



# Maintenance Orders (Reciprocal Enforcement) Act 1972

## 1972 CHAPTER 18

### PART I

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

##### *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;

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- (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.

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*Status: This is the original version (as it was originally enacted).*

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- (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.”