



STATUTORY INSTRUMENTS.

S.I. No. 274 of 2011



EUROPEAN COMMUNITIES (MAINTENANCE) REGULATIONS 2011

(Prn. A11/1003)

EUROPEAN COMMUNITIES (MAINTENANCE) REGULATIONS 2011

I, ALAN SHATTER, Minister for Justice and Equality, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving full effect to Council Regulation (EC) 4/2009¹ of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations make the following Regulations:

Citation and commencement

1. (1) These Regulations may be cited as the European Communities (Maintenance) Regulations 2011.

(2) These Regulations come into operation on 18 June 2011.

Interpretation

2. (1) In these Regulations, except where the context otherwise requires—

“Act of 1940” means the Enforcement of Court Orders Act 1940 (No. 23 of 1940),

“Act of 1976” means the Family Law (Maintenance of Spouses and Children) Act 1976 (No. 11 of 1976),

“Act of 1994” means the Maintenance Act 1994 (No. 28 of 1994),

“decision” includes an authentic instrument and a court settlement,

“enforcement order” means an order for the recognition or enforcement of all or part of a decision where the order—

(a) is made by the Master of the High Court under Regulation 9, or

(b) is made or varied—

(i) on appeal from a decision of the Master under that Regulation, or

(ii) on appeal from a decision of the High Court on such an appeal,

“enforceable maintenance order” means—

(a) a maintenance order respecting all of which an enforcement order has been made, or

¹OJ No. L7, 10.1.2009, p.1

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 17th June, 2011.*

- (b) if an enforcement order has been made respecting only part of a maintenance order, the maintenance order to the extent to which it is so ordered to be enforced,

“2007 Hague Protocol” means the Hague Protocol of 23 November 2007 on the law applicable to maintenance applications,

“maintenance” means maintenance within the meaning of the Maintenance Regulation,

“maintenance creditor” means, in relation to a maintenance order, the person entitled to the payments for which the order provides,

“maintenance debtor” means, in relation to a maintenance order, the person who is liable to make a payment under the order,

“maintenance order” means a decision relating to maintenance,

“Maintenance Regulation” means Council Regulation (EC) 4/2009¹ of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations,

“Member State” means a Member State of the European Union other than the State or Denmark,

“Member State not bound by the 2007 Hague Protocol” means the United Kingdom or Denmark.

(2) References in these Regulations to numbered Chapters or Articles without qualification are references to the Chapters or Articles so numbered of the Maintenance Regulation.

(3) Unless provided otherwise, a word or expression used in these Regulations and in the Maintenance Regulation has the same meaning in these Regulations as it has in the Maintenance Regulation.

Jurisdiction of Circuit and District Courts

3. The Circuit Court or the District Court has jurisdiction for the purposes of Article 3(a) and (b) and the jurisdiction may be exercised by the judge for the time being assigned—

(a) in the case of the Circuit Court, to the circuit, and

(b) in the case of the District Court, to the district court district,

in which the creditor or debtor, as the case may be, is habitually resident.

Choice of Court

4. The Circuit Court or the District Court has jurisdiction for the purposes of Article 4.1. (a), 4.1. (b) and 4.1. (c)(ii) and the jurisdiction may be exercised by the judge for the time being assigned—

(a) in the case of the Circuit Court, to the circuit, and

(b) in the case of the District Court, to the district court district,

in which the creditor or debtor, as the case may be, habitually resides.

Jurisdiction of High Court

5. The High Court has jurisdiction for the purposes of Articles 7, 21 and 32.

Jurisdiction of Dublin Circuit Court and Dublin Metropolitan District Court.

6. Where the circumstances relating to the habitual residence of a creditor or debtor referred to in Regulations 3 and 4 do not apply, the creditor or debtor concerned shall be deemed to be habitually resident in the Dublin Circuit or the Dublin Metropolitan District, and a judge for the time being assigned to that Circuit or District shall have jurisdiction.

Extract of decision

7. Where a maintenance creditor is seeking to enforce a decision in a Member State, the court which made the decision concerned shall, on application to it by the maintenance creditor issue the extract from the decision in the form set out in Annex I to the Maintenance Regulation.

