

Subsidiary Legislation made under s.74(2).

International Recovery of Maintenance (2007 Hague Convention) Regulations 2018

LN.2018/265

Commencement **22.11.2018**

Amending enactment	Relevant current provisions	Commencement date
LN.2020/552	ss. 2(1), 7	01.01.2021

1961-25

Maintenance

2018/265

**International Recovery of Maintenance (2007 Hague
Convention) Regulations 2018**

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ARRANGEMENT OF REGULATIONS

Regulation

PART 1 PRELIMINARY

1. Title and commencement.
2. Interpretation.
3. Application of the Convention.
4. Jurisdiction.
5. Central Authority.

PART 2 LEGAL ASSISTANCE

6. Legal Assistance.

PART 3 RECOGNITION AND ENFORCEMENT

7. Recognition of enforcement of maintenance decisions made by courts in Contracting States.
8. Interest on judgments.
9. Currency of payments under a maintenance decision.
10. Proof and admissibility of certain maintenance decisions and related documents.

PART 4 MAINTENANCE ARRANGEMENTS AND DECISIONS

11. Maintenance arrangements.
12. Applications for establishment or modification of maintenance in Gibraltar.
13. Decisions produced by the combined effect of interim and confirmation orders.

PART 5 INFORMATION

14. Information and data protection.
15. Transmission by Central Authority of information received.
16. Processing by others of information received by the Central Authority.
17. Limitations on use of information.

Maintenance

1961-25

International Recovery of Maintenance (2007 Hague Convention) Regulations 2018

2018/265

This version is out of date

- 18. Non-disclosure to third parties.
- 19. Offences.
- 20. Penalties.
- 21. Interpretation of this Part.

PART 6 MISCELLANEOUS

- 22. Language.
- 23. Rules of court.

SCHEDULE 1

Text on the Convention on the International Recovery of Child Support and Other Forms of
Family Maintenance

SCHEDULE 2

Address and contact details of the Central Authority and the court in Gibraltar.

1961-25

Maintenance

2018/265

International Recovery of Maintenance (2007 Hague Convention) Regulations 2018

This version is out of date

In exercise of the powers conferred on him by section 74(2) of the Maintenance Act in order to implement Council Decision of 9 June 2011 on the approval on behalf of the European Union, of the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance done at the Hague, the Minister has made the following Regulations-

**PART 1
PRELIMINARY**

Title and commencement.

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

Interpretation.

2.(1) In these Regulations-

“Contracting State” means a State bound by the Convention;

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

“agreement in writing” means an agreement recorded in any medium, the information contained in which is accessible so as to be usable for subsequent reference;

“court”, in relation to a maintenance decision given in a Contracting State, includes a tribunal, and any other administrative authority (within the meaning of Article 19(3)) with competence to make a decision in respect of a maintenance obligation;

“creditor” has the meaning given by Article 3;

“debtor” has the meaning given by Article 3;

“decision” also includes a settlement or agreement concluded before or approved by an administrative authority and an automatic adjustment by indexation and a requirement to pay arrears, retroactive maintenance or interest and a determination of costs or expenses;

“maintenance arrangement” means an agreement in writing relating to the payment of maintenance which-

- (i) has been formally drawn up or registered as an authentic instrument by a competent authority; or
- (ii) has been authenticated by, or concluded, registered or filed with a competent authority, and may be subject of review and modification by a competent authority;

“maintenance decision” means a decision, or part of a decision, made by a court in a Contracting State, to which Chapter V applies by virtue of Article 19(1);

“Minister” means the Minister with responsibility for Justice;

“the Maintenance Regulation” means Council Regulation 4/2009 (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;

“Registrar” means the Registrar of the Supreme Court; and

“vulnerable person” has the meaning given in Article 3.

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

Application of the Convention.

3.(1) The Convention shall apply to Gibraltar.

(2) The Convention applies to:

- (a) maintenance obligations arising from a parent-child relationship;
- (b) family relationship;
- (c) parentage irrespective of the marital status of the parents;
- (d) marriage;
- (e) affinity;

1961-25

Maintenance

2018/265

International Recovery of Maintenance (2007 Hague Convention) Regulations 2018

This version is out of date

- (f) vulnerable persons under the age of 18 years;
 - (g) recognition and enforcement or enforcement of a decision for spousal support when the application is made within a claim under subregulation (2)(a);
 - (h) with the exception of Chapters II and III, to spousal support.
- (5) The text of the Convention is set out for reference in Schedule 1.

Jurisdiction.

4.(1) The magistrates' court and the Supreme Court in Gibraltar shall have jurisdiction under the Convention.

(2) The jurisdiction of the Supreme Court under the Convention shall be exercised by the Family Judge.

(3) Notwithstanding subregulation (2), where the Family Judge is not available and it would be in the best interest of the applicant, the proceedings mentioned in that subsection may be exercised by another judge of the Supreme Court.

Central Authority.

5.(1) The functions under the Convention of a Central Authority shall be discharged in Gibraltar by the Minister.

(2) The Registrar shall assist the Minister in carrying out the functions of the Central Authority as the Minister shall specify.

(3) The address and contact details of the Central Authority and the courts in Gibraltar are provided in Schedule 2.

(4) The Government may amend or replace Schedule 2 by notice in the Gazette.

**PART 2
LEGAL ASSISTANCE**

Legal Assistance.

6.(1) Legal Assistance for applications in respect of child support shall be provided free of charge to a creditor in respect of maintenance obligations arising from a parent-child relationship towards a person under the age of 18 years.

(2) Notwithstanding subregulation (1), legal assistance may, in relation to applications other than those under Article 10(1)(a) and (b) and cases covered by Article 24(4), be refused if the Registrar considers that, on the merits, the application or any appeal is manifestly unfounded, and subject to the financial eligibility criteria provided for in the Legal Aid and Assistance Act.

(3) In all other applications where the Convention applies other than in applications under subregulation (1) -

- (a) the provision of free legal assistance shall be made subject to the financial eligibility criteria provided for in the Legal Aid and Assistance Act;
- (b) an applicant, who in the State of origin has benefited from free legal assistance, however, shall be entitled, in any proceedings for recognition and enforcement, to benefit, at least, to the same extent, from free legal assistance as provided for by the law of Gibraltar under the same circumstances.

PART 3 RECOGNITION AND ENFORCEMENT

Recognition and enforcement of maintenance decisions made by courts in Contracting States.

7.(1) Subject to subregulation (2), an application for registration of a maintenance decision under the Convention is to be made to the magistrates' court.

(2) An application for registration is to be submitted by the Central Authority to the clerk of the magistrates' court.

(3) Jurisdiction in relation to applications for registration of maintenance decisions lies with the courts in Gibraltar if-

- (a) the person against whom enforcement is sought is resident in Gibraltar; or
- (b) assets belonging to that person and which are susceptible to enforcement are situated or held in Gibraltar.

