



Domestic Proceedings and Magistrates' Courts Act 1978

1978 CHAPTER 22

PART III

AMENDMENTS OF OTHER ENACTMENTS RELATING TO DOMESTIC PROCEEDINGS

Amendments of Maintenance Orders (Reciprocal Enforcement) Act 1972

54 Date of operation of orders under Part I of Maintenance Orders (Reciprocal Enforcement) Act 1972

The provisions of Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972 relating to the date of operation of orders made in a reciprocating country and registered in the United Kingdom and of orders varying or revoking orders to which that Part relates shall have effect subject to the following amendments—

- (a) in section 5(7) of that Act for the words "the date on which the order was made" there shall be substituted the words "the date on which under the provisions of the order the variation is to take effect";
- (b) in section 5(8) of that Act for the words "the date on which the order was made" there shall be substituted the words "the date on which under the provisions of the order the revocation is to take effect";
- (c) in section 8(7) of that Act for the words "the date on which the order was made" there shall be substituted the words "the date on which they are required to be paid under the provisions of the order";
- (d) in section 8(8) of that Act for the words "such date being a date later than the date on which the order was made" there shall be substituted the words "the date on which they are required to be paid under the provisions of the order or such later date";
- (e) in section 9(8) of that Act for the words "the date on which the order was made" there shall be substituted the words "the date on which under the provisions of the order the variation is to take effect"; and

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- (f) in section 9(9) of that Act for the words " the date on which the order was made " there shall be substituted the words " the date on which under the provisions of the order the revocation is to take effect " .

55 Interpretation of Part I of Maintenance Orders (Reciprocal Enforcement) Act 1972 as respects Scotland

In section 21 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 (which relates to the interpretation of Part I of that Act)—

- (a) in subsection (1)—
- (i) the definition of " maintenance " shall cease to have effect; and
 - (ii) after the words " liable to maintain ;" in paragraph (a) of the definition of " maintenance order " there shall be inserted the following paragraph—
 - “(aa) an order which has been made in Scotland, on or after the granting of a decree of divorce, for the payment of a periodical allowance by one party to the marriage to the other party ;”;
- (b) in subsection (2), after the words " subsection (1) above " there shall be inserted the words " , to the payment of a periodical allowance as mentioned in paragraph (aa) of that definition, " .

56 Magistrates' courts having jurisdiction to hear applications for affiliation orders under s. 27 of Maintenance Orders (Reciprocal Enforcement) Act 1972

In section 27(2) of the Maintenance Orders (Reciprocal Enforcement) Act 1972 (which relates to the jurisdiction of a magistrates' court to hear an application by a person in a convention country for an affiliation order) after the words " magistrates' court" there shall be inserted the words " appointed for the commission area (within the meaning of section 1 of the Administration of Justice Act 1973) or " and the words " petty sessions area or " shall be omitted.

57 Complaint by spouse in convention country for recovery in England and Wales of maintenance from other spouse

For section 28 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 there shall be substituted the following section—

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

Where the complaint is a complaint made for an order under section 2 of the Domestic Proceedings and Magistrates' Courts Act 1978, the court hearing the complaint may make any order which it has power to make under section 2 or 19(1)(i) of that Act; and Part I of that Act, except sections 6 to 18, 19(1)(ii), 21, 23(1), 24 to 27, 28(2), 32(2), 33 and 34, shall apply in relation to the complaint and to any order made on the complaint.”.

58 Complaint by former spouse in convention country for recovery in England and Wales of maintenance from other spouse

After section 28 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 there shall be inserted the following section—

“28A Complaint by former spouse in convention country for recovery in England and Wales of maintenance from other spouse.

