



# Maintenance Orders (Reciprocal Enforcement) Act 1972

## 1972 CHAPTER 18

An Act to make new provision, applying throughout the United Kingdom, in place of the Maintenance Orders (Facilities for Enforcement) Act 1920; to make provision with a view to the accession by the United Kingdom to the United Nations Convention on the Recovery Abroad of Maintenance done at New York on 20th June 1956; to make other provision for facilitating the recovery of maintenance by or from persons in the United Kingdom from or by persons in other countries; to extend the jurisdiction of magistrates' courts to hear complaints by or against persons outside England and Wales; and for purposes connected with the matters aforesaid. [23rd March 1972]

BE IT ENACTED by the authority of the same, as follows:—

### PART I

#### RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS MADE IN UNITED KINGDOM OR RECIPROCATING COUNTRY

##### *Designation of reciprocating countries*

#### **1 Orders in Council designating reciprocating countries**

- (1) Her Majesty, if satisfied that, in the event of the benefits conferred by this Part of this Act being applied to, or to particular classes of, maintenance orders made by the courts of any country or territory outside the United Kingdom, similar benefits will in that country or territory be applied to, or to those classes of, maintenance orders made by the courts of the United Kingdom, may by Order in Council designate that country or territory as a reciprocating country for the purposes of this Part of this Act; and,

subject to subsection (2) below, in this Part of this Act " reciprocating country " means a country or territory that is for the time being so designated.

- (2) A country or territory may be designated under subsection (1) above as a reciprocating country either as regards maintenance orders generally, or as regards maintenance orders other than those of any specified class, or as regards maintenance orders of one or more specified classes only; and a country or territory which is for the time being so designated otherwise than as regards maintenance orders generally shall for the purposes of this Part of this Act be taken to be a reciprocating country only as regards maintenance orders of the class to which the designation extends.

*Orders made by courts in the United Kingdom*

**2 Transmission of maintenance order made in United Kingdom for enforcement in reciprocating country**

- (1) Subject to subsection (2) below, where the payer under a maintenance order made, whether before or after the commencement of this Part of this Act, by a court in the United Kingdom is residing in a reciprocating country, 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 a reciprocating country, 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; and
  - (f) where available, a photograph of the payer;
- shall be sent by that officer to the Secretary of State with a view to their being transmitted by the Secretary of State to the responsible authority in the reciprocating country 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.

### **3 Power of magistrates' court to make provisional maintenance order against person residing in reciprocating country**

(1) Where a complaint is made to a magistrates' court against a person residing in a reciprocating country 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 England and Wales; and
- (b) a summons to appear before the court to answer to 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.

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

(3) If the court hearing a complaint to which subsection (1) above applies is satisfied—

- (a) that there are grounds on which a maintenance order containing a provision requiring the making of payments for the maintenance of a child may be made on that complaint, but
- (b) that it has no jurisdiction to make that order unless it also makes an order providing for the legal custody of that child,

then, for the purpose of enabling the court to make the maintenance order, the complainant shall be deemed to be the person to whom the legal custody of that child has been committed by an order of the court which is for the time being in force.

(4) No enactment empowering a magistrates' court to refuse to make an order on a complaint on the ground that the matter in question is one which would be more conveniently dealt with by the High Court shall apply in relation to a complaint 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;
- (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 Secretary of State with a view to their being transmitted by the Secretary of State to the responsible authority in the reciprocating country in which the payer is residing if he is satisfied that the statement relating to the whereabouts of the payer gives sufficient information to justify that being done.

(6) A maintenance order made by virtue of this section which has been confirmed by a competent court in a reciprocating country shall be treated for all purposes as if the magistrates' court which made the order had made it in the form in which it was confirmed and as if the order had never been a provisional order, and subject to section 5 of this Act, any such order may be enforced, varied or revoked accordingly.

- (7) In the application of this section to Northern Ireland, in subsection (1), for the reference to England and Wales there shall be substituted a reference to Northern Ireland and in subsection (4), for the reference to the High Court there shall be substituted a reference to the High Court of Justice in Northern Ireland.

**4 Power of sheriff to make provisional maintenance order against person residing in reciprocating country**

- (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 ;
- and
- (b) the sheriff is satisfied that, to the best of the information or belief of the pursuer, the defender is residing in a reciprocating country; and
  - (c) the sheriff would not, apart from this subsection, have jurisdiction in that action ;
- but a maintenance order granted by the sheriff in an action in which he has jurisdiction by virtue of this subsection shall be a provisional order.
- (2) This section applies to any action for the payment 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—
- (a) it shall not be necessary for the pursuer to obtain a warrant for the citation of any person, and the action may commence and proceed without such citation;
  - (b) no decree shall be granted in favour of the pursuer unless the grounds of action have been substantiated by sufficient evidence, and section 36(3) of the Sheriff Courts (Scotland) Act 1971 shall not apply in relation to any such action which is a summary cause.
- (5) No enactment empowering the sheriff to remit an action to the Court of Session shall apply in relation to proceedings in which the sheriff has jurisdiction by virtue of subsection (1) above.
- (6) Section 3(5) and (6) of this Act shall apply for the purposes of this section as they apply for the purposes of that section, with the substitution, for references to a magistrates' court, of references to the sheriff.

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

- (1) This section applies to a maintenance order a certified copy of which has been sent to a reciprocating country in pursuance of section 2 of this Act and to a maintenance order made by virtue of section 3 or 4 thereof which has been confirmed by a competent court in such a country.
- (2) A court in the United Kingdom having power to vary a maintenance order to which this section applies shall have power to vary that order by a provisional order.
- (3) Where the court hearing an application for the variation of a maintenance order to which this section applies proposes to vary it by increasing the rate of the payments under the order (then, unless either—
  - (a) both the payer and the payee under the order appear in the proceedings, or
  - (b) the applicant appears and the appropriate process has been duly served on the other party,the order varying the order shall be a provisional order.
- (4) Where a court in the United Kingdom makes a provisional order varying a maintenance order to which this section applies, the prescribed officer of the court shall send in the prescribed manner to the court in a reciprocating country having power to confirm the provisional order a certified copy of the provisional order together with a document, authenticated in the prescribed manner, setting out or summarising the evidence given in the proceedings.
- (5) Where a certified copy of a provisional order made by a court in a reciprocating country, being an order varying or revoking a maintenance order to which this section applies, together with a document, duly authenticated, setting out or summarising the evidence given in the proceedings in which the provisional order was made, is received by the court in the United Kingdom which made the maintenance order, that court may confirm or refuse to confirm the provisional order and, if that order is an order varying the maintenance order, confirm it either without alteration or with such alterations as it thinks reasonable.
- (6) For the purpose of determining whether a provisional order should be confirmed under subsection (5) above, the court shall proceed as if an application for the variation or revocation, as the case may be, of the maintenance order in question had been made to it.
- (7) Where a maintenance order to which this section applies has been varied by an order (including a provisional order which has been confirmed) made by a court in the United Kingdom or by a competent court in a reciprocating country, the maintenance order shall, as from the date on which the order was made, have effect as varied by that order and, where that order was a provisional order, as if that order had been made in the form in which it was confirmed and as if it had never been a provisional order.
- (8) Where a maintenance order to which this section applies has been revoked by an order made by a court in the United Kingdom or by a competent court in a reciprocating country, including a provisional order made by the last-mentioned court which has been confirmed by a court in the United Kingdom, the maintenance order shall, as from the date on which the order was made, be deemed to have ceased to have effect except as respects any arrears due under the maintenance order at that date.
- (9) Where before a maintenance order made by virtue of section 3 or 4 of this Act is confirmed a document, duly authenticated, setting out or summarising evidence taken

in a reciprocating country for the purpose of proceedings relating to the confirmation of the order is received by the court in the United Kingdom which made the order, or that court, in compliance with a request made to it by a court in such a country, takes the evidence of a person residing in the United Kingdom for the purpose of such proceedings, the court in the United Kingdom which made the order shall consider that evidence and if, having done so, it appears to it that the order ought not to have been made—

- (a) it shall, in such manner as may be prescribed, give to the person on whose application the maintenance order was made an opportunity to consider that evidence, to make representations with respect to it and to adduce further evidence ; and
- (b) after considering all the evidence and any representations made by that person, it may revoke the maintenance order.

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

- (a) for subsection (3) there shall be substituted the following subsections:—

“(3) Where the payer under a maintenance order to which this section applies is for the time being residing in a reciprocating country, the court shall not, on an application made by the payee under the order for the variation of the order, vary the order by increasing the rate of the payments thereunder otherwise than by a provisional order.

