STATUTORY RULES OF NORTHERN IRELAND

2005 No. 559

MAGISTRATES' COURTS

The Magistrates' Courts (Miscellaneous Amendments) Rules (Northern Ireland) 2005

Made - - - -	*12th December 2005*
Coming into operation	*6th January 2006*

The Lord Chancellor makes the following Rules in exercise of the powers conferred by Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981(**1**), Article 165 of the Children (Northern Ireland) Order 1995(**2**) and all other powers enabling him in that behalf. In accordance with Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981, he makes the Rules on the advice of the Magistrates' Courts Rules Committee and after consultation with the Lord Chief Justice.

PART I

CITATION AND COMMENCEMENT

Citation and commencement

1. These Rules may be cited as the Magistrates' Courts (Miscellaneous Amendments) Rules (Northern Ireland) 2005 and shall come into operation on 6th January 2006.

PART II

AMENDMENT TO THE MAGISTRATES' COURTS (CHILDREN (NORTHERN IRELAND) ORDER 1995) RULES (NORTHERN IRELAND) 1996

2. The Magistrates' Courts (Children (Northern Ireland) Order 1995) Rules (Northern Ireland) 1996(**3**) ("the Children Order Rules 1996") are amended as follows.

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

(a) after the definition of "business day" insert—

(**1**) S.I. 1981 No. 1675 (N.I. 26)
(**2**) S.I. 1995 No. 755 (N.I. 2)
(**3**) S.R. 1996 No. 323 as amended by S.R. 1999 No. 63 and S.R. 1999 No. 223

""the Central Authority for Northern Ireland" means the Northern Ireland Court Service;";

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

""the Council Regulation" means Council Regulation (EC) 2201/2003 of 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility;"; and

(c) after the definition of "leave" insert—

""Member State" means—

(a) those parties contracting to the Council Regulation, that is to say, Belgium, Cyprus, Czech Republic, Germany, Greece, Spain, Estonia, France, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Austria, Poland, Portugal, Slovakia, Slovenia, Finland, Sweden and the United Kingdom; and

(b) a party which has subsequently adopted the Council Regulation;".

4. In rule 4 (Application), in paragraph (1), after "Forms" insert "C1AA or".

5. In rule 5 (Ex parte application), in paragraph (2)(a), after "Forms" insert "C1AA or".

6. In rule 10 (Acknowledgement of application), after "Form C4" insert "and, if both parts of question 6 or question 7 (or both) on Form C4 are answered in the affirmative, Form C1AA.".

7. After rule 21, insert the following new rules—

"**Application by a party for transfer of proceedings to a court of another Member State**

21A.—(1) A party may make an application that proceedings, or a specific part of those proceedings, be heard in another Member State pursuant to Article 15 of the Council Regulation.

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

(a) to the court in which the relevant parental responsibility proceedings (within the meaning of the Council Regulation) are pending; and

(b) in Form C1 or C2 as appropriate; and

(c) where the application is made in Form C2 it shall be filed and served on the respondents not less than 5 business days before the hearing of the application.

(3) An application under paragraph (1) shall be supported by a written statement, which shall contain evidence of the child's particular connection to the other Member State in accordance with Article 15(3) of the Council Regulation.

(4) The respondents referred to in paragraph (2)(c) are any other parties, the child and the Central Authority of the relevant Member State.

(5) In this rule references to "the child" are references to the child who is the subject of the parental responsibility proceedings.

Application by a court of another Member State for transfer of proceedings

21B.—(1) A court of another Member State may make an application that proceedings, or a specific part of those proceedings, be heard in that Member State pursuant to Article 15 of the Council Regulation.

(2) An application under paragraph (1) shall be made in the first instance to the Central Authority of Northern Ireland.

(3) The Central Authority of Northern Ireland shall forward an application made under paragraph (1) to the court in which the parental responsibility proceedings are pending.

(4) Upon receipt of such an application the clerk of petty sessions shall serve a copy of the application on all other parties in Northern Ireland not less than 5 business days before the hearing of the application.

(5) A decision to accept or refuse jurisdiction under Article 15 of the Council Regulation shall be served on all parties, the Central Authority of the relevant Member State and the Central Authority of Northern Ireland. Service on a Central Authority of another Member State shall be made by the Central Authority for Northern Ireland.

A certified copy of a judgment or a certificate for enforcement in other Member State

21C.—(1) An application for a certified copy of a judgment or certificate referred to in Article 39 or 41 of the Council Regulation shall be made to the court which made the order by written statement without notice being served on any other party.

(2) A written statement by which an application for a certified copy of a judgment is made shall—

(a) give particulars of the proceedings in which the judgment was obtained;

(b) have annexed to it—

(i) a copy of the application by which the proceedings were begun;

(ii) evidence of service on the respondent;

(iii) copies of the documents filed in the proceedings, if any; and

(iv) a statement of the grounds on which the judgment was based together, where appropriate, with any document showing that the applicant is entitled to legal aid or assistance by way of representation for the purposes of the proceedings;

(c) state whether or not the respondent did or did not object to the jurisdiction, and if so, on what grounds;

(d) show that the judgment has been served in accordance with rule 9 and is not subject to any order for the stay of proceedings;

(e) state that the time for appealing has expired, or, as the case may be, the date on which it will expire and in either case whether notice of appeal against the judgment has been given; and

(f) state—

(i) whether the judgment provides for the payment of a sum of money;

(ii) whether interest is recoverable on the judgment or part thereof and if so, the rate of interest, the date from which interest is recoverable, and the date on which interest ceases to accrue.

