

# REGISTRATION OF ORDERS UNDER THE COUNCIL REGULATION, THE CIVIL PARTNERSHIP (JURISDICTION AND RECOGNITION OF JUDGMENTS) REGULATIONS 2005 AND UNDER THE HAGUE CONVENTION 1996

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## 31.1 Scope

This Part applies to proceedings for the recognition, non-recognition and registration of –

- (a) judgments to which the Council Regulation applies;
- (b) measures to which the 1996 Hague Convention applies; and

- (c) judgments to which the Jurisdiction and Recognition of Judgments Regulations apply, and which relate to dissolution or annulment of overseas relationships entitled to be treated as a civil partnership, or legal separation of the same.

### **31.2 Interpretation**

- (1)** In this Part –
  - (a) ‘judgment’ is to be construed –
    - (i) in accordance with the definition in Article 2(4) of the Council Regulation where it applies;
    - (ii) in accordance with regulation 6 of the Jurisdiction and Recognition of Judgments Regulations where those Regulations apply; or
    - (iii) as meaning any measure taken by an authority with jurisdiction under Chapter II of the 1996 Hague Convention where that Convention applies;
  - (b) ‘the Jurisdiction and Recognition of Judgments Regulations’ means the Civil Partnership (Jurisdiction and Recognition of Judgments) Regulations 2005<sup>1</sup>;
  - (c) ‘Member State’ means –
    - (i) where registration, recognition or non-recognition is sought of a judgment under the Council Regulation, a Member State of the European Union which is bound by that Regulation or a country which has subsequently adopted it;
    - (ii) where recognition is sought of a judgment to which the Jurisdiction and Recognition of Judgments Regulations apply, a Member State of the European Union to which Part II of those Regulations applies;
  - (d) ‘Contracting State’ means a State, other than a Member State within the meaning of (c) above, in relation to which the 1996 Hague Convention is in force as between that State and the United Kingdom; and
  - (e) ‘parental responsibility’ –
    - (i) where the Council Regulation applies, has the meaning given in Article 2(7) of that Regulation; and
    - (ii) where the 1996 Hague Convention applies, has the meaning given in Article 1(2) of that Convention.
- (2)** References in this Part to registration are to the registration of a judgment in accordance with the provisions of this Part.

### **31.3 Where to start proceedings**

- (1)** Every application under this Part, except for an application under rule 31.18 for a certified copy of a judgment, or under rule 31.20 for rectification of a certificate issued under Articles 41 or 42, must be made to the principal registry.
- (2)** Nothing in this rule prevents the determination of an issue of recognition as an incidental question by any court in proceedings, in accordance with Article 21(4) of the Council Regulation.
- (3)** Notwithstanding paragraph (1), where recognition of a judgment is raised as an incidental question in proceedings under the 1996 Hague Convention or the Jurisdiction and Recognition of Judgments Regulations the court hearing those proceedings may determine the question of recognition.

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<sup>1</sup> S.I. 2005/3334.

### **31.4 Application for registration, recognition or non-recognition of a judgment**

- (1) Any interested person may apply to the court for an order that the judgment be registered, recognised or not recognised.
- (2) Except for an application under rule 31.7, an application for registration, recognition or non-recognition must be –
  - (a) made to a district judge of the principal registry; and
  - (b) in the form, and supported by the documents and the information required by a practice direction.

### **31.5 Documents – supplementary**

- (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 this Part does not produce the documents required by rule 31.4(2)(b) the court may –
  - (a) fix a time within which the documents are to be produced;
  - (b) accept equivalent documents; or
  - (c) dispense with production of the documents if the court considers it has sufficient information.
- (2) This rule does not apply to applications under rule 31.7.

### **31.6 Directions**

- (1) As soon as practicable after an application under this Part has been made, the court may (subject to the requirements of the Council Regulation) give such directions as it considers appropriate, including as regards the following matters –
  - (a) whether service of the application may be dispensed with;
  - (b) expedition of the proceedings or any part of the proceedings (and any direction for expedition may specify a date by which the court must give its decision);
  - (c) the steps to be taken in the proceedings and the time by which each step is to be taken;
  - (d) the service of documents; and
  - (e) the filing of evidence.
- (2) The court or court officer will –
  - (a) record 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.

