



STATUTORY INSTRUMENTS.

S.I. No. 121 of 2011



CIRCUIT COURT RULES (HAGUE CONVENTION 1996) 2011

(Prn. A11/0451)

CIRCUIT COURT RULES (HAGUE CONVENTION 1996) 2011

We, the Circuit Court Rules Committee, constituted pursuant to the provisions of section 69 of the Courts of Justice Act 1936, and section 12 of the Courts of Justice Act 1947, by virtue of the powers conferred on us by section 66 of the Courts of Justice Act 1924 and section 70 of the Courts of Justice Act 1936, (as applied by section 48 of the Courts (Supplemental Provisions) Act 1961) and section 27 of the Courts (Supplemental Provisions) Act 1961, and of all other powers enabling us in this behalf, do hereby, with the concurrence of the Minister for Justice and Law Reform, make the annexed Rules of Court.

Dated this 22nd day of February 2011.

(Signed): Matthew Deery
(Chairman of the Circuit Court Rules Committee)

Alison Lindsay

Tony Hunt

Gerard J. Doherty

Joe Deane

Noel Rubotham

Susan Ryan

I concur in the making of the above Rules of Court.

Dated this 21st day of March 2011.

Signed: ALAN SHATTER,
MINISTER FOR JUSTICE AND LAW REFORM.

*Notice of the making of this Statutory Instrument was published in
"Iris Oifigiúil" of 25th March, 2011.*

S.I. No. 121 of 2011

CIRCUIT COURT RULES (HAGUE CONVENTION 1996) 2011

1. (1) These Rules, which shall come into operation on the 18th day of April 2011, may be cited as the Circuit Court Rules (Hague Convention 1996) 2011.

(2) These Rules shall be construed together with the Circuit Court Rules.

(3) The Circuit Court Rules as amended by these Rules may be cited as the Circuit Court Rules 2001 to 2011.

2. The Circuit Court Rules are amended by the insertion immediately following rule 6 of Order 59 of the following rule:

“Rule 7 — Proceedings under the Protection of Children (Hague Convention) Act 2000 (No. 37 of 2000) and the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in respect of Parental Responsibility and Measures for the Protection of Children, 1996.

7. (1) In this rule, unless the context otherwise requires:

“the Act” means the Protection of Children (Hague Convention) Act 2000 (No. 37 of 2000), and

each of the expressions “another contracting state”, “Central Authority”, “contracting state”, “the Convention”, “decision”, “judgment”, and “measure” has the meaning assigned to it by section 1 of the Act.

(2) Subject to section 4(2) and section 4(3) of the Act, proceedings before the Court under the Act or under the Convention by virtue of the Act shall be brought:

(a) in the case of proceedings to which section 4(1)(c) of the Act applies, in the County in which the child to whom the request relates resides;

(b) in the case of any other proceedings under the Act or under the Convention by virtue of the Act, in such County or Circuit as is prescribed by statute or these Rules for proceedings of the kind concerned.

(3) (a) Proceedings before the Court under the Act or under the Convention shall, subject to paragraph (b), be brought by the appropriate Family Law Civil Bill which shall be issued, served and entered in accordance with this Order.

(b) Where proceedings directed to the protection of a child’s person or property are pending before the Court, an application for relief

under the Act or under the Convention may be brought by Notice of Motion in those proceedings.

(c) Where the Court is asked in accordance with the Convention to exercise a jurisdiction conferred on it to take any measures by virtue of being the appropriate court of a contracting state, the Family Law Civil Bill under paragraph (a) or, as the case may be, the Notice of Motion under paragraph (b):

(i) shall additionally be entitled in the matter of the provision of the Convention in accordance with which the Court is asked to exercise jurisdiction, and

(ii) shall additionally have appended a copy of any relevant request in writing made by the competent authority of another contracting state, together with a certified translation, where necessary, into Irish or English, or otherwise shall set out the basis on which the request to exercise jurisdiction is made.

(4) Where, in any case, the Court is asked to exercise jurisdiction under the Act by virtue of Article 9, 11 or 12 of the Convention to order relief of a particular kind, any interim or interlocutory order may be sought by ex parte application or, as the case may be, by Notice of Motion to be served upon the parties to the proceedings, and may be granted by the Court on such an application, and

(a) in any case where the Court is satisfied that the delay caused by proceeding by Motion on Notice would or might entail serious harm or mischief, the Court may make an order ex parte as it shall consider just, and urgent applications under this paragraph may be made to a Judge at any time or place approved by him, by arrangement with the County Registrar for the County in question;

(b) interim and interlocutory applications shall, where appropriate, be made to the County Registrar in accordance with the Second Schedule to the Court and Court Officers Act 1995 and Orders 18 and 19;

(c) if on the date for hearing of any application under this sub-rule the matter is not dealt with by the Court for any reason, and, in particular, on foot of an adjournment sought by either party, the other party, whether consenting to the adjournment or not, may apply for, and the Court may grant, such interim or interlocutory relief as to it shall seem appropriate without the necessity of service of a Notice of Motion;

(d) any interim or interlocutory application shall be heard on Affidavit, unless the Court otherwise directs, save that the Deponent of any Affidavit must be available to the Court to give oral

evidence or to be cross-examined as to the Court shall seem appropriate;

- (e) where any oral evidence is heard by the Court in the course of any application *ex parte*, a note of such evidence shall be prepared by the applicant or the applicant's solicitor and approved by the Judge and shall be served upon the respondent forthwith together with a copy of the order made (if any), unless otherwise directed by the Court.