(3A) It shall not be necessary for the payee under a maintenance order to which this section applies to intimate to any person the making by him of an application for a provisional order varying the said maintenance order by increasing the rate of the payments thereunder.”;

- (b) for subsection (6) there shall be substituted the following subsection:—

“(6) Where a certified copy of a provisional order varying or revoking a maintenance order to which this section applies is received by a court as mentioned in subsection (5) above, the prescribed officer of that court shall intimate to the payee under the maintenance order, in the prescribed manner, that the provisional order has been received as aforesaid and that, unless the payee enters appearance within the prescribed period, the court will confirm the provisional order under this section.”

*Orders made by courts in reciprocating countries*

**6 Registration in United Kingdom court of maintenance order made in reciprocating country**

- (1) This section applies to a maintenance order made, whether before or after the commencement of this Part of this Act, by a court in a reciprocating country, including such an order made by such a court which has been confirmed by a court in another reciprocating country but excluding a provisional order which has not been confirmed.
- (2) Where a certified copy of an order to which this section applies is received by the Secretary of State from the responsible authority in a reciprocating country, and it appears to the Secretary of State that the payer under the order is residing in the United Kingdom, he shall send the copy of the order to the prescribed officer of the appropriate court.

- (3) Where the prescribed officer of the appropriate court receives from the Secretary of State a certified copy of an order to which this section applies, he shall, subject to subsection (4) below, 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 to the Secretary of State with a statement giving such information as he possesses as to the whereabouts of the payer.

## **7 Confirmation by United Kingdom court of provisional maintenance order made in reciprocating country**

- (1) This section applies to a maintenance order made, whether before or after the commencement of this Part of this Act, by a court in a reciprocating country being a provisional order.
- (2) Where a certified copy of an order to which this section applies together with—
  - (a) a document, duly authenticated, setting out or summarising the evidence given in the proceedings in which the order was made ; and
  - (b) a statement of the grounds on which the making of the order might have been opposed by the payer under the order,  
is received by the Secretary of State from the responsible authority in a reciprocating country, and it appears to the Secretary of State that the payer under the order is residing in the United Kingdom, he shall send the copy of the order and documents which accompanied it to the prescribed officer of the appropriate court, and that court shall—
    - (i) if the payer under the order establishes any such defence as he might have raised in the proceedings in which the order was made, refuse to confirm the order; and
    - (ii) in any other case, confirm the order either without alteration or with such alterations as it thinks reasonable.
- (3) In any proceedings for the confirmation under this section of a provisional order, the statement received from the court which made the order of the grounds on which the making of the order might have been opposed by the payer under the order shall be conclusive evidence that the payer might have raised a defence on any of those grounds in the proceedings in which the order was made.
- (4) For the purpose of determining whether a provisional order should be confirmed under this section the court shall proceed as if an application for a maintenance order against the payer under the provisional order had been made to it.
- (5) The prescribed officer of a court having power under this section to confirm a provisional order shall, if the court confirms the order, register the order in the prescribed manner in that court, and shall, if the court refuses to confirm the order, return the certified copy of the order and the documents which accompanied it to the Secretary of State.
- (6) If a summons to appear in the proceedings for the confirmation of the provisional order cannot be duly served on the payer under that order the officer by whom the certified copy of the order was received shall return that copy and the documents which

accompanied it to the Secretary of State with a statement giving such information as he possesses as to the whereabouts of the payer.

- (7) This section shall apply to Scotland subject to the following modifications:—
- (a) for subsection (4) there shall be substituted the following subsection:—
- “(4) On receiving a certified copy of a provisional order sent to him in pursuance of subsection (2) above the prescribed officer of the appropriate court shall intimate to the payer under the order, in the prescribed manner, that the order has been received as aforesaid and that, unless the payer enters appearance within the prescribed period, the court will confirm the order under this section.”;
- (b) in subsection (6), for the words from the beginning to " that order" there shall be substituted the words
- “If such intimation as is mentioned in subsection (4) above cannot be given to the payer under a provisional order in pursuance of that subsection”; and
- (c) in any proceedings for the confirmation under this section of a provisional order made by a court in a reciprocating country, the sheriff shall apply the law in force in that country with respect to the sufficiency of evidence.

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

- (1) Subject to subsection (2) 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.
- (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 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.
- (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 £10.
- (4) An order which by virtue of this section is enforceable by a magistrates' court shall be enforceable as if it were an affiliation order made by that court; and the provisions of any enactment with respect to the enforcement of affiliation orders (including enactments relating to the accrual of arrears and the remission of sums due) shall apply accordingly. In this subsection "enactment" includes any order, rule or regulation made in pursuance of any Act.
- (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 as from the date on which the order was made.

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*Status: This is the original version (as it was originally enacted).*

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- (8) The court having power under section 7 of this Act to confirm a provisional order may, if it decides to confirm the order, direct that the sums of money payable under it shall be deemed to have been payable in accordance with the order as from such date, being a date later than the date on which the order was made, as it may specify; and subject to any such direction, a maintenance order registered under the said section 7 shall be treated as if it had been made in the form in which it was confirmed and as if it had never been a provisional order.
- (9) In the application of this section to Scotland—
- (a) subsections (2) to (5) shall be omitted; and
  - (b) in subsection (6), for the word " evidence " there shall be substituted the words  
“sufficient evidence”.
- (10) For the purposes of the application of this section to Northern Ireland, in section 110(9) of the Magistrates' Courts Act (Northern Ireland) 1964 (orders for periodical payment of money), after paragraph (a) there shall be inserted the following paragraph:—
- “(aa) maintenance orders made outside the United Kingdom and registered in a court of summary jurisdiction in Northern Ireland under Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972 ;”.

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

- (1) Subject to the provisions of this section, the registering court—
- (a) shall have the like power, on an application made by the payer or payee under a registered order, to vary or revoke the order as if it had been made by the registering court and as if that court had had jurisdiction to make it; and
  - (b) shall have power to vary or revoke a registered order by a provisional order.
- (2) The registering court shall not vary a registered order otherwise than by a provisional order unless—
- (a) both the payer and the payee under the registered order are for the time being residing in the United Kingdom ; or
  - (b) the application is made by the payee under the registered order; or
  - (c) the variation consists of a reduction in the rate of the payments under the registered order and is made solely on the ground that there has been a change in the financial circumstances of the payer since the registered order was made or, in the case of an order registered under section 7 of this Act, since the registered order was confirmed, and the courts in the reciprocating country in which the maintenance order in question was made do not have power, according to the law in force in that country, to confirm provisional orders varying maintenance orders.
- (3) The registering court shall not revoke a registered order otherwise than by a provisional order unless both the payer and the payee under the registered order are for the time being residing in the United Kingdom.
- (4) On an application for the revocation of a registered order the registering court shall, unless both the payer and the payee under the registered order are for the time being residing in the United Kingdom, apply the law applied by the reciprocating country in which the registered order was made; but where by virtue of this subsection the registering court is required to apply that law, that court may make a provisional order

if it has reason to believe that the ground on which the application is made is a ground on which the order could be revoked according to the law applied by the reciprocating country, notwithstanding that it has not been established that it is such a ground.

- (5) Where the registering court makes a provisional order varying or revoking a registered order the prescribed officer of the court shall send in the prescribed manner to the court in the reciprocating country which made the registered order a certified copy of the provisional order together with a document, authenticated in the prescribed manner, setting out or summarising the evidence given in the proceedings.
- (6) Where a certified copy of a provisional order made by a court in a reciprocating country, being an order varying a registered order, together with a document, duly authenticated, setting out or summarising the evidence given in the proceedings, in which the provisional order was made, is received by the registering court, that court may confirm the order either without alteration or with such alterations as it thinks reasonable or refuse to confirm the order.
- (7) For the purpose of determining whether a provisional order should be confirmed under subsection (6) above the court shall proceed as if an application for the variation of the registered order had been made to it.
- (8) Where a registered order has been varied by an order (including a provisional order which has been confirmed) made by a court in the United Kingdom or by a competent court in a reciprocating country, the registered order shall, as from the date on which the order was made, have effect as varied by that order and, where that order was a provisional order, as if that order had been made in the form in which it was confirmed and as if it had never been a provisional order.
- (9) Where a registered order has been revoked by an order made by a court in the United Kingdom or by a competent court in a reciprocating country, including a provisional order made by the first-mentioned court which has been confirmed by a competent court in a reciprocating country, the registered order shall, as from the date on which the order was made, be deemed to have ceased to have effect except as respects any arrears due under the registered order at that date.
- (10) The prescribed officer of the registering court shall register in the prescribed manner any order varying a registered order other than a provisional order which is not confirmed.
- (11) In the application of this section to Scotland—
  - (a) after subsection (4) there shall be inserted the following subsection:—

“(4A) It shall not be necessary for the payer under a registered order to intimate to any person the making by him of an application for a provisional order varying or revoking the registered order.”; and
  - (b) for subsection (7) there shall be substituted the following subsection:—

“(7) Where a certified copy of a provisional order varying a registered order is received by the registering court as mentioned in subsection (6) above, the prescribed officer of that court shall intimate to the payer under the registered order, in the prescribed manner, that the provisional order has been received as aforesaid and that, unless the payer enters appearance within the prescribed period, the court will confirm the provisional order under this section.”

