

SCHEDULES

SCHEDULE 9

Section 283.

International protection of adults

Part 1

Preliminary

Introduction

1. Paragraphs 2 to 5 apply for the purposes of this Schedule.

The Convention

2.—(1) “Convention” means the Convention on the International Protection of Adults signed at the Hague on 13th January 2000.

(2) “Convention country” means a country in which the Convention is in force.

(3) A reference to an Article or Chapter is to an Article or Chapter of the Convention.

(4) Subject to paragraph 4, an expression which appears in this Schedule and in the Convention is to be construed in accordance with the Convention.

Countries, territories and nationals

3.—(1) “Country” includes a territory which has its own system of law.

(2) Where a country has more than one territory with its own system of law, a reference to the country, in relation to one of its nationals, is to the territory with which the national has the closer, or the closest, connection.

Adults with incapacity

4. “Adult” means a person who—

(a) as a result of an impairment or insufficiency of the person’s personal faculties, cannot protect his or her interests; and

(b) is 16 or over.

Protective measures

5.—(1) “Protective measure” means a measure directed to the protection of the person or property of an adult; and it may deal in particular with any of the following—

- (a) the determination of incapacity and the institution of a protective regime;
- (b) placing the adult under the protection of an appropriate authority;
- (c) guardianship, curatorship or any corresponding system;
- (d) the designation and functions of a person having charge of the adult’s person or property, or representing or otherwise helping the adult;
- (e) placing the adult in a place where protection can be provided;
- (f) administering, conserving or disposing of the adult’s property;
- (g) authorising a specific intervention for the protection of the person or property of the adult.

(2) Where a measure of like effect to a protective measure has been taken in relation to a person while the person is under 16, this Schedule applies to the measure in so far as it has effect in relation to the person once the person is 16 or over.

Application of this Schedule

6.—(1) This Schedule does not apply to a relevant person where either of the following applies—

- (a) 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;
- (b) Council Regulation (EC) No. 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.

(2) In this paragraph “relevant person” means a person who is 16 or over but under 18.

Central Authority

7.—(1) Any function under the Convention of a Central Authority is exercisable in Northern Ireland by the Department of Justice.

(2) A communication may be sent to the Central Authority in relation to Northern Ireland by sending it to the Department of Justice.

Part 2

Jurisdiction

Scope of jurisdiction

8.—(1) The court may exercise its functions under this Act (in so far as it cannot otherwise do so) in relation to—

- (a) an adult habitually resident in Northern Ireland;
- (b) an adult's property in Northern Ireland;
- (c) an adult present in Northern Ireland or who has property there, if the matter is urgent; or
- (d) an adult present in Northern Ireland, if a protective measure which is temporary and limited in its effect to Northern Ireland is proposed in relation to the adult.

(2) An adult present in Northern Ireland is to be treated for the purposes of this paragraph as habitually resident there if—

- (a) the habitual residence of the adult cannot be ascertained;
- (b) the adult is a refugee; or
- (c) the adult has been internationally displaced as a result of disturbance in the country of the adult's habitual residence.

9.—(1) The court may also exercise its functions under this Act (in so far as it cannot otherwise do so) in relation to an adult if sub-paragraph (2) or (3) applies in relation to that adult.

(2) This sub-paragraph applies in relation to an adult if—

- (a) the adult is a British citizen;
- (b) the adult has a closer connection with Northern Ireland than with any other part of the United Kingdom; and
- (c) Article 7 has, in relation to the matter concerned, been complied with.

(3) This sub-paragraph applies in relation to an adult if the Department of Justice, having consulted such persons as it considers appropriate, agrees to a request under Article 8 in relation to the adult.

Exercise of jurisdiction

10.—(1) This paragraph applies where jurisdiction is exercisable under this Schedule in connection with a matter which involves a Convention country other than Northern Ireland.

(2) Any Article on which the jurisdiction is based applies in relation to the matter in so far as it involves the other country (and the court must, accordingly, comply with any duty conferred on it as a result).

(3) Article 12 also applies, so far as its provisions allow, in relation to the matter in so far as it involves the other country.

11. A reference in this Schedule to the exercise of jurisdiction under this Schedule is to the exercise of functions under this Act as a result of this Part.

