

SCHEDULES

SCHEDULE 9

AMENDMENTS

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

66. In section 3 (power to make provisional maintenance order), for subsection (7) substitute the following subsection—

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

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

“(1) Where an application is made to a magistrates' court against a person residing in a reciprocating country and the court would have jurisdiction to determine the application under the Domestic Proceedings (Northern Ireland) Order 1980 or the Children (Northern Ireland) Order 1995 if that person—

(a) were residing in Northern Ireland, 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.”;

(b) in subsection (4), for references to the High Court there shall be substituted references to the High Court of Justice in Northern Ireland.”.

67. In section 5 (variation and revocation of maintenance order made in United Kingdom) after subsection (3A) insert the following subsection—

“(3B) Where paragraph (1) of Article 86 of the Magistrates' Courts (Northern Ireland) Order 1981 applies in relation to a maintenance order to which this section applies, that paragraph shall have effect as if for the words “by order on complaint,” there were substituted “on an application being made, by order”.”

68. In section 8 (enforcement of maintenance order registered in United Kingdom court), in subsection (4) for the words from “if it were” to “any Act” substitute “an order made by that court to which that Article applies”.

69. In section 9 (variation and revocation of maintenance order registered in United Kingdom court), immediately before subsection (1ZB)(a) insert the following paragraph—

“(za) as if in paragraph (1) for the words “by order on complaint,” there were substituted “on an application being made, by order”.”.

70. In section 17 (proceedings in magistrates' courts), for subsection (6) substitute the following subsection—

“(6) Where the respondent to an application for the variation or revocation of—

(a) a maintenance order made by a magistrates' court in Northern Ireland, being an order to which section 5 of this Act applies; or

(b) a registered order which is registered in such a court,

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is residing in a reciprocating country, a magistrates' court in Northern Ireland shall have jurisdiction to hear the application (where it would not have jurisdiction apart from this subsection) if it would have had jurisdiction to hear it had the respondent been residing in Northern Ireland.”.

71. In section 18 (magistrates' courts rules), after subsection (2) insert the following subsection—

“(2A) For the purpose of giving effect to this Part of this Act, rules made in accordance with Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981 may make, in relation to any proceedings brought under or by virtue of this Part of this Act, any provision not covered by subsection (2) above which—

- (a) falls within paragraph (2) of Article 165 of the Children (Northern Ireland) Order 1995, and
- (b) may be made in relation to relevant proceedings under that Article.”.

72. For sections 28C, 29 and 29A substitute the following sections—

“28C Applications for recovery of maintenance in Northern Ireland.

(1) This section applies to any application which—

- (a) is received by the Lord Chancellor from the appropriate authority in a convention country, and
- (b) is an application by a person in that country for the recovery of maintenance from another person who is for the time being residing in Northern Ireland.

(2) Subject to sections 28D to 29B of this Act, an application to which this section applies shall be treated for the purposes of any enactment as if it were an application for a maintenance order under the relevant Order, made at the time when the application was received by the Lord Chancellor.

(3) In the case of an application for maintenance for a child (or children) alone, the relevant Order is the Children (Northern Ireland) Order 1995.

(4) In any other case, the relevant Order is the Domestic Proceedings (Northern Ireland) Order 1980.

(5) In subsection (3) above, “child” means the same as in Schedule 1 to the Children (Northern Ireland) Order 1995.

28D Sending application to the appropriate magistrates' court.

(1) On receipt of an application to which section 28C of this Act applies, the Lord Chancellor shall send it, together with any accompanying documents, to the clerk of a magistrates' court acting for the petty sessions district in which the respondent is residing.

(2) Subject to subsection (4) below, if notice of the hearing of the application by a magistrates' court having jurisdiction to hear it cannot be duly served on the respondent, the clerk of the court shall return the application and the accompanying documents to the Lord Chancellor with a statement giving such information as he possesses as to the whereabouts of the respondent.

