

Subsidiary Legislation made under r.23 of the International Recovery of Maintenance (2007 Hague Convention) Regulations 2018.

**Maintenance Proceedings (2007 Hague Convention)
Rules 2018**

LN.2018/266

Commencement **22.11.2018**

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In exercise of the powers conferred on him by regulation 23 of the International Recovery of Maintenance (2007 Hague Convention) Regulations 2018, in order to facilitate the implementation of the Convention on the International Recovery of Child Support and other Forms of Family Maintenance done at the Hague on 23 November 2007, the Chief Justice has made the following Rules-

**PART 1
PRELIMINARY**

Title and commencement.

1. These Rules may be cited as the Maintenance Proceedings (2007 Hague Convention) Rules 2018 and come into operation on the day of publication.

Interpretation.

2.(1) In these Rules-

“the 2007 Hague Convention” means the Convention of 23 November on the International Recovery of Child Support and other Forms of Family Maintenance done at the Hague;

“business day” means any day other than a-

- (a) Saturday, Sunday, Christmas Day or Good Friday; or
- (b) bank holiday under the Banking and Financial Dealings Act or the Interpretation and General Clauses Act;

“Central Authority” is the Central Authority referred to in regulation 5;

“Contracting State” has the meaning given in regulation 2;

“creditor” has the meaning given by Article 3;

“Family Judge” is the family judge referred to in section 12A.(1) of the Supreme Court Act;

“Registrar” means the Registrar of the Supreme Court;

“Regulations” means the International Recovery of Maintenance (2007 Hague Convention) Regulations 2018;

“Supreme Court” means the Supreme Court of Gibraltar.

(2) Any reference to a numbered Article is to the Article so numbered in the 2007 Hague Convention and any reference to a sub-division of a numbered Article shall be construed accordingly.

(3) Any reference to a regulation is to the regulation so numbered in the Regulations and any reference to a sub-division of a numbered regulation shall be construed accordingly.

**PART 2
PROCEEDINGS IN RESPECT OF THE 2007 HAGUE CONVENTION**

Scope.

3. These Rules apply to any proceedings which are brought or intended to be brought in matters to which the Regulations or the 2007 Hague Convention apply.

Applications to recover maintenance.

4.(1) The following applications shall be available to a creditor in a requesting State seeking to recover maintenance under the 2007 Hague Convention-

- (a) recognition or recognition and enforcement of a decision;
- (b) enforcement of a decision made or recognised in the requested State;
- (c) establishment of a decision in the requested State where there is no existing decision, including where necessary the establishment of parentage;
- (d) establishment of a decision in the requested State where recognition and enforcement of a decision is not possible, or is refused, because of the lack of a basis for recognition and enforcement under Article 20, or on the grounds specified in Article 22(b) or (e);
- (e) modification of a decision made in the requested State; or
- (f) modification of a decision made in a Contracting State other than the requested State.

(2) The following categories of application shall be available to a debtor in a requesting State against whom there is an existing maintenance decision-

- (a) recognition of a decision;
- (b) modification of a decision made in the requested State; and
- (c) modification of a decision made in a Contracting State other than the requested State.

(3) Save as otherwise provided in the 2007 Hague Convention, the applications referred to in subrules (1) and (2) are to be made by complaint and supported by an affidavit, and shall be subject to the jurisdictional rules of the magistrates' court when Gibraltar is the requested State.

Application through the Central Authority.

5.(1) An application under rule 4 (Article 10) shall be made through the Central Authority of the Contracting State in which the applicant is habitually resident.

- (2) The application referred to in subrule (1) shall be made to the Central Authority.

Contents of the application.

6.(1) Save for an application under subrule (4), any other application made under rule 4 (Article 10) shall include-

- (a) a statement of the nature of the application;
- (b) the name and contact details, including the address and date of birth of the applicant;
- (c) the name and, if known, address and date of birth of the respondent;
- (d) the name and date of birth of any person for whom maintenance is sought;
- (e) the grounds upon which the application is based;
- (f) in an application by a creditor, information concerning where the maintenance payment should be sent or electronically submitted;
- (g) the name and contact details of the person or unit from the Central Authority of the requesting State responsible for processing the application; and

(h) affidavit evidence in support of the application.