1961-25

Maintenance

2018/265

International Recovery of Maintenance (2007 Hague Convention) Regulations 2018

This version is out of date

(4) An application for registration shall be determined in the first instance by the magistrates' court (as the registering court).

(5) The decision of the magistrates' court may be appealed to the Supreme Court in accordance with rules of court.

(6) For the purposes of the enforcement of a maintenance decision registered under the Convention in the magistrates' court-

- (a) the decision shall be of the same force and effect;
- (b) the magistrates' court shall have in relation to its enforcement the same powers; and
- (c) proceedings for or with respect to its enforcement may be taken,

as if the decision had originally been made by the magistrates' court.

(7) Subregulation (6) is subject to subregulation (8).

(8) A maintenance decision which is so registered shall be enforceable in the magistrates' court in the same manner as a maintenance order made by that court save that sections 52 and 57 of the Magistrates' Court Act have effect.

(9) Subregulation (6) is also subject to-

- (a) subregulation (3); and
- (b) any provision made by rules of court as to the procedure for the enforcement of maintenance decisions registered in accordance with this regulation.

(10) The debtor under a maintenance decision registered in accordance with this regulation in the magistrates' court must give notice of any change of address to the clerk of the magistrates' court.

(11) A person who without reasonable excuse fails to comply with subregulation (10) commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(12) In this regulation-

“maintenance order” means any order, maintenance decision or maintenance arrangement and includes one which has been discharged or ceased to operate, if any arrears are recoverable thereunder.

Interest on judgments.

8.(1) Subject to subregulations (2) and (3) and any rules of court as to the payment of interest under this regulation, where a person applying for registration of a maintenance decision shows that-

- (a) the decision provides for the payment of money; and
- (b) in accordance with the law of the Contracting State in which the maintenance decision was given and the terms of the decision, interest on that sum is recoverable at a particular rate and from a particular date or time,

the debt resulting from registration of a decision is to carry interest at that rate and from that date or time.

(2) Interest is not recoverable under subregulation (1) unless the rate of interest and the date or time referred to in subregulation (1)(b) are registered with the decision.

(3) Interest on arrears of sums payable under a maintenance decision registered under the Convention in the magistrates’ court shall be recoverable in that court as a civil debt, notwithstanding the provisions of section 40(2)(a) of the Magistrates’ Court Act.

(4) Except as mentioned in subparagraph (3), debts under maintenance decisions registered in Gibraltar under the Convention shall carry interest only as provided by this regulation.

Currency of payments under a maintenance decision.

9.(1) Sums payable under a maintenance decision registered in Gibraltar under the Convention, including any arrears so payable, shall be paid in Sterling.

(2) Where the maintenance decision is expressed in any other currency, the amounts shall be converted on the basis of the exchange rate prevailing on the date on which the application for registration was received by the Central Authority.

(3) For the purposes of this regulation, a written certificate signed by an officer of any bank in Gibraltar and stating the exchange rate prevailing on a specified date shall be evidence of the facts stated.

Proof and admissibility of certain maintenance decisions and related documents.

10.(1) For the purposes of proceedings relating to the Convention a document duly authenticated which purports to be a copy of a maintenance decision given by a court in a Contracting State shall without further proof be deemed to be a true copy, unless the contrary is shown.

(2) A document purporting to be a copy of a maintenance decision given by a court in a Contracting State is duly authenticated for the purpose of this subregulation if it purports-

- (a) to bear the seal of that court; or
- (b) to be certified by any person in that person's capacity as a judge or officer of that court to be a true copy of a maintenance decision given by that court.

(3) Nothing in this regulation shall prejudice the submission in evidence of any document which is admissible apart from this regulation.

PART 4
MAINTENANCE ARRANGEMENTS AND DECISIONS

Maintenance arrangements.

11.(1) References in this regulation to maintenance arrangements are to those maintenance arrangements as defined in Article 3(e) which are to be recognised and enforceable in the same way as maintenance decisions by virtue of Article 30.

(2) In relation to a maintenance arrangement which is enforceable as a maintenance decision in the Contracting State of origin, Part 3 and 4 applies as if that maintenance arrangement was a maintenance decision given by a court of that State.

(3) A document purporting to be a copy of a maintenance arrangement drawn up or registered as an authentic instrument by, or authenticated by, or concluded, registered or filed with a competent authority in a Contracting State is duly authenticated for the purposes of this regulation if it purports to be certified to be a true copy of such an arrangement by a person duly authorised in that State to do so.

(4) The application for recognition and enforcement of a maintenance arrangement shall be determined by rules of court.

(5) Proceedings for recognition and enforcement of a maintenance arrangement shall be suspended if a challenge concerning the arrangement is pending before a competent authority of a Contracting State.

(6) Section 7 of the Civil Jurisdiction and Judgments Act 1993 does not apply to maintenance arrangements.

Applications for establishment or modification of maintenance in Gibraltar.

12.(1) Upon receipt of an application for establishment or modification of a decision under Article 10, the Central Authority shall send that application to the clerk of the magistrates' court.

(2) Upon receipt of the application submitted under subregulation (1), the clerk of the magistrates' court shall consider-

- (a) whether the courts in Gibraltar have jurisdiction to determine the application by virtue of the Maintenance Regulation;
- (b) if the court has jurisdiction, whether the application relates to the financial relief which the magistrates' court has power to make, and if it appears to the clerk of the magistrates' court that the magistrates' court does not have that power, he shall transfer the application to the Supreme Court.

(3) If the magistrates' court has power to make the financial relief to which the application relates-

- (a) the clerk of the magistrates' court shall file the application and serve it on the respondent; or
- (b) if the clerk of the magistrates' court is unable to establish where the respondent is residing, he shall return the application to the Central Authority.

(4) Where the clerk of the magistrates' court decides under subregulation (2)(a) that the courts in Gibraltar do not have jurisdiction to determine the application, he shall return the application to the Central Authority with a written explanation of the reasons for that decision.

(5) In this regulation-

“application” means the application submitted under Article 10 together with any documents which accompany it; and

“respondent” means the person who is alleged in the application under Article 10 to owe maintenance.

Decisions produced by the combined effect of provisional and confirmation orders.

13. Where a decision is produced by the combined effect of a provisional order made in one State and an order made by an authority in another State (“the confirming State”) confirming the provisional order-

- (a) each of those States shall be deemed to be a State of origin;
- (b) the requirements under Article 22(e) (ground for refusing recognition and enforcement) shall be met if the respondent had proper notice of the proceedings in the confirming State and an opportunity to oppose the confirmation of the provisional order;
- (c) the requirement of Article 20(6) (basis for recognition and enforcement) that a decision be enforceable in the State of origin shall be met if the decision is enforceable in the confirming State; and
- (d) Article 18 (limit on proceedings) shall not prevent proceedings for the modification of the decision being commenced in either State.