- (1) Where on an application under section 27(1) of this Act for the recovery of maintenance from a person who is residing in England and Wales—
 - (a) that person is a former spouse of the applicant in a convention country who is seeking to recover maintenance, and
 - (b) the marriage between the applicant and the former spouse has been dissolved by a divorce granted in a convention country which is recognised as valid by the law of England and Wales, and
 - (c) an order for the payment of maintenance for the benefit of the applicant or a child of the family has, by reason of the divorce proceedings in the convention country, been made by the court which granted the divorce or by any other court in that country,the application shall, notwithstanding that the marriage has been dissolved, be treated as a complaint for an order under section 2 of the Domestic Proceedings and Magistrates' Courts Act 1978, and the provisions of this section shall have effect.
- (2) On hearing a complaint by virtue of this section the magistrates' court may, if satisfied that the defendant has failed to comply with the provisions of any such order as is mentioned in subsection (1)(c) above, make any order which it has power to make under section 2 of section 19(1)(i) of the Domestic Proceedings and Magistrates' Courts Act 1978 except that—
 - (a) an order for the making of periodical payments for the benefit of the applicant or any child of the family shall not be made unless the order made in the convention country provides for the making of periodical payments for the benefit of the applicant or, as the case may be, that child, and
 - (b) an order for the payment of a lump sum for the benefit of the applicant or any child of the family shall not be made unless the order made in the convention country provides for the payment of a lump sum to the applicant or, as the case may be, to that child.
- (3) Part I of the Domestic Proceedings and Magistrates' Courts Act 1978 shall apply in relation to any application which is treated by virtue of this section as a complaint for an order under section 2 of that Act, and in relation to any order made on the complaint, subject to the following modifications, that is to say—
 - (a) section 1 shall be omitted ;
 - (b) for the reference in section 2(1) to any ground mentioned in section 1 of that Act there shall be substituted a reference to noncompliance with any such order as is mentioned in subsection (1)(c) of this section;
 - (c) in section 3(1) for the reference to the occurrence of the conduct which is alleged as the ground of the application there shall be substituted a reference to the breakdown of the marriage;

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- (d) in section 4(2) the reference to the subsequent dissolution or annulment of the marriage of the parties affected by the order shall be omitted;
 - (e) sections 6 to 18, 19(1)(ii), 21, 23(1), 24 to 28, 32(2), 33 and 34 shall be omitted.
- (4) A divorce obtained in a convention country shall be presumed for the purposes of this section to be one the validity of which is recognised by the law of England and Wales, unless the contrary is proved by the defendant.
- (5) The reference in subsection (1)(b) above to the dissolution of a marriage by divorce shall be construed as including a reference to the annulment of the marriage and any reference in this section to a divorce or to divorce proceedings shall be construed accordingly.
- (6) In this section the expression "child of the family" has the same meaning as in section 88 of the Domestic Proceedings and Magistrates' Courts Act 1978."

59 Complaint by former wife in convention country for recovery in Northern Ireland of maintenance from former husband

After section 29 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 there shall be inserted the following section—

“29A Complaint by former wife in convention country for recovery in Northern Ireland of maintenance from former husband.

- (1) Where on an application under section 27(1) of this Act for the recovery of maintenance from a person who is residing in Northern Ireland—
- (a) that person is a former husband of the applicant in a convention country who is seeking to recover maintenance, and
 - (b) the marriage between the applicant and the former husband has been dissolved by a divorce granted in a convention country which is recognised as valid by the law of Northern Ireland, and
 - (c) an order for the payment of maintenance for the benefit of the applicant or a child of the marriage has, by reason of the divorce proceedings in the convention country, been made by the court which granted the divorce or by any other court in that country,
- the application shall, notwithstanding that the marriage has been dissolved, be treated as a complaint for an order under section 3 of the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945, and the provisions of this section shall have effect.
- (2) Subject to subsection (3) below, on hearing a complaint by virtue of this section the magistrates' court may, if satisfied that the defendant has failed to comply with the provisions of any such order as is mentioned in subsection (1)(c) above, make any order which it has power to make under section 3(1)(c) or (d) (payment of weekly sum for benefit of wife, or of a child committed to her custody) or section 4 (interim payments) of the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945, treating, for the purposes of the said section 3(1)(d), a child whose legal custody has not been committed to any person as a child committed to the custody of the applicant.