(2) As appropriate, and to the extent known, the applicant shall in addition to the information in subrule (1) include in the application-

- (a) the financial circumstances of the creditor;
- (b) the financial circumstances of the debtor, including the name and address of the employer of the debtor and the nature and location of the assets of the debtor; and
- (c) any other information that may assist with the location of the respondent.

(3) The application shall be accompanied by any necessary supporting information or documentation, including documentation concerning any entitlement to legal assistance in accordance with regulation 6.

(4) In respect of an application for-

- (a) recognition or recognition and enforcement of a decision where Article 10(1)(a) applies; or
- (b) recognition of a decision where Article 10(2)(a) applies,

the application shall be accompanied by the documents listed in rule 7 (Article 25).

Application for recognition and enforcement of a decision.

7.(1) An application for recognition and enforcement shall be accompanied by the following-

- (a) a complete text of the decision certified by the competent authority of the State of origin;
- (b) a certified document from the competent authority in the State of origin stating that the decision is enforceable in the State of origin and, in the case of a decision by an administrative authority, a certified document from the administrative authority stating that the requirements of Article 19(3) are met unless that State has specified in accordance with Article 57 that decisions of its administrative authorities always meet those requirements;
- (c) if the respondent did not appear and was not represented in the proceedings in the State of origin, a document or documents from the competent authority in the State of origin attesting either-

- (i) that the respondent had proper notice of the notice and an opportunity to be heard; or
 - (ii) that the respondent had proper notice of the decision and the opportunity to challenge or appeal it on fact and law;
- (d) where necessary, a certified document from the competent authority of the State of origin showing the amount of any arrears and the date such amount was calculated;
- (e) where necessary, in the case of a decision providing for automatic adjustment by indexation, a document from the competent authority of the State of origin providing the information necessary to make the appropriate calculations; and
- (f) where necessary, documentation from the competent authority of the State of origin showing the extent to which the applicant received legal assistance.
- (2) Upon a challenge or an appeal under Article 23(7)(c) or upon request by the competent authority in the State addressed, a complete copy of the document concerned certified by the State of origin shall be provided by the Central Authority of the requesting State.

PART 3

TRANSMISSION OF APPLICATIONS AND CASES THROUGH CENTRAL AUTHORITIES

Transmission, receipt and processing of applications and cases through the Central Authorities including maintenance arrangements.

8.(1) An application transmitted by the requesting Central Authority on behalf of an applicant to the Central Authority shall be accompanied by the form set out in Schedule 1 to these Rules.

(2) The Central Authority of the requesting State shall, when requested by the Central Authority, provide a complete copy certified by the competent authority in the State of origin of any of the documents listed-

- (a) in rule 7(1)(a), (b) and (d); and (Article 25 (a), (b) and (d))
 - (b) Article 30(3).
- (3) The Central Authority shall-

- (a) within six weeks from the date of receipt of the application, acknowledge receipt in the form set out in Schedule 2 to these Rules; and
 - (b) inform the Central Authority of the requesting State what initial steps have been or will be taken to deal with the application and may request any further documents and information.
- (4) Within the six-week period referred to in subrule 3(a), the Central Authority shall provide to the requesting Central Authority the name and contact details of the clerk of the magistrates' court being the person responsible for responding to inquiries regarding the process of the application.
- (5) Within three months after the acknowledgement, the Central Authority shall inform the requesting Central Authority of the status of the application.
- (6) The Central Authority may refuse to process an application only if the Central Authority manifests that the requirements of the 2007 Hague Convention are not fulfilled.
- (7) The clerk of the magistrates' court shall determine if the requirements of the 2007 Hague Convention are fulfilled.
- (8) In the event of a refusal under subrule (6), the Central Authority shall promptly inform the requesting Central Authority of its reasons for refusal.
- (9) The Central Authority may not reject an application solely on the basis that additional documents or information are needed and may ask the requesting Central Authority to provide these additional documents or information.
- (10) If the requesting Central Authority does not provide any of the documents or information requested by the Central Authority in accordance with subrule (9)-
- (a) within three months from the date of the request; or
 - (b) for a longer period of time specified by the Central Authority,
- the Central Authority may decide that it shall no longer process the application.
- (11) If the Central Authority determines under subrule (10) that it shall no longer process the application, it shall inform the requesting Central Authority of its decision.

