
STATUTORY RULES OF NORTHERN IRELAND

2011 No. 61

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

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

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.”