

APPLICATIONS FOR RECOGNITION AND ENFORCEMENT TO OR FROM EUROPEAN UNION MEMBER STATES

Introduction

- 1.1** The Maintenance Regulation (Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations) (the Maintenance Regulation) applies across the European Union from 18 June 2011. It applies to all cases for recognition and enforcement in or from a European Union Member State from that date. The domestic legislation facilitating the application of the Maintenance Regulation is the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011¹ (the CJJMR).
- 1.2** The Member States of the European Union are: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

Relationship between the Maintenance Regulation and other international instruments

- 2.1** The Maintenance Regulation replaces the relevant provisions of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (known as Brussels I), subject to the transitional provisions of Article 75. It will also take precedence over any other international conventions and agreements concerning matters which the Maintenance Regulation governs as regards relations between Member States. In particular (and subject to the relevant transitional provisions (discussed below)), the Maintenance Regulation must be applied between Member States instead of the following
- (a) The Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations done at The Hague on 2 October 1973 (the 1973 Convention)²;
 - (b) the arrangements for reciprocal enforcement of maintenance between the United Kingdom and the Republic of Ireland reflected in the Reciprocal Enforcement of Maintenance Orders (Republic of Ireland) Order 1993³ (the Republic of Ireland Order);
 - (c) as regards Malta, the provisions of the Maintenance Orders (Reciprocal Enforcement) Act 1972 Part 1 (the 1972 Act);

¹ S.I.2011/1484.

² This Convention previously governed relations between the UK and other European Union Member States which were Contracting Parties to it, rather than Brussels I. Those Member States were – the Czech Republic, Denmark, Germany, Finland, France, Italy, Luxembourg, the Netherlands, Portugal, Estonia, Poland, Slovakia, Spain, and Sweden. The arrangements in the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1993 (S.I.1993/593) (the Hague Convention Countries Order) no longer apply in relations with these countries.

³ S.I.1993/594.

- (d) the United Nations Convention on the Recovery Abroad of Maintenance done at New York on 20th June 1956 (the 1956 New York Convention) (applied in England and Wales by Part II of the Maintenance Orders (Reciprocal Enforcement) Act 1972) (this Convention is concerned with the reciprocal treatment of *applications* for maintenance rather than reciprocal enforcement of orders, but is included here for clarity).

Application of the Maintenance Regulation rules to recognition, registration and enforcement in England and Wales of an order from another Member State

- 3.1** For an application for enforcement of a maintenance order from another European Union Member State which applies the 2007 Hague Protocol on the Law Applicable to Maintenance Orders (all other Member States except Denmark), the court will apply the rules in Sections 1 and 3 of Chapter IV of the Maintenance Regulation. Orders from such Member States are not subject to registration and benefit from direct enforceability in magistrates' courts in the same manner as an order for maintenance which had been made in proceedings in England and Wales. Rules 59A and 59B of the Magistrates' Courts Rules 1981 (as amended¹) make provision for such cases.
- 3.2** For an application from another European Union Member State which does not apply the 2007 Hague Protocol on the Law Applicable to Maintenance Orders (namely Denmark), the court will apply the rules in Sections 2 and 3 of Chapter IV of the Maintenance Regulation. These orders do require registration before they can be enforced and Section 1 of Chapter 3 of Part 34 of the Family Procedure Rules 2010 applies to these cases.

Application of the Maintenance Regulation to recognition and enforcement of a maintenance order from England and Wales in another Member State

- 4.1** Where recognition and enforcement of an England and Wales maintenance order is sought in another European Union Member State, the courts and authorities of that Member State will apply Sections 2 and 3 of Chapter IV of the Maintenance Regulation, because the United Kingdom is not a State Party to the 2007 Hague Protocol (and consequently courts and authorities of the United Kingdom are not bound to apply applicable law rules to the initial decision). Section 2 of Chapter 3 of Part 34 of the Family Procedure Rules 2010 applies to those decisions.

Transitional cases

- 5.1** The Maintenance Regulation makes specific provision for transitional cases in Article 75. The general rule is provided by Article 75(1), whereby the Regulation applies only to proceedings instituted after its date of application (18 June 2011). However, special rules apply in relation to applications from another European Union Member State for recognition or recognition and enforcement
- (a) (a) Where the maintenance decision was given in any Member State prior to 18 June 2011, but recognition and enforcement are sought after that date, the court will apply the rules of Sections 2 and 3 of Chapter IV.