**PART 4
CHALLENGES OR APPEALS.**

Challenge or an appeal on applications for registration.

9.(1) A challenge or appeal of a decision of the magistrates' court in accordance with regulation 7(5)-

- (a) shall be lodged in the Supreme Court within 30 days of the notification given to the applicant and the respondent under Article 23(5); or
- (b) if the contesting party is not habitually resident in Gibraltar, the challenge or appeal shall be lodged within 60 days of notification.

(2) A challenge or appeal may be on fact and on a point on law and founded only on the following-

- (a) the grounds for refusing recognition and enforcement set out in Article 22;
- (b) the bases for recognition and enforcement under Article 20; or
- (c) the authenticity or integrity of any document transmitted in accordance with rule 7(a), (b) or (d) (Article 25 (a), (b) or (d)).

(3) A challenge or an appeal by a respondent may also be founded on the fulfilment of the debt to the extent that the recognition and enforcement relates to payments that fell due in the past.

(4) The Supreme Court shall promptly notify the applicant and the respondent of the decision following the challenge or the appeal.

(5) A further challenge or an appeal of the Supreme Court's decision may be made to the Court of Appeal within fourteen business days after the day on which the decision of the Supreme Court was given.

(6) An appeal to the Supreme Court must be lodged with the Registrar.

(7) A further challenge or an appeal shall not have the effect of staying the enforcement of the decision unless there are exceptional circumstances.

Enforcement of decisions.

10. Any determination, decision or order by the Family Judge on such an appeal from the magistrates' court may be enforced as it were a decision of that court.

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**PART 5
PRESENCE OF THE PARTIES TO PROCEEDINGS**

Presence of the parties to proceedings under the 2007 Hague Convention.

11. In proceedings for recognition and enforcement of a decision under the 2007 Hague Convention, the physical presence of the child or the applicant would not be required in the court of the State addressed.

SCHEDULE 1

Rule 8(1)

Transmittal form under Article 12(2)

————— CONFIDENTIALITY AND

**PERSONAL DATA
PROTECTION NOTICE**

Personal data gathered or transmitted under the Convention shall be used only for the purposes for which it was gathered or transmitted. Any authority processing such data shall ensure its confidentiality, in accordance with the law of its State.

An authority shall not disclose or confirm information gathered or transmitted in application of this Convention if it determines that to do so could jeopardise the health, safety or liberty of a person in accordance with Article 40.

A determination of non-disclosure has been made by a Central Authority in accordance with Article 40.

<p>1. Requesting Central Authority</p> <p>a. Address</p> <p>b. Telephone number</p> <p>c. Fax number</p> <p>d. E-mail</p> <p>e. Reference number</p>	<p>2. Contact person in requesting State</p> <p>a. Address (if different)</p> <p>b. Telephone number (if different)</p> <p>c. Fax number (if different)</p> <p>d. E-mail (if different)</p> <p>e. Language(s)</p>
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3. Requested Central Authority
Address

4. Particulars of the applicant

a. Family name(s):

b. Given name(s):

c. Date of birth:
(dd/mm/yyyy)

or

a. Name of the public body:

5. Particulars of the person(s) for whom maintenance is sought or payable

a. The person is the same as the applicant named in point 4

b. i. Family name(s):
Given name(s):
Date of birth: (dd/mm/yyyy)

ii. Family name(s):
Given name(s):
Date of birth: (dd/mm/yyyy)

iii. Family name(s):
Given name(s):
Date of birth: (dd/mm/yyyy)

6. Particulars of the debtor¹

a. The person is the same as the applicant named in point 4

b. Family name(s):

c. Given name(s):

d. Date of birth: (dd/mm/yyyy)

7. This transmittal form concerns and is accompanied by an application under:

Article 10(1) a)
 Article 10(1) b)
 Article 10(1) c)
 Article 10(1) d)
 Article 10(1) e)
 Article 10(1) f)
 Article 10(2) a)
 Article 10(2) b)
 Article 10(2) c)

8. The following documents are appended to the application:

a. For the purpose of an application under Article 10(1) a) and:
In accordance with Article 25:

Complete text of the decision (Art. 25(1) a))
 Abstract or extract of the decision drawn up by the competent authority of the State of origin (Art. 25(3) b)) (if applicable)

¹ According to Art. 3 of the Convention “‘debtor’ means an individual who owes or who is alleged to owe maintenance”.