Enforcement of decisions given in Member States bound by the 2007 Hague Protocol

8. (1) A decision given in a Member State bound by the 2007 Hague Protocol shall be of the same force and effect as a judgment or decree of the District Court, and may be enforced, and proceedings taken on it, as if it were a judgment or decree of that Court.

(2) Section 8(7) of the Act of 1940 does not apply to proceedings for the enforcement of a decision referred to in paragraph (1).

(3) Paragraphs (1) and (2) apply even though an amount payable under the decision exceeds the maximum amount the District Court has jurisdiction to award under an enactment referred to in the Act of 1976.

(4) A decision to which paragraph (1) applies shall be deemed to be an antecedent order within the meaning of the Act of 1976.

Applications for recognition or enforcement of decisions given in a Member State not bound by the 2007 Hague Protocol

9. (1) An application under the Maintenance Regulation for the recognition and enforcement of a decision in a Member State not bound by the 2007 Hague Protocol shall be made to the Master of the High Court.

(2) The Master of the High Court shall determine an application referred to in paragraph (1) in accordance with the Maintenance Regulation.

(3) Where the application is for the enforcement of a decision, the Master of the High Court shall declare the decision enforceable immediately on completion of the formalities provided for in Article 28, without any review under Article 24 and shall make an enforcement order in relation to the decision.

(4) An order referred to in paragraph (3) may provide for the recognition or enforcement of all or part of the decision concerned.

(5) Where an application is made under paragraph (1), the Master of the High Court may by order declare the decision which is the subject of the enforcement order and which relates to—

- (a) a sum payable under the enforceable maintenance order as a periodic payment but not paid before the relevant enforcement order was made, or
- (b) a lump sum (not being a sum referred to in paragraph (a)) which is payable under the enforceable maintenance order,

to be of the same force and effect as a judgment of the High Court and such a decision may be enforced by the High Court and proceedings taken on it as if it were a judgment of that Court.

(6) No order shall be made under paragraph (5) unless the Master of the High Court considers it necessary for the effective enforcement of the enforceable maintenance order concerned.

(7) A maintenance order shall be regarded as a decision referred to in paragraph (1) if the District Court does not have jurisdiction to enforce it under Regulation 10.

(8) For the purposes of this Regulation references in Articles 31, 32, 34, 36, 37, 38, 39 and 48 to a declaration of enforceability are to be read as references to an enforcement order.

Enforcement of enforceable maintenance orders given in a Member State not bound by the 2007 Hague Protocol

10. (1) Subject to Regulation 14 and the restrictions on enforcement contained in Article 36(3), the District Court has jurisdiction to enforce an enforceable maintenance order.

(2) An enforceable maintenance order shall, from the date on which the maintenance order was made, be deemed for the purposes of—

- (a) paragraph (1),
- (b) section 98(1) (as amended by section 30(1) of the Act of 1976) of the Defence Act 1954 (No. 18 of 1954), and
- (c) subject to the Maintenance Regulation, the variation or discharge of that order under section 6 (as amended by section 43(b) of the Act of 1995) of the Act of 1976,

to be an order made by the District Court under section 5, 5A (inserted by section 18 of the Act of 1987) or 21A (inserted by section 21 of the Act of 1987) of the Act of 1976, as may be appropriate.

(3) Paragraphs (1) and (2) apply even though an amount payable under the enforceable maintenance order exceeds the maximum amount the District Court has jurisdiction to award under an enactment referred to in paragraph (2).

(4) Where an enforceable maintenance order is varied by a court of a Member State not bound by the 2007 Hague Protocol, and an enforcement order has been made respecting all or part of the enforceable maintenance order as so varied, or respecting all or part of the order effecting the variation, the enforceable maintenance order shall, from the date on which the variation takes effect, be enforceable in the State only as so varied.

(5) Where an enforceable maintenance order is revoked by a court of a Member State not bound by the 2007 Hague Protocol, and an enforcement order has been made respecting the order effecting the revocation, the enforceable maintenance order shall, from the date on which the revocation takes effect, cease to be enforceable in the State except in relation to any sums under the order that were payable, but not paid, on or before that date.

