

SCHEDULE 2

Article 2(2)

PART I OF THE ACT AS MODIFIED BY SCHEDULE 1

*Orders made by courts in the United Kingdom*

**Transmission of maintenance order made in United Kingdom for enforcement in the Republic of Ireland.**

2.—(1) Subject to subsection (2) below, where the payer under a maintenance order made, whether before, on or after 5th April 1993, by a court in the United Kingdom is residing in the Republic of Ireland, the payee under the order may apply for the order to be sent to that country for enforcement.

(2) Subsection (1) above shall not have effect in relation to a provisional order or to an order made by virtue of a provision of Part II of this Act.

(3) Every application under this section shall be made in the prescribed manner to the prescribed officer of the court which made the maintenance order to which the application relates.

(4) If, on an application duly made under this section to the prescribed officer of a court in the United Kingdom, that officer is satisfied that the payer under the maintenance order to which the application relates is residing in the Republic of Ireland, the following documents, that is to say—

- (a) a certified copy of the maintenance order;
- (b) a certificate signed by that officer certifying that the order is enforceable in the United Kingdom;
- (c) a certificate of arrears so signed;
- (d) a statement giving such information as the officer possesses as to the whereabouts of the payer;
- (e) a statement giving such information as the officer possesses for facilitating the identification of the payer;
- (f) where available, a photograph of the payer;
- (g) if the payer did not appear in the proceedings in which the maintenance order was made, the original or a certified copy of a document which establishes that notice of the institution of the proceedings was served on the payer;
- (h) a document which establishes that notice of the order was sent to the payer; and
- (i) if the payee received legal aid in the proceedings, a written statement to that effect signed by that officer,

shall be sent by that officer, in the case of a court in England and Wales or Northern Ireland, to the Lord Chancellor, or, in the case of a court in Scotland, to the Secretary of State, with a view to their being transmitted by the Lord Chancellor, or, as the case may be, the Secretary of State, to the responsible authority in the Republic of Ireland if he is satisfied that the statement relating to the whereabouts of the payer gives sufficient information to justify that being done.

(5) Nothing in this section shall be taken as affecting any jurisdiction of a court in the United Kingdom with respect to a maintenance order to which this section applies, and any such order may be enforced, varied or revoked accordingly.

**Power of magistrates' court to make and confirm provisional maintenance order against person residing in the Republic of Ireland.**

3.—(1) Where an application is made to a magistrates' court for a maintenance order against a person residing in the Republic of Ireland and the court would have jurisdiction to determine the

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application under the Domestic Proceedings and Magistrates' Courts Act 1978(1) or the Children Act 1989(2) if that person—

- (a) were residing in England and Wales, and
- (b) received reasonable notice of the date of the hearing of the application,

the court shall (subject to subsection (2) below) have jurisdiction to determine the application.

(2) A maintenance order made by virtue of this section shall be a provisional order.

(4) No enactment (or provision made under an enactment) requiring or enabling—

- (a) a court to transfer proceedings from a magistrates' court to a county court or the High Court, or
- (b) a magistrates' court to refuse to make an order on an application on the ground that any matter in question is one that would be more conveniently dealt with by the High Court,

shall apply in relation to an application to which subsection (1) above applies.

(5) Where a court makes a maintenance order which is by virtue of this section a provisional order, the following documents, that is to say—

- (a) a certified copy of the maintenance order;
- (b) a document, authenticated in the prescribed manner, setting out or summarising the evidence given in the proceedings;
- (c) a certificate signed by the prescribed officer of the court certifying that the grounds stated in the certificate are the grounds on which the making of the order might have been opposed by the payer under the order;
  - (ca) a notice addressed to the payer stating that a provisional order has been made, that it has no effect unless and until confirmed with or without alteration by the court making the order, and that in considering whether or not to confirm the provisional order the court will take into account any representations made or any evidence adduced by or on behalf of the payer within three weeks from the date of service of the notice;
- (d) a statement giving such information as was available to the court as to the whereabouts of the payer;
- (e) a statement giving such information as the officer possesses for facilitating the identification of the payer; and
- (f) where available, a photograph of the payer,

shall be sent by that officer to the Lord Chancellor with a view to their being transmitted by the Lord Chancellor to the responsible authority in the Republic of Ireland if he is satisfied that the statement relating to the whereabouts of the payer gives sufficient information to justify that being done.

(6) The court which made a provisional order by virtue of this section shall not earlier than three weeks after the date of service of the notice referred to in paragraph (ca) of subsection (5) above consider whether or not to confirm the order and with or without alteration and shall take into account any representations made and any evidence adduced by or on behalf of the payer.