**PART 5
INFORMATION**

Information and data protection.

14.(1) Subject to the provisions of this Part, the Income Tax Office, the Department of Social Security, the Civil Status and Registration Office and the Employment Service shall provide to the Central Authority such information listed in subregulation (5) as they hold in the course of their ordinary activities and which is necessary to facilitate establishment, modification, recognition, registration or enforcement of a maintenance obligation to which this Convention applies, except that provision of information may be refused where it would pose a threat to public safety.

(2) The information to be supplied to the Central Authority under subregulation (1) shall be limited to information held for functions relating to social security, child support and employment and training.

(3) The information shall be provided to the Central Authority upon its request and shall be treated as confidential.

(4) The Central Authority may not request the information unless the following conditions are met-

- (a) the application to which the request relates has been made under Chapter III (applications through Central Authorities) or is an application for a specific measure under Article 7 relating to the location of the debtor or creditor, or to obtaining the information in Article 6(2)(c) (relevant circumstances); and
- (b) the request is limited to information which is relevant for the establishment, modification, recognition, registration or enforcement of the maintenance obligation in question,

as the case may be.

(5) Subject to subregulation (6) to (8), the information to be supplied under subregulation (1) is-

- (a) the address of the debtor or of the creditor;
- (b) details of the debtor's income;
- (c) the identity and contact details of the debtor's employer;
- (d) details of any deposit account or withdrawable share account that the debtor holds with a deposit-taker; or
- (e) details of the debtor's assets.

(6) Where the application to which the request relates is for the establishment or modification of a maintenance obligation, the Central Authority may only request the address of the debtor or of the creditor.

(7) The information under subregulation (5)(e) cannot be requested unless the information in subregulation (5)(b) to (d) is insufficient to enable enforcement of the maintenance obligation.

(8) Where the application to which the request relates is for a specific measure in accordance with subregulation (4)(a), the information in subregulation (5) (b), (d) and (e)-

- (a) shall consist only of an indication as to whether the debtor has income or assets in Gibraltar; and
- (b) shall be supplied only if the creditor produces to the Central Authority a copy of the maintenance obligation or an abstract from it together with the document required by Article 25(1)(b) or Article 30(3)(b), as appropriate, stating that it is enforceable in the Contracting State in which it was made,

and no information may be supplied in relation to the identity and contact details of the debtor's employer.

Transmission by Central Authority of information received.

15. The Central Authority shall transmit the information received in accordance with this Part to-

- (a) the courts in Gibraltar; or
- (b) where necessary, the requesting Central Authority,

as appropriate.

Processing by others of information received by the Central Authority.

16. Subject to the provisions of the Convention and of this Part, the persons and authorities to whom the Central Authority transmits information in accordance with this Part and the requirements of Articles 6 and 7 may process that information in a manner necessary to facilitate the adjudication and recovery of the maintenance obligation to which the request relates.

Limitations on the use of information.

17. The Central Authority, the court to which it transmits information in accordance with regulation 15, and any person or authority in Gibraltar to whom that information is transmitted (whether by the court or by the Central Authority)-

- (a) may use information provided under this Part only for the purpose of facilitating recovery of maintenance in accordance with this Part and the Convention;
- (b) may not disclose to the applicant the information so provided, except that-

- (i) the existence, or not as the case may be, of an address, income or assets in Gibraltar may be so disclosed;
- (ii) the information may be disclosed if required by rules of court.

Non-disclosure to third parties.

18.(1) Subject to regulation 17(b), the information referred to in regulation 14(5) which is received by the Central Authority from a person or authority listed in regulation 14(1), cannot be disclosed to another person unless the disclosure is in connection with a function of the Central Authority under Articles 6 and 7 and Chapter III.

(2) Subregulation (1) does not apply to-

- (a) the disclosure of information which is in a form of a summary or collection of information so framed as not to enable identification of any person from the information;
- (b) disclosure which is made in pursuance of a court order; and
- (c) disclosure which is required by any other enactment.

Offences.

19.(1) Subject to subregulation (3), a person who-

- (a) is or has been employed by the Central Authority; or
- (b) provides or has provided services to the Central Authority,

commits an offence if that person makes disclosure, otherwise than in accordance with this Part, of information referred to in regulation 14(5) which has been obtained from a person or authority listed in regulation 14(1) and which relates to a person whose identity is specified in the information disclosed or can be deduced from it.

(2) It is a defence to prove that, at the time of the alleged offence, the person making the disclosure believed that they were making the disclosure lawfully in accordance with this Part and the Convention, and had no reasonable cause to believe otherwise.

(3) Subregulation (1) does not apply to disclosure of information received by such a person from the Central Authority where the information so disclosed is held by the Central Authority for the purposes of employment and training only.

Penalties.

20. A person found guilty of an offence under this Part shall be liable-

- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine or to both; or
- (b) on summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding level 4 on the standard scale or to both.

Interpretation of this Part.

21. In this Part-

any references to “Central Authority” include persons employed by or supplying services to the Central Authority;

“deposit-taker” means a person who may, in the course of their business, lawfully accept deposits in Gibraltar;

“functions related to social security” includes functions related to statutory sick pay, statutory maternity pay or statutory paternity pay and maternity allowance under section 11A(1). and 11B. of the Social Security (Insurance) Act;

“maintenance obligation” means any maintenance obligation to which the Convention (as applied by Gibraltar) applies, and includes maintenance arrangements as defined under Article 3(e); and

“requesting Central Authority” means the Central Authority of another Contracting State to the Convention which has made the request for information or sent the application under Article 10 or the specific measures under Article 7.

**PART 6
MISCELLANEOUS**

Language.

22.(1) In Gibraltar, any application and related documents shall be in the original language, and shall be accompanied by a translation into English.

(2) For the purposes of Article 44(3), the accepted language for the Central Authority shall be English.

Rules of court.

23. The Chief Justice, may, by rules of court, make such provision as appears to him necessary or expedient for the purposes of these Regulations and the Convention.