Part 3

Applicable law

Applicable law

12. In exercising jurisdiction under this Schedule, the court may, if it considers that the matter has a substantial connection with a country other than Northern Ireland and having regard to the interests of the adult, apply the law of that other country.

13. Where a protective measure is taken in one country but implemented in another, the conditions of implementation are governed by the law of the other country.

Lasting powers of attorney, etc

14.—(1) If the donor of a lasting power is habitually resident in Northern Ireland at the time of granting the power, the law applicable to the existence, extent, modification or extinction of the power is—

- (a) the law of Northern Ireland; or
- (b) if the donor specifies in writing the law of a connected country for the purpose, that law.

(2) If the donor is habitually resident in another country at that time, but Northern Ireland is a connected country, the law applicable in that respect is—

- (a) the law of the other country; or
- (b) if the donor specifies in writing the law of Northern Ireland for the purpose, that law.

(3) A country is connected, in relation to the donor, if it is a country—

- (a) of which the donor is a national;
- (b) in which the donor was habitually resident before the grant of the power; or
- (c) in which the donor has property.

(4) Where this paragraph applies as a result of sub-paragraph (3)(c), it applies only in relation to the property which the donor has in the connected country.

(5) The law applicable to the manner of the exercise of a lasting power is the law of the country where it is exercised.

(6) In this Part, “lasting power” means—

- (a) a lasting power of attorney (see section 97);
- (b) an enduring power of attorney (as defined by section 306(1)); or
- (c) any other power of like effect.

15.—(1) Where a lasting power is not exercised in a manner sufficient to guarantee the protection of the person or property of the donor, the court, in exercising jurisdiction under this Schedule, may disapply or modify the power.

(2) Where, in accordance with this Part, the law applicable to the power is, in one or more respects, that of a country other than Northern Ireland, the court must, so far as possible, have regard to the law of the other country in that respect (or those respects).

16. Regulations may provide for Schedule 4 (lasting powers of attorney: formalities) to apply with modifications in relation to a lasting power which comes within paragraph 14(6)(c).

Protection of third parties

17.—(1) This paragraph applies where a person (a “representative”) in purported exercise of an authority to act on behalf of an adult enters into a transaction with a third party.

(2) The validity of the transaction may not be questioned in proceedings, nor may the third party be held liable, merely because—

- (a) where the representative and third party are in Northern Ireland when entering into the transaction, sub-paragraph (3) applies;
- (b) where they are in another country at that time, sub-paragraph (4) applies.

(3) This sub-paragraph applies if—

- (a) the law applicable to the authority in one or more respects is, as a result of this Schedule, the law of a country other than Northern Ireland; and
- (b) the representative is not entitled to exercise the authority in that respect (or those respects) under the law of that other country.

(4) This sub-paragraph applies if—

- (a) the law applicable to the authority in one or more respects is, as a result of this Part, the law of Northern Ireland; and

(b) the representative is not entitled to exercise the authority in that respect (or those respects) under that law.

(5) This paragraph does not apply if the third party knew or ought to have known that the applicable law was—

- (a) in a case within sub-paragraph (3), the law of the other country;
- (b) in a case within sub-paragraph (4), the law of Northern Ireland.

Mandatory rules

18. Where the court is entitled to exercise jurisdiction under this Schedule, the mandatory provisions of the law of Northern Ireland apply, regardless of any system of law which would otherwise apply in relation to the matter.

Public policy

19. Nothing in this Part requires or enables the application in Northern Ireland of a provision of the law of another country if its application would be manifestly contrary to public policy.

Part 4

Recognition and enforcement

Recognition

20.—(1) A protective measure taken in relation to an adult under the law of a country other than Northern Ireland is to be recognised in Northern Ireland if it was taken on the ground that the adult is habitually resident in the other country.

(2) A protective measure taken in relation to an adult under the law of a Convention country other than Northern Ireland is to be recognised in Northern Ireland if it was taken on a ground mentioned in Chapter 2 (jurisdiction).

(3) But the court may disapply this paragraph in relation to a measure if it considers that—

- (a) the case in which the measure was taken was not urgent;
- (b) the adult was not given an opportunity to be heard; and
- (c) that omission amounted to a breach of natural justice.