## 10 Cancellation of registration and transfer of order

- (1) Where—
  - (a) a registered order is revoked by an order made by the registering court; or
  - (b) a registered order is revoked by a provisional order made by that court which has been confirmed by a court in a reciprocating country and notice of the confirmation is received by the registering court; or
  - (c) a registered order is revoked by an order made by a court in such a country 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 when its registration is cancelled by virtue of this subsection 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 Secretary of State.
- (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 Secretary of State 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 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 send the certified copy of the order to the Secretary of State.
- (7) The officer of a court who is required by any of the foregoing provisions of this section to send to the Secretary of State 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”; and

- (b) subsections (3) and (4) shall be omitted.

## **11 Steps to be taken by Secretary of State where payer under certain orders is not residing in the United Kingdom**

- (1) If it appears to the Secretary of State that the payer under a maintenance order, a certified copy of which has been received by him from a reciprocating country, is not residing in the United Kingdom or, in the case of an order which subsequently became a registered order, has ceased to reside therein, he shall send to the responsible authority in that country or, if having regard to all the circumstances he thinks it proper to do so, to the responsible authority in another reciprocating country—
- (a) the certified copy of the order in question and a certified copy of any order varying that order;
  - (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 Secretary of State possesses as to the whereabouts of the payer; and
  - (d) any other relevant documents in his possession relating to the case.
- (2) Where the documents mentioned in subsection (1) above are sent to the responsible authority in a reciprocating country other than that in which the order in question was made, the Secretary of State shall inform the responsible authority in the reciprocating country in which that order was made of what he has done.

### *Appeals*

## **12 Appeals**

- (1) No appeal shall lie from a provisional order made in pursuance of any provision of this Part of this Act by a court in the United Kingdom.
- (2) Where in pursuance of any such provision any such court confirms or refuses to confirm a provisional order made by a court in a reciprocating country, whether a maintenance order or an order varying or revoking a maintenance order, the payer or payee under the maintenance 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 which confirmed or refused to confirm it had made or, as the case may be, refused to make it.
- (3) Where in pursuance of any such provision any such court makes, or refuses to make, an order varying or revoking a maintenance order made by a court in a reciprocating country, then, subject to subsection (1) above, the payer or payee under the maintenance order shall have the like right of appeal (if any) from that order or from the refusal to make it as he would have if the maintenance order had been made by the first-mentioned court.
- (4) Nothing in this section (except subsection (1)) shall be construed as affecting any right of appeal conferred by any other enactment.

## *Evidence*

### **13 Admissibility of evidence given in reciprocating country**

- (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 a reciprocating country ; or
  - (b) a document, duly authenticated, which purports to set out or summarise evidence taken in such a 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 such a country or to be a copy of a document so received,

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 fact 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, magistrate 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, magistrate 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.

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

- (1) Where for the purpose of any proceedings in a court in a reciprocating country 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 in the prescribed manner by the prescribed officer of the court to the court in the reciprocating country by or on behalf of which the request was made.

- (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 the Parliament of Northern Ireland,
- 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 77(1), (3) and (4) of the Magistrates' Courts Act 1952 (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 court in a reciprocating country 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 (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 a reciprocating country 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 the United Kingdom 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 request a court in a reciprocating country to take or provide evidence relating to such matters as may be specified in the request and may remit the case to that court for that purpose.
- (6) In the application of this section to Northern Ireland, in subsection (3), for the reference to section 77(1), (3) and (4) of the Magistrates' Courts Act 1952 there shall be substituted a reference to sections 120(1), (3) and (4), 121 and 122 of the Magistrates' Courts Act (Northern Ireland) 1964.

## 15 **Order, etc. made abroad need not be proved**

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

- (a) any order made by a court in a reciprocating country purporting to bear the seal of that court or to be signed by any person in his capacity as a judge, magistrate 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, magistrate 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 a reciprocating country shall be deemed without further proof to be such a copy.

### *Supplemental*

#### **16 Payment of sums under orders made abroad: conversion of currency**

- (1) 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.
- (2) Where the sums required to be paid under a registered order are expressed in a currency other than the currency of the United Kingdom, then, as from the relevant date, the order shall be treated as if it were an order requiring the payment of such sums in the currency of the United Kingdom as, on the basis of the rate of exchange prevailing at that date, are equivalent to the sums so required to be paid.
- (3) Where the sum specified in any statement, being a statement of the amount of any arrears due under a maintenance order made by a court in a reciprocating country, is expressed in a currency other than the currency of the United Kingdom, that sum shall be deemed to be such sum in the currency of the United Kingdom as, on the basis of the rate of exchange prevailing at the relevant date, is equivalent to the sum so specified.
- (4) For the purposes of this section a written certificate purporting to be signed by an officer of any bank in the United Kingdom certifying that a specified rate of exchange prevailed between currencies at a specified date and that at such rate a specified sum in the currency of the United Kingdom is equivalent to a specified sum in another specified currency shall be evidence of the rate of exchange so prevailing on that date and of the equivalent sums in terms of the respective currencies.
- (5) In this section " the relevant date " means—
  - (a) in relation to a registered order or to a statement of arrears due under a maintenance order made by a court in a reciprocating country, the date on which the order first becomes a registered order or (if earlier) the date on which it is confirmed by a court in the United Kingdom;
  - (b) in relation to a registered order which has been varied,  
the date on which the last order varying that order is registered in a court in the United Kingdom or (if earlier) the date on which the last order varying that order is confirmed by such a court.
- (6) In the application of this section to Scotland:—
  - (a) subsection (1) shall not apply ;
  - (b) in subsection (4), for the word " evidence " there shall be substituted the words  
"sufficient evidence".

#### **17 Proceedings in magistrates' courts**

- (1) Subject to subsection (2) below, the proceedings which are domestic proceedings within the meaning of the Magistrates' Courts Act 1952 shall include all proceedings in a magistrates' court under this Part of this Act other than proceedings for the variation or enforcement of a maintenance order.
- (2) The magistrates' court before which there fall to be heard any proceedings for the variation of a maintenance order to which this Part of this Act applies may, if it thinks fit, order that those proceedings and any other proceedings being heard therewith shall be treated for the purposes of the said Act of 1952 as domestic proceedings.

- (3) The said Act of 1952 shall have effect in accordance with subsections (1) and (2) above notwithstanding anything in subsection (1) of section 56 thereof or section 5 of the Legitimacy Act 1959 (definition of " domestic proceedings ").
- (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.
- (5) Any application which by virtue of a provision of this Part of this Act is made to a magistrates' court shall be made by complaint.
- (6) A magistrates' court in Northern Ireland shall have jurisdiction to hear a complaint for the variation or revocation—
  - (a) of a maintenance order made by such a court, being an order to which section 5 of this Act applies; or
  - (b) of a registered order which is registered in that court,
 if the defendant to the complaint is residing in a reciprocating country and the court would have jurisdiction to hear the complaint had the defendant been residing in Northern Ireland.
- (7) Where the defendant to a complaint for the variation or revocation—
  - (a) of a maintenance order made by a magistrates' court, being an order to which section 5 of this Act applies; or
  - (b) of a registered order registered in a magistrates' court,
 does not appear at the time and place appointed for the hearing of the complaint, but the court is satisfied that the defendant is residing in a reciprocating country, the court may proceed to hear and determine the complaint at the time and place appointed for the hearing or for any adjourned hearing in like manner as if the defendant had appeared at that time and place.
- (8) At the end of paragraph (a) of section 98 of the Magistrates' Courts Act (Northern Ireland) 1964 (definition of " domestic proceedings ") there shall be inserted the words  
 “or Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972”.

