STATUTORY RULES OF NORTHERN IRELAND

2011 No. 61

MAGISTRATES' COURTS

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

Made - - - - 1st March 2011

Coming into operation in accordance with rule 2

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 Article 165 of the Children (Northern Ireland) Order 1995(**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 (Children (Northern Ireland) Order 1995) (Amendment) Rules (Northern Ireland) 2011.

2. These Rules shall come into operation on the day on which the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children(**3**) enters in to force for the United Kingdom, which date will be notified in the London, Edinburgh and Belfast Gazettes.

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

3. The Magistrates' Courts (Children (Northern Ireland) Order 1995) Rules (Northern Ireland) 1996(**4**) shall be amended as follows.

4. In rule 1 (Citation, commencement and interpretation), in paragraph (3)—

(a) after the definition of "child" insert—

"(b) "Contracting State" means a State party to the 1996 Hague Convention;";

(c) after the definition of "guardian ad litem" insert—

(**1**) S.I.1981/1675 (N.I. 26); Article 13 was amended by paragraph 65 of Schedule 5 to the Constitutional Reform Act 2005 (c.4).
(**2**) S.I. 1995/755 (N.I. 2).
(**3**) CM 77277.
(**4**) S.R. 1996 No.323; to which the most recent relevant amendment was made by S.R. 2005 No. 559.

""the 1996 Hague Convention" means 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;

and then insert—

"judgment" in rules 21A to 21V is to be construed in accordance with Article 2(4) of the Council Regulation where it applies and as meaning any measure taken by an authority with jurisdiction under Chapter II of the 1996 Hague Convention where that Convention applies;";

(d) in the definition of "parental responsibility" after "Article 6" insert—

", and in relation to proceedings under the Council Regulation, as in Article 2(7) of that Regulation and in relation to proceedings under the Hague Convention, as in Article 1(2) of that Convention".

5. For rules 21A to 21D, substitute—

"**Transfer of proceedings under Article 15 of the Council Regulation or under Article 8 of the 1996 Hague Convention**

21A.—(1) Where a court is considering the transfer of proceedings to the court of another Member State or Contracting State under rules 21B to 21D it will—

(a) fix a date for a hearing for the court to consider the question of transfer; and

(b) give directions as to the manner in which the parties may make representations.

(2) The court may, with the consent of all parties, deal with the question of transfer without a hearing.

(3) Directions which are in force immediately prior to the transfer of proceedings to a court in another Member State or Contracting State under rules 21B to 21D will continue to apply until the court in that other State accepts jurisdiction in accordance with the provisions of the Council Regulation or the 1996 Hague Convention (as appropriate), subject to any variation or revocation of the directions.

(4) The clerk of petty sessions will—

(a) take a note of the giving, variation or revocation of directions under this rule; and

(b) as soon as practicable serve a copy of the directions order on every party.

(5) A register of all applications and requests for transfer of jurisdiction to or from another Member State or Contracting State will be kept by the clerk of petty sessions.

(6) In this rule and in rules 21B to 21V, references to the court of another Member State or Contracting State include authorities within the meaning of "court" in Article 2(1) of the Council Regulation and authorities of Contracting States which have jurisdiction to take measures directed to the protection of the person or property of the child within the meaning of the 1996 Hague Convention.

Application by a party for transfer of the proceedings to another MemberState or ContractingState

21B.—(1) A party may apply to the court under Article 15(1) of the Council Regulation or under Article 8(1) of the 1996 Hague Convention—

(a) to stay the proceedings, or a specified part of the proceedings, and to invite the parties to introduce a request before a court of another Member State or Contracting State; or

(b) to make a request to a court of another Member State or another Contracting State to assume jurisdiction for the proceedings, or a specified part of the proceedings.

(2) An application under paragraph (1) must be made—

(a) to the court in which the relevant parental responsibility proceedings are pending; and

(b) in Form C1 or C2 as appropriate.

(3) The applicant must file the application and serve it on the respondents not less than 42 days before the hearing of the application.

Application by a court of another MemberState or another ContractingState for transfer of the proceedings

21C.—(1) This rule applies where a court of another Member State or another Contracting State makes an application under Article 15(2)(c) of the Council Regulation or under Article 9 of the 1996 Hague Convention that the court having jurisdiction in relation to the proceedings transfer the proceedings, or a specified part of the proceedings, to the applicant court.

(2) When the court receives the application, the clerk of petty sessions will—

(a) as soon as practicable, notify the Central Authority for Northern Ireland of the application; and

(b) serve the application, and notice of the hearing on all other parties in Northern Ireland not less than 5 days before the hearing of the application.

Exercise by the court of its own motion of powers to seek to transfer the proceedings

21D.—(1) The court having jurisdiction in relation to the proceedings may of its own motion exercise its powers under Article 15 of the Council Regulation or Article 8 of the 1996 Hague Convention in relation to the proceedings, or a specified part of the proceedings.

(2) Where the court proposes to exercise its powers, the clerk of petty sessions will give the parties not less than 5 days notice of the hearing."

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 MemberState or ContractingState 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