

*Changes to legislation:* There are currently no known outstanding effects for the Civil Jurisdiction and Judgments Act 1982, CHAPTER V. (See end of Document for details)

## SCHEDULES

### [<sup>F1</sup>SCHEDULE 3G

#### TEXT OF THE 2007 HAGUE CONVENTION

##### Textual Amendments

- F1** Sch. 3G inserted (31.12.2020) by Private International Law (Implementation of Agreements) Act 2020 (c. 24), s. 4(3), Sch. 4 (with s. 3(1), Sch. 5 para. 8)

#### CONVENTION ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE

### CHAPTER V

#### RECOGNITION AND ENFORCEMENT

##### *Article 19*

##### *Scope of the Chapter*

- (1) This Chapter shall apply to a decision rendered by a judicial or administrative authority in respect of a maintenance obligation. The term “decision” also includes a settlement or agreement concluded before or approved by such an authority. A decision may include automatic adjustment by indexation and a requirement to pay arrears, retroactive maintenance or interest and a determination of costs or expenses.
- (2) If a decision does not relate solely to a maintenance obligation, the effect of this Chapter is limited to the parts of the decision which concern maintenance obligations.
- (3) For the purpose of paragraph 1, “administrative authority” means a public body whose decisions, under the law of the State where it is established—
  - (a) may be made the subject of an appeal to or review by a judicial authority; and
  - (b) have a similar force and effect to a decision of a judicial authority on the same matter.
- (4) This Chapter also applies to maintenance arrangements in accordance with Article 30.
- (5) The provisions of this Chapter shall apply to a request for recognition and enforcement made directly to a competent authority of the State addressed in accordance with Article 37.

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## Article 20

### *Bases for recognition and enforcement*

- (1) A decision made in one Contracting State (“the State of origin”) shall be recognised and enforced in other Contracting States if—
  - (a) the respondent was habitually resident in the State of origin at the time proceedings were instituted;
  - (b) the respondent has submitted to the jurisdiction either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity;
  - (c) the creditor was habitually resident in the State of origin at the time proceedings were instituted;
  - (d) the child for whom maintenance was ordered was habitually resident in the State of origin at the time proceedings were instituted, provided that the respondent has lived with the child in that State or has resided in that State and provided support for the child there;
  - (e) except in disputes relating to maintenance obligations in respect of children, there has been agreement to the jurisdiction in writing by the parties; or
  - (f) the decision was made by an authority exercising jurisdiction on a matter of personal status or parental responsibility, unless that jurisdiction was based solely on the nationality of one of the parties.
- (2) A Contracting State may make a reservation, in accordance with Article 62, in respect of paragraph 1 (c), (e) or (f).
- (3) A Contracting State making a reservation under paragraph 2 shall recognise and enforce a decision if its law would in similar factual circumstances confer or would have conferred jurisdiction on its authorities to make such a decision.
- (4) A Contracting State shall, if recognition of a decision is not possible as a result of a reservation under paragraph 2, and if the debtor is habitually resident in that State, take all appropriate measures to establish a decision for the benefit of the creditor. The preceding sentence shall not apply to direct requests for recognition and enforcement under Article 19(5) or to claims for support referred to in Article 2(1) (b).
- (5) A decision in favour of a child under the age of 18 years which cannot be recognised by virtue only of a reservation in respect of paragraph 1 (c), (e) or (f) shall be accepted as establishing the eligibility of that child for maintenance in the State addressed.
- (6) A decision shall be recognised only if it has effect in the State of origin, and shall be enforced only if it is enforceable in the State of origin.

## Article 21

### *Severability and partial recognition and enforcement*

- (1) If the State addressed is unable to recognise or enforce the whole of the decision, it shall recognise or enforce any severable part of the decision which can be so recognised or enforced.
- (2) Partial recognition or enforcement of a decision can always be applied for.

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## Article 22

### *Grounds for refusing recognition and enforcement*

Recognition and enforcement of a decision may be refused if—

- (a) recognition and enforcement of the decision is manifestly incompatible with the public policy (“*ordre public*”) of the State addressed;
- (b) the decision was obtained by fraud in connection with a matter of procedure;
- (c) proceedings between the same parties and having the same purpose are pending before an authority of the State addressed and those proceedings were the first to be instituted;
- (d) the decision is incompatible with a decision rendered between the same parties and having the same purpose, either in the State addressed or in another State, provided that this latter decision fulfils the conditions necessary for its recognition and enforcement in the State addressed;
- (e) in a case where the respondent has neither appeared nor was represented in proceedings in the State of origin—
  - (i) when the law of the State of origin provides for notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or
  - (ii) when the law of the State of origin does not provide for notice of the proceedings, the respondent did not have proper notice of the decision and an opportunity to challenge or appeal it on fact and law; or
- (f) the decision was made in violation of Article 18.

