

SCHEDULES

SCHEDULE 11

Section 37(1).

MINOR AMENDMENTS RELATING TO MAINTENANCE ORDERS

PART I

ENFORCEMENT OF LUMP SUM ORDERS

Maintenance Orders Act 1950 (c. 37)

- 1 In section 18(3A) of the Maintenance Orders Act 1950 (order not to be enforced by registering court under that Act if re-registered for enforcement in another court), for " whilst it is registered " substitute " to the extent that it is for the time being registered ".

Maintenance Orders Act 1958 (c. 39)

- 2 (1) Section 2 of the Maintenance Orders Act 1958 (registration of orders) is amended as follows.
- (2) In subsection (3) (registration of magistrates' court order for enforcement in the High Court), for the words from " shall " onwards (which require the court to be satisfied that not less than a certain number of periodical payments are in arrears) substitute " may, if it thinks fit, grant the application ".
- (3) After subsection (3) insert—
- “(3A) Without prejudice to subsection (3) of this section, where a magistrates' court order provides both for the payment of a lump sum and for the making of periodical payments, a person entitled to receive a lump sum under the order who considers that, so far as it relates to that sum, the order could be more effectively enforced if it were registered may apply to the original court for the registration of the order so far as it so relates, and the court may, if it thinks fit, grant the application.
- (3B) Where an application under subsection (3A) of this section is granted in the case of a magistrates' court order, the provisions of this Part of this Act shall have effect in relation to that order as if so far as it relates to the payment of a lump sum it were a separate order.”.

Maintenance and Affiliation Orders Act (Northern Ireland) 1966 (c. 35) (N.I.)

- 3 (1) Section 11 of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966 (registration of orders) is amended as follows.

Status: This is the original version (as it was originally enacted).

(2) In subsection (3) (registration of order made by court of summary jurisdiction for enforcement in the High Court), for the words from " shall " onwards (which require the court to be satisfied that not less than a certain number of periodical payments are in arrears) substitute " may, if it thinks fit, grant the application ".

(3) After subsection (3) insert—

“(3A) Without prejudice to subsection (3), where an order made by a court of summary jurisdiction provides both for the payment of a lump sum and for the making of periodical payments, a person entitled to receive a lump sum under the order who considers that, so far as it relates to that sum the order could be more effectively enforced if it were registered may apply to the original court for the registration of the order so far as it so relates, and the court may, if it thinks fit, grant the application.

(3B) Where an application under subsection (3A) is granted in the case of an order made by a court of summary jurisdiction, the provisions of this Part shall have effect in relation to that order as if so far as it relates to the payment of a lump sum it were a separate order.”.

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

4 (1) In section 9 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 (variation and revocation of orders), after subsection (1) insert—

“(1A) The powers conferred by subsection (1) above are not exercisable in relation to so much of a registered order as provides for the payment of a lump sum.”.

(2) In section 21 of that Act (interpretation of Part I)—

(a) in paragraph (a) of the definition of " maintenance order " in subsection (1) ;
and

(b) in subsection (2),

for " periodical payment of sums of money " substitute " payment of a lump sum or the making of periodical payments ".

PART II

RECOVERY OF INTEREST ON ARREARS

Maintenance Orders Act 1950 (c. 37)

5 In section 18 of the Maintenance Orders Act 1950 (enforcement of registered orders), after subsection (1) (orders to be enforced in the same manner as orders made by the court of registration), insert—

“(1A) A maintenance order registered under this Part of this Act in a court of summary jurisdiction in England or Northern Ireland shall not carry interest; but where a maintenance order so registered is registered in the High Court under Part I of the Maintenance Orders Act 1958 or section 36 of the Civil Jurisdiction and Judgments Act 1982, this subsection shall not prevent any sum for whose payment the order provides from carrying interest in accordance with section 2A of the said Act of 1958 or section 11A of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966.

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

(1B) A maintenance order made in Scotland which is registered under this Part of this Act in the Supreme Court in England or Northern Ireland shall, if interest is by the law of Scotland recoverable under the order, carry the like interest in accordance with subsection (1) of this section.”.

Maintenance Orders Act 1958 (c. 39)

6 (1) The Maintenance Orders Act 1958 is amended as follows.

(2) After section 2 insert—

“2A Interest on sums recoverable under certain orders registered in the High Court.

(1) Where, in connection with an application under section 2(3) of this Act for the registration of a magistrates' court order, the applicant shows in accordance with rules of court—

(a) that the order, though deemed for the purposes of section 1 of this Act to have been made by a magistrates' court in England, was in fact made in another part of the United Kingdom or in a country or territory outside the United Kingdom ; and

(b) that, as regards any sum for whose payment the order provides, interest on that sum at a particular rate is, by the law of that part or of that country or territory, recoverable under the order from a particular date or time,

then, if the original court grants the application and causes a certified copy of the order to be sent to the prescribed officer of the High Court under section 2(4)(c) of this Act, it shall also cause to be sent to him a certificate in the prescribed form showing, as regards that sum, the rate of interest so recoverable and the date or time from which it is so recoverable.

(2) The officer of the court who receives a certificate sent to him under the preceding subsection shall cause the certificate to be registered in that court together with the order to which it relates.

(3) Where an order is registered together with a certificate under this section, then, subject to any provision made under the next following subsection, sums payable under the order shall carry interest at the rate specified in the certificate from the date or time so specified.

(4) Provision may be made by rules of court as to the manner in which and the periods by reference to which any interest payable by virtue of subsection (3) is to be calculated and paid, including provision for such interest to cease to accrue as from a prescribed date.