(6A) Where the payer makes any representations or adduces any evidence, a copy of the representations or evidence shall be served on the person on whose application the provisional order was made before the date of the hearing at which confirmation of the provisional order will be considered and that person shall be notified in the prescribed manner of the date fixed for the hearing.

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(1) 1978 c. 22.  
(2) 1989 c. 41.

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(6B) The court shall not confirm such an order unless the documents mentioned in paragraphs (a), (b), (c) and (ca) of subsection (5) above have been served on the payer in accordance with the law for the service of such documents in the Republic of Ireland and in sufficient time to enable him to arrange for his defence.

(6C) Where an order has been confirmed under this section, the prescribed officer of the court shall—

- (a) send to the payer by registered post notice of the confirmation of the order; and
- (b) send the following documents, that is to say—
  - (i) a certified copy of the maintenance order as confirmed;
  - (ii) a certificate signed by that officer certifying that the order is enforceable in the United Kingdom;
  - (iii) if the payer did not appear in the proceedings in which the order was confirmed, the original or a certified copy of a document which establishes that the documents mentioned in paragraphs (a), (b), (c) and (ca) of subsection (5) above have been served on the payer;
  - (iv) a document which establishes that notice of the confirmation of the order has been sent to the payer by registered post;
  - (v) if the payee received legal aid in the proceedings, a written statement to that effect signed by that officer,

to the Lord Chancellor with a view to their being transmitted by him to the responsible authority in the Republic of Ireland.

(6D) Where the court decides not to confirm a provisional order, it shall revoke the order.

(7) In the application of this section to Northern Ireland—

- (a) for subsection (1) there shall be substituted—

“(1) Where a complaint is made to a magistrates' court against a person residing in the Republic of Ireland and the complaint is one on which the court would have jurisdiction by virtue of any enactment to make a maintenance order if—

  - (a) that person were residing in Northern Ireland, and
  - (b) a summons to appear before the court to answer the complaint had been duly served on him,

the court shall have jurisdiction to hear the complaint and may (subject to subsection (2) below) make a maintenance order on the complaint.”, and

- (b) for subsection (4) there shall be substituted—

“(4) No enactment empowering a magistrates' court to refuse to make an order on a complaint on the ground that any matter in question is one which would be more conveniently dealt with by the High Court of Justice in Northern Ireland shall apply in relation to a complaint to which subsection (1) above applies.”.

#### **Power of sheriff to make maintenance order against person residing in the Republic of Ireland.**

4.—(1) The sheriff shall have jurisdiction in any action to which this section applies if—

- (a) the pursuer resides within the jurisdiction of the sheriff;
- (b) the sheriff is satisfied that, to the best of the information or belief of the pursuer, the defender is residing in the Republic of Ireland; and
- (c) the sheriff would not, apart from this subsection, have jurisdiction in that action.

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(2) This section applies to any action for the payment, variation or revocation of aliment which is competent in the sheriff court, and includes an action of affiliation and aliment, but does not include an action of separation and aliment or adherence and aliment, or any action containing a crave for the custody of a child.

(3) Where in any action in which the payment of aliment in respect of a child is claimed, being an action in which the sheriff has jurisdiction by virtue of subsection (1) above, the sheriff is satisfied—

- (a) that there are grounds on which a maintenance order containing a provision requiring the payment of aliment in respect of that child may be made in that action, but
- (b) that he has no power to make that order unless he also makes an order providing for the custody of the child,

then, for the purpose of enabling the sheriff to make the maintenance order, the pursuer shall be deemed to be a person to whom the custody of the child has been committed by a decree of the sheriff which is for the time being in force.

(4) In any action in which the sheriff has jurisdiction by virtue of subsection (1) above, no decree shall be granted in favour of the pursuer unless—

- (a) a copy of the initial writ or summons together with a copy of the warrant for citation has been sent to the responsible authority in the Republic of Ireland for service on the defender; and
- (b) a copy of the initial writ or summons has been served on the defender in accordance with the law for the service of such documents in the Republic of Ireland and in sufficient time to enable him to arrange for his defence; and
- (c) the grounds of action have been substantiated by sufficient evidence, and section 36(3) of the Sheriff Courts (Scotland) Act 1971<sup>(3)</sup> shall not apply in relation to any such action which is a summary cause.

### **Variation and revocation of maintenance order made in United Kingdom.**

5.—(1) This section applies to a maintenance order a certified copy of which has been sent to the Republic of Ireland in pursuance of section 2 of this Act and to a provisional order made in pursuance of section 3 of this Act which has been confirmed by a court in England and Wales or Northern Ireland under that section.

(2) Where subsection (1) of section 60 of the Magistrates' Courts Act 1980<sup>(4)</sup> (revocation, variation etc. of orders for periodical payment) applies in relation to a maintenance order to which this section applies, that subsection shall have effect as if for the words “by order on complaint,” there were substituted “on an application being made, by order”.

