

Lorem ips

Enforcement of Foreign Judgments

Fundamental Principles [Northern Ireland]

2020



TABLE OF CONTENTS

	Page
I. RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION (CIVIL AND COMMERCIAL MATTERS)	1
A. Ability to Apply for Recognition and Enforcement of a Court Judgment	1
1. Is it possible to apply for enforcement of a foreign court judgment in your country?	1
B. Applicable Law: General Rules	1
1. Which laws are generally applicable to the enforcement of a foreign court judgment in your country?	1
C. Special Rules: European Union	1
1. Are there any special rules regarding the enforcement of a foreign court judgment in your country?	1
2. Does the European Union have a special procedure to enforce court judgments coming out of its member states?	2
D. Average Duration of Enforcement Procedure	3
1. What is the average length of time for this kind of procedure?	3
II. Denial of Recognition and Enforcement of a Foreign Court Judgment: Reasons	3
A. Can a court in your country deny recognition and enforcement of a foreign court judgment? If YES: what kind of reasons may justify denial?	3
B. Costs and Expenses	5
1. What kind of costs and expenses can a claimant expect in this enforcement procedure?	5
III. FORMAL REQUIREMENTS	5
A. Time Limit	5
1. Is there a time limit to apply for enforcement of a foreign court judgment?	5

B.	Final and Definitive Court Judgment: Provisional Enforcement	6
1.	Is it mandatory for the judgment to be a final and definitive court judgment? If NO: Are there any special requirements to provisionally enforce a court judgment which is not final and definitive?	6
C.	Necessary Requirements.....	6
1.	What necessary requirements must the foreign court judgment fulfil to be recognised and enforced?.....	6
D.	Other Formal Requirements: Court Fees.....	6
1.	Is it mandatory to pay court fees for this kind of application?	6
E.	Are there any other formal requirements in your country to enforce a court judgment?	6
IV.	PROCEDURE.....	7
A.	Competent Court	7
1.	Which court or courts are competent to decide an enforcement application?	7
B.	Informational Requirements for the Application to Enforce a Foreign Court Judgment	7
1.	What information must be contained in the enforcement application of a foreign court judgment?	7
C.	What documents must be included with/attached to the application to enforce a foreign court judgment?	8
D.	Phases of the Procedure	8
1.	What are the phases of the procedure to enforce a foreign court judgment?	8
E.	Opposition of the Defendant	8
1.	Can a defendant oppose this enforcement application?	8
2.	Are there a limited number of reasons for the defendant to oppose the enforcement of the court judgment? If YES: what are those reasons?	8
F.	Appeal and its Consequences in this Procedure	8

1.	Is it possible to appeal a court decision to recognise and enforce a foreign court decision?	8
2.	Can this appeal suspend the enforcement?	9
G.	Recovery of Judicial Costs and Expenses	9
1.	Are there any rules concerning recovery of the judicial costs incurred as a result of the enforcement application?	9
V.	RECOVERY OF THE DEBT	9
A.	Means of Enforcement	9
1.	What types of assets are subject to enforcement of the court's judgment?	9
VI.	OTHER ISSUES OF INTEREST IN YOUR JURISDICTION.	10
A.	Any other issues of interest in your jurisdiction	10

**I. RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION
(CIVIL AND COMMERCIAL MATTERS)**

A. Ability to Apply for Recognition and Enforcement of a Court Judgment

- 1. Is it possible to apply for enforcement of a foreign court judgment in your country?**

Answer: Yes.

B. Applicable Law: General Rules

- 1. Which laws are generally applicable to the enforcement of a foreign court judgment in your country?**

Answer: The Rules of the Court of Judicature (NI) 1980 Order 71

www.justice-ni.gov.uk/sites/default/files/publications/justice/COJ_Rules.pdf

C. Special Rules: European Union

- 1. Are there any special rules regarding the enforcement of a foreign court judgment in your country?**

Answer: Similar to the rules in England and Wales.

Judgments from England, Wales and Scotland can be enforced in Northern Ireland under the Civil Jurisdiction and Judgments Act 1982.

European Community Judgments can be registered under Order 71 rules 13-21 of The Rules of the Court of Judicature (NI) 1980.