(6) Subject to paragraphs (3) to (5) of Regulation 9, the following shall be regarded as being payable pursuant to an order made under section 5, 5A (inserted by section 18 of the Act of 1987), or 21A (inserted by section 21 of the Act of 1987) of the Act of 1976—

- (a) any sum payable under an enforceable maintenance order but not paid before the relevant enforcement order was made;
- (b) any costs of or incidental to the application for the enforcement order that are payable under Regulation 14(2).

(7) The jurisdiction vested in the District Court by this Regulation may be exercised by the judge of that Court for the time being assigned to—

- (a) where the maintenance debtor under an enforceable maintenance order resides in the State, the district court district in which the debtor resides or carries on any profession, business or occupation, or
- (b) where such a maintenance debtor does not so reside but is employed by a person residing or having a place of business in the State or by a body whose seat of management or control is in the State, the district court district in which the person resides or the body has its seat.

(8) Notwithstanding anything to the contrary in an enforceable maintenance order, the maintenance debtor shall pay any sum payable under that order to—

- (a) in a case referred to in paragraph (7)(a), the district court clerk for the district court area in which the debtor for the time being resides, or
- (b) in a case referred to in paragraph (7)(b), a district court clerk specified by the District Court, for transmission to the maintenance creditor or, if a public authority has been authorised by the creditor to receive the sum, to the public authority.

(9) Where a sum payable under an enforceable maintenance order is not duly paid and where the maintenance creditor so requests in writing, the district court clerk concerned shall make an application to the District Court respecting that sum under—

(a) section 8 (as amended by section 2(2) of the Enforcement of Court Orders (Amendment) Act 2009 (No. 21 of 2009) of the Act of 1940, or

(b) section 10 (as amended by section 43 of the Act of 1995) of the Act of 1976.

(10) For the purposes of paragraph (9)(a), a reference to an applicant in section 8 (other than subsections (4) and (5) of that section) of the Act of 1940 shall be construed as a reference to the district court clerk.

(11) Nothing in this Regulation shall affect the right of a maintenance creditor under an enforceable maintenance order to institute proceedings for the recovery of a sum payable to a district court clerk under paragraph (8).

(12) Section 8(7) of the Act of 1940 does not apply to proceedings for the enforcement of an enforceable maintenance order.

(13) The maintenance debtor concerned shall give notice of any change of address to the district court clerk for the district court area in which the debtor has been residing.

(14) A person who, without reasonable excuse, contravenes paragraph (13) is guilty of an offence and liable on summary conviction to a class C fine.

(15) Where there are two or more district court clerks for a district court area, a reference in this section to a district court clerk shall be construed as a reference to any of them.

(16) For the purposes of this Regulation the Dublin Metropolitan District is deemed to be a district court area.

(17) In this Regulation—

“Act of 1987” means the Status of Children Act 1987 (No. 26 of 1987),

“Act of 1995” means the Family Law Act 1995 (No. 26 of 1995).

Proceedings to contest the decision given on appeal under Article 33

11. A decision under Article 33 may be appealed on a point of law to the Supreme Court.

Provisional, including protective, measures (Article 14)

12. (1) The High Court may, on application to it pursuant to Article 14, grant any provisional measures, including protective measures, that the Court has power to grant in proceedings that, apart from this Regulation, are within its jurisdiction if—

- (a) proceedings have been, or are to be, commenced in a Member State, and
- (b) the subject matter of the proceedings is within the scope of the Maintenance Regulation (whether or not the Maintenance Regulation has effect in relation to the proceedings).

(2) On an application under paragraph (1) the High Court may refuse to grant the measures sought if, in the opinion of the Court, the fact that, apart from this Regulation, the Court does not have jurisdiction in relation to the subject matter of the proceedings makes it inexpedient for it to grant those measures.

(3) Subject to Article 36(3), an application to the Master of the High Court for an enforcement order respecting a judgment may include an application for any protective measures the High Court has power to grant in proceedings that, apart from these Regulations, are within its jurisdiction.

(4) Where an enforcement order is made, the Master of the High Court shall grant any protective measures referred to in paragraph (3) that are sought in the application for the enforcement order.

Proof and admissibility of decisions and certain translations

13. (1) For the purposes of Article 28 a document, duly authenticated, which purports to be a copy of a decision given in a Member State not bound by the 2007 Hague Protocol shall without further proof be deemed to be a true copy of the decision, unless the contrary is shown.

