Fil-qasam tal-ġustizzja ċivili, il-proċeduri u l-proċedimenti pendenti mibdija fi tmiem il-perjodu ta' tranżizzjoni se jkomplu skont il-liġi tal-UE. Il-Portal tal-e-Ġustizzja, abbażi tal-ftehim reċiproku mar-Renju Unit, se jżomm l-informazzjoni rilevanti marbuta mar-Renju Unit sa tmiem l-2024.

Family maintenance

Skozja

1 What do the concepts "maintenance" and "maintenance obligation" mean in practical terms? Which persons have to pay a maintenance allowance to another person?

In Scotland there are presently two systems for the determination of support: the Child Support Act 1991 has generally taken priority over the Family Law (Scotland) Act 1985 and has removed child support from the private law area and the jurisdiction of the courts to the public sphere. However, the Child Support Act generally only applies where the person with care, non-resident parent and child are habitually resident in the UK. Where the 1991 Act does not apply, then the older scheme contained in the Family Law (Scotland) Act 1985 will operate.

Under the Child Support Act 1991 only a "qualifying child" (one who has at least one non-resident parent) is eligible to benefit from a maintenance decision made by the Child Maintenance Service A parent (or other qualifying person) with care of a child can apply for maintenance for the child from the non-resident parent.

Under the Family Law (Scotland) Act 1985 an obligation of aliment is owed by:

A husband to his spouse

A wife to her spouse

A father or mother to his or her child

A person to a child (other than a child who is boarded out with him by a local or other public authority or voluntary organisation) who has been accepted by him as a child of his family.

An ex-civil partner may also have to pay maintenance to the other ex civil partner.

2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?

Under the Child Support Act 1991 Act a child must be:

under the age of 16 or

under the age of 19 and in full-time education which is not advanced education or

Under 18 and available for either work or youth training while the parent is still claiming child support in respect of the child.

Under the Family Law (Scotland) Act 1985, a child is defined as:

a person under the age of 18 or

a person over that age but under 25 and "reasonably and appropriately undergoing instruction at an educational establishment, or training for employment or for a trade, profession or vocation".

3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?

If both parents are in Scotland, or another part of the United Kingdom, application is made to the Child Maintenance Service. If one parent resides outside of Scotland, the other parent can apply to their local Sheriff Court for a maintenance order but would need to seek legal advice on how to do this.

4 Can a request be made on behalf of a relative (if yes, what grade), or a child?

A request for child maintenance may be made on behalf of a parent or other person with responsibility for the child, provided the applicant has been given authority to do so or has power of attorney. A child cannot apply for maintenance in their own right, unless they are over 12 years of age and live in Scotland.

5 If I plan to bring the case to court, how do I know which court has jurisdiction?

The Sheriff Court within whose area the child resides will generally have jurisdiction. Details of Scottish courts can be found on the Scottish Courts and Tribunals Service website.

6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?

Yes, legal advice should be sought from a lawyer practicing family law.

7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?

Court fees and legal fees will have to be paid, but application for legal aid may be made to the Scottish Legal Aid Board.

8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?

Courts can make orders for child or spousal maintenance. The amount of the order will be determined by a number of factors, notably the income of the payer. It is possible for either party to seek modification of a maintenance order by application to the court. Maintenance claims are not usually backdated beyond the date of application, although this can be done at the discretion of the Sheriff.

9 How and to whom will the maintenance be paid?

For child maintenance, payment is generally paid to the parent with whom the child lives.

10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?

There are a range of enforcement methods available in Scotland. These include:

Arrestment of earnings

Arrestment of funds from bank accounts or other sources

Inhibition over land and buildings

Enforcement action is generally taken by Sheriff Officers, who are independent officers of the court.

11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system

Enforcement procedures in Scotland are prescribed by law under the Debtors (Scotland) Act 1987. The Act makes provision for statutory enforcement procedures and provides a level of debtor protection. For example, the Act limits the amount that can be deducted by an employer from a debtor's salary. There is no prescription period for the recovery of a maintenance debt in Scotland. Any debt due will be recoverable for as long as the debtor is in Scotland, or has attachable assets in Scotland. However, if the law of another country has to be applied by a Scottish court in relation to a maintenance obligation, the court will apply the relevant rules of law of that country.

12 Is there an organisation or an authority which can help me to recover maintenance?

The Child Maintenance Service (when both parents are resident in the UK). The Scottish Central Authority (when one parent is abroad). Details of the Scottish Central Authority are provided below.

13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?

No.

14 If I am in this Member State and the debtor has his/her residence in another country:

14.1 Can I obtain the assistance of an authority or private organisation in this Member State?

You should contact the Scottish Central Authority.

14.2 If so, how can that authority or private organisation be contacted?

Scottish Government Justice Directorate
Central Authority and International Law Team
St Andrew's House (GW15)
Regent Road
Edinburgh EH1 3DG
Scotland
Tel: 00 44 131 244 3570
00 44 131 244 4829
00 44 131 244 2417
Fax: 00 44 131 244 4848

15 If I am in another country and the debtor is in this Member State:

15.1 Can I address a request directly to such an authority or private organisation in this Member State?

You should contact the Central Authority for the Member State concerned. Each authority can be contacted directly.

15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?

See above.

16 Is this Member State bound by the 2007 Hague Protocol?

No.

17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?

The Family Law (Scotland) Act 1985 applies to the Maintenance Regulation. Corresponding private international law rules are contained in the Child Care and Maintenance Rules 1997, as amended.

18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?

Applications by creditors under Article 56 of the Regulation are granted legal aid automatically, unless the application is considered to be manifestly unfounded.

19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?

Additional action was taken to ensure assistance can be provided in accordance with Article 51. This included amendments to legislation, court rules and legal aid provisions.

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