

2018 No. 1125

EXITING THE EUROPEAN UNION

PRIVATE INTERNATIONAL LAW

The International Recovery of Maintenance (Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance 2007) (EU Exit) Regulations 2018

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| <i>Sift requirements satisfied</i> | <i>16th October 2018</i> |
| <i>Made - - - -</i> | <i>30th October 2018</i> |
| <i>Laid before Parliament</i> | <i>1st November 2018</i> |
| <i>Coming into force in accordance with regulation 1</i> | |

The requirements of paragraph 3(2) of Schedule 7 to the European Union (Withdrawal) Act 2018(a) (relating to the appropriate Parliamentary procedure for these Regulations) have been satisfied.

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of and paragraph 21(b) of Schedule 7 to that Act.

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the International Recovery of Maintenance (Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance 2007) (EU Exit) Regulations 2018 and come into force on exit day.

Interpretation

2. In these Regulations—

- (a) “the 2007 Hague Convention” means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance concluded on 23 November 2007 at The Hague(b);

(a) 2018 c. 16.

(b) <https://assets.hcch.net/docs/14e71887-0090-47a3-9c49-d438eb601b47.pdf>

- (b) “maintenance obligation” means an obligation to pay maintenance under a maintenance decision within the meaning of Article 19, or a maintenance arrangement within the meaning of Article 30;
 - (c) “the relevant Central Authority in the United Kingdom” means—
 - (i) for England and Wales, the Lord Chancellor;
 - (ii) for Scotland, the Scottish Ministers;
 - (iii) for Northern Ireland, the Department of Justice;
 - (d) “the relevant competent authority in the United Kingdom” means—
 - (i) for England and Wales, the family court;
 - (ii) for Scotland, the sheriff court;
 - (iii) for Northern Ireland, a magistrates’ court;
 - (e) “request” means, as the context requires—
 - (i) an application in a category referred to in Article 10;
 - (ii) a direct request within the meaning of Article 37; or
 - (iii) a request for specific measures within the meaning of Article 7;
 - (f) “the section 4 rights” has the meaning given by regulation 3,
- and a reference to an Article is a reference to an Article of the 2007 Hague Convention.

PART 2

The rights etc deriving from the 2007 Hague Convention

Rights etc deriving from the 2007 Hague Convention

- 3.—**(1) The section 4 rights have effect in the United Kingdom on and after exit day—
- (a) subject to and in accordance with regulations 4 to 7; and
 - (b) subject to paragraph (2).
- (2) If a declaration made by the EU relating to Article 2(3) regarding the extension of Chapters II and III of the 2007 Hague Convention to spousal support has effect immediately before exit day, the section 4 rights are to continue to apply on and after exit day on the basis that Chapters II and III are so extended.
- (3) In these Regulations, the section 4 rights are the rights, powers, liabilities, obligations, restrictions, remedies and procedures which—
- (a) are derived from the 2007 Hague Convention, and
 - (b) continue to be recognised in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018.
- (4) The Articles of, and the declarations under, the 2007 Hague Convention from which the section 4 rights are derived are—
- (a) Articles 2, 3, 5 to 15, 17, 18, 19 to 23, 25 to 34, 36, 37 to 40, 42 to 46, 48 to 53, and 56;
 - (b) any declaration referred to in paragraph (2).

Payments falling due under maintenance obligations towards a person under 21 years of age before the 2007 Hague Convention again enters into force for the United Kingdom

- 4.—**(1) This regulation applies in relation to payments under maintenance obligations arising from a parent-child relationship towards a person under the age of 21 years, where such payments fall due before the 2007 Hague Convention again enters into force for the United Kingdom.

(2) Subject to paragraph (3), at any time before the 2007 Hague Convention again enters into force for the United Kingdom, a creditor in relation to an obligation mentioned in paragraph (1) may seek enforcement of any payment falling due under that obligation as if the United Kingdom remained without interruption a State bound by the 2007 Hague Convention, and the section 4 rights have effect accordingly.

(3) Where, before exit day, a maintenance obligation mentioned in paragraph (1) was governed by the rules of the EU, such that the rules of the 2007 Hague Convention did not apply by virtue of Article 51(4), paragraph (2) shall not apply to any payment falling due under that maintenance obligation before exit day.

(4) In this regulation, “creditor” has the meaning given by Article 3 (and, where the context so requires, as extended by Article 36).

Maintenance obligations and requests before exit day

5.—(1) This regulation applies in relation to maintenance obligations and requests, other than those to which regulation 4 applies, where —

- (a) payments fall due;
- (b) an application, or request for specific measures, is received by the relevant Central Authority in the United Kingdom; or
- (c) a direct request is received by the relevant competent authority in the United Kingdom,

after the 2007 Hague Convention entered into force for the United Kingdom by virtue of being a member State, but before exit day.