¹ Amended by the Magistrates' Courts (Enforcement or Variation of Orders Made in Family Proceedings and Miscellaneous Provisions) Rules 2011, S.I. 2011/1329.

- (b) (b) Where the maintenance decision was given in any Member State after 18 June 2011 but the proceedings for that decision were commenced prior to that date, the court will also apply the rules of Sections 2 and 3 of Chapter IV.
- (c) (c) Where there is an application in progress on 18 June 2011 for recognition and enforcement under Council Regulation (EC) No 44/2001 (Brussels I) relating to a maintenance decision from a Member State, the court will apply the rules of Chapter III of Brussels I.
- 5.2** It will therefore be seen that, for transitional cases (a) and (b) above, Section 1 of Chapter IV will not be used, regardless of whether the Member State in question applies the 2007 Hague Protocol the arrangements are the same for all Member States.
- 5.3** As stated in paragraph 2.1 above, the Maintenance Regulation will apply as between Member States instead of other existing international agreements dealing with the same matters. The provisions of 5.1 (a) and (b) above apply in all cases. Where relations in maintenance matters between the United Kingdom and another Member State were governed by Brussels I prior to the application of the Maintenance Regulation, the transitional arrangements in paragraph 5.1 (c) above will apply, and transitional arrangements regarding rules of court for such cases are made in rule 38 of the Family Procedure (Amendment) Rules 2011¹.
- 5.4** Where maintenance matters between the United Kingdom and another Member State were governed by the 1973 Convention or the Republic of Ireland Order prior to 18 June 2011, the following provision is made for transitional cases
- (a) As regards cases governed by the 1973 Convention, the references in the Hague Convention Countries Order to those Member States which are party to that Convention have been revoked². However, those Member States continue to be treated under that Order as Hague Convention Countries for transitional purposes³ under the CJJMR, including those proceedings for establishment, variation, or revocation of a maintenance order, or for registration of a maintenance order, which are continuing on 18 June 2011. In those circumstances, the rules at Part 34, Chapter 2, Section 2 sub-section 2 of the Family Procedure Rules 2010 will continue to apply to those proceedings.
- (b) In relation to cases concerning the Republic of Ireland, the Republic of Ireland Order has been revoked⁴. Transitional provision is made by paragraph 28 of Schedule 7 to the CJJMR. Again, this includes provision for proceedings for establishment of maintenance, variation or revocation of an order, or for registration of an order, which are continuing on 18 June 2011. The Family Procedure Rules 2010 have been amended so that Part 34, Chapter 2, Section 2 sub-section 1 has been revoked. Provision is made for the application of those rules in transitional cases in the Family Procedure (Amendment) Rules 2011 at rule 38. Annex 1 to Practice Direction 34A (which sets out rules 34.14 to 34.25 as modified by Part 34, Chapter 2, section 2 subsection 1 prior to its revocation) should therefore be applied in accordance with the provision in rule 38 of those Amendment Rules.
- 5.5** No specific provision is currently made in domestic law for transitional provision relating to Malta or in relation to the 1956 New York Convention as it relates to applications from European Union Member States. The position is directly governed by Article 75(1) of the Maintenance Regulation. Where proceedings have been instituted by virtue of the 1956 New York Convention or the operation of Part I of the 1972 Act on or prior to 18 June 2011 and

1 S.I.2011/1328.

2 The Civil Jurisdiction and Judgments (Maintenance) Regulations 2011 Schedule 7 paragraph 25(2) (S.I. 2011/1484).

3 Schedule 7 paragraph 26 *ibid*.

4 Schedule 7 paragraph 27 *ibid*.

are continuing on that date, those proceedings are not affected by Maintenance Regulation rules. Such proceedings would include applications for variation and revocation of orders as well as for establishment of a maintenance order. However, recognition and enforcement in another Member State of any resulting order would occur in accordance with the Maintenance Regulation (and the transitional provisions of Article 75(2) should be considered). Enforcement in England and Wales of orders registered under either part of the 1972 Act on or prior to 18 June 2011 will not be affected by the Maintenance Regulation.