## **18 Magistrates' courts rules**

- (1) Without prejudice to the generality of the power to make rules under section 15 of the Justices of the Peace Act 1949 (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 a reciprocating country, 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 reciprocating countries 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 a reciprocating country relating to a maintenance order to which this Part of this Act applies ;
  - (e) the circumstances and manner in which cases may be remitted by magistrates' courts to courts in reciprocating countries;
  - (f) the circumstances and manner in which magistrates' courts may for the purposes of this Part of this Act communicate with courts in reciprocating countries.
- (2) Rules with respect to the matters mentioned in subsection (1) above may be made in accordance with section 23 of the Magistrates' Courts Act (Northern Ireland) 1964 in relation to proceedings or matters in magistrates' courts in Northern Ireland under this Part of this Act.

## **19 Rules for sheriff court**

Without prejudice to the generality of the powers conferred on the Court of Session by section 32 of the Sheriff Courts (Scotland) Act 1971 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 a reciprocating country, 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 a reciprocating country 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 reciprocating countries 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 reciprocating countries;
- (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 reciprocating countries.

## **20 Restriction on enforcement of arrears under maintenance order registered in Scotland**

Where a maintenance order is for the time being registered in the sheriff court under this Part of this Act, a person shall not be entitled, except with the leave of the sheriff, to enforce, whether by diligence or otherwise, the payment of any arrears due under the order, if either—

- (a) the sheriff has made a provisional order under section 9 of this Act revoking the said maintenance order and the arrears accrued after the making of the said provisional order, or
- (b) the arrears accrued before the commencement of this Part of this Act;

and on any application for leave to enforce the payment of any such arrears, the sheriff may refuse leave, or may grant leave subject to such restrictions and conditions (including conditions as to the allowing of time for payment or the making of payment by instalments) as he thinks appropriate, or may remit the payment of such arrears or of any part thereof.

## 21 Interpretation of Part I

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

" 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 ", as respects Scotland, means aliment;

" 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 ; 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 15 of the Justices of the Peace Act 1949 or by rules made in accordance with section 23 of the Magistrates' Courts Act (Northern Ireland) 1964, as the case may be, and in relation to any other court means prescribed by rules of court;

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*Status: This is the original version (as it was originally enacted).*

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- " provisional order " means (according to the context)—
- (a) an order made by a court in the United Kingdom which is provisional only and has no effect unless and until confirmed, with or without alteration, by a competent court in a reciprocating country; or
  - (b) an order made by a court in a reciprocating country which is provisional only and has no effect unless and until confirmed, with or without alteration, by a court in the United Kingdom having power under this Part of this Act to confirm it;
- " reciprocating country " has the meaning assigned to it by section 1 of this Act;
- " 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 a reciprocating country, means any person who in that country has functions similar to those of the Secretary of State under this Part of this Act.
- (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 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.
- (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.

#### *Amendments, repeals and transitional provisions*

## **22 Amendments and repeals**

- (1) The enactments mentioned in the Schedule to this Act shall have effect subject to the minor and consequential amendments specified therein.
- (2) The following are hereby repealed—
- (a) the Maintenance Orders (Facilities for Enforcement) Act 1920;
  - (b) in the Magistrates' Court Act, 1952, in section 56(1) paragraph (c) and the words from " or in an order " to the end;
  - (c) in the Maintenance Orders Act 1958, section 19 and, in section 23(2), the words " section nineteen ";
  - (d) in the South Africa Act 1962, paragraph 2 of Schedule 2.

## **23 Maintenance order registered in High Court under the Maintenance Orders etc. Act 1920**

- (1) Where a country or territory, being a country or territory to which at the commencement of section 1 of this Act the Maintenance Orders (Facilities for Enforcement) Act 1920 extended, becomes a reciprocating country, then, if immediately before the Order in Council made under section 12 of that Act extending that Act to that country or territory was revoked any maintenance order made by a

court in that country or territory was registered in the High Court under section 1 of that Act, the High Court may, on an application by the payer or the payee under the order or of its own motion, transfer the order to such magistrates' court as having regard to the place where the payer is residing and to all the circumstances it thinks most appropriate, with a view to the order being registered in that court under this Part of this Act.

- (2) Where the High Court transfers an order to a magistrates' court under this section it shall—
  - (a) cause a certified copy of the order to be sent to the clerk of that court, and
  - (b) cancel the registration of the order in the High Court.
- (3) The clerk of the court who receives a certified copy of an order sent to him under this section shall register the order in the prescribed manner in that court.
- (4) On registering a maintenance order in a magistrates' court by virtue of this section the clerk of the court shall, if the order is registered in that court under Part I of the Maintenance Orders Act 1958, cancel that registration.
- (5) In the application of this section to Northern Ireland, for references to the High Court there shall be substituted references to the High Court of Justice in Northern Ireland.

## **24 Application of Part I to certain orders and proceedings under the Maintenance Orders etc. Act 1920**

Where Her Majesty proposes by an Order in Council under section 1 of this Act to designate as a reciprocating country a country or territory to which at the commencement of that section the Maintenance Orders (Facilities for Enforcement) Act 1920 extended, that Order in Council may contain such provisions as Her Majesty considers expedient for the purpose of securing—

- (a) that the provisions of this Part of this Act apply, subject to such modifications as may be specified in the Order, to maintenance orders, or maintenance orders of a specified class—
  - (i) made by a court in England, Wales or Northern Ireland against a person residing in that country or territory, or
  - (ii) made by a court in that country or territory against a person residing in England, Wales or Northern Ireland,

being orders to which immediately before the date of the coming into operation of the Order in Council the said Act of 1920 applied, except any order which immediately before that date is registered in the High Court or the High Court of Justice in Northern Ireland under section 1 of that Act;

- (b) that any maintenance order, or maintenance order of a specified class, made by a court in that country or territory which has been confirmed by a court in England, Wales or Northern Ireland under section 4 of the said Act of 1920 and is in force immediately before that date is registered under section 7 of this Act:
- (c) that any proceedings brought under or by virtue of a provision of the said Act of 1920 in a court in England, Wales or Northern Ireland which are pending at that date, being proceedings affecting a person resident in that country or territory, are continued as if they had been brought under or by virtue of the corresponding provision of this Part of this Act.

## PART II

### RECIPROCAL ENFORCEMENT OF CLAIMS FOR THE RECOVERY OF MAINTENANCE

#### *Convention countries*

#### **25 Convention countries**

- (1) Her Majesty may by Order in Council declare that any country or territory specified in the Order, being a country or territory outside the United Kingdom to which the Maintenance Convention extends, is a convention country for the purposes of this Part of this Act.
- (2) In this section " the Maintenance Convention" means the United Nations Convention on the Recovery Abroad of Maintenance done at New York on 20th June 1956.

#### *Application by person in the United Kingdom for recovery, etc. of maintenance in convention country*

#### **26 Application by person in United Kingdom for recovery, etc. of maintenance in convention country**

- (1) Where a person in the United Kingdom (" the applicant") claims to be entitled to recover in a convention country maintenance from another person, and that other person is for the time being subject to the jurisdiction of that country, the applicant may apply to the Secretary of State, in accordance with the provisions of this section, to have his claim for the recovery of maintenance from that other person transmitted to that country.
- (2) Where the applicant seeks to vary any provision made in a convention country for the payment by any other person of maintenance to the applicant, and that other person is for the time being subject to the jurisdiction of that country, the applicant may apply to the Secretary of State, in accordance with the provisions of this section, to have his application for the variation of that provision transmitted to that country.
- (3) An application to the Secretary of State under subsection (1) or (2) above shall be made through the appropriate officer, and that officer shall assist the applicant in completing an application which will comply with the requirements of the law applied by the convention country and shall send the application to the Secretary of State, together with such other documents, if any, as are required by that law.
- (4) On receiving an application from the appropriate officer the Secretary of State shall transmit it, together with any accompanying documents, to the appropriate authority in the convention country, unless he is satisfied that the application is not made in good faith or that it does not comply with the requirements of the law applied by that country.
- (5) The Secretary of State may request the appropriate officer to obtain from the court of which he is an officer such information relating to the application as may be specified in the request, and it shall be the duty of the court to furnish the Secretary of State with the information he requires.