(2) The section 4 rights have effect as if—

- (a) the United Kingdom were a State bound by the 2007 Hague Convention on and after exit day, and
- (b) Article 51(4) operated as it would have operated if the United Kingdom had also continued to be a member State.

(3) Notwithstanding the effect that Articles 48 to 50 and 51(1) to (3) would produce if the United Kingdom were a State bound by the 2007 Hague Convention, the section 4 rights do not have effect as regards the maintenance obligation or request if and to the extent that their having effect would conflict with a treaty obligation of the United Kingdom.

Maintenance obligations and requests before the 2007 Hague Convention again enters into force for the United Kingdom

6.—(1) This regulation applies in relation to maintenance obligations and requests, other than those to which regulation 4 applies, where—

- (a) payments fall due;
- (b) an application, or request for specific measures, is received by the relevant Central Authority in the United Kingdom; or
- (c) a direct request is received by the relevant competent authority in the United Kingdom,

on or after exit day, but before the 2007 Hague Convention again enters into force for the United Kingdom.

(2) The section 4 rights have effect as if—

- (a) the United Kingdom were a State bound by the 2007 Hague Convention on and after exit day, and
- (b) Article 51(4) operated accordingly (and not as if the United Kingdom were also a member State).

(3) Notwithstanding the effect that Articles 48 to 50 and 51(1) to (3) would produce if the United Kingdom were a State bound by the 2007 Hague Convention, the section 4 rights do not

have effect as regards the maintenance obligation or request if and to the extent that their having effect would conflict with a treaty obligation of the United Kingdom.

Requests and maintenance obligations after the 2007 Hague Convention again enters into force for the United Kingdom

7.—(1) This regulation applies if the 2007 Hague Convention again enters into force for the United Kingdom on or after exit day.

(2) The section 4 rights are to have effect in relation to requests and maintenance obligations consistent with the application of the 2007 Hague Convention by the United Kingdom upon that new entry into force, and in accordance with Article 56.

(3) Paragraph (2) is not to be read as requiring Article 51(4) to operate as if the United Kingdom were a member State after that entry into force.

PART 3

Modification and amendment of primary and secondary legislation

Primary and subordinate legislation giving effect to the 2007 Hague Convention

8.—(1) Provision made by the legislation mentioned in paragraph (3) in relation to the 2007 Hague Convention also applies in a case where regulation 4, 5 or 6 applies.

(2) Where the provision so applies in a particular case, it has effect as if the provision were made in relation to the section 4 rights, as the section 4 rights have effect in that case (see regulation 3(2) and regulation 4(2) and (3), 5(2) and (3) or 6(2) and (3)).

(3) The legislation referred to in paragraph (1) is—

- (a) the Maintenance Orders Act 1958(a);
- (b) the Maintenance and Affiliation Orders Act (Northern Ireland) 1966(b);
- (c) the Administration of Justice Act 1970(c);
- (d) the Attachment of Earnings Act 1971(d);
- (e) the Magistrates' Courts (Northern Ireland) Order 1981(e)
- (f) the Civil Jurisdiction and Judgments Act 1982(f);
- (g) the Magistrates' Courts (Civil Jurisdiction and Judgments Act 1982) Rules (Northern Ireland) 1986(g);
- (h) the Debtors (Scotland) Act 1987(h);
- (i) the Social Security Administration Act 1992(i);
- (j) the Social Security Administration (Northern Ireland) Act 1992(j);
- (k) the Debt Arrangement and Attachment (Scotland) Act 2002(k);
- (l) the Civil Legal Aid (Scotland) Regulations 2002(l);

(a) 1958 c. 39. Relevant amendments were made by S.I. 2012/2814.

(b) 1966 c. 35. Relevant amendments were made by S.R. 2012/413.

(c) 1970 c. 31. Relevant amendments were made by S.I. 2012/2814.

(d) 1971 c. 32. Relevant amendments were made by S.I. 2012/2814.

(e) S.I. 1981/1675 (N.I. 26). Relevant amendments were made by S.R. 2012/413.

(f) 1982 c. 27. Relevant amendments were made by S.I. 2012/2814.

(g) S.I. 1986/359. Relevant amendments were made by S.R. 2012/413.

(h) 1987 c. 18). Relevant amendments were made by S.S.I. 2012/301.

(i) 1992 c. 5. Relevant amendments were made by S.I. 2012/2814.

(j) 1992 c. 8. Relevant amendments were made by S.R. 201/413.

(k) 2002 asp. 17. Relevant amendments were made by S.S.I. 2012/301.

