STATUTORY RULES OF NORTHERN IRELAND

# 2011 No. 225

# MAGISTRATES' COURTS

## The Magistrates' Courts (Civil Jurisdiction and Judgments Act 1982) (Amendment) Rules (Northern Ireland) 2011

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| *Made - - - -* | *15th June 2011* |
| *Coming into operation* | *18th June 2011* |

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(**1**) and section 48 of the Civil Jurisdiction and Judgments Act 1982(**2**), 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 (Civil Jurisdiction and Judgments Act 1982) (Amendment) Rules (Northern Ireland) 2011 and come into operation on 18th June 2011.

**Amendments to the Magistrates' Courts (Civil Jurisdiction and Judgments Act 1982) Rules (Northern Ireland) 1986**

**2.** The Magistrates' Courts (Civil Jurisdiction and Judgments Act 1982) Rules (Northern Ireland) 1986(**3**) are amended as follows.

**3.** For rule 2, insert—

""the 1982 Act" means the Civil Jurisdiction and Judgments Act 1982;

"the 1968 Convention", "Contracting State" and "the Lugano Convention" have the same meaning as in the 1982 Act;

"the 1988 Convention" means the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters done at Lugano on 16th September 1988;

(**1**) S.I. 1981/1675 (N.I.26); Article 13 was amended by paragraph 133 of Schedule 18 to the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (2010 No..976) and paragraph 65 of Schedule 5 to the Constitutional Reform Act 2005 (c.4).

(**2**) 1982 c.27. Section 48 was amended by section 3 of, and paragraph 23 of Schedule 2 to, the Civil Jurisdiction and Judgments Act 1991 (c.12) and Article 4 and paragraph 17 of Schedule 2 to the Civil Jurisdiction and Judgments Order 2001 (S.I. 2001/3929) and regulation 5 of the Civil Jurisdiction and Judgments (Maintenance) (Rules of Court) Regulations 2011 (S.I. 2011/1215). Regulation 7 of the 2011 Regulations applies section 48 to authentic instruments and court settlements.

(**3**) S.R.1986 No 359 to which the most recent relevant amendments were made by S.R. 2002 No. 159.

"the Hague Protocol" means the Protocol on the Law Applicable to Maintenance Obligations done at The Hague on 23rd November 2007;

references to "a maintenance order" include reference to a decision, a court settlement or an authentic instrument within the meaning of Article 2 of the Maintenance Regulation where that regulation applies;

"the Maintenance Regulation" means Council Regulation (EC) No 4/2009 of 18th December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and co-operation in matters relating to maintenance obligations(**4**) 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(**5**);

"Regulation State" means a Member State of the European Union which is not bound by the Hague Protocol, or, where registration is sought for a maintenance order to which Article 75(2)(a) or (b) of the Maintenance Regulation applies, the Member State of the European Union from which the order originated."

**4.** In rule 3 —

(1) after "the 1982 Act" for "and" substitute ",";

(2) after the "the Civil Jurisdiction and Judgments Order" insert "and the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011(**6**)"

**5.** In rule 4 —

(1) in paragraph (1A) —

(a) for "Article 38 of the Regulation for enforcement" substitute "Article 26 of the Maintenance Regulation for the registration";

(b) for "Articles 34 and 35 of the Regulation" substitute "Article 24 of the Maintenance Regulation";

(2) in paragraph (3), for "Lord Chancellor" substitute "Department of Justice";

(3) in paragraph (4), for "Lord Chancellor" substitute "Department of Justice";

(4) in paragraph (5), for "Article 38 of the Regulation" substitute "Article 26 of the Maintenance Regulation";

(5) in paragraph (6)(a), for "Lord Chancellor" substitute "Department of Justice".

**6.** In rule 5(1), for "Article 43 of the Regulation" substitute "Article 32 of the Maintenance Regulation".

**7.** In rule 6(1), for "Lord Chancellor" substitute "Department of Justice".

**8.** In rule 8(1) —

(1) for "Article 53 of the Regulation" substitute "Articles 28 or 29 of the Maintenance Regulation"; and

(2) for "Lord Chancellor" substitute "Department of Justice".

**9.** In rule 9 —

(1) for "Article 53 of the Regulation" substitute "Articles 28 or 29 of the Maintenance Regulation"; and

(2) for "Lord Chancellor" substitute "Department of Justice".

**10.** In rule 10 —

(**4**) OJNo. L.7, 10.1.2009, p. 1-79
(**5**) OJ No. L 299, 16.11,2005, p.61.
(**6**) S.I. 2011/1484.

(1) in paragraph (1) —

(a) for "Regulation State" substitute "Member State of the European Union";

(b) for "Article 5(2) of the Regulation" substitute "the Maintenance Regulation";

(2) in paragraph (2), for "Lord Chancellor" substitute "Department of Justice";

(3) in paragraph (7) —

(a) for "Article 5(2) of the Regulation" substitute "the Maintenance Regulation".

(b) for "Annex V to the Regulation;" substitute "Annex II to the Maintenance Regulation."

(c) for "under Articles 38 and 39 of the Regulation" substitute "or enforcement".

**11.** In rule 11—

(1) in paragraph (1), for "Regulation State" substitute "Member State of the European Union";

(2) in paragraph (2), for "Lord Chancellor" substitute "Department of Justice";

(3) for paragraph (3)(c), substitute—

"in considering whether to vary or revoke the order—

(i) where the pay does not appear and is not represented at the hearing, the court shall apply the provisions of Article 20 of the 1968 Convention, Article 26 of the Lugano Convention or Article 11 of the Maintenance Regulation, as the case may be, and take into account any representations made and any evidence adduced by him or on his behalf under sub-paragraph (b) above;

(ii) where the payer does appear and is represented at the hearing, the court may take any such representations or evidence into account, in addition to any oral representations or evidence adduced at the hearing.";

(4) in paragraph (6)(b)—

(a) for "Annex V to the Regulation" substitute "Annex I or II to the Maintenance Regulation, as the case may be";

(b) for "Articles 38 and 39 of the Regulation" substitute "Articles 26 and 27 of the Maintenance Regulation".

**12.** In rule 14 —

(1) in each place where it occurs, for "Regulation State" substitute "Member State of the European Union";

(2) in paragraph (c), for "Lord Chancellor" substitute "Department of Justice".

**13.** After rule 15, insert—

"**Questions as to the court's jurisdiction or whether the proceedings should be stayed**

**16.**—(1) This rule applies to applications for maintenance where a question as to jurisdiction arises under—

(a) the 1968 Convention;

(b) the 1988 Convention;

(c) the Lugano Convention; or

(d) the Maintenance Regulation.

(2) If at any time after the issue of the application it appears to the court that it does not have or may not have jurisdiction to hear an application, or that under the instruments referred to in paragraph (1) it is or may be required to stay the proceedings or to decline jurisdiction, the court must—