”;

(ii) after paragraph (c) insert—

“(d) a court settlement or authentic instrument (within the meaning of Article 2 of the Maintenance Regulation) which is—

(i) registered in the sheriff court under the 2011 Regulations; or

(ii) otherwise enforceable in Scotland by virtue of the Maintenance Regulation and the 2011 Regulations; or

(e) a maintenance arrangement (within the meaning of Article 3(e) of the Hague Convention) which is registered in the sheriff court under the Hague Convention;”;

(c) after the definition of “electronic communications” insert—

““the Hague Convention” means the Convention on the International Recovery of Child Support and other forms of Family Maintenance done at The Hague on 23rd November 2007;

“the Maintenance Regulation” means Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations including as applied in relation to Denmark by virtue of the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark;”.

The Civil Legal Aid (Scotland) Regulations 2002

4.—(1) The Civil Legal Aid (Scotland) Regulations 2002(b) are amended as follows.

(2) In regulation 46 (applications under the European Judgments Convention)(c)—

(a) after paragraph (1)(c) insert—

“(d) application for legal aid is made in relation to proceedings in respect of which the sheriff court has jurisdiction, or an appeal in respect of which the Inner House of the Court of Session has jurisdiction, by, or on behalf of, a person who has made an application to the Scottish Ministers under Chapter III of the Hague Convention and the person—

(i) is entitled to free legal assistance by virtue of Article 15(1) of that Convention; or

(a) 2007 asp 3.

(b) S.S.I. 2002/494.

(c) Regulation 46 has been amended by S.I 2011/1484 and S.S.I. 2011/161.

- (ii) has, in a State bound by the Hague Convention other than an EU Member State, benefitted from free legal assistance and is entitled to free legal assistance by virtue of Article 17(b) of that Convention”;
- (b) in paragraph (3) after “paragraph (1)(c)(i)” insert “or (d)(i)”; and
- (c) after paragraph (4) insert—
 - “(5) In paragraph (1)(d), “the Hague Convention” means the Convention on the International Recovery of Child Support and other forms of Family Maintenance done at The Hague on 23rd November 2007.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision to facilitate the application 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 Convention”) in Scotland. The Convention will be concluded by the European Union on a date yet to be determined pursuant to Council Decision 2011/432/EU (OJ L 192, 22.07.2011, p.39-50). Member States of the European Union (apart from Denmark) are bound to apply the Convention by virtue of conclusion by the European Union. The Convention contains rules on the recognition and enforcement of maintenance decisions between Contracting Parties, and administrative co-operation to facilitate the recovery of such maintenance.

Regulation 3 designates the Scottish Ministers as the Central Authority in relation to Scotland for the purposes of Article 4 of the Convention.

Regulation 4 makes provision for the recognition and enforcement in Scotland of maintenance decisions made by courts in Contracting States. Jurisdiction lies with the courts of Scotland where the person against whom enforcement is sought is resident in Scotland or assets belonging to that person and which are susceptible to enforcement are situated or held in Scotland (regulation 4(2)). The relevant court to which an application should be made is the sheriff court (regulation 4(1) and (3)). An application for registration of a maintenance decision is to be decided by the sheriff clerk (regulation 4(4)) but a right of appeal lies to the sheriff (regulation 4(5)) with a further right of appeal to the Inner House of the Court of Session on a point of law only (regulation 4(6)). A maintenance decision registered in Scotland is to be enforceable as if it was made by the registering court (regulation 4(7)).

Regulations 5 to 7 make provision for interest, currency of payments and admissibility.

Regulation 8 makes equivalent provision to regulation 4 for the recognition and enforcement in Scotland of maintenance arrangements (which is defined in Article 3 of the Convention).

Regulation 9 and the Schedule make consequential amendments to the Debtors (Scotland) Act 1987, the Debt Arrangement and Attachment (Scotland) Act 2002 and the Bankruptcy and Diligence etc. (Scotland) Act 2007 so that maintenance decisions and arrangements within the scope of the Convention can be enforced in the same manner as decisions of a registering court in Scotland. Amendments are also made which make it clear that court settlements and authentic instruments within the scope of Council Regulation (EC) No 4/2009 can be enforced in the same way. An amendment is also made to the Civil Legal Aid (Scotland) Regulations 2002 so as to provide for the availability of legal aid for applications to the Scottish Ministers under Chapter III of the Convention.

No Business and Regulatory Impact Assessment has been prepared in respect of these Regulations.

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