

SCHEDULES

SCHEDULE 1

AMENDMENT OF CERTAIN ENACTMENTS RELATING TO MAINTENANCE ORDERS REGISTERED IN OR CONFIRMED BY MAGISTRATES' COURTS OR REGISTERED IN THE HIGH COURT

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

- 12 In section 7 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 (confirmation by UK court of provisional maintenance order made in reciprocating country), after subsection (5) (registration etc. of order) there shall be inserted the following subsections—

“(5A) Where a magistrates' court in England and Wales confirms a provisional order under this section, it shall at the same time exercise one of its powers under subsection (5B) below.

(5B) The powers of the court are—

- (a) the power to order that payments under the order be made directly to the clerk of the court or the clerk of any other magistrates' court in England and Wales;
- (b) the power to order that payments under the order be made to the clerk of the court, or to the clerk of any other magistrates' court in England and Wales, by such method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (standing order, etc.) as may be specified;
- (c) the power to make an attachment of earnings order under the Attachment of Earnings Act 1971 to secure payments under the order.

(5C) In deciding which of the powers under subsection (5B) above it is to exercise, the court shall have regard to any representations made by the payer under the order.

(5D) Subsection (4) of section 59 of the Magistrates' Courts Act 1980 (power of court to require debtor to open account) shall apply for the purposes of subsection (5B) above as it applies for the purposes of that section but as if for paragraph (a) there were substituted—

“(a) the court proposes to exercise its power under paragraph (b) of section 7(5B) of the Maintenance Orders (Reciprocal Enforcement) Act 1972, and”.

- 13 (1) In section 8 of that Act (enforcement of maintenance order registered in UK court), in subsection (4) (orders enforceable as magistrates' court maintenance orders) after the words “An order which by virtue of this section is enforceable by a magistrates' court shall” there shall be inserted “subject to the modifications of sections 76 and 93 of the Magistrates' Courts Act 1980 specified in subsections (4A) and (4B) below”.

Status: This is the original version (as it was originally enacted).

- (2) After that subsection there shall be inserted the following subsections—
- “(4A) Section 76 (enforcement of sums adjudged to be paid) shall have effect as if for subsections (4) to (6) there were substituted the following subsections—
- “(4) Where proceedings are brought for the enforcement of a magistrates' court maintenance order under this section, the court may vary the order by exercising one of its powers under subsection (5) below.
- (5) The powers of the court are—
- (a) the power to order that payments under the order be made directly to the clerk of the court or the clerk of any other magistrates' court;
- (b) the power to order that payments under the order be made to the clerk of the court, or to the clerk of any other magistrates' court, by such method of payment falling within section 59(6) above (standing order, etc.) as may be specified;
- (c) the power to make an attachment of earnings order under the Attachment of Earnings Act 1971 to secure payments under the order.
- (6) In deciding which of the powers under subsection (5) above it is to exercise, the court shall have regard to any representations made by the debtor (within the meaning of section 59 above).
- (7) Subsection (4) of section 59 above (power of court to require debtor to open account) shall apply for the purposes of subsection (5) above as it applies for the purposes of that section but as if for paragraph (a) there were substituted—
- “(a) the court proposes to exercise its power under paragraph (b) of section 76(5) below, and”.”
- (4B) In section 93 (complaint for arrears), subsection (6) (court not to impose imprisonment in certain circumstances) shall have effect as if for paragraph (b) there were substituted—
- “(b) if the court is of the opinion that it is appropriate—
- (i) to make an attachment of earnings order; or
- (ii) to exercise its power under paragraph (b) of section 76(5) above.””
- 14 In section 9 of that Act (variation and revocation of maintenance order registered in UK court), after subsection (1) (registering court to have same power to revoke or vary order as if order had been made by court, including power to revoke or vary order by way of provisional order) there shall be inserted the following subsection—
- “(1ZA) Where the registering court is a magistrates' court in England and Wales, section 60 of the Magistrates' Courts Act 1980 (revocation, variation etc. of orders for periodical payment) shall have effect in relation to the registered order—
- (a) as if in subsection (3) for the words “paragraphs (a) to (d) of section 59(3) above” there were substituted “subsection (3A) below” and after that subsection there were inserted—

“(3A) The powers of the court are—

- (a) the power to order that payments under the order be made directly to the clerk of the court or the clerk of any other magistrates' court;
- (b) the power to order that payments under the order be made to the clerk of the court, or to the clerk of any other magistrates' court, by such method of payment falling within section 59(6) above (standing order, etc.) as may be specified;
- (c) the power to make an attachment of earnings order under the Attachment of Earnings Act 1971 to secure payments under the order.”;
- (b) as if in subsection (4) for paragraph (b) there were substituted—
 - “(b) payments under the order are required to be made to the clerk of the court, or to the clerk of any other magistrates' court, by any method of payment falling within section 59(6) above (standing order, etc.)”; and as if after the words “the court” there were inserted “which made the order”;
- (c) as if in subsection (5) for the words “to the clerk” there were substituted “in accordance with paragraph (a) of subsection (3A) above”;
- (d) as if in subsection (7), paragraph (c) and the word “and” immediately preceding it were omitted;
- (e) as if in subsection (8) for the words “paragraphs (a) to (d) of section 59(3) above” there were substituted “subsection (3A) above”;
- (f) as if for subsections (9) and (10) there were substituted the following subsections—
 - “(9) In deciding, for the purposes of subsections (3) and (8) above, which of the powers under subsection (3A) above it is to exercise, the court shall have regard to any representations made by the debtor.
 - (10) Subsection (4) of section 59 above (power of court to require debtor to open account) shall apply for the purposes of subsection (3A) above as it applies for the purposes of that section but as if for paragraph (a) there were substituted—
 - “(a) the court proposes to exercise its power under paragraph (b) of section 60(3A) below, and”.”