1961-25

Maintenance

2018/265

International Recovery of Maintenance (2007 Hague Convention) Regulations 2018

This version is out of date

regulation 3(5)

SCHEDULE 1

Text on the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance

(Concluded 23 November 2007)

The States signatory to the present Convention,
Desiring to improve co-operation among States for the international recovery of child support and other forms of family maintenance,
Aware of the need for procedures which produce results and are accessible, prompt, efficient, cost-effective, responsive and fair,
Wishing to build upon the best features of existing Hague Conventions and other international instruments, in particular the United Nations *Convention on the Recovery Abroad of Maintenance* of 20 June 1956,
Seeking to take advantage of advances in technologies and to create a flexible system which can continue to evolve as needs change and further advances in technology create new opportunities,
Recalling that, in accordance with Articles 3 and 27 of the United Nations *Convention on the Rights of the Child* of 20 November 1989,
– in all actions concerning children the best interests of the child shall be a primary consideration,
– every child has a right to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development,
– the parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child’s development, and
– States Parties should take all appropriate measures, including the conclusion of international agreements, to secure the recovery of maintenance for the child from the parent(s) or other responsible persons, in particular where such persons live in a State different from that of the child,
Have resolved to conclude this Convention and have agreed upon the following provisions –

CHAPTER I – OBJECT, SCOPE AND DEFINITIONS

Article 1 Object

The object of the present Convention is to ensure the effective international recovery of child support and other forms of family maintenance, in particular by –

- a)* establishing a comprehensive system of co-operation between the authorities of the Contracting States;
- b)* making available applications for the establishment of maintenance decisions;
- c)* providing for the recognition and enforcement of maintenance decisions; and
- d)* requiring effective measures for the prompt enforcement of maintenance decisions.

Article 2

Scope

(1) This Convention shall apply –

- a)* to maintenance obligations arising from a parent-child relationship towards a person under the age of 21 years;
- b)* to recognition and enforcement or enforcement of a decision for spousal support when the application is made with a claim within the scope of sub-paragraph *a)*; and
- c)* with the exception of Chapters II and III, to spousal support.

(2) Any Contracting State may reserve, in accordance with Article 62, the right to limit the application of the Convention under sub-paragraph 1 *a)*, to persons who have not attained the age of 18 years. A Contracting State which makes this reservation shall not be entitled to claim the application of the Convention to persons of the age excluded by its reservation.

(3) Any Contracting State may declare in accordance with Article 63 that it will extend the application of the whole or any part of the Convention to any maintenance obligation arising from a family relationship, parentage, marriage or affinity, including in particular obligations in respect of vulnerable persons. Any such declaration shall give rise to obligations between two Contracting States only in so far as their declarations cover the same maintenance obligations and parts of the Convention.

(4) The provisions of this Convention shall apply to children regardless of the marital status of the parents.

1961-25

Maintenance

2018/265

**International Recovery of Maintenance (2007 Hague
Convention) Regulations 2018**

This version is out of date

**Article 3
Definitions**

For the purposes of this Convention –

- a)* “creditor” means an individual to whom maintenance is owed or is alleged to be owed;
- b)* “debtor” means an individual who owes or who is alleged to owe maintenance;
- c)* “legal assistance” means the assistance necessary to enable applicants to know and assert their rights and to ensure that applications are fully and effectively dealt with in the requested State. The means of providing such assistance may include as necessary legal advice, assistance in bringing a case before an authority, legal representation and exemption from costs of proceedings;
- d)* “agreement in writing” means an agreement recorded in any medium, the information contained in which is accessible so as to be usable for subsequent reference;
- e)* “maintenance arrangement” means an agreement in writing relating to the payment of maintenance which –
 - i)* has been formally drawn up or registered as an authentic instrument by a competent authority; or
 - ii)* has been authenticated by, or concluded registered or filed with a competent authority, and may be the subject of review and modification by a competent authority;
- f)* “vulnerable person” means a person who, by reason of an impairment or insufficiency of his or her personal faculties, is not able to support him or herself.

CHAPTER II – ADMINISTRATIVE CO-OPERATION

**Article 4
Designation of Central Authorities**

(1) A Contracting State shall designate a Central Authority to discharge the duties that are imposed by the Convention on such an authority.

(2) Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and shall specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

(3) The designation of the Central Authority or Central Authorities, their contact details, and where appropriate the extent of their functions as specified in paragraph 2, shall be communicated by a Contracting State to the Permanent Bureau of the Hague Conference on Private International Law at the time when the instrument of ratification or accession is deposited or when a declaration is submitted in accordance with Article 61. Contracting States shall promptly inform the Permanent Bureau of any changes.

Article 5

General functions of Central Authorities

Central Authorities shall –

- a) co-operate with each other and promote co-operation amongst the competent authorities in their States to achieve the purposes of the Convention;
- b) seek as far as possible solutions to difficulties which arise in the application of the Convention.

Article 6

Specific functions of Central Authorities

(1) Central Authorities shall provide assistance in relation to applications under Chapter III. In particular they shall –

- a) transmit and receive such applications;
- b) initiate or facilitate the institution of proceedings in respect of such applications.

(2) In relation to such applications they shall take all appropriate measures –

- a) where the circumstances require, to provide or facilitate the provision of legal assistance;
- b) to help locate the debtor or the creditor;

1961-25

Maintenance

2018/265

International Recovery of Maintenance (2007 Hague Convention) Regulations 2018

This version is out of date

- c) to help obtain relevant information concerning the income and, if necessary, other financial circumstances of the debtor or creditor, including the location of assets;
- d) to encourage amicable solutions with a view to obtaining voluntary payment of maintenance, where suitable by use of mediation, conciliation or similar processes;
- e) to facilitate the ongoing enforcement of maintenance decisions, including any arrears;
- f) to facilitate the collection and expeditious transfer of maintenance payments;
- g) to facilitate the obtaining of documentary or other evidence;
- h) to provide assistance in establishing parentage where necessary for the recovery of maintenance;
- i) to initiate or facilitate the institution of proceedings to obtain any necessary provisional measures that are territorial in nature and the purpose of which is to secure the outcome of a pending maintenance application;
- j) to facilitate service of documents.

(3) The functions of the Central Authority under this Article may, to the extent permitted under the law of its State, be performed by public bodies, or other bodies subject to the supervision of the competent authorities of that State. The designation of any such public bodies or other bodies, as well as their contact details and the extent of their functions, shall be communicated by a Contracting State to the Permanent Bureau of the Hague Conference on Private International Law. Contracting States shall promptly inform the Permanent Bureau of any changes.

(4) Nothing in this Article or Article 7 shall be interpreted as imposing an obligation on a Central Authority to exercise powers that can be exercised only by judicial authorities under the law of the requested State.

Article 7 **Requests for specific measures**

(1) A Central Authority may make a request, supported by reasons, to another Central Authority to take appropriate specific measures under Article 6(2) *b), c), g), h), i)* and *j)* when no application under Article 10 is pending. The requested Central Authority shall take such measures as are appropriate if satisfied that they are necessary to assist a potential applicant in

making an application under Article 10 or in determining whether such an application should be initiated.

(2) A Central Authority may also take specific measures on the request of another Central Authority in relation to a case having an international element concerning the recovery of maintenance pending in the requesting State.

**Article 8
Central Authority costs**

(1) Each Central Authority shall bear its own costs in applying this Convention.

(2) Central Authorities may not impose any charge on an applicant for the provision of their services under the Convention save for exceptional costs arising from a request for a specific measure under Article 7.

(3) The requested Central Authority may not recover the costs of the services referred to in paragraph 2 without the prior consent of the applicant to the provision of those services at such cost.