(2) A document purporting, under paragraph (1), to be a copy of a decision shall be regarded for those purposes as being duly authenticated if it—

- (a) purports to bear the seal of the court or authority concerned, or
- (b) purports to be certified by a judge or officer of the court or authority

to be a true copy of the decision.

(3) A document which—

(a) purports to be a transliteration or translation of—

- (i) a decision given by a court of a Member State not bound by the 2007 Hague Protocol,
- (ii) an authentic instrument or a court settlement within the meaning of Article 48(1), or

(iii) a form mentioned in Articles 40 and 48, and

(b) is certified as correct by a person competent to do so,

shall be admissible as evidence of the document of which it purports to be a translation.

Interest on decisions and payment of costs

14. (1) Where, on application for an enforcement order relating to—

- (a) a decision for the payment of a sum of money, and
- (b) in accordance with the law of the Member State in which the decision was given, interest on the sum is recoverable under the decision at a particular rate or rates and from a particular date or time,

the enforcement order concerned, where made, shall provide that the person liable to pay that sum shall also be liable to pay the interest, other than interest on costs recoverable under paragraph (2), in accordance with the particulars noted in the order, and the interest shall be recoverable by the applicant as though it were part of the sum.

(2) An enforcement order may provide for the payment to the applicant by the respondent of the reasonable costs of or incidental to the application for the enforcement order.

(3) A person required by an enforcement order to pay costs shall be liable to pay interest on the costs as if they were the subject of an order for the payment of costs made by the High Court on the date on which the enforcement order was made.

(4) Interest shall be payable on a sum referred to in subparagraph (1)(a) only as provided for in this Regulation.

Currency of payments under maintenance orders

15. (1) An amount payable in the State under a maintenance order shall be payable in the currency of the State.

(2) If the amount is stated in the maintenance order in any other currency, payment shall be made on the basis of the exchange rate prevailing on the date the enforcement order is made between the currency of the State and the other currency.

(3) For the purposes of this Regulation a certificate purporting to be signed by an officer of an authorised institution and to state the exchange rate prevailing on a specified date between a specified currency and the currency of the State shall be admissible as evidence of the facts stated in the certificate.

(4) In this Regulation, “authorised institution” means—

- (a) a credit institution within the meaning of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (including a branch, within the meaning of Article 4(3) of that Directive, located in a Member State of a credit institution having its

head office in or, in accordance with Article 38 of that Directive, elsewhere than in a Member State),

(b) a trustee savings bank within the meaning of the Trustee Savings Banks Acts 1989 and 2001, or

(c) An Post.

Designation of Central Authority

16. The Minister for Justice and Equality is designated as the Central Authority for the State for the purposes of the Maintenance Regulation.

Functions of Central Authority

17. (1) Where an application is made to the Central Authority pursuant to Article 56, the Central Authority shall, on behalf of the applicant, take any action which is required to be taken by it under the Maintenance Regulation and, in that context, references in the Maintenance Regulation to the applicant, to the party or to other analogous terms shall be construed, where appropriate, as references to the Central Authority.

(2) Without prejudice to the generality of paragraph (1), where the application is for recognition or for a declaration of enforceability of a decision, the Central Authority may, on receipt of that application, send it to the Master of the High Court for determination in accordance with Regulation 9.

(3) Where the Master of the High Court has determined an application in accordance with paragraph (2), the Master of the High Court shall cause the decision to be brought to the notice of the Central Authority and, if an enforcement order has been made, the Master shall cause notice thereof to be served on the maintenance debtor.

(4) (a) The notice to be served on a maintenance debtor under paragraph (3) shall include a statement of the provisions of Article 32 of the Maintenance Regulation.

(b) Service of the notice may be effected personally or in any manner in which service of a superior court document within the meaning of section 23 of the Courts Act, 1971 may be effected.

(5) Where no appeal has been made pursuant to Article 32, or the time allowed for an appeal has elapsed, the Central Authority shall, where appropriate, transmit a decision determined under paragraph (2) to the district court clerk for the district in which the debtor for the time being resides for the purposes of enforcement.

(6) The Central Authority may request that payments of maintenance be made directly to the maintenance creditor.