## Article 23

### *Procedure on an application for recognition and enforcement*

- (1) Subject to the provisions of the Convention, the procedures for recognition and enforcement shall be governed by the law of the State addressed.
- (2) Where an application for recognition and enforcement of a decision has been made through Central Authorities in accordance with Chapter III, the requested Central Authority shall promptly either—
  - (a) refer the application to the competent authority which shall without delay declare the decision enforceable or register the decision for enforcement; or
  - (b) if it is the competent authority take such steps itself.
- (3) Where the request is made directly to a competent authority in the State addressed in accordance with Article 19(5), that authority shall without delay declare the decision enforceable or register the decision for enforcement.
- (4) A declaration or registration may be refused only on the ground set out in Article 22 (a). At this stage neither the applicant nor the respondent is entitled to make any submissions.
- (5) The applicant and the respondent shall be promptly notified of the declaration or registration, made under paragraphs 2 and 3, or the refusal thereof in accordance with paragraph 4, and may bring a challenge or appeal on fact and on a point of law.
- (6) A challenge or an appeal is to be lodged within 30 days of notification under paragraph 5. If the contesting party is not resident in the Contracting State in which the declaration or registration was made or refused, the challenge or appeal shall be lodged within 60 days of notification.

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- (7) A challenge or appeal may be founded only on the following—
- (a) the grounds for refusing recognition and enforcement set out in Article 22;
  - (b) the bases for recognition and enforcement under Article 20;
  - (c) the authenticity or integrity of any document transmitted in accordance with Article 25(1) (a), (b) or (d) or (3) (b).
- (8) A challenge or an appeal by a respondent may also be founded on the fulfilment of the debt to the extent that the recognition and enforcement relates to payments that fell due in the past.
- (9) The applicant and the respondent shall be promptly notified of the decision following the challenge or the appeal.
- (10) A further appeal, if permitted by the law of the State addressed, shall not have the effect of staying the enforcement of the decision unless there are exceptional circumstances.
- (11) In taking any decision on recognition and enforcement, including any appeal, the competent authority shall act expeditiously.

#### *Article 24*

##### *Alternative procedure on an application for recognition and enforcement*

- (1) Notwithstanding Article 23(2) to (11), a State may declare, in accordance with Article 63, that it will apply the procedure for recognition and enforcement set out in this Article.
- (2) Where an application for recognition and enforcement of a decision has been made through Central Authorities in accordance with Chapter III, the requested Central Authority shall promptly either—
- (a) refer the application to the competent authority which shall decide on the application for recognition and enforcement; or
  - (b) if it is the competent authority, take such a decision itself.
- (3) A decision on recognition and enforcement shall be given by the competent authority after the respondent has been duly and promptly notified of the proceedings and both parties have been given an adequate opportunity to be heard.
- (4) The competent authority may review the grounds for refusing recognition and enforcement set out in Article 22 (a), (c) and (d) of its own motion. It may review any grounds listed in Articles 20, 22 and 23(7) (c) if raised by the respondent or if concerns relating to those grounds arise from the face of the documents submitted in accordance with Article 25.
- (5) A refusal of recognition and enforcement may also be founded on the fulfilment of the debt to the extent that the recognition and enforcement relates to payments that fell due in the past.
- (6) Any appeal, if permitted by the law of the State addressed, shall not have the effect of staying the enforcement of the decision unless there are exceptional circumstances.
- (7) In taking any decision on recognition and enforcement, including any appeal, the competent authority shall act expeditiously.

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## Article 25

### Documents

- (1) An application for recognition and enforcement under Article 23 or Article 24 shall be accompanied by the following—
  - (a) a complete text of the decision;
  - (b) a document stating that the decision is enforceable in the State of origin and, in the case of a decision by an administrative authority, a document stating that the requirements of Article 19(3) are met unless that State has specified in accordance with Article 57 that decisions of its administrative authorities always meet those requirements;
  - (c) if the respondent did not appear and was not represented in the proceedings in the State of origin, a document or documents attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard, or that the respondent had proper notice of the decision and the opportunity to challenge or appeal it on fact and law;
  - (d) where necessary, a document showing the amount of any arrears and the date such amount was calculated;
  - (e) where necessary, in the case of a decision providing for automatic adjustment by indexation, a document providing the information necessary to make the appropriate calculations;
  - (f) where necessary, documentation showing the extent to which the applicant received free legal assistance in the State of origin.
- (2) Upon a challenge or appeal under Article 23(7) (c) or upon request by the competent authority in the State addressed, a complete copy of the document concerned, certified by the competent authority in the State of origin, shall be provided promptly—
  - (a) by the Central Authority of the requesting State, where the application has been made in accordance with Chapter III;
  - (b) by the applicant, where the request has been made directly to a competent authority of the State addressed.
- (3) A Contracting State may specify in accordance with Article 57—
  - (a) that a complete copy of the decision certified by the competent authority in the State of origin must accompany the application;
  - (b) circumstances in which it will accept, in lieu of a complete text of the decision, an abstract or extract of the decision drawn up by the competent authority of the State of origin, which may be made in the form recommended and published by the Hague Conference on Private International Law; or
  - (c) that it does not require a document stating that the requirements of Article 19(3) are met.

