



Maintenance Orders (Reciprocal Enforcement) Act 1972

1972 CHAPTER 18

PART I

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

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;

Status: This is the original version (as it was originally enacted).

" 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;

" 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.