### **31.7 Recognition and enforcement under the Council Regulation of a judgment given in another Member State relating to rights of access or under Article 11(8) for the return of the child to that State**

- (1) This rule applies where a judgment has been given in another Member State –
  - (a) relating to rights of access: or
  - (b) under Article 11(8) of the Council Regulation for the return of a child to that State, which has been certified, in accordance with Article 41(2) or 42(2) as the case may be, by the judge in the court of origin.
- (2) An application for recognition or enforcement of the judgment must be –
  - (a) made in writing to a district judge of the principal registry; and
  - (b) accompanied by a copy of the certificate issued by the judge in the court of origin.

- (3) The application may be made without notice.
- (4) Rules 31.5 and 31.8 to 31.17 do not apply to an application made under this rule.
- (5) Nothing in this rule shall prevent a holder of parental responsibility from seeking recognition and enforcement of a judgment in accordance with the provisions of rules 31.8 to 31.17.

### **31.8 Registration for enforcement or order for non-recognition of a judgment**

- (1) This rule applies where an application is made for an order that a judgment given in another Member State, or a Contracting State, should be registered, or should not be recognised, except where rule 31.7 applies.
- (2) where the application is made for an order that the judgment should be registered –
  - (a) upon receipt of the application, and subject to any direction given by the court under rule 31.6, the court officer will serve the application on the person against whom registration is sought;
  - (b) the court will not accept submissions from either the person against whom registration is sought or any child in relation to whom the judgment was given.
- (3) Where the application is for an order that the judgment should not be recognised –
  - (a) upon receipt of the application, and subject to any direction given by the court under rule 31.6, the court officer will serve the application on the person in whose favour judgment was given;
  - (b) the person in whose favour the judgment was given must file an answer to the application and serve it on the applicant –
    - (i) within 1 month of service of the application; or
    - (ii) if the applicant is habitually resident in another Member State, within two months of service of the application.
- (4) In cases to which the 1996 Hague Convention applies and the Council Regulation does not apply, the court may extend the time set out in subparagraph (3)(b)(ii) on account of distance.
- (5) The person in whose favour the judgment was given may request recognition or registration of the judgment in their answer, and in that event must comply with 31.4(2)(b), to the extent that such documents, information and evidence are not already contained in the application for non-recognition.
- (6) If, in a case to which the Council Regulation applies, the person in whose favour the judgment was given fails to file an answer as required by paragraph (3), the court will act in accordance with the provisions of Article 18 of the Council Regulation.
- (7) If, in a case to which the 1996 Hague Convention applies and the Service Regulation does not, the person in whose favour the judgment was given fails to file an answer as required by paragraph (3) –
  - (a) where the Hague Convention of 15th November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters applies, the court shall apply Article 15 of that Convention; and
  - (b) in all other cases, the court will not consider the application unless –
    - (i) it is proved to the satisfaction of the court that the person in whose favour judgment was given was served with the application within a reasonable period of time to arrange his or her response; or

(ii) the court is satisfied that the circumstances of the case justify proceeding with consideration of the application.

- (8) In a case to which the Jurisdiction and Recognition of Judgments Regulations apply, if the person in whose favour judgment was given fails to file an answer as required by paragraph (3), the court will apply the Service Regulation where that regulation applies, and if it does not –
- (a) where the Hague Convention of 15th November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters applies, the court shall apply Article 15 of that Convention; and
  - (b) in all other cases, the court will apply the provisions of paragraph (7)(b).

### **31.9 Stay of recognition proceedings by reason of an appeal**

Where recognition or non-recognition of a judgment given in another Member State or Contracting State is sought, or is raised as an incidental question in other proceedings, the court may stay the proceedings –

- (a) if an ordinary appeal against the judgment has been lodged; or
- (b) if the judgment was given in the Republic of Ireland, if enforcement of the judgment is suspended there by reason of an appeal.

