

SCHEDULES

SCHEDULE 1

AMENDMENTS RELATING TO MAINTENANCE ORDERS REGISTERED IN OR CONFIRMED BY COURTS OF SUMMARY JURISDICTION OR REGISTERED IN THE HIGH COURT

The Maintenance Orders (Reciprocal Enforcement) Act 1972 (c. 18)

7. In section 7 (confirmation by UK court of provisional maintenance order made in reciprocating country), after subsection (5D) insert—

“(5E) Where a court of summary jurisdiction in Northern Ireland confirms a provisional order under this section, it shall at the same time exercise one of its powers under subsection (5F) below.

(5F) The powers of the court are—

- (a) the power to order that payments under the order be made directly to the collecting officer;
- (b) the power to order that payments under the order be made to the collecting officer, by such method of payment falling within Article 85(7) of the Magistrates' Courts (Northern Ireland) Order 1981 (standing order, etc.) as may be specified;
- (c) the power to make an attachment of earnings order under Part IX of the Order of 1981 to secure payments under the order;

and in this subsection “collecting officer” means the officer mentioned in Article 85(4) of the Order of 1981.

(5G) In deciding which of the powers under subsection (5F) above it is to exercise, the court shall have regard to any representations made by the payer under the order.

(5H) Paragraph (5) of Article 85 of the Magistrates' Courts (Northern Ireland) Order 1981 (power of court to require debtor to open account) shall apply for the purposes of subsection (5F) above as it applies for the purposes of that Article but as if for subparagraph (a) there were substituted—

“(a) the court proposes to exercise its power under paragraph (b) of section 7(5F) of the Maintenance Orders (Reciprocal Enforcement) Act 1972, and”.”.

8. In section 8 (enforcement of maintenance order registered in UK court), in subsection (4)—

- (a) after the words “An order which by virtue of this section is enforceable by a magistrates' court shall” there shall be inserted “subject to the modifications of Article 98 of the Magistrates' Courts (Northern Ireland) Order 1981 specified in subsection (4C) below”;
- (b) after subsection (4B) insert—

“(4C) Article 98 of the Magistrates' Courts (Northern Ireland) Order 1981 (enforcement of sums adjudged to be paid) shall have effect—

(a) as if for paragraph (7)(a) there were substituted the following paragraph—

“(a) if the court is of the opinion that it is appropriate—

- (i) to make an attachment of earnings order; or

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- (ii) to exercise its power under paragraph (8C)(b)”;
- (b) as if for paragraphs (8B) to (8D) there were substituted the following paragraphs—

“(8B) Upon the appearance of a person or proof of service of the summons on him as mentioned in paragraph (4) for the enforcement of an order to which this Article applies, the court or resident magistrate may vary the order by exercising one of the powers under paragraph (8C).

(8C) The powers mentioned in paragraph (8B) are—

- (a) the power to order that payments under the order be made directly to the collecting officer;
- (b) the power to order that payments under the order be made to the collecting officer, by such method of payment falling within Article 85(7) (standing order, etc.) as may be specified;
- (c) the power to make an attachment of earnings order under Part IX to secure payments under the order.

(8D) In deciding which of the powers under paragraph (8C) is to be exercised, the court or, as the case may be, a resident magistrate shall have regard to any representations made by the debtor (within the meaning of Article 85).

(8E) Paragraph (5) of Article 85 (power of court to require debtor to open account) shall apply for the purposes of paragraph (8C) as it applies for the purposes of that Article but as if for sub-paragraph (a) there were substituted—

“(a) the court proposes to exercise its power under sub-paragraph (b) of Article 98(8C), and”.”.”

