



STATUTORY INSTRUMENTS.

S.I. No. 612 of 2011



EUROPEAN COMMUNITIES (MAINTENANCE) (AMENDMENT)
REGULATIONS 2011

(Prn. A11/2213)

EUROPEAN COMMUNITIES (MAINTENANCE) (AMENDMENT)
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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 further 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

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

Definition

2. In these Regulations “Principal Regulations” means the European Communities (Maintenance) Regulations 2011 (S.I. No. 274 of 2011).

Amendment of Regulation 2 of the Principal Regulations

3. Regulation 2 of the Principal Regulations is amended by the insertion after the definition of “Member State” of the following:

“Member State bound by the 2007 Hague Protocol” means a Member State of the European Union other than the State, the United Kingdom or Denmark.

Amendment of Regulation 7 of the Principal Regulations

4. Regulation 7 of the Principal Regulations is amended by the insertion of “or Denmark” after “Member State”.

Amendment of Regulation 8 of the Principal Regulations

5. The Principal Regulations are amended by the substitution of the following for Regulation 8:

“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.

¹OJ No. L7, 10.1.2009, p.1

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 2nd December, 2011.*

(2) Paragraph (1) applies 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.

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

(4) Subject to paragraph (5), and notwithstanding anything to the contrary in the decision, paragraphs (7), (8), (11), (13), (14), (15) and (16) of Regulation 10 shall apply, with any necessary modifications, in relation to that decision.

(5) This Regulation is without prejudice to the right of a maintenance creditor to request that any sums payable on foot of a maintenance order be paid directly to him or her.”.

Amendment of Regulation 9 of the Principal Regulations

6. Regulation 9 of the Principal Regulations is amended by the substitution of the following for paragraph (2)—

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

Amendment of Regulation 10 of the Principal Regulations

7. Regulation 10 of the Principal Regulations is amended—

(a) by the substitution of the following for paragraphs (8) to (10)—

“(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—

(a) the maintenance creditor may, in writing, request the district court clerk concerned to make an application to the District Court respecting that sum under section 10 (as amended by section 43 of the Act of 1995) of the Act of 1976, or

(b) the maintenance creditor may apply, in writing, to the relevant district court clerk for the issue of a summons under section 8(1) (as amended by section 63 of the Civil Law (Miscellaneous Provisions) Act 2011) of the Enforcement of Court Orders Act 1940.

(10) For the purposes of paragraph 9(b) a reference to an applicant in section 8(1) of the Act of 1940 shall be construed as including a reference to the district court clerk.”,

and

(b) by the deletion of paragraphs (12).

Amendment of Regulation 12 of the Principal Regulations

8. Regulation 12(1)(a) is amended by the insertion of “or Denmark” after “Member State”.

Amendment of Regulation 13 of the Principal Regulations

9. Regulation 13 of the Principal Regulations is amended—

(a) by the substitution of the following for paragraph (1)—

“(1) For the purposes of Articles 20 and 28 a document, duly authenticated, which purports to be a copy of a decision given in a Member State or Denmark shall without further proof be deemed to be a true copy of the decision, unless the contrary is shown.”,

and

(b) by the substitution of the following for paragraph (3)(a)(i)—

“(3) (a) (i) a decision given by a court of a Member State or Denmark.”.

Amendment of Regulation 15 of the Principal Regulations

10. (1) Regulation 15(2) of the Principal Regulations is amended by the substitution of “maintenance order” for “enforcement order”.

(2) Regulation 15(4)(a) is amended by the insertion of “or Denmark” after “Member State” in both places where it occurs.

Amendment of Regulation 17 of the Principal Regulations

11. Regulation 17 of the Principal Regulations is amended by the substitution of the following for paragraphs (5), (6) and (7)—

“(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 court area in which the debtor for the time being resides for the purposes of enforcement under Regulation 10.

(6) Where the application is for the enforcement of a decision, the Central Authority shall, where appropriate, transmit the documents referred to in Article 20 to the district court clerk for the district court area in which the debtor for the time being resides and paragraphs (7), (8), (11), (13), (14), (15) and (16) of Regulation 10 shall apply, with any necessary modifications, in relation to that decision.

(7) Where the creditor so specifies, the Central Authority may request that payments of maintenance be made directly to the maintenance creditor.”.



GIVEN under my Official Seal,
29 November 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 amends the European Communities (Maintenance) Regulations 2011 (S.I. No. 274 of 2011) for the purpose of giving further effect to 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 certain provisions necessary for the good administration of the Regulation.

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