### **31.10 Effect of refusal of application for a decision that a judgment should not be recognised**

Where the court refuses an application for a decision that a judgment should not be recognised, the court may –

- (a) direct that the decision to refuse the application is to be treated as a decision that the judgment be recognised; or
- (b) treat the answer under paragraph (3)(b) of rule 31.8 as an application that the judgment be registered for enforcement if paragraph (5) of that rule is complied with and order that the judgment be registered for enforcement in accordance with rule 31.11.

### **31.11 Notification of the court's decision on an application for registration or non-recognition**

- (1) Where the court has –
  - (a) made an order on an application for an order that a judgment should be registered for enforcement; or
  - (b) refused an application that a judgment should not be recognised and ordered under rule 31.10 that the judgment be registered for enforcement, the court officer will as soon as practicable take the appropriate action under paragraph (2) or (3).
- (2) If the court refuses the application for the judgment to be registered for enforcement, the court officer will serve the order on the applicant and the person against whom judgment was given in the state of origin.
- (3) If the court orders that the judgment should be registered for enforcement, the court officer will –
  - (a) register the judgment in the central index of judgments kept by the principal registry;
  - (b) confirm on the order that the judgment has been registered; and

- (c) serve on the parties the court's order endorsed with the court officer's confirmation that the judgment has been registered.
- (4) A sealed order of the court endorsed in accordance with paragraph (3)(b) will constitute notification that the judgment has been registered under Article 28(2) of the Council Regulation or under Article 26 of the 1996 Hague Convention, as the case may be, and in this Part 'notice of registration' means a sealed order so endorsed.
- (5) The notice of registration must state –
  - (a) full particulars of the judgment registered and the order for registration;
  - (b) the name of the party making the application and his address for service within the jurisdiction;
  - (c) the right of the person against whom judgment was given to appeal against the order for registration; and
  - (d) the period within which an appeal against the order for registration may be made.

### **31.12 Effect of registration under rule 31.11**

Registration of a judgment under rule 31.11 will serve for the purpose of Article 21(3) of the Council Regulation, Article 24 of the 1996 Hague Convention, or regulation 7 of the Jurisdiction and Recognition of Judgments Regulations (as the case may be) as a decision that the judgment is recognised.

### **31.13 The central index of judgments registered under rule 31.11**

The central index of judgments registered under rule 31.11 will be kept by the principal registry.

### **31.14 Decision on recognition of a judgment only**

- (1) Where an application is made seeking recognition of a judgment only, the provisions of rules 31.8 and 31.9 apply to that application as they do to an application for registration for enforcement.
- (2) Where the court orders that the judgment should be recognised, the court officer will serve a copy of the order on each party as soon as practicable.
- (3) A sealed order of the court will constitute notification that the judgment has been recognised under Article 21(3) of the Council Regulation, Article 24 of the 1996 Hague convention or regulation 7 of the Jurisdiction and Recognition of Judgments Regulations, as the case may be.
- (4) The sealed order shall indicate –
  - (a) full particulars of the judgment recognised;
  - (b) the name of the party making the application and his address for service within the jurisdiction;
  - (c) the right of the person against whom judgment was given to appeal against the order for recognition; and
  - (d) the period within which an appeal against the order for recognition may be made.

### **31.15 Appeal against the court's decision under rules 31.10, 31.11 or 31.14**

- (1) An appeal against the court's decision under rules 31.10, 31.11 or 31.14 must be made to a judge of the High Court –
  - (a) within one month of the date of service of the notice of registration; or

- (b) if the party bringing the appeal is habitually resident in another Member State, or a Contracting State, within two months of the date of service.
- (2) The court may not extend time for an appeal on account of distance unless the matter is one to which the 1996 Hague Convention applies and the Council Regulation does not apply.
- (3) If, in a case to which the 1996 Hague Convention applies and the Service Regulation does not, the appeal is brought by the applicant for a declaration of enforceability or registration and the respondent fails to appear –
  - (a) where the Hague Convention of 15th November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters applies, the court shall apply Article 15 of that Convention; and
  - (b) in all other cases, the court will not consider the appeal unless –
    - (i) it is proved to the satisfaction of the court that the respondent was served with notice of the appeal within a reasonable period of time to arrange his or her response; or
    - (ii) the court is satisfied that the circumstances of the case justify proceeding with consideration of the appeal.
- (4) This rule is subject to rule 31.16.