- (6) Where the applicant is residing in England and Wales or in Northern Ireland the appropriate officer for the purposes of this section is the clerk of a magistrates' court acting for the petty sessions area or petty sessions district, as the case may be, in which the applicant is residing.
- (7) Where the applicant is residing in Scotland the appropriate officer for the purposes of this section is the sheriff clerk or sheriff clerk depute of the sheriff court within the jurisdiction of which the applicant is residing.

*Application by person in convention country for recovery  
of maintenance in England, Wales or Northern Ireland*

**27 General provisions relating to application for recovery of maintenance in England, etc.**

- (1) Where the Secretary of State receives from the appropriate authority in a convention country an application by a person in that country for the recovery of maintenance from another person who is for the time being residing in England and Wales or in Northern Ireland, he shall send the application, together with any accompanying documents, to the clerk of a magistrates' court acting for the petty sessions area or petty sessions district, as the case may be, in which that other person is residing; and the application shall be treated for the purposes of any enactment as if it were a complaint and references in this section and in sections 28, 29 and 30 of this Act to the complaint, the complainant and the defendant shall be construed accordingly.
- (2) Where the complaint is for an affiliation order, a magistrates' court acting for the petty sessions area or petty sessions district, as the case may be, in which the defendant is residing shall have jurisdiction to hear the complaint.
- (3) Section 15(2)(a) of the Guardianship of Minors Act 1971 (which restricts the power of a magistrates' court to entertain an application under that Act relating to a minor who has attained the age of sixteen) shall not apply to the complaint.
- (4) If a summons to appear before a magistrates' court having jurisdiction to hear the complaint cannot be duly served on the defendant, the clerk of the court shall, subject to subsection (5) below, return the complaint and the accompanying documents to the Secretary of State with a statement giving such information as he possesses as to the whereabouts of the defendant, and unless the Secretary of State is satisfied that the defendant is not residing in the United Kingdom he shall deal with the complaint in accordance with subsection (1) above or section 31 of this Act, as the circumstances of the case require.
- (5) If the clerk of a magistrates' court to whom the complaint is sent in pursuance of a provision of this section is satisfied that the defendant is residing within the jurisdiction of another magistrates' court in that part of the United Kingdom in which the first-mentioned court is he shall send the complaint and accompanying documents to the clerk of that other court and shall inform the Secretary of State that he has done so.
- (6) The clerk of a court to whom the complaint is sent under subsection (5) above shall proceed as if it had been sent to him under subsection (1) above.
- (7) When hearing the complaint a magistrates' court shall proceed as if the complainant were before the court.

- (8) If a magistrates' court makes an order on the complaint, the clerk of the court shall register the order in the prescribed manner in that court.
- (9) Payment of sums due under a registered order shall, while the order is registered in a magistrates' court, be made in such manner and to such person as may be prescribed, and none of the following enactments relating to the power of a magistrates' court to direct payments to be made to or through the collecting officer of the court or some other person, that is to say, section 52 of the Magistrates' Court Act 1952, section 5(5) of the Affiliation Proceedings Act 1957, section 13(2) of the Matrimonial Proceedings (Magistrates' Courts) Act 1960 and subsections (1) to (8) of section 95 of the Magistrates' Courts Act (Northern Ireland) 1964, shall apply in relation to a registered order.
- (10) Without prejudice to the generality of the power to make rules under section 15 of the Justices of the Peace Act 1949 (magistrates' courts rules), the said power shall include power to prescribe the orders made or other things done by a magistrates' court, or an officer of such a court, under this Part of this Act, 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.
- (11) In the application of this section to Northern Ireland, in subsection (10), for the reference to section 15 of the Justices of the Peace Act 1949 there shall be substituted a reference to section 23 of the Magistrates' Courts Act (Northern Ireland) 1964.

## **28 Complaint by spouse in convention country for recovery in England and Wales of maintenance from other spouse**

- (1) Where the complaint is a complaint under section 1 of the Matrimonial Proceedings (Magistrates' Courts) Act 1960, the provisions of this section shall have effect.
- (2) Where the complainant is the wife of the defendant, the only provisions which the court hearing the complaint may include in an order under section 2(1) of the said Act of 1960, or in an interim order under section 6 thereof, are either or both of the following provisions, namely—
  - (a) a provision such as is mentioned in paragraph (b) of the said section 2(1); and
  - (b) a provision for the making by the defendant for the maintenance of any child of the family of weekly payments, being—
    - (i) if and for so long as the child is under the age of sixteen years, payments to the complainant;
    - (ii) if it appears to the court that the child is, or will be, or if such payments were made would be, a dependant though over the age of sixteen years, and that it is expedient that such payments should be made in respect of that child while such a dependant, payments to such person (who may be the child or the complainant) as may be specified in the order, for such period during which the child is over that age but under the age of twenty-one years as may be so specified.
- (3) Where the complainant is the husband of the defendant, the only provisions which the court hearing the complaint may include in an order under the said section 2(1), or in an interim order under the said section 6, are either or both of the following provisions, namely—
  - (a) where, by reason of the impairment of the husband's earning capacity through age, illness or disability of mind or body, it appears to the court reasonable

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in all the circumstances so to do, a provision such as is mentioned in paragraph (c) of the said section 2(1); and

- (b) a provision such as is mentioned in subsection (2)(b) above.
- (4) Where the court has begun to hear the complaint, being a complaint for maintenance for the complainant and for a child of the family, then, whether or not the court makes an order containing a provision such as is mentioned in paragraph (b) or (c) of the said section 2(1), it may, subject to section 2(5) of the said Act of 1960 (order for payments by a party in respect of child who is not a child of that party), make a matrimonial order containing a provision such as is mentioned in subsection (2)(b) above; and the court shall not dismiss or make its final order on the complaint until it has decided whether or not, and if so how, the power conferred on it by this subsection should be exercised.
- (5) For the avoidance of doubt it is hereby declared that the power of a magistrates' court under section 53 of the Magistrates' Courts Act 1952 to vary an order for the periodical payment of money includes power to vary an order made under the said Act of 1960 on the complaint by adding to that order any provision authorised by this section to be included in such an order.
- (6) Subject to subsections (2) and (3) above, the said Act of 1960 shall, in its application to the complaint and to a matrimonial order or interim order made on the complaint, have effect subject to the following modifications, that is to say—
- (a) in sections 2(5), 6(2)(a), 7(3) and 8(2), for references to section 2(1)(h) of that Act there shall be substituted references to subsection (2)(b) above ;
  - (b) in sections 6(3) and (4), 7(2) and 11(2), and in the definitions of those orders in section 16, references to section 8 of that Act shall be construed as including references to section 53 of the Magistrates' Courts Act 1952;
  - (c) in section 13(4), the reference to that Act shall be construed as including a reference to this Part of this Act; and
  - (d) sections 3, 4, 5, 8(1), 9, 10 and 13(2) shall be omitted.

## **29 Complaint by woman in convention country for recovery in Northern Ireland of maintenance from her husband**

- (1) Where the complaint is a complaint under section 1 of the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945, the provisions of this section shall have effect.
- (2) The only provisions which the court hearing the complaint may include in an order under section 3(1) of the said Act of 1945, or in an interim order under section 4 thereof, are either or both of the following provisions, namely—
- (a) a provision such as is mentioned in paragraph (c) of the said section 3(1); and
  - (b) a provision such as is mentioned in paragraph (d) of that subsection;
- but in determining whether to include in any such order a provision such as is mentioned in the said paragraph (d) as respects a child the legal custody of whom has not been committed to any person, the court shall proceed as if it had made an order under the said section 3(1) committing the child to the custody of the wife.
- (3) Section 5(2) of the said Act of 1945 (power to make new order where order made on application of a married woman is discharged) shall have effect where an order made on the complaint is discharged as if the words " that the legal custody of the children of the marriage shall continue to be committed to such married woman and " were omitted.

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- (4) Section 8 of the said Act of 1945 (power to refuse order in case more suitable for High Court) shall not apply in relation to the complaint.