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- (3) An order shall not be made by virtue of subsection (2) above for the payment of a weekly sum for the benefit of the applicant unless the order made in the convention country provides for the making of periodical payments for her benefit; nor shall an order be made by virtue of that subsection for the payment of a weekly sum for the benefit of a child of the marriage unless the order made in the convention country provides for the making of periodical payments for the benefit of that child.
- (4) The Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945 shall apply in relation to any application which is treated by virtue of this section as a complaint for an order under section 3 of that Act, and in relation to any order made on the complaint, subject to the following modifications, that is to say—
- (a) references to the husband or the wife shall be construed as references to, respectively, the former husband or the former wife, and references to the parties to the marriage shall be construed accordingly ;
 - (b) sections 1 and 2 shall be omitted ;
 - (c) for the reference in section 3(1) to an application under the foregoing provisions of that Act there shall be substituted a reference to an application such as is mentioned in subsection (1) above;
 - (d) in section 3, subsection (1)(a) and (b) and subsections (2) to (4) shall be omitted;
 - (e) payments made under section 3(1)(c) or (d) or section 4 shall be made in the prescribed manner to the prescribed person, instead of to such a person as is mentioned in those provisions (and accordingly subsection (9) of section 27 of this Act shall have effect as if those provisions were included among the enactments mentioned in that subsection);
 - (f) section 5(2) to (5) shall be omitted ;
 - (g) section 8 shall be omitted ;
 - (h) proviso (b) to section 13(1) shall be omitted.
- (5) A divorce obtained in a convention country shall be presumed for the purposes of this section to be one the validity of which is recognised by the law of Northern Ireland, unless the contrary is proved by the defendant.
- (6) The reference in subsection (1)(b) above to the dissolution of a marriage by divorce shall be construed as including a reference to the annulment of the marriage and any reference in this section to a divorce or to divorce proceedings shall be construed accordingly.
- (7) In this section the expression " child of the marriage" shall be construed in accordance with section 8 of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966.”.

60 Further amendments of Maintenance Orders (Reciprocal Enforcement) Act 1972 as respects Scotland

- (1) In section 31 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 (which relates to applications for the recovery of maintenance in Scotland)—
- (a) after subsection (1) there shall be inserted the following subsection—

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- “(1A) In any proceedings arising out of such an application as aforesaid the sheriff may subject to subsection (4) below make, with respect to an application under subsection (1) above, such order as he thinks fit having regard to the respective means of the applicant and the person from whom recovery of maintenance is sought and to all the circumstances of the case.”;
- (b) in subsection (2)—
- (i) after the word " sheriff" where it first occurs there shall be inserted the words " , or (on appeal or remit) the Court of Session, "; and
 - (ii) for the words " the sheriff clerk or sheriff clerk depute shall register the order in the prescribed manner in the court" there shall be substituted the words " the order shall be registered forthwith in the prescribed manner in the appropriate sheriff court by the sheriff clerk or sheriff clerk depute of that sheriff court; and where an order of the Court of Session varies or revokes a registered order of the sheriff, the said sheriff clerk or sheriff clerk depute shall amend the register accordingly ";
- (c) after subsection (2) there shall be inserted the following subsection—
- “(2A) In subsection (2) above " the appropriate sheriff court" means the sheriff court making the order or (where the order is an order of the Court of Session) from which the remit or appeal has come.”; and
- (d) after subsection (3) there shall be inserted the following subsections—
- “(4) Where an application under subsection (1) above is for the recovery of maintenance from a person who is a former spouse of the applicant an order containing a provision requiring the payment of such maintenance for the benefit of the applicant shall not be made in respect of that application unless—
- (i) the marriage between the applicant and the said former spouse has been dissolved by a divorce which has been granted in a convention country and which is recognised as valid by the law of Scotland ;
 - (ii) an order for the payment of maintenance for the benefit of the applicant has, in or by reason of the divorce proceedings in the convention country, been made by the court which granted the divorce or by any other court in that country ; and
 - (iii) the court making the order under this section is satisfied that the former spouse of the applicant has failed to comply with the order mentioned in paragraph (ii) above.
- (5) Without prejudice to any existing power of variation or revocation but subject to section 34(1) of this Act, subsections (4) and (5) of section 5 of the Divorce (Scotland) Act 1976 shall, where an order with respect to an application under subsection (1) above requires the payment of maintenance by a person to a former spouse of that person, apply to that order as they apply to an order under section 5 of the said Act of 1976.
- (6) Section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966 (which relates to the variation and recall by the sheriff of