(5) Except as provided by this section sums payable under registered orders shall not carry interest.”.

(3) In section 3(1) of that Act (enforcement of registered orders), after " Subject to the provisions of " insert " section 2A of this Act and " .

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

Maintenance and Affiliation Orders Act (Northern Ireland) 1966 (c. 35) (N.I.)

- 7 (1) The Maintenance and Affiliation Orders Act (Northern Ireland) 1966 is amended as follows.
- (2) After section 11 insert—

“11A Interest on sums recoverable under certain orders registered in the High Court.

- (1) Where, in connection with an application under section 11(3) for the registration of an order made by a court of summary jurisdiction, the applicant shows in accordance with rules of court—
- (a) that the order, though deemed for the purposes of this Part to have been made by a court of summary jurisdiction in Northern Ireland, was in fact made in a country or territory outside the United Kingdom; and
 - (b) that, as regards any sum for whose payment the order provides, interest on that sum at a particular rate is, by the law of that country or territory, recoverable under the order from a particular date or time,
- then, if the original court grants the application and causes a certified copy of the order to be sent to the prescribed officer of the High Court under section 11(4)(c) it shall also cause to be sent to him a certificate in the prescribed form showing, as regards that sum, the rate of interest so recoverable and the date or time from which it is so recoverable.
- (2) The officer of a court who receives a certificate sent to him under subsection (1) shall cause the certificate to be registered in that court together with the order to which it relates.
- (3) Where an order is registered together with a certificate under this section, then, subject to any provision made under subsection (4), sums payable under the order shall carry interest at the rate specified in the certificate from the date or time so specified.
- (4) Provision may be made by rules of court as to the manner in which and the periods by reference to which any interest payable by virtue of subsection (3) is to be calculated and paid, including provision for such interest to cease to accrue as from a prescribed date.
- (5) Except as provided by this section sums payable under registered orders shall not carry interest.”.
- (3) In section 12(1) (enforcement of registered orders), after " Subject to the provisions of " insert " section 11A and ".
- (4) In section 16(2) of that Act (construction of " rules of court") at the end add " and in section 11 A(4) shall be construed as including a reference to Judgment Enforcement Rules made under Article 141 of the Judgments Enforcement (Northern Ireland) Order 1981

PART III

RECIPROCAL ENFORCEMENT FOUNDED ON PRESENCE OF ASSETS

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

- 8 The Maintenance Orders (Reciprocal Enforcement) Act 1972 is amended as follows.
- 9 In section 2 (transmission of United Kingdom order for enforcement in reciprocating country)—
- (a) in subsections (1) and (4), after "residing" insert "or has assets"; and
 - (b) in subsection (4), after "whereabouts of the payer", in both places where it occurs, insert "and the nature and location of his assets in that country".
- 10 In section 6 (registration in United Kingdom of order made in reciprocating country)—
- (a) in subsection (2), after "residing" insert "or has assets"; and
 - (b) in subsection (4)—
 - (i) after "is residing" insert "or has assets";
 - (ii) for "so residing" substitute "residing and has no assets within the jurisdiction of the court"; and
 - (iii) at the end insert "and the nature and location of his assets".
- 11 In section 8(5) (duty of magistrates' court and its officers to take prescribed steps for enforcing registered orders), after "enforcing" insert "or facilitating the enforcement of".
- 12 In section 9 (variation and revocation of orders), after the subsection (1A) inserted by paragraph 4(1) of this Schedule, insert—
- “(1B) The registering court shall not vary or revoke a registered order if neither the payer nor the payee under the order is resident in the United Kingdom.”.
- 13 (1) Section 10 (cancellation of registration and transfer of orders) is amended as follows.
- (2) In subsection (2), for "has ceased to reside within the jurisdiction of that court," substitute "is not residing within the jurisdiction of that court and has no assets within that jurisdiction against which the order can be effectively enforced,".
 - (3) In subsection (3), after "residing" insert "or has assets".
 - (4) In subsection (5), for "still residing" substitute "residing or has assets".
 - (5) In subsection (6)—
 - (a) after "is residing" insert "or has assets"; and
 - (b) for "so residing" insert "residing and has no assets within the jurisdiction of the court".
 - (6) In subsection (7)(b), after "payer" insert "and the nature and location of his assets".
- 14 In section 11(1) (steps to be taken where payer is not residing in the United Kingdom)—
- (a) before "it appears" insert "at any time";
 - (b) for the words from "in the United Kingdom" to "therein," substitute "and has no assets in the United Kingdom,"; and

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- (c) after " payer " in paragraph (c) insert " and the nature and location of his assets ".
- 15 In section 21(1) (interpretation of Part I), in the definition of " the appropriate court "—
- (i) after " residing ", in the first and second places where it occurs, insert " or having assets " ;
 - (ii) for " the sheriff court " substitute " a sheriff court " ; and
 - (iii) after " residing ", where it last occurs, insert " or has assets " .
- 16 In section 24 (application of Part I to certain orders and proceedings under Maintenance Orders (Facilities for Enforcement) Act 1920), in paragraph (a)(i) and (ii), after " residing " insert " or having assets " .
- 17 In section 40 (power to apply Act with modifications by Order in Council)—
- (a) in paragraph (a), omit " against persons in that country or territory " ; and
 - (b) in paragraph (b), omit " against persons in the United Kingdom " .
- 18 In section 47 (interpretation), in subsection (3) (construction of references to a court's jurisdiction), after " the reference is " insert " to assets being located or " and omit the words " or having ceased to reside " .