Document stating that the decision is enforceable in the State of origin and, in the case of a decision by an administrative authority, a document stating that the requirements of Article 19(3) are met unless that State has specified in accordance with Article 57 that decisions of its administrative authorities always meet those requirements (Art. 25(1) b)) or if Article 25(3) c) is applicable

If the respondent did not appear and was not represented in the proceedings in the State of origin, a document or documents attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard, or that the respondent had proper notice of the decision and the opportunity to challenge or appeal it on fact and law (Art. 25(1) c)

Where necessary, a document showing the amount of any arrears and the date such amount was calculated (Art. 25(1) d))

Where necessary, a document providing the information necessary to make appropriate calculations in case of a decision providing for automatic adjustment by indexation (Art. 25(1) e))

Where necessary, documentation showing the extent to which the applicant received free legal assistance in the State of origin (Art. 25(1) f))

In accordance with Article 30(3):

Complete text of the maintenance arrangement (Art. 30(3) a))

A document stating that the particular maintenance arrangement is enforceable as a decision in the State of origin (Art. 30(3) b))

Any other documents accompanying the application (e.g., if required, a document for the purpose of Art. 36(4)):

.....

b. For the purpose of an application under Article 10(1) b), c), d), e), f) and (2) a), b) or c), the following number of supporting documents (excluding the transmittal form and the application itself) in accordance with Article 11(3):

Article 10(1) b)

Article 10(1) c)

Article 10(1) d)

Article 10(1) e)

Article 10(1) f)

Article 10(2) a)

Article 10(2) b)

Article 10(2) c)

Name: (in block letters) Date:.....

Authorised representative of the Central Authority (dd/mm/yyyy)

SCHEDULE 2

Rule 8(3)(a)

Acknowledgement form under Article 12(3)

CONFIDENTIALITY AND PERSONAL DATA PROTECTION NOTICE

Personal data gathered or transmitted under the Convention shall be used only for the purposes for which it was gathered or transmitted. Any authority processing such data shall ensure its confidentiality, in accordance with the law of its State.

An authority shall not disclose or confirm information gathered or transmitted in application of this Convention if it determines that to do so could jeopardise the health, safety or liberty of a person in accordance with Article 40.

A determination of non-disclosure has been made by a Central Authority in accordance with Article 40.

<p>1. Requested Central Authority</p> <p>a. Address</p> <p>b. Telephone number</p> <p>c. Fax number</p> <p>d. E-mail</p> <p>e. Reference number</p>	<p>2. Contact person in requested State</p> <p>a. Address (if different)</p> <p>b. Telephone number (if different)</p> <p>c. Fax number (if different)</p> <p>d. E-mail (if different)</p> <p>e. Language(s)</p>
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3. Requesting Central Authority

Contact person

Address

4. The requested Central Authority acknowledges receipt on (dd/mm/yyyy) of the transmittal form from the requesting Central Authority (reference number; dated (dd/mm/yyyy)) concerning the following application under:

Article 10(1) a)

Article 10(1) b)

Article 10(1) c)

Article 10(1) d)

Article 10(1) e)

Article 10(1) f)

Article 10(2) a)

Article 10(2) b)

Article 10(2) c)

Family name(s) of applicant:

Family name(s) of the person(s) for whom
maintenance is sought or payable:

.....

.....

Family name(s) of debtor:

5. Initial steps taken by the requested Central Authority:

The file is complete and is under consideration

See attached status of application report

Status of application report will follow

Please provide the following additional information and/or
documentation:

.....

.....

The requested Central Authority refuses to process this application as it
is manifest that the requirements of the Convention are not fulfilled
(Art. 12(8)). The reasons:

are set out in an attached document

will be set out in a document to follow

The requested Central Authority requests that the requesting Central Authority
inform it of any change in the status of the application.

Name: (in block letters) Date:.....

Authorised representative of the Central Authority (dd/mm/yyyy)