9. In section 9 (variation and revocation of maintenance order registered in UK court), after subsection (1ZA) insert—

“(1ZB) Where the registering court is a court of summary jurisdiction in Northern Ireland, Article 86 of the Magistrates' Courts (Northern Ireland) Order 1981 (revocation, variation etc., of orders for periodical payment) shall have effect in relation to the registered order—

- (a) as if in paragraph (3) for the words “sub-paragraphs (a) to (d) of Article 85(3)” there were substituted “paragraph (3A)” and after that paragraph there were inserted—

“(3A) The powers of the court are—

- (a) the power to order that payments under the order be made directly to the collecting officer;
- (b) the power to order that payments under the order be made to the collecting officer by such method of payment falling within Article 85(7) (standing order, etc.) as may be specified;
- (c) the power to make an attachment of earnings order under Part IX to secure payments under the order.”;

- (b) as if in paragraph (4) for sub-paragraph (b) there were substituted—

“(b) payments under the order are required to be made to the collecting officer by any method of payment falling within Article 85(7) (standing order, etc.)”;

and as if after the words “petty sessions” there were inserted “for the petty sessions district for which the court which made the order acts”;

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- (c) as if in paragraph (5) for the words “to the collecting officer” there were substituted “in accordance with sub-paragraph (a) of paragraph (3A)”;
- (d) as if in paragraph (7), sub-paragraph (c) and the word “and” immediately preceding it were omitted;
- (e) as if in paragraph (8) for the words “sub-paragraphs (a) to (d) of Article 85(3)” there were substituted “paragraph (3A)”;
- (f) as if for paragraphs (9) and (10) there were substituted the following paragraphs—
 - “(9) In deciding, for the purposes of paragraphs (3) and (8), which of the powers under paragraph (3A) it is to exercise, the court shall have regard to any representations made by the debtor.
 - (10) Paragraph (5) of Article 85 (power of court to require debtor to open account) shall apply for the purposes of paragraph (3A) as it applies for the purposes of that Article but as if for sub-paragraph (a) there were substituted—
 - “(a) the court proposes to exercise its power under sub-paragraph (b) of Article 86(3A), and”.”.”

10. In section 27 (general provisions relating to application for recovery of maintenance in England, etc.)—

- (a) after subsection (7D) insert—

“(7E) Where a court of summary jurisdiction in Northern Ireland makes an order on the complaint, Article 85 of the Magistrates' Courts (Northern Ireland) Order 1981 (orders for periodical payment: means of payment) and paragraph (1) of Article 36 of the Domestic Proceedings (Northern Ireland) Order 1980 (extension of Article 85) shall not apply, but the court shall, at the same time that it makes the order, exercise one of its powers under subsection (7F) below.

(7F) The powers of the court are—

- (a) the power to order that payments under the order be made directly to the collecting officer;
- (b) the power to order that payments under the order be made to the collecting officer, by such method of payment falling within Article 85(7) of the Magistrates' Courts (Northern Ireland) Order 1981 (standing order, etc.) as may be specified;
- (c) the power to make an attachment of earnings order under Part IX of the Order of 1981 to secure payments under the order;

and in this subsection “collecting officer” means the officer mentioned in Article 85(4) of the Order of 1981.

(7G) In deciding which of the powers under subsection (7B) above it is to exercise, the court shall have regard to any representations made by the person liable to make payments under the order.

(7H) Paragraph (5) of Article 85 of the Magistrates' Courts (Northern Ireland) Order 1981 (power of court to require debtor to open account) shall apply for the purposes of subsection (7F) above as it applies for the purposes of that Article but as if for sub-paragraph (a) there were substituted—

- “(a) the court proposes to exercise its power under paragraph (b) of section 27(7F) of the Maintenance Orders (Reciprocal Enforcement) Act 1972, and”.”;
- (b) subsection (9) (payment to be in such manner and to such person as may be prescribed and certain enactments not to apply) shall cease to have effect.

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11. In section 29 (complaint by spouse in convention country for recovery in Northern Ireland of maintenance from other spouse), after the word “21” there shall be inserted “22A”.

12. In section 29A (complaint by former spouse in convention country for recovery in Northern Ireland of maintenance from other spouse), in subsection (3) (modifications of 1978 Act), in paragraph (e) after the word “21” there shall be inserted “22A”.