(3) Where an application is made to a court in England and Wales or Northern Ireland by the payee for the variation or revocation of an order to which this section applies, and the payer is residing in the Republic of Ireland, the prescribed officer of the court shall send to the Lord Chancellor a certified copy of the application, together with a document, authenticated in the prescribed manner, setting out or summarising the evidence in support of the application, with a view to their being transmitted by him to the responsible authority in the Republic of Ireland for service on the payer.

(4) A court in England and Wales or Northern Ireland shall not vary or revoke such an order before the expiry of three weeks from the date of service of the documents mentioned in subsection (3) above and before varying or revoking the order shall take into account any representations made and any evidence adduced by or on behalf of the payer.

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(3) 1971 c. 58.

(4) 1980 c. 43; section 60(1) was substituted by section 4 of the Maintenance Enforcement Act 1991 (c. 17).

(5) Where such an order is varied or revoked by a court in England and Wales or Northern Ireland a certified copy of the order of the court and a statement as to the service of the documents mentioned in subsection (3) above on the payer shall be sent to the court in the Republic of Ireland by which the order is being enforced.

(6) Where a maintenance order to which this section applies has been varied by an order made by a court in the United Kingdom, the maintenance order shall, as from the date on which the order of variation was made, have effect as varied by that order.

(7) Where a maintenance order to which this section applies has been revoked by an order made by a court in the United Kingdom, the maintenance order shall, as from the date on which the order of revocation was made, be deemed to have ceased to have effect except as respects any arrears due under the maintenance order at that date.

### *Orders made by courts in the Republic of Ireland*

#### **Registration in United Kingdom court of maintenance order made in the Republic of Ireland.**

6.—(1) This section applies to a maintenance order made whether before, on or after 5th April 1993 by a court in the Republic of Ireland.

(2) Where a certified copy of an order to which this section applies is received by the Lord Chancellor or the Secretary of State from the responsible authority in the Republic of Ireland, and it appears to him that the payer under the order is residing in the United Kingdom, he shall send the copy of the order and the accompanying documents to the prescribed officer of the appropriate court.

(3) Where the prescribed officer of the appropriate court receives from the Lord Chancellor or the Secretary of State a certified copy of an order to which this section applies, he shall, subject to the following subsections, register the order in the prescribed manner in that court.

(4) Before registering an order under this section an officer of a court shall take such steps as he thinks fit for the purpose of ascertaining whether the payer under the order is residing within the jurisdiction of the court, and if after taking those steps he is satisfied that the payer is not so residing he shall return the certified copy of the order and the accompanying documents to the Lord Chancellor or, as the case may be, the Secretary of State with a statement giving such information as he possesses as to the whereabouts of the payer.

(5) The order shall not be registered—

- (a) if such registration is contrary to public policy;
- (b) if the payer did not appear in the proceedings in the Republic of Ireland and he was not served in accordance with the law of the place where he was residing with the summons or other notice of the institution of the proceedings in sufficient time to enable him to arrange for his defence;
- (c) if the order is irreconcilable with a judgment given in the United Kingdom in proceedings between the same parties.

(6) If the order is registered under this section, the prescribed officer of the appropriate court shall serve notice in a prescribed form on the payer and give notice to the payee that the order has been registered.

(7) The payer may within one calendar month from the date of service of the said notice appeal to the court in which the order is registered to set aside the registration of the order on one of the grounds set out in subsection (5) above.

(8) If the payer appeals to the appropriate court to set aside the registration of the order, the prescribed officer of the court shall give notice to the payee of the appeal and of the date of the hearing of the appeal.

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(9) If the payer appeals to the appropriate court to set aside the registration of the order, the court may, on the application of the payer, stay, or in Scotland sist, the proceedings if either—

- (a) enforcement of the maintenance order has been suspended in the Republic of Ireland pending the determination of any form of appeal; or
- (b) the time for an appeal has not yet expired and enforcement has been suspended pending the making of an appeal,

and in the latter case the court may lay down the time within which the proceedings will be stayed or sisted.

(10) If the order is not registered by virtue of subsection (5) above, the prescribed officer shall give notice to the payee in a prescribed form that the order has not been registered.

(11) A payee to whom notice has been given by the officer of any court under subsection (10) above may within one calendar month of the date of the notice appeal to that court to set aside the decision not to register the order.

(12) In the application of this section to Scotland—

- (a) in subsection (6), for the words “serve notice on” there shall be substituted the words “intimate to”;
- (b) in subsection (7), for the words “service of the said notice” there shall be substituted the words “the said intimation”; and
- (c) in subsections (7) to (11), for any reference to an appeal there shall be substituted a reference to an application and cognate expressions shall be construed accordingly.