(l) S.S.I. 2002/494. Relevant amendments were made by S.S.I. 2012/301.

- (m) the Bankruptcy and Diligence etc. (Scotland) Act 2007(a);
- (n) the Armed Forces (Forfeiture and Deductions) Regulations 2009(b);
- (o) the Family Procedure Rules 2010(c);
- (p) the Legal Aid, Sentencing and Punishment of Offenders Act 2012(d);
- (q) the International Recovery of Maintenance (Hague Convention 2007 etc.) Regulations 2012(e);
- (r) the International Recovery of Maintenance (Hague Convention 2007) (Scotland) Regulations 2012(f);
- (s) the International Recovery of Maintenance (Hague Convention 2007 etc.) Regulations (Northern Ireland) 2012(g);
- (t) the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013(h);
- (u) the Legal Aid (Financial Resources and Payment for Services) (Legal Persons) Regulations 2013(i).

The International Recovery of Maintenance (Hague Convention 2007 etc.) Regulations 2012

9. In the International Recovery of Maintenance (Hague Convention 2007 etc.) Regulations 2012—

- (a) in regulation 5 (the Convention), omit “which are not European Union Member States”;
- (b) in Schedule 1, paragraph 1(1) (interpretation), in the definition of “Contracting State”, omit “other than an EU Member State”.

PART 4

Amendment of retained direct EU legislation

Council Decision of 31 March 2011 (2011/220/EU)

10. Council Decision of 31 March 2011 on the signing, on behalf of the European Union, of the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (2011/220/EU) is revoked.

Council Decision of 9 June 2011 (2011/432/EU)

11. Council Decision of 9 June 2011 on the approval, on behalf of the European Union, of the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (2011/432/EU) is revoked.

Signed by authority of the Secretary of State for Justice

30th October 2018

Lucy Frazer
Parliamentary Under-Secretary of State
Ministry of Justice

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- (a) 2007 asp. 3. Relevant amendments were made by S.S.I. 2012/301.
 - (b) S.I. 2009/1109. Relevant amendments were made by S.I. 2012/2814.
 - (c) S.I. 2010/2955. Relevant amendments were made by S.I. 2012/2806.
 - (d) 2012 c. 10.
 - (e) S.I. 2012/2814. Relevant amendments were made by S.I. 2014/879 and S.I. 2015/1489.
 - (f) S.S.I. 2012/301.
 - (g) S.R. 2012/413. Relevant amendments were made by S.R. 2016/317.
 - (h) S.I. 2013/480.
 - (i) S.I. 2013/512.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(e)) arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to legislation in the field of private international law, relating to the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, done at The Hague on 23 November 2007 (“the 2007 Hague Convention”). The UK has applied the 2007 Hague Convention since 1 August 2014 by virtue of the EU’s conclusion of that Convention, and thus it will cease to apply to the UK on exit day. These Regulations retain the directly effective rights and obligations etc derived from the 2007 Hague Convention in domestic law in the UK, both in relation to maintenance obligations and requests for maintenance that will lose the benefit of the Convention upon exit day, and in relation to maintenance obligations and requests for maintenance to which the 2007 Hague Convention will once again apply when the UK ratifies that convention in its own right.

Part 2 identifies the rights, powers, liabilities, obligations, restrictions, remedies and procedures which are derived from the 2007 Hague Convention and recognised in domestic law by virtue of section 4 of the European Union Withdrawal Act 2018 (“the section 4 rights”). That Part further makes provision regarding how the section 4 rights are to apply to maintenance obligations and requests arising before exit day, those arising after exit day but before the 2007 Hague Convention again enters into force for the UK, and to those to which the 2007 Hague Convention will apply in accordance with the provisions of Article 56 of that Convention when the Convention again enters into force for the UK.

Part 3 makes modifications in relation to primary and secondary legislation relating to the 2007 Hague Convention, applying it to the section 4 rights as they apply to maintenance obligations and requests arising before exit day, and those arising after exit day but before the 2007 Hague Convention again enters into force for the UK.

Part 4 revokes retained direct EU legislation consisting of two Council Decisions relating to the signature and conclusion of the 2007 Hague Convention by the EU.

An impact assessment on the effect that this instrument will have on the costs of business, the voluntary sector and the private sector is available from the Ministry of Justice, 102 Petty France, London SW1H 9AJ and is published alongside the Explanatory Memorandum for this instrument at www.legislation.gov.uk.

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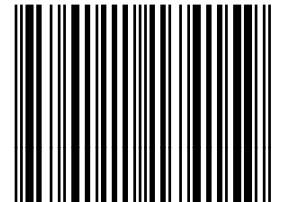
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