CHAPTER III – APPLICATIONS THROUGH CENTRAL AUTHORITIES

**Article 9
Application through Central Authorities**

An application under this Chapter shall be made through the Central Authority of the Contracting State in which the applicant resides to the Central Authority of the requested State. For the purpose of this provision, residence excludes mere presence.

**Article 10
Available applications**

(1) The following categories of application shall be available to a creditor in a requesting State seeking to recover maintenance under this 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;
- f)* modification of a decision made in a 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, or an equivalent procedure leading to the suspension, or limiting the enforcement, of a previous decision in the requested State;
- b)* modification of a decision made in the requested State;
- c)* modification of a decision made in a State other than the requested State.

(3) Save as otherwise provided in this Convention, the applications in paragraphs 1 and 2 shall be determined under the law of the requested State, and applications in paragraphs 1 *c)* to *f)* and 2 *b)* and *c)* shall be subject to the jurisdictional rules applicable in the requested State.

Article 11 **Application contents**

(1) All applications under Article 10 shall as a minimum include –

- a)* a statement of the nature of the application or applications;
- 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 transmitted;

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- g)* save in an application under Article 10(1) *a)* and (2) *a)*, any information or document specified by declaration in accordance with Article 63 by the requested State;
 - h)* the name and contact details of the person or unit from the Central Authority of the requesting State responsible for processing the application.
- (2) As appropriate, and to the extent known, the application shall in addition in particular include –
- 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;
 - 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 the entitlement of the applicant to free legal assistance. In the case of applications under Article 10(1) *a)* and (2) *a)*, the application shall be accompanied only by the documents listed in Article 25.
- (4) An application under Article 10 may be made in the form recommended and published by the Hague Conference on Private International Law.

Article 12

Transmission, receipt and processing of applications and cases through Central Authorities

- (1) The Central Authority of the requesting State shall assist the applicant in ensuring that the application is accompanied by all the information and documents known by it to be necessary for consideration of the application.
- (2) The Central Authority of the requesting State shall, when satisfied that the application complies with the requirements of the Convention, transmit the application on behalf of and with the consent of the applicant to the Central Authority of the requested State. The application shall be accompanied by the transmittal form set out in Annex 1. The Central Authority of the requesting State shall, when requested by the Central Authority of the requested State, provide a complete copy certified by the competent authority in the State of origin of any document specified under Articles 16(3), 25(1) *a*), *b*) and *d*) and (3) *b*) and 30(3).

(3) The requested Central Authority shall, within six weeks from the date of receipt of the application, acknowledge receipt in the form set out in Annex 2, and 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 necessary documents and information. Within the same six-week period, the requested Central Authority shall provide to the requesting Central Authority the name and contact details of the person or unit responsible for responding to inquiries regarding the progress of the application.

(4) Within three months after the acknowledgement, the requested Central Authority shall inform the requesting Central Authority of the status of the application.

(5) Requesting and requested Central Authorities shall keep each other informed of –

- a) the person or unit responsible for a particular case;
- b) the progress of the case, and shall provide timely responses to enquiries.

(6) Central Authorities shall process a case as quickly as a proper consideration of the issues will allow.

(7) Central Authorities shall employ the most rapid and efficient means of communication at their disposal.

(8) A requested Central Authority may refuse to process an application only if it is manifest that the requirements of the Convention are not fulfilled. In such case, that Central Authority shall promptly inform the requesting Central Authority of its reasons for refusal.

(9) The requested Central Authority may not reject an application solely on the basis that additional documents or information are needed. However, the requested Central Authority may ask the requesting Central Authority to provide these additional documents or information. If the requesting Central Authority does not do so within three months or a longer period specified by the requested Central Authority, the requested Central Authority may decide that it will no longer process the application. In this case, it shall inform the requesting Central Authority of this decision.

Article 13

Means of communication

Any application made through Central Authorities of the Contracting States in accordance with this Chapter, and any document or information appended thereto or provided by a Central

Authority, may not be challenged by the respondent by reason only of the medium or means of communication employed between the Central Authorities concerned.

Article 14

Effective access to procedures

(1) The requested State shall provide applicants with effective access to procedures, including enforcement and appeal procedures, arising from applications under this Chapter.

(2) To provide such effective access, the requested State shall provide free legal assistance in accordance with Articles 14 to 17 unless paragraph 3 applies.

(3) The requested State shall not be obliged to provide such free legal assistance if and to the extent that the procedures of that State enable the applicant to make the case without the need for such assistance, and the Central Authority provides such services as are necessary free of charge.

(4) Entitlements to free legal assistance shall not be less than those available in equivalent domestic cases.

(5) No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in proceedings under the Convention.

Article 15

Free legal assistance for child support applications

(1) The requested State shall provide free legal assistance in respect of all applications by a creditor under this Chapter concerning maintenance obligations arising from a parent-child relationship towards a person under the age of 21 years.

(2) Notwithstanding paragraph 1, the requested State may, in relation to applications other than those under Article 10(1) a) and b) and the cases covered by Article 20(4), refuse free legal assistance if it considers that, on the merits, the application or any appeal is manifestly unfounded.

Article 16

Declaration to permit use of child-centred means test

(1) Notwithstanding Article 15(1), a State may declare, in accordance with Article 63, that it will provide free legal assistance in respect of applications other than under Article 10(1) a)

1961-25

Maintenance

2018/265

International Recovery of Maintenance (2007 Hague Convention) Regulations 2018

This version is out of date

and *b*) and the cases covered by Article 20(4), subject to a test based on an assessment of the means of the child.

(2) A State shall, at the time of making such a declaration, provide information to the Permanent Bureau of the Hague Conference on Private International Law concerning the manner in which the assessment of the child's means will be carried out, including the financial criteria which would need to be met to satisfy the test.

(3) An application referred to in paragraph 1, addressed to a State which has made the declaration referred to in that paragraph, shall include a formal attestation by the applicant stating that the child's means meet the criteria referred to in paragraph 2. The requested State may only request further evidence of the child's means if it has reasonable grounds to believe that the information provided by the applicant is inaccurate.

(4) If the most favourable legal assistance provided for by the law of the requested State in respect of applications under this Chapter concerning maintenance obligations arising from a parent-child relationship towards a child is more favourable than that provided for under paragraphs 1 to 3, the most favourable legal assistance shall be provided.

Article 17

Applications not qualifying under Article 15 or Article 16

In the case of all applications under this Convention other than those under Article 15 or Article 16 –

- a*) the provision of free legal assistance may be made subject to a means or a merits test;
- b*) an applicant, who in the State of origin has benefited from free legal assistance, shall be entitled, in any proceedings for recognition or enforcement, to benefit, at least to the same extent, from free legal assistance as provided for by the law of the State addressed under the same circumstances.