#### **Enforcement of maintenance order registered in United Kingdom court.**

**8.—(1)** Subject to subsections (1A), (2), (2A) and (2B) below, a registered order may be enforced in the United Kingdom as if it had been made by the registering court and as if that court had had jurisdiction to make it; and proceedings for or with respect to the enforcement of any such order may be taken accordingly.

(1A) During the period within which an appeal to set aside the registration of a registered order may be made under section 6(7) and until any such appeal has been determined, no measures of enforcement may be taken against the property of the payer other than those designed to protect the interests of the payee:

Provided that nothing in this subsection shall be construed as preventing a registered order from being registered as mentioned in subsection (2) below.

(2) Subsection (1) above does not apply to an order which is for the time being registered in the High Court under Part I of the Maintenance Orders Act 1958<sup>(5)</sup> or to an order which is for the time being registered in the High Court of Justice in Northern Ireland under Part II of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966<sup>(6)</sup>.

(2A) Where in a maintenance order made in the Republic of Ireland there are provisions which are not enforceable, this section shall apply only to the remaining provisions of the order.

(2B) The payee under a registered order may request the partial enforcement of that order.

(3) Any person for the time being under an obligation to make payments in pursuance of a registered order shall give notice of any change of address to the clerk of the registering court, and any person failing without reasonable excuse to give such a notice shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

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(5) 1958 c. 39.

(6) 1966 c. 35 (N.I.).

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(4) An order which by virtue of this section is enforceable by a magistrates' court in England and Wales shall subject to the modifications of sections 76 and 93 of the Magistrates' Courts Act 1980(7) specified in subsections (4A) and (4B) below be enforceable as if it were a magistrates' court maintenance order made by that court.

In this subsection, "magistrates' court maintenance order" has the same meaning as in section 150(1) of the Magistrates' Courts Act 1980.

(4A) Section 76 (enforcement of sums adjudged to be paid) shall have effect as if for subsections (4) to (6) there were substituted the following subsections—

"(4) Where proceedings are brought for the enforcement of a magistrates' court maintenance order under this section, the court may vary the order by exercising one of its powers under subsection (5) below.

(5) The powers of the court are—

- (a) the power to order that payments under the order be made directly to the clerk of the court or the clerk of any other magistrates' court;
- (b) the power to order that payments under the order be made to the clerk of the court, or to the clerk of any other magistrates' court, by such method of payment falling within section 59(6) above (standing order, etc.) as may be specified;
- (c) the power to make an attachment of earnings order under the Attachment of Earnings Act 1971(8) to secure payments under the order.

(6) In deciding which of the powers under subsection (5) above it is to exercise, the court shall have regard to any representations made by the debtor (within the meaning of section 59 above).

(7) Subsection (4) of section 59 above (power of court to require debtor to open account) shall apply for the purposes of subsection (5) above as it applies for the purposes of that section but as if for paragraph (a) there were substituted—

"(a) the court proposes to exercise its power under paragraph (b) of section 76(5) below, and""

(4B) In section 93 (complaint for arrears), subsection (6) (court not to impose imprisonment in certain circumstances) shall have effect as if for paragraph (b) there were substituted—

"(b) if the court is of the opinion that it is appropriate—

- (i) to make an attachment of earnings order; or
- (ii) to exercise its power under paragraph (b) of section 76(5) above."

(5) The magistrates' court by which an order is enforceable by virtue of this section, and the officers thereof, shall take all such steps for enforcing the order as may be prescribed.

(6) In any proceedings for or with respect to the enforcement of an order which is for the time being registered in any court under this Part of this Act a certificate of arrears sent to the prescribed officer of the court shall be evidence of the facts stated therein.

(7) Subject to subsection (8) below, sums of money payable under a registered order shall be payable in accordance with the order, or such part thereof as the payee may have requested should be enforced, as from the date on which the order took effect.

(8) No sums of money accruing before 1st April 1975 under a registered order shall be payable in accordance with the order.

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(7) 1980 c. 43; section 76 was amended by the Criminal Justice Act 1982 (c. 48), Schedule 16 and by the Maintenance Enforcement Act 1991 (c. 17), section 7. Section 93 was amended by the Family Law Reform Act 1987 (c. 42), Schedule 2 and by the Maintenance Enforcement Act 1991, Schedule 2.

(8) 1971 c. 32.

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- (9) In the application of this section to Scotland—
- (a) in subsection (1A), for any reference to an appeal there shall be substituted a reference to an application;
  - (b) subsections (2) to (5) shall be omitted; and
  - (c) in subsection (6), for the word “evidence” there shall be substituted the words “sufficient evidence”.