Judgments from EU member states can be enforced in Northern Ireland under Regulation (EC) 44/2001 and Regulation (EU) 1215/2012 (Recast Brussels Regulation, with the exception of Denmark). Judgments from EU member states, Iceland, Switzerland and Norway can be enforced in Northern Ireland under the 2007 Lugano Convention.

The Administration of Justice Act 1920 and the Foreign Judgments (Reciprocal Enforcement) Act 1933 allow for enforcement of money judgments obtained in mainly commonwealth and colonial countries by way of registration. The procedure for enforcing a judgment under these Acts is set out in Order 71 of The Rules of the Court of Judicature (NI) 1980.

Where none of the above provisions apply, (for example, US, Russia or and China), the judgment must be enforced under common law by way of

new legal proceedings usually with an application for summary judgment. However, the foreign judgment can only be enforced if:

- The foreign court had jurisdiction.
- The foreign judgment was not obtained by fraud.
- The foreign judgment is not contrary to public policy or natural justice.
- The foreign judgment is final and conclusive.
- The foreign judgment is for a definite sum of money.

2. Does the European Union have a special procedure to enforce court judgments coming from its member states?

Answer: Yes. Similar to response of England and Wales.

The principle is that a claimant who has obtained a judgment from one of the member states can enforce in the other member states without having to begin separate proceedings.

For judgments on civil and commercial matters in court proceedings commenced on or after 10 January 2015, the procedure is governed by the Recast Brussels Regulation which has direct effect in all EU member states, and has also been implemented in Denmark. The Recast Brussels Regulation states that a judgment given in a member state shall be recognised in other member states without any special procedure being required.

Unlike the previous 2001 Brussels Regulation, the Recast Brussels Regulation provides that a judgment given in a member state which is enforceable in that member state shall be enforceable in other states without a declaration of enforceability (*exequatur*) being necessary.

The general principle is that the procedure for the enforcement of judgments given in another member state is governed by the law of the member state in which enforcement is sought (Article 41(1)).

The 2001 Brussels Regulation continues to apply to civil and commercial matters where court proceedings were commenced prior to 10 January 2015. The courts of the enforcing member state must first declare the judgment to be enforceable and so an application must be made locally (in Northern Ireland to the High Court, Queens Bench Division).

The Brussels Convention applies to judgments from Gibraltar and some dependent territories of EU member states.

There are also a number of simpler expedited procedures available in specific circumstances:

- For uncontested judgments, the European Enforcement Order procedure can be followed, which is found in the EEO Regulation (Council Regulation 805/2004/EC). Under this procedure, an

uncontested judgment of a member state (with the exception of Denmark) is automatically enforceable in another member state. An application for an EEO certificate must be made to the High Court before it is enforced.

- The European Small Claims Procedure (Regulation (EC) 861/2007) sets out a simplified procedure for civil or commercial cross-border claims with a value of up to €5,000 (previously €2,000).

- The European Order for Payment Procedure (Regulations (EC) 1896/2006 and 936/2012) can be used for cross-border uncontested money claims.

Rules regarding the European Order for Payment Procedure are set out in Order 71 Rules of Judicature (Northern Ireland) 1980:

www.justice-ni.gov.uk/sites/default/files/publications/justice/COJ_Rules.pdf

D. Average Duration of Enforcement Procedure

1. What is the average length of time for this kind of procedure?

Answer: Usually between 2 and 6 months, depending on whether it is challenged. However, once registered, the length of time to enforce the Order at the Enforcement of Judgments Office will depend on whether the debtor is employed/self-employed or owns property etc.

II. Denial of Recognition and Enforcement of a Foreign Court Judgment: Reasons

A. Can a court in your country deny recognition and enforcement of a foreign court judgment? If YES: what kind of reasons may justify denial?

Answer: Yes. As per England and Wales response.

Where the Recast Brussels Regulation applies, reasons to refuse recognition and enforcement of a judgment are as set out at Articles 45 and 46.

Where the 2001 Brussels Regulation applies, reasons to deny enforcement include:

- Failure to comply with the formalities as set out in Articles 53-54 of the 2001 Brussels Regulation.
- One of the grounds set out in Articles 34 and 35 of the 2001 Brussels Regulation (which largely correlate with Article 45 of the Recast Brussels Regulation).

