

POLICY NOTE

THE INTERNATIONAL RECOVERY OF MAINTENANCE (HAGUE CONVENTION 2007) (SCOTLAND) REGULATIONS 2012

SSI 2012/301

The above instrument is being made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The instrument is subject to negative resolution procedure.

Background

The Regulations make provision to facilitate the application 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 Convention”) in Scotland. The Convention will be concluded by the European Union on a date yet to be determined pursuant to Council Decision 2011/432/EU (“the Council Decision”). The Regulations will come into force on the date that the Convention enters into force in respect of the European Union, the date of which will be notified in the Edinburgh Gazette.

The Convention contains rules on recognition and enforcement of maintenance decisions between States bound by the Convention and administrative co-operation to facilitate the recovery of such maintenance. Member States of the European Union (apart from Denmark) are bound to apply the Convention by virtue of conclusion by the European Union.

The Convention is intended to provide a simpler, quicker and more efficient global system for the reciprocal enforcement of family maintenance and will replace earlier Hague and UN Conventions. EU Member States will use the Convention with non-EU Contracting States only; Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations continues to apply in respect of arrangements among EU Member States.

Policy

The Regulations make provision so as to enable the recognition and enforcement, in Scotland, of maintenance decisions made by courts, and maintenance arrangements concluded, in States bound by the Convention (other than EU Member States). This is achieved by providing for the registration of maintenance decisions and arrangements in the sheriff court where a maintenance obligation falls to be enforced against a person who is resident in Scotland or assets belonging to that person which are susceptible to enforcement are situated or held in Scotland.

The Regulations designate the Scottish Ministers as the Central Authority in relation to Scotland for the purposes of Article 4 of the Convention. Applications under Chapter III of the Convention will, therefore, fall to be made to the Scottish Ministers. The Scottish Ministers will, therefore be responsible for the obligations under the Convention to provide administrative co-operation to facilitate the recovery of maintenance in Scotland.

The Regulations also make minor and consequential amendments to the Debtors (Scotland) Act 1987, the Debt Arrangement and Attachment (Scotland) Act 2002 and the Bankruptcy and Diligence etc. (Scotland) Act 2007 so as to ensure that the various enforcement measures for which they provide can be executed in relation to maintenance arrangements which are registered in the sheriff court. Further amendments to these provisions are made so as to make it clear that these measures are also available in respect of court settlements and authentic instruments which are registered in the sheriff court under the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011.

The Regulations also make amendments to the Civil Legal Aid (Scotland) Regulations 2002 so that legal aid is available in respect of applications to the Scottish Ministers under Chapter III of the Convention.

Consultation

Consultees in Scotland and Northern Ireland were included as part of a technical consultation carried out by the Ministry of Justice in respect of equivalent Regulations proposed to be made in relation to England and Wales. Key stakeholders were subsequently consulted about the wording of the Regulations but no further consultation was considered necessary.

Impact Assessment and Financial Effects

It is anticipated that the number of cases under these Regulations will not be significant. These cases will be eligible for legal aid assistance and will not be subject to means testing. The Scottish Legal Aid Board have been consulted on the amendments to the Civil Legal Aid (Scotland) Regulations 2002

Given that these Regulations relate to improving the reciprocal enforcement of family maintenance they do not impact on business or the environment.

Choice of procedure

Section 2(2) of the European Communities Act 1972 enables the Scottish Ministers to elect for an instrument to be subject to the affirmative or negative procedure. The Scottish Government has elected to make the regulations subject to the negative procedure since they do not contain any criminal provisions or unusual powers of entry nor do they impose any onerous duties on members of the public or involve substantial expenditure. Although the regulations make amendments to primary legislation those amendments are consequential to the requirements of the Convention (which will apply in any case by virtue of the direct applicability of the Convention as a matter of EU law).

Since it is not anticipated that the European Union will conclude the Convention before April 2013, the Scottish Parliament will, in any event, have the full 40 day period to consider the instrument before it enters into force.

Timing

Article 7 of the Council Decision requires the Member States to notify the Commission, no later than 10 December 2012, amongst other things of, the contact details of the Central Authority designated in accordance with Article 4(3) of the Conventions.

It is anticipated that the Convention will be concluded by the European Union in or after April 2013.

Scottish Government
November 2012