#### **Variation and revocation of maintenance order registered in United Kingdom court.**

9.—(1) Where a registered order has been varied by a court in the Republic of Ireland, the registered order shall, as from the date on which the order of variation took effect or 1st April 1975, whichever is the later, have effect as varied by that order.

(2) Where a registered order has been revoked by a court in the Republic of Ireland, the registered order shall, as from the date on which the order of revocation took effect or 1st April 1975, whichever is the later, be deemed to have ceased to have effect except as respects any arrears due under the registered order at that date.

(3) The prescribed officer of the registering court shall register in the prescribed manner any order varying a registered order.

#### **Cancellation of registration and transfer of order**

10.—(1) Where a registered order is revoked by an order made by a court in the Republic of Ireland and notice of the revocation is received by the registering court, the prescribed officer of the registering court shall cancel the registration; but any arrears due under the registered order at the date on which the order of revocation took effect or 1st April 1975, whichever is the later, shall continue to be recoverable as if the registration had not been cancelled.

(2) Where the prescribed officer of the registering court is of opinion that the payer under a registered order has ceased to reside within the jurisdiction of that court, he shall cancel the registration of the order and, subject to subsection (3) below, shall send the certified copy of the order to the Lord Chancellor.

(3) Where the prescribed officer of the registering court, being a magistrates' court, is of opinion that the payer is residing within the jurisdiction of another magistrates' court in that part of the United Kingdom in which the registering court is, he shall transfer the order to that other court by sending the certified copy of the order to the prescribed officer of that other court.

(4) On the transfer of an order under subsection (3) above the prescribed officer of the court to which it is transferred shall, subject to subsection (6) below, register the order in the prescribed manner in that court.

(5) Where the certified copy of an order is received by the Lord Chancellor under this section and it appears to him that the payer under the order is still residing in the United Kingdom, he shall transfer the order to the appropriate court by sending the certified copy of the order together with the related documents to the prescribed officer of the appropriate court and, subject to subsection (6) below, that officer shall register the order in the prescribed manner in that court.

(6) Before registering an order in pursuance of subsection (4) or (5) above an officer of a court shall take such steps as he thinks fit for the purpose of ascertaining whether the payer is so residing, and if after taking those steps he is satisfied that the payer is not residing within the jurisdiction of the court he shall send the certified copy of the order to the Lord Chancellor.

(7) The officer of a court who is required by any of the foregoing provisions of this section to send to the Lord Chancellor or to the prescribed officer of another court the certified copy of an order shall send with that copy—



- (a) a certificate of arrears signed by him;
  - (b) a statement giving such information as he possesses as to the whereabouts of the payer; and
  - (c) any relevant documents in his possession relating to the case.
- (8) In the application of this section to Scotland—
- (a) in subsection (2), for the words “within the jurisdiction of that court” there shall be substituted the words “in Scotland”;
  - (b) subsections (3) and (4) shall be omitted; and
  - (c) for the words “Lord Chancellor” in each place where they occur, there shall be substituted the words “Secretary of State”.

**Steps to be taken by Lord Chancellor or Secretary of State where payer under certain orders is not residing in the United Kingdom.**

**11.**—(1) If it appears to the Lord Chancellor or the Secretary of State that the payer under a maintenance order, a certified copy of which has been received by him from the Republic of Ireland, is not residing in the United Kingdom, he shall send to the responsible authority in that country—

- (a) the certified copy of the order in question;
- (b) if the order has at any time been a registered order, a certificate of arrears signed by the prescribed officer;
- (c) a statement giving such information as the Lord Chancellor or the Secretary of State possesses as to the whereabouts of the payer; and
- (d) any other relevant documents in his possession relating to the case.

*Appeals*

**Appeals**

**12.**—(1) No appeal shall lie from a provisional order made in pursuance of section 3 of this Act by a court in England and Wales or Northern Ireland.

(2) Where in pursuance of that section any such court confirms or refuses to confirm such a provisional order, the payer or payee under the order shall have the like right of appeal (if any) from the confirmation of, or refusal to confirm, the provisional order as he would have if that order were not a provisional order and the court had made or, as the case may be, refused to make the order on the occasion on which it confirmed or, as the case may be, refused to confirm the order.

(3) Nothing in subsection (2) shall be construed as affecting any right of appeal conferred by any other enactment.

*Evidence*

**Admissibility of evidence given in the Republic of Ireland.**

- 13.**—(1) A statement contained in—
- (a) a document, duly authenticated, which purports to set out or summarise evidence given in proceedings in a court in the Republic of Ireland; or
  - (b) a document, duly authenticated, which purports to set out or summarise evidence taken in that country for the purpose of proceedings in a court in the United Kingdom under this Part of this Act, whether in response to a request made by such a court or otherwise; or
  - (c) a document, duly authenticated, which purports to have been received in evidence in proceedings in a court in that country or to be a copy of a document so received; or

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(d) a document purporting to be signed by a judge or officer of a court in the Republic of Ireland which establishes that certain documents were served on a person, shall in any proceedings in a court in the United Kingdom relating to a maintenance order to which this Part of this Act applies be admissible as evidence of any facts stated therein to the same extent as oral evidence of that fact is admissible in those proceedings.