(4) The court may also disapply this paragraph in relation to a measure if it considers that—

- (a) recognition of the measure would be manifestly contrary to public policy;
- (b) the measure would be inconsistent with a mandatory provision of the law of Northern Ireland; or

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(c) the measure is inconsistent with one subsequently taken, or recognised, in Northern Ireland in relation to the adult.

(5) The court may also disapply this paragraph in relation to a measure taken under the law of a Convention country in a matter to which Article 33 applies, if the court considers that that Article has not been complied with in connection with that matter.

21.—(1) An interested person may apply to the court for a declaration as to whether a protective measure taken under the law of a country other than Northern Ireland is to be recognised in Northern Ireland.

(2) No leave is required for an application to the court under this paragraph.

22. For the purposes of paragraphs 20 and 21, any finding of fact in relation to jurisdiction relied on when the measure was taken is conclusive.

Enforcement

23.—(1) An interested person may apply to the court for a declaration as to whether a protective measure taken under the law of, and enforceable in, a country other than Northern Ireland is enforceable, or to be registered, in Northern Ireland.

(2) The court must make the declaration if—

(a) the measure comes within sub-paragraph (1) or (2) of paragraph 20; and

(b) the paragraph is not disapplied in relation to it as a result of sub-paragraph (3), (4) or (5) of that paragraph.

(3) A measure to which a declaration under this paragraph relates is enforceable in Northern Ireland as if it were a measure of like effect taken by the court.

Measures taken in relation to under 16s

24.—(1) This paragraph applies where—

(a) provision giving effect to, or otherwise deriving from, the Convention in a country other than Northern Ireland applies in relation to a person who is under 16; and

(b) a measure is taken in relation to that person in reliance on that provision.

(2) This Part applies in relation to that measure as it applies in relation to a protective measure taken in relation to an adult under the law of a Convention country other than Northern Ireland.

Supplementary

25. The court may not review the merits of a measure taken outside Northern Ireland except to establish whether the measure complies with this Schedule in so far as it is, as a result of this Schedule, required to do so.

Part 5

Co-operation

Proposal for cross-border placement

26.—(1) This paragraph applies where a public authority proposes to place an adult in an establishment in a Convention country other than Northern Ireland.

(2) The public authority must consult an appropriate authority in that other country about the proposed placement and, for that purpose, must send it—

- (a) a report on the adult; and
- (b) a statement of its reasons for the proposed placement.

(3) If the appropriate authority in the other country opposes the proposed placement within a reasonable time, the public authority may not proceed with it.

27. A proposal received by a public authority under Article 33 in relation to an adult is to proceed unless the authority opposes it within a reasonable time.

Adult in danger etc

28.—(1) This paragraph applies if a public authority is told that an adult—

- (a) who is in serious danger, and
- (b) in relation to whom the public authority has taken, or is considering taking, protective measures,

is, or has become resident, in a country other than Northern Ireland.

(2) The public authority must tell an appropriate authority in that other country about—

- (a) the danger; and
- (b) the measures taken or under consideration.

29. A public authority may not request from, or send to, an appropriate authority in a country other than Northern Ireland information in accordance with Chapter 5 (co-operation) in relation to an adult if it considers that doing so—

- (a) would be likely to endanger the adult or the adult's property; or
- (b) would amount to a serious threat to the liberty or life of a member of the adult's family.

Part 6

General

Certificate

30. A certificate given under Article 38 by an authority in a Convention country other than Northern Ireland is, unless the contrary is shown, proof of the matters contained in it.

Powers to make further provision as to private international law

31.—(1) Regulations may make provision—

- (a) giving further effect to the Convention; or
- (b) otherwise about the private international law of Northern Ireland in relation to the protection of adults.

(2) The regulations may—

- (a) confer functions on the Department of Justice, the court or another public authority;
- (b) amend this Schedule;
- (c) provide for this Schedule to apply with specified modifications;
- (d) make provision relating to countries other than Convention countries.

Exceptions

32. Nothing in this Schedule applies, and no provision made under paragraph 31 is to apply, to any matter to which the Convention, as a result of Article 4, does not apply.