CHAPTER IV – RESTRICTIONS ON BRINGING PROCEEDINGS

Article 18

Limit on proceedings

(1) Where a decision is made in a Contracting State where the creditor is habitually resident, proceedings to modify the decision or to make a new decision cannot be brought by the debtor

in any other Contracting State as long as the creditor remains habitually resident in the State where the decision was made.

(2) Paragraph 1 shall not apply –

- a)* where, except in disputes relating to maintenance obligations in respect of children, there is agreement in writing between the parties to the jurisdiction of that other Contracting State;
- b)* where the creditor submits to the jurisdiction of that other Contracting State either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity;
- c)* where the competent authority in the State of origin cannot, or refuses to, exercise jurisdiction to modify the decision or make a new decision; or
- d)* where the decision made in the State of origin cannot be recognised or declared enforceable in the Contracting State where proceedings to modify the decision or make a new decision are contemplated.

CHAPTER V – RECOGNITION AND ENFORCEMENT

Article 19

Scope of the Chapter

(1) This Chapter shall apply to a decision rendered by a judicial or administrative authority in respect of a maintenance obligation. The term “decision” also includes a settlement or agreement concluded before or approved by such an authority. A decision may include automatic adjustment by indexation and a requirement to pay arrears, retroactive maintenance or interest and a determination of costs or expenses.

(2) If a decision does not relate solely to a maintenance obligation, the effect of this Chapter is limited to the parts of the decision which concern maintenance obligations.

(3) For the purpose of paragraph 1, “administrative authority” means a public body whose decisions, under the law of the State where it is established –

- a)* may be made the subject of an appeal to or review by a judicial authority; and
- b)* have a similar force and effect to a decision of a judicial authority on the same matter.

(4) This Chapter also applies to maintenance arrangements in accordance with Article 30.

(5) The provisions of this Chapter shall apply to a request for recognition and enforcement made directly to a competent authority of the State addressed in accordance with Article 37.

Article 20

Bases for recognition and enforcement

(1) A decision made in one Contracting State (“the State of origin”) shall be recognised and enforced in other Contracting States if –

- a)* the respondent was habitually resident in the State of origin at the time proceedings were instituted;
- b)* the respondent has submitted to the jurisdiction either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity;
- c)* the creditor was habitually resident in the State of origin at the time proceedings were instituted;
- d)* the child for whom maintenance was ordered was habitually resident in the State of origin at the time proceedings were instituted, provided that the respondent has lived with the child in that State or has resided in that State and provided support for the child there;
- e)* except in disputes relating to maintenance obligations in respect of children, there has been agreement to the jurisdiction in writing by the parties; or
- f)* the decision was made by an authority exercising jurisdiction on a matter of personal status or parental responsibility, unless that jurisdiction was based solely on the nationality of one of the parties.

(2) A Contracting State may make a reservation, in accordance with Article 62, in respect of paragraph 1 *c)*, *e)* or *f)*.

(3) A Contracting State making a reservation under paragraph 2 shall recognise and enforce a decision if its law would in similar factual circumstances confer or would have conferred jurisdiction on its authorities to make such a decision.

(4) A Contracting State shall, if recognition of a decision is not possible as a result of a reservation under paragraph 2, and if the debtor is habitually resident in that State, take all appropriate measures to establish a decision for the benefit of the creditor. The preceding sentence shall not apply to direct requests for recognition and enforcement under Article 19(5) or to claims for support referred to in Article 2(1) *b*).

(5) A decision in favour of a child under the age of 18 years which cannot be recognised by virtue only of a reservation in respect of paragraph 1 *c*), *e*) or *f*) shall be accepted as establishing the eligibility of that child for maintenance in the State addressed.

(6) A decision shall be recognised only if it has effect in the State of origin, and shall be enforced only if it is enforceable in the State of origin.

Article 21

Severability and partial recognition and enforcement

(1) If the State addressed is unable to recognise or enforce the whole of the decision, it shall recognise or enforce any severable part of the decision which can be so recognised or enforced.

(2) Partial recognition or enforcement of a decision can always be applied for.

Article 22

Grounds for refusing recognition and enforcement

Recognition and enforcement of a decision may be refused if –

- a*) recognition and enforcement of the decision is manifestly incompatible with the public policy (“*ordre public*”) of the State addressed;
- b*) the decision was obtained by fraud in connection with a matter of procedure;
- c*) proceedings between the same parties and having the same purpose are pending before an authority of the State addressed and those proceedings were the first to be instituted;
- d*) the decision is incompatible with a decision rendered between the same parties and having the same purpose, either in the State addressed or in another State, provided that this latter decision fulfils the conditions necessary for its recognition and enforcement in the State addressed;

- e)* in a case where the respondent has neither appeared nor was represented in proceedings in the State of origin –
 - i)* when the law of the State of origin provides for notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or
 - ii)* when the law of the State of origin does not provide for notice of the proceedings, the respondent did not have proper notice of the decision and an opportunity to challenge or appeal it on fact and law; or
- f)* the decision was made in violation of Article 18.

Article 23

Procedure on an application for recognition and enforcement

- (1) Subject to the provisions of the Convention, the procedures for recognition and enforcement shall be governed by the law of the State addressed.
- (2) Where an application for recognition and enforcement of a decision has been made through Central Authorities in accordance with Chapter III, the requested Central Authority shall promptly either –
 - a)* refer the application to the competent authority which shall without delay declare the decision enforceable or register the decision for enforcement; or
 - b)* if it is the competent authority take such steps itself.
- (3) Where the request is made directly to a competent authority in the State addressed in accordance with Article 19(5), that authority shall without delay declare the decision enforceable or register the decision for enforcement.
- (4) A declaration or registration may be refused only on the ground set out in Article 22 *a)*. At this stage neither the applicant nor the respondent is entitled to make any submissions.
- (5) The applicant and the respondent shall be promptly notified of the declaration or registration, made under paragraphs 2 and 3, or the refusal thereof in accordance with paragraph 4, and may bring a challenge or appeal on fact and on a point of law.
- (6) A challenge or an appeal is to be lodged within 30 days of notification under paragraph 5. If the contesting party is not resident in the Contracting State in which the declaration or

registration was made or refused, the challenge or appeal shall be lodged within 60 days of notification.

(7) A challenge or appeal may be 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;
- c)* the authenticity or integrity of any document transmitted in accordance with Article 25(1) *a)*, *b)* or *d)* or (3) *b)*.

(8) 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.

(9) The applicant and the respondent shall be promptly notified of the decision following the challenge or the appeal.

(10) A further appeal, if permitted by the law of the State addressed, shall not have the effect of staying the enforcement of the decision unless there are exceptional circumstances.

(11) In taking any decision on recognition and enforcement, including any appeal, the competent authority shall act expeditiously.