(2) A document purporting to set out or summarise evidence given as mentioned in subsection (1)(a) above, or taken as mentioned in subsection (1)(b) above, shall be deemed to be duly authenticated for the purposes of that subsection if the document purports to be certified by the judge or other person before whom the evidence was given or, as the case may be, by whom it was taken, to be the original document containing or recording, or, as the case may be, summarising, that evidence or a true copy of that document.

(3) A document purporting to have been received in evidence as mentioned in subsection (1)(c) above, or to be a copy of a document so received, shall be deemed to be duly authenticated for the purposes of that subsection if the document purports to be certified by a judge or officer of the court in question to have been, or to be a true copy of a document which has been, so received.

(4) It shall not be necessary in any such proceedings to prove the signature or official position of the person appearing to have given such a certificate.

(5) Nothing in this section shall prejudice the admission in evidence of any document which is admissible in evidence apart from this section.

### **Obtaining of evidence needed for purpose of certain proceedings**

**14.**—(1) Where for the purpose of any proceedings in a court in the Republic of Ireland relating to a maintenance order to which this Part of this Act applies a request is made by or on behalf of that court for the taking in the United Kingdom of the evidence of a person residing therein relating to matters specified in the request, such court in the United Kingdom as may be prescribed shall have power to take that evidence and, after giving notice of the time and place at which the evidence is to be taken to such persons and in such manner as it thinks fit, shall take the evidence in such manner as may be prescribed.

Evidence taken in compliance with such a request shall be sent by the prescribed officer of the court—

- (a) in England and Wales or Northern Ireland, to the Lord Chancellor, or
- (b) in Scotland, to the Secretary of State,

for transmission to the responsible authority in the Republic of Ireland.

(2) Where any person, not being the payer or the payee under the maintenance order to which the proceedings in question relate, is required by virtue of this section to give evidence before a court in the United Kingdom, the court may order that there shall be paid—

- (a) if the court is a court in England, Wales or Scotland, out of moneys provided by Parliament; and
- (b) if the court is a court in Northern Ireland, out of moneys provided by Parliament,

such sums as appear to the court reasonably sufficient to compensate that person for the expense, trouble or loss of time properly incurred in or incidental to his attendance.

(3) Section 97(1), (3) and (4) of the Magistrates' Courts Act 1980<sup>(9)</sup> (which provide for compelling the attendance of witnesses, etc.) shall apply in relation to a magistrates' court having power under subsection (1) above to take the evidence of any person as if the proceedings in the

<sup>(9)</sup> 1980 c. 43: section 97 was amended by the Contempt of Court Act 1981 (c. 49), Schedule 2; by S.I.1984/447; and by the Criminal Justice (International Co-operation) Act 1990 (c. 5), Schedule 4.

court in the Republic of Ireland for the purpose of which a request for the taking of the evidence has been made were proceedings in the magistrates' court and had been begun by complaint.

(4) Paragraphs 71 and 73 of Schedule 1 to the Sheriff Courts (Scotland) Act 1907<sup>(10)</sup> (which provide for the citation of witnesses, etc.) shall apply in relation to a sheriff having power under subsection (1) above to take the evidence of any person as if the proceedings in the court in the Republic of Ireland for the purpose of which a request for the taking of the evidence has been made were proceedings in the sheriff court.

(5) A court in—

- (a) England and Wales or Northern Ireland may for the purpose of any proceedings in that court under this Part of this Act relating to a maintenance order to which this Part of this Act applies, send to the Lord Chancellor, or
- (b) Scotland may for the purpose of such proceedings in that court relating to such an action, send to the Secretary of State,

for transmission to the responsible authority in the Republic of Ireland a request for a court in the Republic of Ireland to take or provide evidence relating to such matters as may be specified in the request.

(6) In the application of this section to Northern Ireland, in subsection (3), for the reference to section 97(1), (3) and (4) of the Magistrates' Courts Act 1980 there shall be substituted a reference to Articles 118(1), (3) and (4), 119 and 120 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>(11)</sup>.

