

## CHAPTER 88

### CIVIL MATTERS INVOLVING PARENTAL RESPONSIBILITIES UNDER THE COUNCIL REGULATION

#### Interpretation

**88.1.** In this Chapter -

“the Council Regulation” means Council Regulation (E.C.) No. 2201/2003 of 27<sup>th</sup> November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility;

“parental responsibility” has the same meaning as in Article 2(7) of the Council Regulation;

“Member State” has the same meaning as in Article 2(3) of the Council Regulation;

“foreign court” means a court in a Member State other than the United Kingdom

#### Transfers of cases involving matters of parental responsibility

**88.2** Where the court receives a request under Article 15(1) (request for transfer to court better place to hear the case) or an application under Article 15(2)(c) (application for transfer of case involving parental responsibilities to foreign court) of the Council Regulation, the request or application, as the case may be, shall-

- (a) contain a detailed statement on the particular connection the child is considered to have with either Scotland or the Member State of the foreign court;
- (b) contain the full name, designation and address of all the parties to the action involving parental responsibilities, including any Scottish agent instructed to represent any of the parties.
- (c) in the case of a request under Article 15(1), be accompanied by any order of the foreign court confirming that at least one of the parties has accepted the request;
- (d) be accompanied by any other documents considered by the foreign court to be relevant to the action involving parental responsibilities including any papers forming part of the process in the foreign court.

#### Transfers where proceedings ongoing in the sheriff court

**88.3.**(1) Where an application under Article 15(2)(c) of the Council Regulation (application for transfer of case involving parental responsibilities to foreign court) is received and states that proceedings involving the same parties and matters involving parental responsibility are ongoing in a sheriff court, the Deputy Principal Clerk shall, within four days after the application is received, transmit the application to the sheriff clerk of the sheriff court specified in the request.

(2) When transmitting an application under paragraph (1) the Deputy Principal Clerk shall give written intimation of the transmission to-

- (a) the parties; and
- (b) to the foreign court.

(3) Failure by the Deputy Principal Clerk to comply with paragraph (2) shall not affect the validity of a transfer under paragraph (1).

#### Translations of documents

**88.4.** Where any document received under rule 88.2 (transfer of cases involving matters of parental responsibility) is in a language other than English, there shall be lodged with that document a translation into English certified as correct by the translator; and the certificate shall include his full name, address and qualifications.

### **Requests to accept transfer from a court in another Member State**

**88.5.**-(1) A request to the court to accept jurisdiction of an action involving parental responsibilities under rule 88.2 (request to transfer a case) shall be lodged with a summons in Form 13.2-A(a).

(2) When the summons lodged under paragraph (1) is signetted the pursuer shall request the Keeper of the Rolls to allocate a hearing within 14 days of the signetting, to determine whether the court will accept jurisdiction in the action.

(3) On allocation of the date of the hearing the pursuer shall serve a copy of the summons on the defender and at the same time intimate the date and time of the hearing on the defender by serving on him a notice in Form 88.5 (form of notice of intimation of a hearing to determine jurisdiction), not less than 7 days before the date of the hearing.

(4) The pursuer shall lodge a certificate of intimation in Form 16.2 (certificate of intimation furth of United Kingdom), 16.3 (certificate of service by messenger-at-arms) or 16.4 (certificate of service by post), as appropriate, at least 2 days before the date of the hearing.

(5) Where the court orders that it will accept jurisdiction of an action after a hearing under paragraph (2) the Deputy Principal Clerk shall, within seven days, send a copy of the interlocutor to the requesting court.

### **Application for transfer of case involving parental responsibilities to foreign court.**

**88.6.** Where a an application under Article 15(2) of the Council Regulation (application for transfer of case involving parental responsibilities to foreign court is received the Deputy Principal Clerk shall-

- (a) on receipt of the application and any accompanying documents, give written intimation of the application to each party to the action and to any Scottish agents identified in the application as being instructed to represent any of the parties; and
- (b) within two sitting days of receipt of the application, cause it to be put out on the By Order Roll before the Lord Ordinary.

### **Placement of a child in another Member State**

**86.7.**-(1) where the court requires to obtain the consent of a competent authority in another Member State to the placement of a child under Article 56 of the Council Regulation it shall send a request in Form 88.7 and any other documents it considers to be relevant to the Scottish central authority for transmission to the central authority in the other Member State.

(2) In this rule “central authority” means an authority designated under Article 53 of the Council Regulation.

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(a) Form 13.2-A was amended by S.I. 1994/2901 and S.S.I. 2004/537.