(The procedure for applications under rule 31.15 is set out in Practice Direction 30A (Appeals).)

### **31.16 Stay of enforcement where appeal pending in state of origin**

- (1) A party against whom enforcement is sought of a judgment which has been registered under rule 31.11 may apply to the court with which an appeal is lodged under rule 31.15 for the proceedings to be stayed where –
  - (a) that party has lodged an ordinary appeal in the Member State or Contracting State of origin; or
  - (b) the time for such an appeal has not yet expired.
- (2) Where an application for a stay is filed in the circumstances described in paragraph (1)(b), the court may specify the time within which an appeal must be lodged.

### **31.17 Enforcement of judgments registered under rule 31.11**

- (1) The court will not enforce a judgment registered under rule 31.11 until after –
  - (a) the expiration of any applicable period under rules 31.15 or 31.16; or
  - (b) if that period has been extended by the court, the expiration of the period so extended.
- (2) A party applying to the court for the enforcement of a registered judgment must produce to the court a certificate of service of –
  - (a) the notice of registration of the judgment; and
  - (b) any order made by the court in relation to the judgment.

(Service out of the jurisdiction, including service in accordance with the Service Regulation, is dealt with in chapter 4 of Part 6 and in Practice Direction 6B.)

### **31.18 Request for a certificate or a certified copy of a judgment**

- (1) An application for a certified copy of a judgment, or for a certificate under Articles 39, 41 or 42 of the Council Regulation, must be made to the court which made the order or judgment in respect of which certification is sought and without giving notice to any other party.

- (2) The application must be made in the form, and supported by the documents and information required by a practice direction.
- (3) The certified copy of the judgment will be an office copy sealed with the seal of the court and signed by the district judge, or by the court where the application is made to the Magistrates' Court. It will be issued with a certified copy of any order which has varied any of the terms of the original order.
- (4) Where the application is made for the purposes of applying for recognition or recognition and enforcement of the order in another Contracting State, the court must indicate on the certified copy of the judgment the grounds on which it based its jurisdiction to make the order, for the purposes of Article 23(2)(a) of the 1996 Hague Convention.

### **31.19 Certificates issued in England and Wales under Articles 41 and 42 of the Council Regulation**

The court officer will serve –

- (a) a certificate issued under Article 41 or 42; or
  - (b) a certificate rectified under rule 31.20,
- on all parties and will transmit a copy to the Central Authority for England and Wales.

### **31.20 Rectification of certificate issued under Article 41 or 42 of the Council Regulation**

- (1) Where there is an error in a certificate issued under Article 41 or 42, an application to rectify that error must be made to the court which issued the certificate.
- (2) A rectification under paragraph (1) may be made –
  - (a) by the court of its own initiative; or
  - (b) on application by –
    - (i) any party to the proceedings; or
    - (ii) the court or Central Authority of another Member State.
- (3) An application under paragraph (2)(b) may be made without notice being served on any other party.

### **31.21 Authentic instruments and agreements under Article 46 of the Council Regulation**

This Chapter applies to an authentic instrument and an agreement to which Article 46 of the Council Regulation applies as it applies to a judgment.

### **31.22 Application for provisional, including protective measures**

An application for provisional, including protective, measures under Article 20 of the Council Regulation or Articles 11 or 12 of the 1996 Hague Convention may be made notwithstanding that the time for appealing against an order for registration of a judgment has not expired or that a final determination of any issue relating to enforcement of the judgment is pending.