**30 Further provisions relating to recovery in England, Wales and Northern Ireland of maintenance for children**

- (1) Where the complaint is for an order under section 9(2) of the Guardianship of Minors Act 1971, and the court hearing the complaint is satisfied that, if it made an order under subsection (1) of that section giving the custody of the minor to whom the complaint relates to the complainant, it would have power to make an order under subsection (2) of that section for the payment of sums towards the maintenance of the minor, it shall in determining whether to make an order on the complaint proceed as if it had made an order under subsection (1) of that section giving the custody of the minor to the complainant.
- (2) Section 16(4) of the said Act of 1971 (refusal of order in case more suitable for the High Court) shall not apply in relation to a complaint to which subsection (1) above applies or in relation to an application for the variation or revocation of an order made on such a complaint.
- (3) Where the complaint is for an affiliation order under the Affiliation Proceedings Act 1957 or the Illegitimate Children (Affiliation Orders) Act (Northern Ireland) 1924—
- (a) it shall be sufficient for the purposes of paragraph (b) of section 2(1) of the said Act of 1957 (time for making complaint) or paragraph (c) of section 2(3) of the said Act of 1924 (provision to the like effect), as the case may be, to prove that the defendant has within the twelve months next after the birth of the child to whom the complaint relates paid money for its maintenance in pursuance of a requirement of the law applied by a court outside the United Kingdom; and
  - (b) any evidence of the complainant in support of the complaint given in a convention country a record or summary of which is received by the court hearing the complaint, or the court hearing an appeal against an affiliation order made on the complaint or against the refusal to make such an order, shall be treated by the court hearing the complaint or the court hearing such an appeal, as the case may be, as if it had been given by the complainant in person before that court.
- (4) Where the complaint is for an affiliation order under the said Act of 1924, a summons may be issued on the complaint notwithstanding that the complainant has not made the information mentioned in section 2(4) of that Act.
- (5) Without prejudice to any other enactment empowering a magistrates' court to vary an affiliation order made by it, an affiliation order made under the said Act of 1957 or the said Act of 1924, as the case may be, on the complaint may be varied by such a court so as to entitle any person, other than the complainant, who for the time being has the custody of the child to whom the order relates to any payments to be made under the order.
- (6) Section 41 of this Act shall not apply in relation to an order under section 9(2) of the said Act of 1971, or an affiliation order under the said Act of 1957, made on the complaint.

*Application by person in convention country for recovery of maintenance in Scotland*

**31 Application by person in convention country for recovery of maintenance in Scotland**

- (1) Where the Secretary of State receives from the appropriate authority in a convention country an application by a person in that country for the recovery of maintenance from another person who is for the time being residing in Scotland, he shall send the application, together with any accompanying documents, to the secretary of the committee established under Article 5 of the Legal Aid (Scotland) Scheme 1958, or under the corresponding provision of any scheme amending or having effect in place of that Scheme ; and the secretary shall thereupon send the application and any accompanying documents to a solicitor practising in the sheriff court within the jurisdiction of which that other person is residing, with a view to the solicitor's taking on behalf of the applicant such steps as appear to the solicitor appropriate in respect of the application.
- (2) Where in any proceedings arising out of such an application as aforesaid the sheriff makes an order containing a provision requiring the payment of maintenance, the sheriff clerk or sheriff clerk depute shall register the order in the prescribed manner in the court.
- (3) Without prejudice to the generality of the powers conferred on the Court of Session by section 32 of the Sheriff Courts (Scotland) Act 1971 to regulate by act of sederunt the procedure of the sheriff court, the said powers shall include power 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, 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.

*Transfer, enforcement, variation and revocation of registered orders*

**32 Transfer of orders**

- (1) 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, then, unless he is of opinion that the payer has ceased to reside in the United Kingdom, he shall, subject to subsection (2) below, send a certified copy of the order and the related documents to the Secretary of State, and if he is of opinion that the payer has ceased to reside in the United Kingdom he shall send a notice to that effect to the Secretary of State.
- (2) Where the clerk 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 a certified copy of the order and the related documents to the clerk of that other court and, subject to subsection (4) below, that clerk shall register the order in the prescribed manner in that court.
- (3) Where a certified copy of an order is received by the Secretary of State 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 copy of the order and the related documents to the prescribed officer of the appropriate

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court and, subject to subsection (4) below, that officer shall register the order in the prescribed manner in that court.

- (4) Before registering an order in pursuance of subsection (2) or (3) above 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 related documents to the officer of the court or the Secretary of State, as the case may be, from whom he received them, together with a statement giving such information as he possesses as to the whereabouts of the payer.
- (5) Where a certified copy of an order is received by the Secretary of State under this section and it appears to him that the payer under the order has ceased to reside in the United Kingdom he shall return the copy of the order and the related documents to the registering court.
- (6) An officer of a court on registering an order in the court in pursuance of subsection (2) or (3) above shall give notice of the registration in the prescribed manner to the prescribed officer of the court in which immediately before its registration under this section the order was registered.
- (7) The officer to whom notice is given under subsection (6) above shall on receiving the notice cancel the registration of the order in that court.

(8) In this section—

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

" certificate of arrears " and " certified copy " have the same meanings respectively as in Part I of this Act;

" payer ", in relation to a registered order, means the person liable to make payments under the order; and

" related documents " means—

- (a) the application on which the order was made ;
- (b) a certificate of arrears signed by the prescribed officer of the registering court;
- (c) a statement giving such information as he possesses as to the whereabouts of the payer; and
- (d) any relevant documents in his possession relating to the case.

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

- (a) in subsection (1), for the words " within the jurisdiction of that court " there shall be substituted the words

“in Scotland”;

- (b) subsection (2) shall be omitted ;
- (c) in subsection (4), for the words " the officer of the court or the Secretary of State, as the case may be, from whom he received them " there shall be substituted the words

“the Secretary of State”;

- (d) at the end of subsection (6) there shall be inserted the words

“and to the Secretary of State”;

(e) after subsection (7) there shall be inserted the following subsections:—

“(7A) The Secretary of State on receiving notice under subsection (6) above shall send a copy of the registered order and of the related documents to the secretary of the committee mentioned in section 31(1) of this Act, and the secretary shall thereupon send the copy of the order and of the related documents to a solicitor practising in the registering court, with a view to the solicitor's taking on behalf of the person entitled to the payments for which the order provides such steps as appear to the solicitor appropriate to enforce the order.

(7B) Where an order is registered in the sheriff court by virtue of subsection (3) above, any provision of the order by virtue of which the payments for which the order provides are required to be made through or to any officer or person on behalf of the person entitled thereto shall be of no effect so long as the order is so registered.”;

(f) " appropriate court", in relation to a person residing in Scotland, means the sheriff court within the jurisdiction of which that person is residing.

### **33 Enforcement of orders**

- (1) Subject to subsection (2) below, a registered order which is registered in a court other than the court by which the order was made may be enforced 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 in accordance with this subsection but not otherwise.
- (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 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.
- (3) An order which by virtue of subsection (1) above is enforceable by a magistrates' court shall be enforceable as if it were an affiliation order made by that court; and the provisions of any enactment with respect to the enforcement of affiliation orders (including enactments relating to the accrual of arrears and the remission of sums due) shall apply accordingly. In this subsection " enactment" includes any order, rule or regulation made in pursuance of any Act.
- (4) A magistrates' court in which an order is registered under this Part of this Act, and the officers thereof, shall take all such steps for enforcing the order as may be prescribed.
- (5) 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 under section 32 of this Act to the prescribed officer of the court shall be evidence of the facts stated therein.
- (6) Part II of the Maintenance Orders Act 1950 (enforcement of certain orders throughout the United Kingdom) shall not apply to a registered order.
- (7) In the application of this section to Scotland—
  - (a) subsections (2) to (4) shall be omitted; and
  - (b) in subsection (5), for the word " evidence " there shall be substituted the words “sufficient evidence”.

### **34 Variation and revocation of orders**

- (1) Where a registered order is registered in a court other than the court by which the order was made, the registering court shall have the like power to vary or revoke the order as if it had been made by the registering court and as if that court had had jurisdiction to make it; and no court other than the registering court shall have power to vary or revoke a registered order.
- (2) Where the registering court revokes a registered order it shall cancel the registration.
- (3) Where the Secretary of State receives from the appropriate authority in a convention country an application by a person in that country for the variation of a registered order, he shall, if the registering court is a magistrates' court, send the application together with any documents accompanying it to the clerk of that court.
- (4) Where a court in a part of the United Kingdom makes, or refuses to make, an order varying or revoking a registered order made by a court in another part thereof, any person shall have the like right of appeal (if any) against the order or refusal as he would have if the registered order had been made by the first-mentioned court.
- (5) In the application of this section to Scotland, for subsection (3) there shall be substituted the following subsection:—

“(3) Where the Secretary of State receives from the appropriate authority in a convention country an application by a person in that country for the variation of a registered order, he shall, if the registering court is a sheriff court, send the application, together with any documents accompanying it, to the secretary of the committee mentioned in section 31(1) of this Act, and the secretary shall thereupon send the application and any accompanying documents to a solicitor practising in the registering court, with a view to the solicitor's taking on behalf of the applicant such steps as appear to the solicitor appropriate in respect of the application.”