Where the Hague Convention applies (currently to judgments from Mexico and Singapore):

- The enforcing court must be satisfied that the original court was designated in an exclusive choice of court agreement.
- The foreign judgment must be enforceable in its state of origin.
- However, the enforcing court cannot review the merits of the judgment.

See Article 9 of the Hague Convention.

Where bilateral arrangements apply, then the provisions in Section 9(2) of the Administration of Justice Act 1920 and Section 4 (1) of the Foreign Judgments (Reciprocal Enforcement) Act 1933 apply.

In relation to common law claims, i.e. where the enforcing state is not subject to specific multilateral or bilateral arrangements, reasons to deny recognition and enforcement can include:

- Lack of jurisdiction of the foreign court.
- Recognition of the judgment would be contrary to public policy or violate human rights.
- The judgment was not final and conclusive on the issue.
- The court gave judgment in breach of a jurisdiction or arbitration clause.
- The judgment was obtained by fraud.
- The judgment to be enforced is not for a fixed sum of money.
- The judgment involves the enforcement of a foreign penal or revenue law.
- The judgment was awarded in a manner contrary to natural or substantive justice.

In relation to all of the above, a court can refuse recognition/enforcement:

- Where the defendant has not been properly served.

B. Costs and expenses

1. What kind of costs and expenses can a claimant expect in this enforcement procedure?

Answer: Court fees.

Translation fees (if applicable)

Solicitor/Barrister fees – will vary depending on complexity and if proceedings are subject to challenge by the other party.

Process server's fees if serving the judgment by personal service.

Costs of enforcement - depend on method of enforcement used and how much the debt is for etc.

III. FORMAL REQUIREMENTS

A. Time Limit

1. Is there a time limit to apply for enforcement of a foreign court judgment?

Answer: Similar to response for England and Wales.

There are no limitation periods under the Recast Brussels Regulation, the 2001 Brussels Regulation, the Brussels Convention or the 2007 Lugano Convention.

The Civil Jurisdiction and Judgments (Hague Convention on Choice of Court Agreements 2005) Regulations 2015/1644, which implement the Hague Convention into law in Northern Ireland, provide at regulation 4B that: *“A judgment which is required to be recognised and enforced under the 2005 Hague Convention must be registered without delay...”*

Under the Administration of Justice Act 1920, an application must be made to the High Court of Northern Ireland within twelve months after the date of the foreign judgment (or such longer period as may be allowed by the court) to have the judgment registered in Northern Ireland.

Under the Foreign Judgments (Reciprocal Enforcement) Act 1933, an application must be made to the High Court of Northern Ireland within 6 years of the date of the foreign judgment (or the date of the last judgment, if there have been appeal proceedings).

Under the common law, the period is 6 years from the date of the foreign judgment (The Limitation (Northern Ireland) Order 1989).

B. Final and Definitive Court Judgment: Provisional Enforcement

1. **Is it mandatory for the judgment to be a final and definitive court judgment?
If NO: Are there any special requirements to provisionally enforce a court judgment which is not final and definitive?**

Answer: Yes, as per England and Wales.

C. Necessary Requirements

1. **What necessary requirements must the foreign court judgment fulfil to be recognised and enforced?**

Answer: EU Regime – when the judgment has been certified / declared enforceable in another member state.

Any requirements set out in multilateral or bilateral treaties / statutes.

Common law:

- a) The judgment must be final and conclusive in the court from which it came.
- b) Within the territorial, procedural and substantive jurisdiction of the foreign court.
- c) The foreign judgment was not obtained by fraud or breach of natural justice.
- d) The foreign judgment is for a definite sum of money.

D. Other Formal Requirements: Court Fees

1. **Is it mandatory to pay court fees for this kind of application?**

Answer: Yes. There will be a court fee payable for the application to register the judgment, where registration is necessary. There will be further fees depending on method of enforcement chosen and how much the debt is for.

- E. Are there any other formal requirements in your country to enforce a court judgment?**

Answer: No.