(7) Where the application is for the enforcement of a decision, paragraphs (4), (5) and (6) shall apply with any necessary modifications.

Taking of evidence for proceedings in a Member State (Article 51(g))

18. Where a request is made to the Central Authority by or on behalf of a court in a Member State to obtain the evidence of a person residing in the State for the purposes of any proceedings in that jurisdiction for the recovery of maintenance, the Central Authority shall forward the request to the District Court, which is competent to take evidence under the European Communities (Evidence in Civil or Commercial Matters) Regulations 2008 (S.I. No. 102 of 2008) pursuant to a request to which Article 1.1(a) of Council Regulation (EC) 1206/2001² on co-operation between the courts of the Member States on the taking of evidence in civil or commercial matters applies.

Obtaining, transmission and use of information

19. (1) The Central Authority may, for the purposes of obtaining any information that is necessary or expedient for the performance of its functions, require any holder of a public office or body financed wholly or partly by means of moneys provided by the Oireachtas to provide it with any information in the possession or procurement of the holder or body as to the whereabouts, place of work, or location and extent of the assets, of a maintenance creditor or debtor and the holder or body shall, as soon as practicable, comply with the requirement.

(2) If the District Court, on application to it by the Central Authority, is of the opinion that any person or body (not being a person or body referred to in paragraph (1)) is likely to have information as to the matters referred to in that paragraph and that the Central Authority requires the information for the purposes so referred to, the Court may order that person or body to provide it to the Central Authority within such period as may be specified in the order.

(3) The jurisdiction conferred on the District Court by subsection (2) may be exercised by the judge of the District Court for the time being assigned to the district court district in which the person or body to whom the order sought is to be directed resides or carries on any profession, business or occupation.

(4) The Central Authority shall transmit the information referred to in Article 61(2) to the competent courts, the competent authorities responsible for service of documents and the competent authorities responsible for enforcement of a decision, as the case may be.

Application of Article 68 (Relations with other Community Instruments)

20. (1) The Maintenance Regulation, other than Chapters III and VII, applies to Denmark.

(2) Articles 2 and Chapter IX apply to Denmark to the extent that they relate to jurisdiction, recognition, enforceability and enforcement of judgments and the right to apply to the courts.

Transitional Provision

21. For the purposes of Article 75(2)(a) and (b), Regulations 5 (in so far as it relates to Article 32), and 9 to 15 apply.

²OJ No. L174, 27.6.2001, p.1

Application of Act of 1994 (Co-operation between Central Authorities)

22. (1) The Maintenance Act 1994 shall cease to apply in relation to the State and Member States for the purposes of Chapter VII of the Maintenance Regulation with effect from 18 June 2011.

(2) The Act of 1994 applies to Denmark, except where a request for the recovery of maintenance is received under section 14 of that Act from the Central Authority of Denmark, the Central Authority shall transmit that request to the Master of the High Court for determination under Regulation 9.

Amendment of European Communities (European Enforcement Order) Regulations 2005 (S.I. No. 648/2005)

23. (1) Notwithstanding Regulation 7 of the European Communities (European Enforcement Order) Regulations 2005 (S.I. No. 648 of 2005), where a decision relates to a claim for periodical payments of maintenance, and has been certified as a European Enforcement Order in a Member State of origin, that decision shall be of the same force and effect as a judgment or decree of the District Court, and may be enforced, and proceedings taken on it, as if it were a judgment or decree of that Court.

(2) A decision to which paragraph (1) applies shall be deemed to be an antecedent order within the meaning of the Act of 1976.

Restriction of European Communities (Civil and Commercial Judgments) Regulations 2002 (S.I. No. 52/2002)

24. The European Communities (Civil and Commercial Judgments) Regulations 2002 (S.I. No. 52 of 2002) shall not apply to a maintenance order.

Repeal of Maintenance Orders Act 1974

25. The Maintenance Orders Act 1974 (No.16 of 1974) is repealed.



GIVEN under my Official Seal,
14 June 2011.

ALAN SHATTER,
Minister for Justice and Equality.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

This Regulation sets out the effect on domestic legislation of Council Regulation (EC) 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations and makes the necessary provisions for the good administration of the Regulation.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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