(3) If the application is returned to the Lord Chancellor under subsection (2) above, then, unless he is satisfied that the respondent is not residing in the United Kingdom, he shall deal with it in accordance with subsection (1) above or section 27B of this Act or send it to the Secretary of State to be dealt with in accordance with section 31 of this Act (as the circumstances of the case require).

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(4) If the clerk of a court to whom the application is sent under this section is satisfied that the respondent is residing within the petty sessions district for which another magistrates' court acts, he shall send the application and accompanying documents to the clerk of that other court and shall inform the Lord Chancellor that he has done so.

(5) If the application is sent to the clerk of a court under subsection (4) above, he shall proceed as if it had been sent to him under subsection (1) above.

Applications to which section 28C applies: general.

(28E) 1 This section applies where a magistrates' court makes an order on an application to which section 28C of this Act applies.

(2) Article 85 of the Magistrates' Courts (Northern Ireland) Order 1981 ("the 1981 Order") (orders for periodical payment: means of payment) shall not apply.

(3) The court shall, at the same time that it makes the order, exercise one of its powers under subsection (4) below.

(4) Those powers 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 1981 Order (standing order, etc.) as may be specified;
- (c) the power to make an attachment of earnings order under Part IX of the 1981 Order to secure payments under the order;

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

(5) In deciding which of the powers under subsection (4) above it is to exercise, the court shall have regard to any representations made by the person liable to make payments under the order.

(6) Paragraph (5) of Article 85 of the 1981 Order (power of court to require debtor to open account) shall apply for the purposes of subsection (4) 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 28E(4) of the Maintenance Orders (Reciprocal Enforcement) Act 1972, and".

(7) The clerk of the court shall register the order in the prescribed manner in the court.

29 Applications by spouses under the Domestic Proceedings (Northern Ireland) Order 1980.

(1) The magistrates' court hearing an application which by virtue of section 28C of this Act is to be treated as if it were an application for a maintenance order under the Domestic Proceedings (Northern Ireland) Order 1980 may make any order on the application which it has power to make under Article 4 or 20(1) of that Order.

(2) That Order shall apply in relation to such an application, and to any order made on such an application, with the following omissions—

- (a) Articles 8 to 10, 18, 19, 21, 22A, 25(1), 27 to 29 and 30(1A),
- (b) in Article 32(1) the words "either the applicant or", and
- (c) Article 36(1).

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(3) Subsections (1) and (2) above do not apply where section 29A of this Act applies.

29A Applications by former spouses under the Domestic Proceedings (Northern Ireland) Order 1980.

(1) This section applies where in the case of any application which by virtue of section 28C of this Act is to be treated as if it were an application for a maintenance order under the Domestic Proceedings (Northern Ireland) Order 1980 (“the 1980 Order”)—

- (a) the applicant and respondent were formerly married,
- (b) their marriage was dissolved or annulled in a country or territory outside the United Kingdom by a divorce or annulment which is recognised as valid by the law of Northern Ireland;
- (c) an order for the payment of maintenance for the benefit of the applicant or a child of the family has, by reason of the divorce or annulment, been made by a court in a convention country, and
- (d) where the order for the payment of maintenance was made by a court of a different country from that in which the divorce or annulment was obtained, either the applicant or the respondent was resident in the convention country whose court made that order at the time that order was applied for.

(2) Any magistrates' court that would have jurisdiction to hear the application under Article 32 of the 1980 Order (as modified in accordance with subsection (6) below) if the applicant and the respondent were still married shall have jurisdiction to hear it notwithstanding the dissolution or annulment of the marriage.

(3) If the magistrates' court hearing the application is satisfied that the respondent has failed to comply with the provisions of any order such as is mentioned in subsection (1)(c) above, it may (subject to subsections (4) and (5) below) make any order which it has power to make under Article 4 or 20(1) of the 1980 Order.

(4) The court shall not make an order for the making of periodical payments for the benefit of the applicant or any child of the family unless the order made in the convention country provides for the making of periodical payments for the benefit of the applicant or, as the case may be, that child.