Article 24

Alternative procedure on an application for recognition and enforcement

(1) Notwithstanding Article 23(2) to (11), a State may declare, in accordance with Article 63, that it will apply the procedure for recognition and enforcement set out in this Article.

(2) Where an application for recognition and enforcement of a decision has been made through Central Authorities in accordance with Chapter III, the requested Central Authority shall promptly either –

- a)* refer the application to the competent authority which shall decide on the application for recognition and enforcement; or
- b)* if it is the competent authority, take such a decision itself.

(3) A decision on recognition and enforcement shall be given by the competent authority after the respondent has been duly and promptly notified of the proceedings and both parties have been given an adequate opportunity to be heard.

(4) The competent authority may review the grounds for refusing recognition and enforcement set out in Article 22 *a)*, *c)* and *d)* of its own motion. It may review any grounds listed in Articles 20, 22 and 23(7) *c)* if raised by the respondent or if concerns relating to those grounds arise from the face of the documents submitted in accordance with Article 25.

(5) A refusal of recognition and enforcement 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.

(6) Any appeal, if permitted by the law of the State addressed, shall not have the effect of staying the enforcement of the decision unless there are exceptional circumstances.

(7) In taking any decision on recognition and enforcement, including any appeal, the competent authority shall act expeditiously.

Article 25 **Documents**

(1) An application for recognition and enforcement under Article 23 or Article 24 shall be accompanied by the following –

- a)* a complete text of the decision;
- b)* a 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;
- c)* 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;
- d)* where necessary, a document 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 providing the information necessary to make the appropriate calculations;
- f)* where necessary, documentation showing the extent to which the applicant received free legal assistance in the State of origin.

(2) Upon a challenge or 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 competent authority in the State of origin, shall be provided promptly –

- a)* by the Central Authority of the requesting State, where the application has been made in accordance with Chapter III;
- b)* by the applicant, where the request has been made directly to a competent authority of the State addressed.

(3) A Contracting State may specify in accordance with Article 57 –

- a)* that a complete copy of the decision certified by the competent authority in the State of origin must accompany the application;
- b)* circumstances in which it will accept, in lieu of a complete text of the decision, an abstract or extract of the decision drawn up by the competent authority of the State of origin, which may be made in the form recommended and published by the Hague Conference on Private International Law; or
- c)* that it does not require a document stating that the requirements of Article 19(3) are met.

Article 26

Procedure on an application for recognition

This Chapter shall apply *mutatis mutandis* to an application for recognition of a decision, save that the requirement of enforceability is replaced by the requirement that the decision has effect in the State of origin.

Article 27

Findings of fact

1961-25

Maintenance

2018/265

International Recovery of Maintenance (2007 Hague Convention) Regulations 2018

This version is out of date

Any competent authority of the State addressed shall be bound by the findings of fact on which the authority of the State of origin based its jurisdiction.

Article 28

No review of the merits

There shall be no review by any competent authority of the State addressed of the merits of a decision.

Article 29

Physical presence of the child or the applicant not required

The physical presence of the child or the applicant shall not be required in any proceedings in the State addressed under this Chapter.

Article 30

Maintenance arrangements

(1) A maintenance arrangement made in a Contracting State shall be entitled to recognition and enforcement as a decision under this Chapter provided that it is enforceable as a decision in the State of origin.

(2) For the purpose of Article 10(1) *a*) and *b*) and (2) *a*), the term “decision” includes a maintenance arrangement.

(3) An application for recognition and enforcement of a maintenance arrangement shall be accompanied by the following –

- a*) a complete text of the maintenance arrangement; and
- b*) a document stating that the particular maintenance arrangement is enforceable as a decision in the State of origin.

(4) Recognition and enforcement of a maintenance arrangement may be refused if –

- a*) the recognition and enforcement is manifestly incompatible with the public policy of the State addressed;
- b*) the maintenance arrangement was obtained by fraud or falsification;

- c) the maintenance arrangement is incompatible with a decision rendered between the same parties and having the same purpose, either in the State addressed or in another State, provided that this latter decision fulfils the conditions necessary for its recognition and enforcement in the State addressed.

(5) The provisions of this Chapter, with the exception of Articles 20, 22, 23(7) and 25(1) and (3), shall apply *mutatis mutandis* to the recognition and enforcement of a maintenance arrangement save that –

- a) a declaration or registration in accordance with Article 23(2) and (3) may be refused only on the ground set out in paragraph 4 a);
- b) a challenge or appeal as referred to in Article 23(6) may be founded only on the following –
 - i) the grounds for refusing recognition and enforcement set out in paragraph 4;
 - ii) the authenticity or integrity of any document transmitted in accordance with paragraph 3;
- c) as regards the procedure under Article 24(4), the competent authority may review of its own motion the ground for refusing recognition and enforcement set out in paragraph 4 a) of this Article. It may review all grounds listed in paragraph 4 of this Article and the authenticity or integrity of any document transmitted in accordance with paragraph 3 if raised by the respondent or if concerns relating to those grounds arise from the face of those documents.

(6) Proceedings for recognition and enforcement of a maintenance arrangement shall be suspended if a challenge concerning the arrangement is pending before a competent authority of a Contracting State.

(7) A State may declare, in accordance with Article 63, that applications for recognition and enforcement of a maintenance arrangement shall only be made through Central Authorities.

(8) A Contracting State may, in accordance with Article 62, reserve the right not to recognise and enforce a maintenance arrangement.

Article 31

Decisions produced by the combined effect of provisional and confirmation orders

1961-25

Maintenance

2018/265

International Recovery of Maintenance (2007 Hague Convention) Regulations 2018

This version is out of date

Where a decision is produced by the combined effect of a provisional order made in one State and an order by an authority in another State (“the confirming State”) confirming the provisional order –

- a)* each of those States shall be deemed for the purposes of this Chapter to be a State of origin;
- b)* the requirements of Article 22 *e)* shall be met if the respondent had proper notice of the proceedings in the confirming State and an opportunity to oppose the confirmation of the provisional order;
- c)* the requirement of Article 20(6) that a decision be enforceable in the State of origin shall be met if the decision is enforceable in the confirming State; and
- d)* Article 18 shall not prevent proceedings for the modification of the decision being commenced in either State.

CHAPTER VI – ENFORCEMENT BY THE STATE ADDRESSED

Article 32

Enforcement under internal law

- (1) Subject to the provisions of this Chapter, enforcement shall take place in accordance with the law of the State addressed.
- (2) Enforcement shall be prompt.
- (3) In the case of applications through Central Authorities, where a decision has been declared enforceable or registered for enforcement under Chapter V, enforcement shall proceed without the need for further action by the applicant.
- (4) Effect shall be given to any rules applicable in the State of origin of the decision relating to the duration of the maintenance obligation.
- (5) Any limitation on the period for which arrears may be enforced shall be determined either by the law of the State of origin of the decision or by the law of the State addressed, whichever provides for the longer limitation period.