### **35 Further provisions with respect to variation, etc. of orders by magistrates' courts**

- (1) Notwithstanding anything in section 28(6)(d) or 30(6) of this Act, a magistrates' court shall have jurisdiction to hear an application for the variation or revocation of a registered order registered in that court, being—
  - (a) an application made by the person against whom or on whose application the order was made, or
  - (b) an application made by some other person in pursuance of section 30(5) of this Act for the variation of an affiliation order,notwithstanding that the person by or against whom the application is made is residing outside England and Wales.
- (2) Where an application by a person in a convention country for the variation of a registered order is received from the Secretary of State by the clerk of a magistrates' court, he shall treat the application as if it were a complaint for the variation of the order to which the application relates, and the court hearing the application shall proceed as if the application were a complaint and the applicant were before the court.
- (3) Without prejudice to subsection (2) above, an application to a magistrates' court for the variation or revocation of a registered order shall be made by complaint.

- (4) Where the defendant to a complaint for the variation or revocation of a registered order, being an order registered in a magistrates' court, does not appear at the time and place appointed for the hearing of the complaint, but the court is satisfied—
- (a) that the defendant is residing outside England and Wales; and
  - (b) that such notice of the making of the complaint and of the time and place aforesaid as may be prescribed has been given to the defendant in the prescribed manner,
- the court may proceed to hear and determine the complaint at the time and place appointed for the hearing or for any adjourned hearing in like manner as if the defendant had appeared at that time and place.
- (5) This section shall have effect in Northern Ireland with the substitution of references to Northern Ireland for references to England and Wales.

### *Supplemental*

## **36 Admissibility of evidence given in convention country**

- (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 a convention country ; or
  - (b) a document, duly authenticated, which purports to set out or summarise evidence taken in such a 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 on behalf of 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 such a country, or to be a copy of a document so received,
- shall, in any proceedings in a magistrates' court or sheriff court arising out of an application received by the Secretary of State as mentioned in section 27(1) or 31(1) of this Act or out of an application made by any person for the variation or revocation of a registered order or in proceedings on appeal from any such proceedings, be admissible as evidence of any fact 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, magistrate 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, magistrate 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.

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

### **37 Obtaining of evidence for purpose of proceedings in United Kingdom court**

- (1) A court in the United Kingdom may for the purpose of any proceedings in that court under this Part of this Act arising out of an application received by the Secretary of State from a convention country request the Secretary of State to make to the appropriate authority or court in the convention country a request for the taking in that country of the evidence of a person residing therein relating to matters connected with the application.
- (2) A request made by a court under this section shall—
- (a) give details of the application in question ;
  - (b) state the name and address of the person whose evidence is to be taken ; and
  - (c) specify the matters relating to which the evidence of that person is required.
- (3) If the Secretary of State is satisfied that a request made to him under this section contains sufficient information to enable the evidence of the person named in the request relating to the matters specified therein to be taken by a court or person in the convention country, he shall transmit the request to the appropriate authority or court in that country.

### **38 Taking of evidence at request of court in convention country**

- (1) Where a request is made to the Secretary of State by or on behalf of a court in a convention country to obtain the evidence of a person residing in the United Kingdom relating to matters connected with an application to which section 26 of this Act applies, the Secretary of State shall request such court, or such officer of a court, as he may determine to take the evidence of that person relating to such matters connected with that application as may be specified in the request.
- (2) The court by which or officer by whom a request under subsection (1) above is received from the Secretary of State shall have power to take the 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 or he thinks fit, shall take the evidence of the person named in the request relating to the matters specified therein in such manner as may be prescribed; and the evidence so taken shall be sent in the prescribed manner by the prescribed officer to the court in the convention country by or on behalf of which the request referred to in subsection (1) above was made.
- (3) Where any person, not being the person by whom the application mentioned in subsection (1) above was made, 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 the Parliament of Northern Ireland,
- 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.

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- (4) Section 77(1), (3) and (4) of the Magistrates' Courts Act 1952 (which provide for compelling the attendance of witnesses, etc.) shall apply in relation to a magistrates' court to which a request under subsection (1) above is made as if the application to which the request relates were a complaint to be heard by that court.
- (5) Paragraphs 71 and 73 of Schedule 1 to the Sheriff Courts (Scotland) Act 1907 (which provide for the citation of witnesses, etc.) shall apply in relation to a sheriff court to which a request under subsection (1) above is made as if the application to which the request relates were proceedings in that court.
- (6) In the application of this section to Northern Ireland, in subsection (4), for the reference to section 77(1), (3) and (4) of the Magistrates' Courts Act 1952 there shall be substituted a reference to sections 120(1), (3) and (4), 121 and 122 of the Magistrates' Courts Act (Northern Ireland) 1964.

### 39 Interpretation of Part II

In this Part of this Act—

- " maintenance ", as respects Scotland, means aliment;
- " order", as respects Scotland, includes any interlocutor, and any decree or provision contained in an interlocutor ;
- " prescribed " has the same meaning as in Part I of this Act;
- " registered order " means an 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.

## PART III

### MISCELLANEOUS AND SUPPLEMENTAL

*Further provisions relating to enforcement of maintenance  
 orders and to applications for recovery of maintenance*

### 40 Power to apply Act to maintenance orders and applications for recovery of maintenance made in certain countries

Where Her Majesty is satisfied—

- (a) that arrangements have been or will be made in a country or territory outside the United Kingdom to ensure that maintenance orders made by courts in the United Kingdom against persons in that country or territory can be enforced in that country or territory or that applications by persons in the United Kingdom for the recovery of maintenance from persons in that country or territory can be entertained by courts in that country or territory; and
- (b) that in the interest of reciprocity it is desirable to ensure that maintenance orders made by courts in that country or territory against persons in the United Kingdom can be enforced in the United Kingdom or, as the case may be, that applications by persons in that country or territory for the recovery of maintenance from persons in the United Kingdom can be entertained by courts in the United Kingdom,

Her Majesty may by Order in Council make provision for applying the provisions of this Act, with such exceptions, adaptations and modifications as may be specified in the Order, to such orders or applications as are referred to in paragraphs (a) and (b) above and to maintenance and other orders made in connection with such applications by courts in the United Kingdom or in that country or territory.

*Provisions with respect to certain orders of magistrates' courts*

**41 Complaint for variation, etc. of certain orders by or against persons outside England and Wales**

(1) The jurisdiction to revoke, revive or vary an order for the periodical payment of money conferred on magistrates' courts by section 53 of the Magistrates' Courts Act 1952 shall, in the case of—

- (a) an affiliation order, or
- (b) an order under section 9, 10 or 11 of the Guardianship of Minors Act 1971 for the payment of sums towards the maintenance of a minor,

be exercisable notwithstanding that the proceedings for the revocation, revival or variation, as the case may be, of the order are brought by or against a person residing outside England and Wales.

(2) Subsections (2) to (5) of section 9 of the Matrimonial Proceedings (Magistrates' Courts) Act 1960 (which relates to the procedure to be followed in the case of a complaint by or against a person outside England and Wales for variation, etc., of an order made under that Act) shall, for the purposes of subsection (1) above, apply in respect of any such order as is mentioned in paragraph (a) or (b) of that subsection as they apply in respect of a matrimonial or interim order, but with the substitution of references to section 53 of the said Act of 1952 for references to section 8 of the said Act of 1960.

(3) In section 15(1) of the Maintenance Orders Act 1950 (service of process on a person residing in Scotland or Northern Ireland), after the words " Act 1971 " there shall be inserted the words

“or section 41 of the Maintenance Orders (Reciprocal Enforcement) Act 1972”.

(4) Section 3(3) of the said Act of 1950 (jurisdiction in proceedings by or against a person residing in Scotland or Northern Ireland for the revocation, etc., of an affiliation order) is hereby repealed.

**42 Provisional order for maintenance of party to marriage made by magistrates' court to cease to have effect on remarriage of party**

(1) Where a magistrates' court has, by virtue of section 3 of this Act, made a provisional maintenance order consisting of, or including, a provision such as is mentioned in section 2(1)(b) or (c) of the Matrimonial Proceedings (Magistrates' Courts) Act 1960 (payment of weekly sums by husband or wife) and the order has been confirmed by a competent court in a reciprocating country, then, if after the making of that order the marriage of the parties to the proceedings in which the order was made is dissolved or annulled but the order continues in force, that order or, as the case may be, that provision thereof shall cease to have effect on the remarriage of the party in whose

favour it was made, except in relation to any arrears due under it on the date of such remarriage and shall not be capable of being revived.