## Article 26

### Procedure on an application for recognition

This Chapter shall apply *mutatis mutandis* to an application for recognition of a decision, save that the requirement of enforceability is replaced by the requirement that the decision has effect in the State of origin.

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*Article 27*

*Findings of fact*

Any competent authority of the State addressed shall be bound by the findings of fact on which the authority of the State of origin based its jurisdiction.

*Article 28*

*No review of the merits*

There shall be no review by any competent authority of the State addressed of the merits of a decision.

*Article 29*

*Physical presence of the child or the applicant not required*

The physical presence of the child or the applicant shall not be required in any proceedings in the State addressed under this Chapter.

*Article 30*

*Maintenance arrangements*

- (1) A maintenance arrangement made in a Contracting State shall be entitled to recognition and enforcement as a decision under this Chapter provided that it is enforceable as a decision in the State of origin.
- (2) For the purpose of Article 10(1) (a) and (b) and (2) (a), the term “decision” includes a maintenance arrangement.
- (3) An application for recognition and enforcement of a maintenance arrangement shall be accompanied by the following—
  - (a) a complete text of the maintenance arrangement; and
  - (b) a document stating that the particular maintenance arrangement is enforceable as a decision in the State of origin.
- (4) Recognition and enforcement of a maintenance arrangement may be refused if—
  - (a) the recognition and enforcement is manifestly incompatible with the public policy of the State addressed;
  - (b) the maintenance arrangement was obtained by fraud or falsification;
  - (c) the maintenance arrangement is incompatible with a decision rendered between the same parties and having the same purpose, either in the State addressed or in another State, provided that this latter decision fulfils the conditions necessary for its recognition and enforcement in the State addressed.
- (5) The provisions of this Chapter, with the exception of Articles 20, 22, 23(7) and 25(1) and (3), shall apply *mutatis mutandis* to the recognition and enforcement of a maintenance arrangement save that—
  - (a) a declaration or registration in accordance with Article 23(2) and (3) may be refused only on the ground set out in paragraph 4 (a);
  - (b) a challenge or appeal as referred to in Article 23(6) may be founded only on the following—

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- (i) the grounds for refusing recognition and enforcement set out in paragraph 4;
  - (ii) the authenticity or integrity of any document transmitted in accordance with paragraph 3;
- (c) as regards the procedure under Article 24(4), the competent authority may review of its own motion the ground for refusing recognition and enforcement set out in paragraph 4 (a) of this Article. It may review all grounds listed in paragraph 4 of this Article and the authenticity or integrity of any document transmitted in accordance with paragraph 3 if raised by the respondent or if concerns relating to those grounds arise from the face of those documents.
- (6) Proceedings for recognition and enforcement of a maintenance arrangement shall be suspended if a challenge concerning the arrangement is pending before a competent authority of a Contracting State.
- (7) A State may declare, in accordance with Article 63, that applications for recognition and enforcement of a maintenance arrangement shall only be made through Central Authorities.
- (8) A Contracting State may, in accordance with Article 62, reserve the right not to recognise and enforce a maintenance arrangement.

#### *Article 31*

##### *Decisions produced by the combined effect of provisional and confirmation orders*

Where a decision is produced by the combined effect of a provisional order made in one State and an order by an authority in another State (“the confirming State”) confirming the provisional order—

- (a) each of those States shall be deemed for the purposes of this Chapter to be a State of origin;
- (b) the requirements of Article 22 (e) shall be met if the respondent had proper notice of the proceedings in the confirming State and an opportunity to oppose the confirmation of the provisional order;
- (c) the requirement of Article 20(6) that a decision be enforceable in the State of origin shall be met if the decision is enforceable in the confirming State; and
- (d) Article 18 shall not prevent proceedings for the modification of the decision being commenced in either State.]

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