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certain orders made by the Court of Session) shall not apply to an order of the Court of Session registered under subsection (2) above.”.

- (2) In section 34 of the said Act of 1972 (which provides for the variation and revocation of orders), in subsection (5) after the word " Scotland " there shall be inserted the words—

“—

(a) the words " and no court other than the registering court shall have power to vary or revoke a registered order " in subsection (1) above are subject to any power of the Court of Session on appeal; and

(b)”.

- (3) In section 36 of the said Act of 1972 (which provides for the admissibility of written evidence), in subsection (1) after the words " magistrates' court or " there shall be inserted the words " in, or remitted from, a ".

- (4) In section 39 of the said Act of 1972 (which relates to the interpretation of Part II of that Act), in the definition of " maintenance " for the words " means aliment" there shall be substituted the words " includes aliment and any sums which are payable, following divorce, as a periodical allowance ".

61 Eligibility for Legal Aid in Scotland for proceedings under Maintenance Orders (Reciprocal Enforcement) Act 1972

After section 43 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 there shall be inserted the following section—

“43A Eligibility for Legal Aid in Scotland

- (1) In connection with proceedings under Part I of this Act in relation to a maintenance order made by a court in a reciprocating country, where there is produced a certificate from the responsible authority in that country to the effect that the payee would, in that country, be financially eligible for complete or partial—

(i) legal aid ; or

(ii) exemption from costs or expenses,

in proceedings there in relation to that maintenance order, sections 2(1) and (6) (c), 3 and 4 of the Legal Aid (Scotland) Act 1967 shall not apply in respect of the payee and, subject to the other provisions of that Act, legal aid shall under that Act be available to the payee without inquiry into the payee's resources.

- (2) In connection with proceedings under Part II of this Act—

(a) arising out of an application received from a convention country for the recovery of maintenance; or

(b) relating to an order made in respect of such an application,

where there is produced a certificate from the appropriate authority in that county to the effect that the applicant would, in that country, be financially eligible for complete or partial—

(i) legal aid; or

(ii) exemption from costs or expenses,

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in proceedings there for the recovery of maintenance, sections 2(1) and (6)(c), 3 and 4 of the said Act of 1967 shall not apply in respect of the applicant and, subject to the other provisions of that Act, legal aid shall under that Act be available to the applicant without inquiry into the applicant's resources.

(3) Where, in connection with proceedings under Part I or II of this Act, a person has received legal aid by virtue of subsection (1) or (2) above, legal advice and assistance under the Legal Advice and Assistance Act 1972 shall, notwithstanding—

(i) any financial conditions imposed by, or by virtue of, sections 1 and 4(2), (3) and (4); and

(ii) in relation to the effect of subsections (1) to (4) and (7) of section 4 of the said Act of 1967, the provisions of section 6(1)(b),

of the said Act of 1972 (but subject otherwise to the provisions of the said Act of 1972), be available in Scotland for that person, without inquiry into his resources, in connection with any matter incidental to, or arising out of, those proceedings.

(4) In subsection (1) above " maintenance order ", "reciprocating country", "responsible authority" and " payee " have the same meanings respectively as in Part I of this Act; and in subsection (2) above " convention country " means a country or territory specified in an Order in Council under section 25(1) of this Act, " maintenance " has the same meaning as in Part II of this Act, and " appropriate authority " means the authority from which the Secretary of State received the application.”.