#### **Order, etc. made in the Republic of Ireland need not be proved.**

15. For the purposes of this Part of this Act, unless the contrary is shown—

- (a) any order made by a court in the Republic of Ireland purporting to bear the seal of that court or to be signed by any person in his capacity as a judge or officer of the court, shall be deemed without further proof to have been duly sealed or, as the case may be, to have been signed by that person;
- (b) the person by whom the order was signed shall be deemed without further proof to have been a judge or officer, as the case may be, of that court when he signed it and, in the case of an officer, to have been authorised to sign it; and
- (c) a document purporting to be a certified copy of an order made by a court in the Republic of Ireland shall be deemed without further proof to be such a copy.

#### *Supplemental*

#### **Payments of sums under orders made in the Republic of Ireland.**

16. Payment of sums due under a registered order shall, while the order is registered in a court in England, Wales or Northern Ireland, be made in such manner and to such person as may be prescribed.

#### **Proceedings in magistrates' courts.**

17.—(4) Anything authorised or required by this Part of this Act to be done by, to or before the magistrates' court by, to or before which any other thing was done may be done by, to or before any magistrates' court acting for the same petty sessions area (or, in Northern Ireland, petty sessions district) as that court.

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<sup>(10)</sup> 1907 c. 51.

<sup>(11)</sup> S.I. 1981/1685 (N.I.26).

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(5) Any application which by virtue of a provision of this Part of this Act is made to a magistrates' court in Northern Ireland shall be made by complaint.

(5A) Where the respondent to an application for the variation or revocation of—

- (a) a maintenance order made by a magistrates' court in England and Wales, being an order to which section 5 of this Act applies; or
- (b) a registered order which is registered in such a court,

is residing in the Republic of Ireland, a magistrates' court in England and Wales shall have jurisdiction to hear the application (where it would not have such jurisdiction apart from this subsection) if it would have had jurisdiction to hear it had the respondent been residing in England and Wales.

(6) A magistrates' court in Northern Ireland shall have jurisdiction to hear a complaint for the variation or revocation of a maintenance order made by such a court, being an order to which section 5 of this Act applies, if the defendant to the complaint is residing in the Republic of Ireland and the court would have jurisdiction to hear the complaint had the defendant been residing in Northern Ireland.

(7) Where the respondent to an application for the variation or revocation of a maintenance order made by a magistrates' court, being an order to which section 5 of this Act applies, does not appear at the time and place appointed for the hearing of the application, but the court is satisfied that the respondent is residing in the Republic of Ireland, the court may proceed to hear and determine the application at the time and place appointed for the hearing or for any adjourned hearing in like manner as if the respondent had appeared at that time and place.

(7A) In the application of this section to Northern Ireland, in subsection (7)—

- (a) for the word “respondent”, in each place where it occurs, there shall be substituted “defendant”; and
- (b) for the words “an application” and “the application”, in each place where they occur, there shall be substituted “a complaint” and “the complaint” respectively.

### **Magistrates' courts rules.**

**18.**—(1) Without prejudice to the generality of the power to make rules under section 144 of the Magistrates' Courts Act 1980<sup>(12)</sup> (magistrates' courts rules), provision may be made by such rules with respect to any of the following matters, namely—

- (a) the circumstances in which anything authorised or required by this Part of this Act to be done by, to or before a magistrates' court acting for a particular petty sessions area or by, to or before an officer of that court may be done by, to or before a magistrates' court acting for such other petty sessions area as the rules may provide or by, to or before an officer of that court;
- (b) the orders made, or other things done, by a magistrates' court, or an officer of such a court, under this Part of this Act, or by a court in the Republic of Ireland, notice of which is to be given to such persons as the rules may provide and the manner in which such notice shall be given;
- (c) the cases and manner in which courts in the Republic of Ireland are to be informed of orders made, or other things done, by a magistrates' court under this Part of this Act;
- (d) the cases and manner in which a justices' clerk may take evidence needed for the purpose of proceedings in a court in the Republic of Ireland relating to a maintenance order to which this Part of this Act applies;

<sup>(12)</sup> 1980 c. 43. There are no relevant amendments.

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- (e) the circumstances and manner in which cases may be remitted by magistrates' courts to courts in the Republic of Ireland;
- (f) the circumstances and manner in which magistrates' courts may for the purposes of this Part of this Act communicate with courts in the Republic of Ireland.

(1A) For the purpose of giving effect to this Part of this Act, rules made under section 144 of the Magistrates' Courts Act 1980 may make, in relation to any proceedings brought under or by virtue of this Part of this Act, any provision not covered by subsection (1) above which—

- (a) falls within subsection (2) of section 93 of the Children Act 1989<sup>(13)</sup>, and
- (b) may be made in relation to relevant proceedings under that section.

(2) Rules with respect to the matters mentioned in subsection (1) above may be made in accordance with Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>(14)</sup> in relation to proceedings or matters in magistrates' courts in Northern Ireland under this Part of this Act.