(5) The court shall not make an order for the payment of a lump sum for the benefit of the applicant or any child of the family unless the order made in the convention country provides for the payment of a lump sum to the applicant or, as the case may be, to that child.

(6) The 1980 Order shall apply in relation to the application, and to any order made on the application, with the following modifications—

- (a) Article 3 shall be omitted,
- (b) for the reference in Article 4(1) to any ground mentioned in Article 3 there shall be substituted a reference to non-compliance with any such order as is mentioned in subsection (1)(c) of this section,
- (c) for the references in Article 5(2) and (3) to the occurrence of the conduct which is alleged as the ground of the application there shall be substituted references to the breakdown of the marriage,
- (d) the reference in Article 6(2) to the subsequent dissolution or annulment of the marriage of the parties affected by the order shall be omitted,
- (e) Articles 8 to 10, 18, 19, 21, 22A, 25(1) and 27 to 30 shall be omitted,
- (f) in Article 32(1), the words “either the applicant or” shall be omitted, and
- (g) Article 36(1) shall be omitted.

(7) A divorce or annulment obtained in a country or territory outside the United Kingdom shall be presumed for the purposes of this section to be one the validity of which is recognised by the law of Northern Ireland, unless the contrary is proved by the respondent.

(8) In this section “child of the family” has the meaning given in Article 2(2) of the 1980 Order.

29B Applications under the Children (Northern Ireland) Order 1995.

29B. No provision of an order made under Schedule 7 to the Children (Northern Ireland) Order 1995 requiring or enabling a court to transfer proceedings from a magistrates' court to a county court or the High Court shall apply in relation to an application which by virtue of section 28C of this Act is to be treated as if it were an application for a maintenance order under that Order.”.

73. In section 33 (enforcement of orders), in subsection (3) for the words from “if it were” to “any Act” substitute “an order made by that court to which that Article applies”.

74.—(1) In section 34 (variation and revocation of orders), in subsection (1) after “Subject to” insert “subsection (3B) below and”.

(2) After subsection (3A) insert the following subsection—

“(3B) Where paragraph (1) of Article 86 of the Magistrates' Courts (Northern Ireland) Order 1981 (revocation, variation etc. of orders for periodical payment) applies in relation to a registered order, that paragraph shall have effect as if for the words “by order on complaint,” there were substituted “on an application being made, by order”.”

75. For section 35A substitute the following section—

“35A Further provisions with respect to variation etc. of orders by magistrates' courts in Northern Ireland.

(1) Notwithstanding anything in section 29(2) or 29A(6)(e) of this Act, a magistrates' court in Northern Ireland shall have jurisdiction to hear an application—

- (a) for the variation or revocation of a registered order registered in that court, and
- (b) made by the person against whom or on whose application the order was made, notwithstanding that the person by or against whom the application is made is residing outside Northern Ireland.

(2) None of the powers of the court, or of the clerk, under section 34B of this Act shall be exercisable in relation to such an application.

(3) Where the respondent to an application for the variation or revocation of a registered order which is registered in a magistrates' court in Northern Ireland does not appear at the time and place appointed for the hearing of the application, but the court is satisfied—

- (a) that the respondent is residing outside Northern Ireland, and
- (b) that the prescribed notice of the making of the application and of the time and place appointed for the hearing has been given to the respondent in the prescribed manner,

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.”.

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76. In section 36 (admissibility of evidence given in convention country), in subsection (1) for “received by the Lord Chancellor as mentioned in section 28C(1) of this Act” substitute “to which section 28C(1) of this Act applies”.

77.—(1) In section 38A, after subsection (3) add the following subsection—

“(4) For the purpose of giving effect to this Part of this Act, rules made under Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981 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 paragraph (2) of Article 165 of the Children (Northern Ireland Order) 1995, and
- (b) may be made in relation to relevant proceedings under that Article.”.