13. In section 33 (enforcement of orders)—

(a) in subsection (3) for the words “shall be enforceable” there shall be substituted “shall, subject to the modifications of Article 98 of the Magistrates' Courts (Northern Ireland) Order 1981 (enforcement of sums adjudged to be paid and complaint for arrears) specified in subsection (4C) of section 8 of this Act, be enforceable”;

(b) after subsection (3A) insert—

“(3B) Where, by virtue of being registered in the court of summary jurisdiction in which it was made, a registered order is enforceable as a maintenance order made by a court of summary jurisdiction, Article 98 of the Magistrates' Courts (Northern Ireland) Order 1981 shall have effect subject to the modifications specified in subsection (4C) of section 8 of this Act.”.

14. In section 34 (variation and enforcement of orders)—

(a) at the beginning of subsection (1) (order registered in court other than court which made it variable as if made by registering court) insert “Subject to section 34B of this Act”;

(b) after section 34A insert—

“Variation of orders by courts of summary jurisdiction in Northern Ireland.

34B.—(1) The provisions of this section shall have effect in relation to a registered order which is registered in a court of summary jurisdiction in Northern Ireland (whether or not the court made the order) in place of the following enactments, that is to say—

(a) paragraphs (3) to (11) of Article 86 of the Magistrates' Courts (Northern Ireland) Order 1981; and

(b) Article 22A of the Domestic Proceedings (Northern Ireland) Order 1980.

(2) The power of a court of summary jurisdiction in Northern Ireland to vary a registered order shall include power, if the court is satisfied that payment has not been made in accordance with the order, to exercise one of its powers under subsection (3) below.

(3) The powers of the court are—

(a) the power to order that payments under the order be made directly to the collecting officer;

(b) the power to order that payments under the order be made to the collecting officer by such method of payment falling within Article 85(7) of the Magistrates' Courts (Northern Ireland) Order 1981 (standing order, etc.) as may be specified;

(c) the power to make an attachment of earnings order under Part IX of the Order of 1981 to secure payments under the order;

and in this subsection “collecting officer” means the officer mentioned in Article 85(4) of the Order of 1981.

(4) In any case where—

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- (a) a registered order is registered in a court of summary jurisdiction in Northern Ireland, and
- (b) payments under the order are required to be made to the collecting officer in Northern Ireland, by any method of payment falling within Article 85(7) of the Magistrates' Courts (Northern Ireland) Order 1981 (standing order, etc.),

an interested party may apply in writing to the clerk of petty sessions in which the order is registered for the order to be varied as mentioned in subsection (5) below.

(5) Subject to subsection (8) below, where an application has been made under subsection (4) above, the clerk, after giving written notice (by post or otherwise) of the application to any other interested party and allowing that party, within the period of 14 days beginning with the date of the giving of that notice, and opportunity to make written representations, may vary the order to provide that payments under the order shall be made in accordance with paragraph (a) of subsection (3) above.

(6) The clerk may proceed with an application under subsection (4) above notwithstanding that any such interested party as is referred to in subsection (5) above has not received written notice of the application.

(7) In subsections (4) to (6) above “interested party”, in relation to an order, means the debtor or the creditor.

(8) Where an application has been made under subsection (4) above, the clerk may, if he considers it inappropriate to exercise his power under subsection (5) above, refer the matter to the court which may vary the order by exercising one of its powers under subsection (3) above.

(9) In deciding, for the purposes of subsections (2) and (8) above, which of the powers under subsection (3) above it is to exercise, the court shall have regard to any representations made by the debtor.

(10) Paragraph (5) of Article 85 of the Magistrates' Courts (Northern Ireland) Order 1981 (power of court to require debtor to open account) shall apply for the purposes of subsection (3) above as it applies for the purposes of that Article but as if for subparagraph (a) there were substituted—

“(a) the court proposes to exercise its power under paragraph (b) of section 34B(3) of the Maintenance Orders (Reciprocal Enforcement) Act 1972, and”.

(11) In this section “creditor” and “debtor” have the same meaning as they have in Article 85 of the Magistrates' Courts (Northern Ireland) Order 1981.”.

15. In section 35 (further provisions with respect to variation etc., of orders by magistrates' courts), at the end of subsection (1) (court to have jurisdiction to hear application for variation or revocation notwithstanding one of the parties is outside Northern Ireland) there shall be inserted the words “but none of the powers of the court, or of the clerk, conferred by section 34B of this Act shall be exercisable in relation to such an application”.