### Rules for sheriff court.

**19.** Without prejudice to the generality of the powers conferred on the Court of Session by section 32 of the Sheriff Courts (Scotland) Act 1971<sup>(15)</sup> to regulate by act of sederunt the procedure of the sheriff court, the said powers shall include power—

- (a) to prescribe the decrees granted, or other things done, by the sheriff, or an officer of the sheriff court, under this Part of this Act, or by a court in the Republic of Ireland, notice of which is to be given to such persons as the act of sederunt may provide and the manner in which such notice shall be given;
- (b) to provide that evidence needed for the purpose of proceedings in a court in the Republic of Ireland relating to a maintenance order to which this Part of this Act applies may, in such cases and manner as the act of sederunt may provide, be taken by a sheriff clerk or sheriff clerk depute;
- (c) to prescribe the cases and manner in which courts in the Republic of Ireland are to be informed of decrees granted, or other things done, by the sheriff under this Part of this Act;
- (d) to prescribe the circumstances and manner in which cases may be remitted by the sheriff to courts in the Republic of Ireland;
- (e) to prescribe the circumstances and manner in which the sheriff may for the purposes of this Part of this Act communicate with courts in the Republic of Ireland.

### Interpretation of Part 1.

**21.—(1)** In this Part of this Act—

“affiliation order” means an order (however described) adjudging, finding or declaring a person to be the father of a child, whether or not it also provides for the maintenance of the child;

“the appropriate court”, in relation to a person residing in England and Wales or in Northern Ireland means a magistrates' court, and in relation to a person residing in Scotland means the sheriff court, within the jurisdiction of which that person is residing;

“certificate of arrears”, in relation to a maintenance order, means a certificate certifying that the sum specified in the certificate is to the best of the information or belief of the officer giving the certificate the amount of the arrears due under the order at the date of the certificate except any arrears due under the order in respect of a period ending before 1st April 1975 or, as the

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<sup>(13)</sup> 1989 c. 41.

<sup>(14)</sup> S.I. 1981/1685 (N.I.26).

<sup>(15)</sup> 1971 c. 58.

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case may be, that to the best of his information or belief there are no arrears due thereunder at the date of the certificate;

“certified copy”, in relation to an order of a court, means a copy of the order certified by the proper officer of the court to be a true copy;

“court” includes any tribunal or person having power to make, confirm, enforce, vary or revoke a maintenance order;

“maintenance order” means an order (however described) of any of the following descriptions, that is to say—

- (a) an order (including an affiliation order or order consequent upon an affiliation order) which provides for the periodical payment of sums of money towards the maintenance of any person, being a person whom the person liable to make payments under the order is, according to the law applied in the place where the order was made, liable to maintain;
- (aa) an order which has been made in Scotland, on or after the granting of a decree of divorce, for the payment of a periodical allowance by one party to the marriage to the other party; and
- (b) an affiliation order or order consequent upon an affiliation order, being an order which provides for the payment by a person adjudged, found or declared to be a child’s father of expenses incidental to the child’s birth or, where the child has died, of his funeral expenses,

and, in the case of a maintenance order which has been varied, means that order as varied;

“order”, as respects Scotland, includes any interlocutor, and any decree or provision contained in an interlocutor;

“payee”, in relation to a maintenance order, means the person entitled to the payments for which the order provides;

“payer”, in relation to a maintenance order, means the person liable to make payments under the order;

“prescribed”, in relation to a magistrates’ court in England and Wales or in Northern Ireland, means prescribed by rules made under section 144 of the Magistrates’ Courts Act 1980 or by rules made in accordance with Article 13 of the Magistrates’ Courts (Northern Ireland) Order 1981, as the case may be, and in relation to any other court means prescribed by rules of court;

“provisional order” means an order made by a court in England and Wales or Northern Ireland which is provisional only and has no effect unless and until confirmed, with or without alteration, by that court;

“registered order” means a maintenance order which is for the time being registered in a court in the United Kingdom under this Part of this Act;

“registering court”, in relation to a registered order, means the court in which that order is for the time being registered under this Part of this Act;

“the responsible authority”, in relation to the Republic of Ireland, means any person who in that country has functions similar to those of the Lord Chancellor or the Secretary of State under this Part of this Act; and

“revoke” and “revocation” include discharge.

(2) For the purposes of this Part of this Act an order shall be taken to be a maintenance order so far (but only so far) as it relates to the periodical payment of sums of money as mentioned in paragraph (a) of the definition of “maintenance order” in subsection (1) above, to the payment of a periodical allowance as mentioned in paragraph (aa) of that definition, or to the payment by a person adjudged, found or declared to be a child’s father of any such expenses as are mentioned in paragraph (b) of that definition.

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(3) Any reference in this Part of this Act to the payment of money for the maintenance of a child shall be construed as including a reference to the payment of money for the child's education.