IV. PROCEDURE

A. Competent Court

1. Which court or courts are competent to decide an enforcement application?

Answer: Where registration of the judgment is necessary, the application must be made to the Queen's Bench Division of the High Court of Northern Ireland.

B. Informational Requirements for the Application to Enforce a Foreign Court Judgment

1. What information must be contained in the enforcement application of a foreign court judgment?

Answer: Similar to England and Wales.

Generally speaking the information required includes:

- The name of the judgment creditor and their address for service within the jurisdiction.
- The name of the judgment debtor and their address or place of business, if known.
- The grounds on which the judgment creditor is entitled to enforce the judgment.
- In the case of a money judgment, the amount in respect of which it remains unsatisfied.
- Where interest is recoverable, both (i) the amount of interest which has accrued up to the date of the application; or (ii) the rate of interest, the date from which it is recoverable and the date on which it ceases to accrue.

C. What documents must be included with/attached to the application to enforce a foreign court judgment?

Answer: Ex parte application

Grounding affidavit

Copy judgment which satisfies the conditions necessary to establish its authenticity.

Copy European Enforcement Order Certificate from the court in which the judgment was issued (if applicable).

Relevant court fee

See Order 71 Rules of Court of Judicature (Northern Ireland) 1980.

D. Phases of the Procedure

1. What are the phases of the procedure to enforce a foreign court judgment?

Answer: Applying to register the judgment where necessary.

Period for challenge.

Enforcement application to the Enforcement of Judgments Office.

E. Opposition of the Defendant

1. Can a defendant oppose this enforcement application?

Answer: Yes.

2. Are there a limited number of reasons for the defendant to oppose the enforcement of the court judgment? If YES: what are those reasons?

Answer: See II A above.

F. Appeal and its Consequences in this Procedure

1. Is it possible to appeal a court decision to recognise and enforce a foreign court decision?

Answer: Yes.

2. Can this appeal suspend the enforcement?

Answer: Similar to England and Wales.

Under Article 49 of the Recast Brussels Regulation, the decision on an application for *refusal* of enforcement may be appealed against by either party. Under Article 51, the court to which an application for refusal of enforcement is submitted or the court which hears an appeal lodged under Article 49 or Article 50 may stay the proceedings if an ordinary appeal has been lodged against the judgment in the Member State of origin or if the time for such an appeal has not yet expired. In the latter case, the court may specify the time within which such an appeal is to be lodged.

Under Article 43 of the 2001 Brussels Regulation, the decision on the application for a declaration of enforceability may be appealed against by either party. Under Article 46.1, the court with which an appeal is lodged under Articles 43 or 44 may, on the application of the party against whom enforcement is sought, stay the proceedings if an ordinary appeal has been lodged against the judgment in the member state of origin or if the time for such an appeal has not yet expired; in the latter case, the court may specify the time within which such an appeal is to be lodged.

Other treaties / statutes – refer to their terms.

Common law – unless the court orders otherwise, an appeal shall not operate to stay enforcement of the original decision.

G. Recovery of Judicial Costs and Expenses

1. Are there any rules concerning recovery of the judicial costs incurred as a result of the enforcement application?

Answer: Generally, the court will order that the judgment debtor pays the judgment creditor's costs although this will depend on the circumstances.

V. RECOVERY OF THE DEBT

A. Means of Enforcement

1. What types of assets are subject to enforcement of the court's judgment?

Answer: Any available assets of the debtor:

Order charging land – if debtor owns land or has an interest in land/property.

Seizure order – for goods owned by the debtor.

Earnings by way of attachment of earnings order or instalments order.

Order appointing receiver – if the debtor is about to receive monies from a third party (e.g. a claim, proceeds of house sale etc.)

VI. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION

A. Any other issues of interest in your jurisdiction

Answer: It is not yet known if any replacement arrangements will be negotiated once the UK leaves the European Union.

Submitted by

	Contact 1	Contact 2 (optional)	Contact 3 (optional)
Contact Name:	Damian McParland		
Firm Name:	Millar McCall Wylie LLP		
Email:	Damian.McParland@mmwlegal.com		
Phone #:	02890200050		
Website:	www.mmwlegal.com/		