Article 33

Non-discrimination

The State addressed shall provide at least the same range of enforcement methods for cases under the Convention as are available in domestic cases.

Article 34
Enforcement measures

(1) Contracting States shall make available in internal law effective measures to enforce decisions under this Convention.

(2) Such measures may include –

- a)* wage withholding;
- b)* garnishment from bank accounts and other sources;
- c)* deductions from social security payments;
- d)* lien on or forced sale of property;
- e)* tax refund withholding;
- f)* withholding or attachment of pension benefits;
- g)* credit bureau reporting;
- h)* denial, suspension or revocation of various licenses (for example, driving licenses);
- i)* the use of mediation, conciliation or similar processes to bring about voluntary compliance.

Article 35
Transfer of funds

(1) Contracting States are encouraged to promote, including by means of international agreements, the use of the most cost-effective and efficient methods available to transfer funds payable as maintenance.

(2) A Contracting State, under whose law the transfer of funds is restricted, shall accord the highest priority to the transfer of funds payable under this Convention.

CHAPTER VII – PUBLIC BODIES**Article 36****Public bodies as applicants**

(1) For the purposes of applications for recognition and enforcement under Article 10(1) *a*) and *b*) and cases covered by Article 20(4), “creditor” includes a public body acting in place of an individual to whom maintenance is owed or one to which reimbursement is owed for benefits provided in place of maintenance.

(2) The right of a public body to act in place of an individual to whom maintenance is owed or to seek reimbursement of benefits provided to the creditor in place of maintenance shall be governed by the law to which the body is subject.

(3) A public body may seek recognition or claim enforcement of –

- a)* a decision rendered against a debtor on the application of a public body which claims payment of benefits provided in place of maintenance;
- b)* a decision rendered between a creditor and debtor to the extent of the benefits provided to the creditor in place of maintenance.

(4) The public body seeking recognition or claiming enforcement of a decision shall upon request furnish any document necessary to establish its right under paragraph 2 and that benefits have been provided to the creditor.

CHAPTER VIII – GENERAL PROVISIONS**Article 37****Direct requests to competent authorities**

(1) The Convention shall not exclude the possibility of recourse to such procedures as may be available under the internal law of a Contracting State allowing a person (an applicant) to seise directly a competent authority of that State in a matter governed by the Convention including, subject to Article 18, for the purpose of having a maintenance decision established or modified.

(2) Articles 14(5) and 17 *b*) and the provisions of Chapters V, VI, VII and this Chapter, with the exception of Articles 40(2), 42, 43(3), 44(3), 45 and 55, shall apply in relation to a request for recognition and enforcement made directly to a competent authority in a Contracting State.

(3) For the purpose of paragraph 2, Article 2(1) *a*) shall apply to a decision granting maintenance to a vulnerable person over the age specified in that sub-paragraph where such decision was rendered before the person reached that age and provided for maintenance beyond that age by reason of the impairment.

Article 38

Protection of personal data

Personal data gathered or transmitted under the Convention shall be used only for the purposes for which they were gathered or transmitted.

Article 39

Confidentiality

Any authority processing information shall ensure its confidentiality in accordance with the law of its State.

Article 40

Non-disclosure of information

(1) 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.

(2) A determination to this effect made by one Central Authority shall be taken into account by another Central Authority, in particular in cases of family violence.

(3) Nothing in this Article shall impede the gathering and transmitting of information by and between authorities in so far as necessary to carry out the obligations under the Convention.

Article 41

No legalisation

No legalisation or similar formality may be required in the context of this Convention.

Article 42

Power of attorney

The Central Authority of the requested State may require a power of attorney from the applicant only if it acts on his or her behalf in judicial proceedings or before other authorities, or in order to designate a representative so to act.

1961-25

Maintenance

2018/265

International Recovery of Maintenance (2007 Hague Convention) Regulations 2018

This version is out of date

Article 43
Recovery of costs

- (1) Recovery of any costs incurred in the application of this Convention shall not take precedence over the recovery of maintenance.
- (2) A State may recover costs from an unsuccessful party.
- (3) For the purposes of an application under Article 10(1) *b*) to recover costs from an unsuccessful party in accordance with paragraph 2, the term “creditor” in Article 10(1) shall include a State.
- (4) This Article shall be without prejudice to Article 8.

Article 44
Language requirements

- (1) Any application and related documents shall be in the original language, and shall be accompanied by a translation into an official language of the requested State or another language which the requested State has indicated, by way of declaration in accordance with Article 63, it will accept, unless the competent authority of that State dispenses with translation.
- (2) A Contracting State which has more than one official language and cannot, for reasons of internal law, accept for the whole of its territory documents in one of those languages shall, by declaration in accordance with Article 63, specify the language in which such documents or translations thereof shall be drawn up for submission in the specified parts of its territory.
- (3) Unless otherwise agreed by the Central Authorities, any other communications between such Authorities shall be in an official language of the requested State or in either English or French. However, a Contracting State may, by making a reservation in accordance with Article 62, object to the use of either English or French.

Article 45
Means and costs of translation

- (1) In the case of applications under Chapter III, the Central Authorities may agree in an individual case or generally that the translation into an official language of the requested State may be made in the requested State from the original language or from any other agreed language. If there is no agreement and it is not possible for the requesting Central Authority to

comply with the requirements of Article 44(1) and (2), then the application and related documents may be transmitted with translation into English or French for further translation into an official language of the requested State.

(2) The cost of translation arising from the application of paragraph 1 shall be borne by the requesting State unless otherwise agreed by Central Authorities of the States concerned.

(3) Notwithstanding Article 8, the requesting Central Authority may charge an applicant for the costs of translation of an application and related documents, except in so far as those costs may be covered by its system of legal assistance.

1961-25

Maintenance

2018/265

**International Recovery of Maintenance (2007 Hague
Convention) Regulations 2018**

This version is out of date

regulation 5(3)

SCHEDULE 2

Address and contact details of the Central Authority and the court in Gibraltar.

1. Address and contact details of the Central Authority:

Ministry of Health, Care and Justice
HM Government of Gibraltar
Zone 1, Level 7
St Bernard's Hospital
Harbour Views Road
Gibraltar
GX11 1AA

Telephone: +350 20007011

Fax: +350 20059942

2. Address and contact details of the Magistrates' Court:

Clerk of the Magistrates' Court
Gibraltar Law Court
32-36 Town Range
Gibraltar
GX11 1AA

Telephone: +350 20075671

Fax: +350 20040483.

3. Address and contact details of the Supreme Court:

Registrar of the Supreme Court
Supreme Court Registry
32-36 Town Range
Gibraltar
GX11 1AA

Telephone: +350 20075608

Fax: +350 20077118

Maintenance

1961-25

**International Recovery of Maintenance (2007 Hague
Convention) Regulations 2018**

2018/265

This version is out of date