(3) A written statement by which an application for a certificate is made shall give—

(a) particulars of the proceedings in which the judgment was obtained;

(b) the full name, county and the date and place of birth of the parties;

(c) details of the type of certificate applied for and the reasons for making the application; and

(d) where the application is for a certificate under Annex II to the Council Regulation —

(i) the full name and, if known, the address and the date and place of birth of any other persons with parental responsibility;

(ii) information as to whether or not the judgment entails the return of a child wrongfully removed or retained in another Member State and, if so, the full name and address of the person to whom the child should be returned.

(4) The certified copy of the judgment shall be an office copy signed by the resident magistrate and there shall be issued with a copy of the judgment a certified copy of any order which has varied any of the terms of the original order.

Rectification of certificates issued under Article 41

21D.—(1) The court may rectify an error in a certificate issued under Article 41.

(2) The court may rectify the certificate of its own motion or pursuant to an application made by any party to the proceedings, or the court or Central Authority or another Member State.".

8. In Schedule 1 (Forms)—

(a) in Form C1 (Application for an order)—

(i) before paragraph 1 insert the following note—

"**Important Note: you should only answer question 6A** if you are asking the court to make an Article 8 order.";

(ii) after paragraph 6 insert the following new paragraph—

6A. Domestic abuse, violence or harm

Do you believe that the child(ren) named above have suffered or are at risk of suffering any harm from any of the following or through seeing or hearing any of the following:

- any form of domestic abuse
- violence within the household
- other conduct or behaviour
- ill treatment of another person

by any person who is or who has been involved in caring for the child(ren) or lives with, or has contact with, the child(ren)?

Please tick the box which applies ☐ Yes ☐ No

If you tick the Yes box, you must also fill in Supplemental Information Form (Form C1AA). You can obtain a copy of this from a court office if one has not been enclosed with the papers served on you.

(iii) in paragraph 9—

(aa) for "mother and father" substitute "parents"; and

(bb) after "married to each other" insert "or civil partners of each other";

(b) after Form C1 insert the new Form C1AA set out in Schedule 1 to these Rules;

(c) in Form C2 (Application)—

(i) before paragraph 1 insert the following note—

"**Important Note: you should only answer question 3A** if you are asking the court to make an Article 8 order."; and

(ii) after paragraph 3 insert the following new paragraph—

3A. Domestic abuse, violence or harm

Do you believe that the child(ren) named above have suffered or are at risk of suffering any harm from any of the following or through seeing or hearing any of the following:

- any form of domestic abuse
- violence within the household
- other conduct or behaviour
- ill treatment of another person

by any person who is or who has been involved in caring for the child(ren) or lives with, or has contact with, the child(ren)?

Please tick the box which applies ☐ Yes ☐ No

If you tick the Yes box, you must also fill in Supplemental Information Form (Form C1AA). You can obtain a copy of this from a court office if one has not been enclosed with the papers served on you.

(d) for Form C4 (Acknowledgement) substitute the new Form C4 set out in Schedule 2 to these Rules;

(e) in Form C7A (Statement of Means)—

(i) in paragraph 1, after "married" insert "in a civil partnership,"; and

(ii) in paragraph 2, after "spouse" insert "civil partner,"; and

(f) in Form C39 for "Article 7" substitute "Article [7(1)][7(1A)]".

9. In Schedule 2 (Notices and Respondents), in the entry relating to Article 7(1)(a), 7(4), 8 etc. for "7(1)(a)" substitute "7(1)(c), 7(1A)".

PART III

AMENDMENT TO THE MAGISTRATES' COURTS (DOMESTIC PROCEEDINGS) RULES (NORTHERN IRELAND) 1996

10. The Magistrates' Courts (Domestic Proceedings) Rules (Northern Ireland) 1996(**4**) ("the Domestic Proceedings Rules 1996") are amended as follows.

11. In rule 1 (Citation, commencement and interpretation), in paragraph (2)—

(a) for "(aaa)" substitute "(ab)"; and

(b) after that sub-paragraph insert—

"(ac) "the Act of 2004" means the Civil Partnership Act 2004;".

12. In rule 3 (Application under Article 4)—

(a) in the heading, after "Article 4" insert "of the Order or Part 1 of Schedule 16 to the Act of 2004";

(b) in paragraph (1), after "Article 4" insert "of the Order or Part 1 of Schedule 16 to the Act of 2004";

(**4**) S.R. 1996 No. 324 as amended by S.R. 1997 No. 538, S.R. 1999 No. 62 and S.R. 2000 No. 300