(5) Where the Court has jurisdiction in any proceedings to which the Convention applies, under Article 5 or 6 of the Convention but, on application of a party to the proceedings or of its own motion, considers in accordance with Article 8 of the Convention that the authority of another contracting state would be better placed in the particular case to assess the best interests of the child, the Court may stay the proceedings before it and, as the Court considers appropriate, either:

- (a) direct the Central Authority to make a request on its behalf to the proper authority of the other contracting state concerned to assume jurisdiction to take such measures of protection as it considers necessary in accordance with Article 8 of the Convention, or
- (b) invite the parties to introduce such a request before the proper authority of the other contracting state concerned in accordance with Article 8 of the Convention,

and the Court may, for those purposes, limit the period of any stay to a period specified by the Court, and adjourn the matter for further consideration.

- (6) (a) The Court may discharge a stay ordered in accordance with sub-rule (5) and direct the withdrawal of any request made under paragraph (a) of that sub-rule if the authority in the other contracting state concerned does not assume jurisdiction within the period for which the Court granted the stay.
- (b) The Court may discharge a stay ordered in accordance with sub-rule (5) if the parties do not, within the period specified by the court, request the authority in the other contracting state concerned to assume jurisdiction.

(7) The Court may give such directions to the Central Authority as are appropriate to facilitate participation in any exchange of views referred to in Article 8.3 of the Convention or Article 9.2 of the Convention in such manner and by such means as the Judge considers most suitable to meet the purposes of the Convention.

(8) In any case where the Court has made an order under Article 11 of the Convention, the Court may direct the Central Authority to notify the Central Authority of another contracting state of the making of that order and may direct the first-mentioned Central Authority to make inquiries of the Central Authority of another contracting state as to whether measures referred to in paragraph 2 of Article 11 of the Convention have been taken.

(9) In any case where the Court has been asked to make an order under Article 12 of the Convention, the Court may direct the Central Authority:

- (a) to make inquiries of the Central Authority of another contracting state as to whether any measures have been taken by the authorities having jurisdiction under Articles 5 to 10 of the Convention and, if so, as to the content of those measures;
- (b) to make inquiries of the Central Authority of another contracting state as to whether a decision (in respect of the measures of protection which may be required by the situation) referred to in paragraph 2 of Article 12 of the Convention has been taken and, if so, as to the content of that decision; or
- (c) to notify the Central Authority of another contracting state of the making by the Court of an order under Article 12 of the Convention.

(10) Without limiting any other power of the Court, the Court may adjourn proceedings under the Act or under the Convention for the purpose of making a request under Article 34 of the Convention.

(11) Proceedings to which the Convention applies shall be heard and decided in accordance with the procedure specified in this Order for the substantive relief claimed, but the Court may receive evidence on affidavit of any matter in such proceedings, where, and on such terms as, it considers necessary.

(12) A certificate of the Court for the purposes of section 6 of the Act shall be provided on application in writing to the County Registrar for that purpose and shall be in the Form 37O in the Schedule of Forms, and may contain such further particulars as the Court may direct the County Registrar to include. Where appropriate, certified copies of any relevant order of the Court in the proceedings and of any document lodged as proof of service in the proceedings may be appended to the certificate.”

3. The Form numbered 37O in the Schedule shall be added to the Schedule of Forms annexed to the Circuit Court Rules, immediately following Form 37N.

FORM 37O

ÉIRE

AN CHÚIRT CHUARDA
THE CIRCUIT COURT

CIRCUIT

COUNTY OF

Convention on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children, signed at The Hague on the 19th day of October 1996

Protection of Children (Hague Convention) Act 2000, section 6

[Title as in proceedings before the Court]

CERTIFICATE

I,..... of....., County Registrar for the above-named County, hereby certify, as regards a measure taken by a Court in Ireland, namely the order of the Circuit Court, Circuit, County of sitting at on the day of 20.... in the above-named proceedings, in accordance with section 6 of the above-named Act as follows:—

(i) the nature of the above-named proceedings is

(ii) the Court assumed jurisdiction under Articleof the above-named Convention

(iii) the time for lodging an appeal against the measure *will expire on/*expired on theday of20.....

(iv) *notice of appeal against the measure, *notice to set aside the measure, the measure having been given in default of appearance, *has been entered by *has not been entered

(v) the measure *was *was not taken in a case of urgency

(vi) the measure not being taken in a case of urgency, the Court has taken such account of the wishes of the child concerned as it thought appropriate and practicable having regard to the child’s age and understanding

**[Insert and enumerate further particulars where directed by the Court in accordance with Order 59, rule 7(11)]*

*Copies of the following documents relative to these proceedings, which I have certified as true copies are appended to this certificate:

*Order of the Circuit Court dated the ... day of 20....

*Statutory declaration of service of dated the ... day of 20.... establishing that notice of the institution of the proceedings was served on the respondent

Dated this ... day of 20....

Signed.....
County Registrar

*delete where inapplicable

EXPLANATORY NOTE

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

These rules insert a new rule 7 into order 59 to prescribe the procedure in respect of proceedings under the Protection of Children (Hague Convention) Act 2000 and the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in respect of Parental Responsibility and Measures for the Protection of Children, 1996.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
AONAD 20 PÁIRC MIONDÍOLA COIS LOCHA, CLÁR CHLAINNE MHUIRIS,
CONTAE MHAIGH EO,
(Teil: 01 - 6476834 nó 1890 213434; Fax: 094 - 9378964 nó 01 - 6476843)
nó trí aon díoltóir leabhar.

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