- (2) For the avoidance of doubt it is hereby declared that references in this section to remarriage include references to a marriage which is by law void or voidable.
- (3) In section 30(2) of the Matrimonial Proceedings and Property Act 1970 (which makes, in relation to such an order as is referred to in subsection (1) above which was confirmed in accordance with section 3 of the Maintenance Orders (Facilities for Enforcement) Act 1920, provision to the like effect as that subsection) the words from " but with the modification " to the end are hereby repealed.

### *Supplemental provisions*

#### **43 Extension of legal aid**

- (1) At the end of paragraph 3 of Part I of Schedule 1 to the Legal Aid and Advice Act 1949 (which specifies the proceedings in a magistrates' court or the Crown Court for which legal aid may be given under section 1 of that Act) there shall be inserted the following sub-paragraph:—
  - “(d) proceedings under Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972 relating to a maintenance order made by a court of a country outside the United Kingdom.”
- (2) At the end of paragraph 3 of Part I of Schedule 1 to the Legal Aid and Advice Act (Northern Ireland) 1965 (which specifies the proceedings in a magistrates' court in Northern Ireland for which legal aid may be given under section 1 of that Act) there shall be inserted the following sub-paragraph:—
  - “(d) proceedings under Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972 relating to a maintenance order made by a court of a country outside the United Kingdom, and any such proceedings as are referred to in sub-paragraph (a) above brought by virtue of Part II of the said Act of 1972”.
- (3) The amendment made by subsection (2) above shall have effect notwithstanding anything in paragraph (b) of section 1(6) of the said Act of 1965.

#### **44 Exclusion of certain enactments relating to evidence**

- (1) Section 20 of the Family Law Reform Act 1969 (power of court hearing certain proceedings to require use of blood tests to determine paternity) and any corresponding enactment of the Parliament of Northern Ireland shall not apply to any proceedings under this Act, but the foregoing provision is without prejudice to the power of a court to allow the report of any person who has carried out such tests to be given in evidence in those proceedings.
- (2) The Foreign Tribunals Evidence Act 1856 (which relates to the taking of evidence in the United Kingdom for the purpose of proceedings before a foreign tribunal) and the Evidence by Commission Act 1859 (which relates to the taking of evidence in the United Kingdom for the purpose of proceedings before a court in Her Majesty's dominions) shall not apply to the taking of evidence in the United Kingdom for the taking of which section 14 or section 38 of this Act provides.

#### **45 Orders in Council**

- (1) An Order in Council under section 1, section 25 or section 40 of this Act may be varied or revoked by a subsequent Order in Council thereunder, and an Order made by virtue of this section may contain such incidental, consequential and transitional provisions as Her Majesty considers expedient for the purposes of that section.
- (2) An Order in Council made under the said section 1 or the said section 40 shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **46 Financial provisions**

There shall be paid out of moneys provided by Parliament—

- (a) any sums ordered by a court under section 14(2) or 38(3) of this Act to be paid out of moneys so provided ; and
- (b) any increase attributable to the provisions of this Act in the sums payable under the Legal Aid and Advice Act 1949 or the Legal Aid (Scotland) Act 1967 out of moneys so provided.

#### **47 Interpretation: general**

- (1) In this Act—
  - " enactment" includes an enactment of the Parliament of Northern Ireland; " magistrates' court", in relation to Northern Ireland, means a court of summary jurisdiction within the meaning of section 1(1) of the Magistrates' Courts Act (Northern Ireland) 1964.
- (2) References in this Act to a part of the United Kingdom are references to England and Wales, to Scotland, or to Northern Ireland.
- (3) Any reference in this Act to the jurisdiction of a court, where the reference is to a person residing, or having ceased to reside, within the jurisdiction of a court, shall be construed in relation to a magistrates' court in England and Wales as a reference to the petty sessions area, and in relation to a magistrates' court in Northern Ireland as a reference to the petty sessions district, for which the court acts.
- (4) Any reference in this Act to any other enactment is a reference thereto as amended, and includes a reference thereto as extended or applied, by or under any other enactment.

#### **48 Special provisions relating to Northern Ireland**

- (1) Nothing in this Act shall authorise any Department of the Government of Northern Ireland to incur any expenses attributable to the provisions of this Act until provision has been made by the Parliament of Northern Ireland for those expenses to be defrayed out of moneys provided by that Parliament.
- (2) For the purposes of section 6 of the Government of Ireland Act 1920 (which relates to the power of the Parliament of Northern Ireland to make laws), the provisions of this Act, so far as they extend to Northern Ireland, shall be deemed to be provisions of an Act passed before the appointed day.
- (3) Any reference in this Act to an enactment of the Parliament of Northern Ireland or to an enactment which that Parliament has power to amend, shall be construed, in relation to Northern Ireland, as a reference to that enactment as amended or extended by any

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Act of that Parliament, whether passed before or after this Act, and to any enactment of that Parliament passed after this Act and re-enacting the said enactment, with or without modifications.

- (4) If the Parliament of Northern Ireland passes any enactment for purposes similar to those of any enactment in force in England and Wales which is referred to in this Act, Her Majesty may by Order in Council direct that this Act shall have effect subject to such modifications or adaptations as may be specified in the Order for the purpose of ensuring the continued operation of this Act in, or in relation to, Northern Ireland.
- (5) Section 45 of this Act shall apply in relation to an Order in Council under subsection (4) above as it applies in relation to an Order in Council under section 1 or 40 of this Act.

#### **49 Short title and commencement**

- (1) This Act may be cited as the Maintenance Orders (Reciprocal Enforcement) Act 1972.
- (2) This Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be so appointed for different provisions of this Act, or for different purposes.

## SCHEDULES

### SCHEDULE

#### CONSEQUENTIAL AND MINOR AMENDMENTS

##### *The Magistrates' Courts Act 1952*

- 1 In section 57(4) of the Magistrates' Courts Act 1952 (proceedings to be treated as domestic proceedings) after the words " Act, 1920 " there shall be inserted the words
- “or registered in a magistrates' court under Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972”
- “confirmed or registered”.

##### *The Army Act 1955 and the Air Force Act 1955*

- 2 Section 150 of the Army Act 1955 and section 150 of the Air Force Act 1955 (enforcement of maintenance, etc. orders by deduction from pay) shall each be amended by the insertion, in subsection (5), at the end of the first paragraph of the words
- “and to an order registered in such a court under Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972”.

##### *The Naval Discipline Act 1957*

- 3 In section 101 of the Naval Discipline Act 1957 (service of process in proceedings for maintenance, etc.), in subsection (5), after the words " Act, 1920" there shall be inserted the words
- “or registered in such a court under Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972”.

##### *The Maintenance Orders Act 1958*

- 4 At the end of section 1 of the Maintenance Orders Act 1958 (introductory provisions setting out the scheme of Part I as respects registration in one court of a maintenance order made by another) there shall be inserted the following subsection:—
- “(4) For the purposes of this section a maintenance order within the meaning of Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972 which is registered in a magistrates' court under the said Part I shall be deemed to be a maintenance order made by that court.”

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*Status: This is the original version (as it was originally enacted).*

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*The Maintenance and Affiliation Orders Act (Northern Ireland) 1966*

5 In section 10 of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966 (orders to which Part II of that Act applies)—

(a) in subsection (2), after the word " means " there shall be inserted the words

“an order made outside the United Kingdom and registered in a court of summary jurisdiction in Northern Ireland under Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972 or”; and

(b) at the end there shall be inserted the following subsection:—

“(5) For the purposes of this Part an order made outside the United Kingdom and registered in a court of summary jurisdiction in Northern Ireland under Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972 shall be deemed to be a maintenance order made by that court”.

*The Administration of Justice Act 1970*

6 At the end of Schedule 8 to the Administration of Justice Act 1970. (maintenance orders to which Part I of the Maintenance Orders Act 1958 applies) there shall be inserted the following paragraph:—

“**11** A maintenance order within the meaning of Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972 registered in a magistrates' court under the said Part I.”

*The Attachment of Earnings Act 1971*

7 At the end of Schedule 1 to the Attachment of Earnings Act 1971. (maintenance orders to which that Act applies) there shall be inserted the following paragraph:—

“**11** A maintenance order within the meaning of Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972 registered in a magistrates' court under the said Part I.”