- 15 (1) In section 27 of that Act (general provisions relating to application for recovery of maintenance in England, etc.), after subsection (7) there shall be inserted the following subsections—

“(7A) Where a magistrates' court in England and Wales makes an order on the complaint, section 59 of the Magistrates' Courts Act 1980 (orders for periodical payment: means of payment) and subsection (2) of section 32 of the Domestic Proceedings and Magistrates' Courts Act 1978 (extension of

section 59) shall not apply, but the court shall, at the same time that it makes the order, exercise one of its powers under subsection (7B) below.

(7B) The powers of the court are—

- (a) the power to order that payments under the order be made directly to the clerk of the court or the clerk of any other magistrates' court in England and Wales;
- (b) the power to order that payments under the order be made to the clerk of the court, or to the clerk of any other magistrates' court in England and Wales, by such method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (standing order, etc.) as may be specified;
- (c) the power to make an attachment of earnings order under the Attachment of Earnings Act 1971 to secure payments under the order.

(7C) In deciding which of the powers under subsection (7B) above it is to exercise, the court shall have regard to any representations made by the person liable to make payments under the order.

(7D) Subsection (4) of section 59 of the Magistrates' Courts Act 1980 (power of court to require debtor to open account) shall apply for the purposes of subsection (7B) above as it applies for the purposes of that section but as if for paragraph (a) there were substituted—

“(a) the court proposes to exercise its power under paragraph (b) of section 27(7B) of the Maintenance Orders (Reciprocal Enforcement) Act 1972, and”.

(2) Subsection (9) of that section (payment to be in such manner and to such person as may be prescribed and certain enactments not to apply) shall cease to have effect.

16 In section 28 of that Act (complaint by spouse in convention country for recovery in England and Wales of maintenance from other spouse), after the word “18” there shall be inserted “20ZA”.

17 In section 28A of that Act (complaint by former spouse in convention country for recovery in England and Wales of maintenance from other spouse), in subsection (3) (modifications of 1978 Act), in paragraph (e) after the word “18” there shall be inserted “20ZA”.

18 (1) In section 33 of that Act (enforcement of orders), in subsection (3) (order registered in magistrates' court other than court by which order made enforceable as magistrates' court maintenance order), for the words “shall be enforceable” there shall be substituted “shall, subject to the modifications of sections 76 and 93 of the Magistrates' Courts Act 1980 (enforcement of sums adjudged to be paid and complaint for arrears) specified in subsections (4A) and (4B) of section 8 of this Act, be enforceable”.

(2) After that subsection there shall be inserted the following subsection—

“(3A) Where, by virtue of being registered in the magistrates' court in which it was made, a registered order is enforceable as a magistrates' court maintenance order, sections 76 and 93 of the Magistrates' Courts Act 1980 shall have effect subject to the modifications specified in subsections (4A) and (4B) of section 8 of this Act.”

- 19 (1) In section 34 of that Act (variation and enforcement of orders), at the beginning of subsection (1) (order registered in court other than court which made it variable as if made by registering court) there shall be inserted the words “Subject to section 34A of this Act”.
- (2) After that section there shall be inserted the following section—

“34A Variation of orders by magistrates' courts in England and Wales

- (1) The provisions of this section shall have effect in relation to a registered order which is registered in a magistrates' court in England and Wales (whether or not the court made the order) in place of the following enactments, that is to say—
- (a) subsections (3) to (11) of section 60 of the Magistrates' Courts Act 1980;
 - (b) section 20ZA of the Domestic Proceedings and Magistrates' Courts Act 1978; and
 - (c) paragraph 6A of Schedule 1 to the Children Act 1989.
- (2) The power of a magistrates' court in England and Wales to vary a registered order shall include power, if the court is satisfied that payment has not been made in accordance with the order, to exercise one of its powers under subsection (3) below.
- (3) The powers of the court are—
- (a) the power to order that payments under the order be made directly to the clerk of the court or the clerk of any other magistrates' court in England and Wales;
 - (b) the power to order that payments under the order be made to the clerk of the court, or to the clerk of any other magistrates' court in England and Wales, by such method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (standing order, etc.) as may be specified;
 - (c) the power to make an attachment of earnings order under the Attachment of Earnings Act 1971 to secure payments under the order.
- (4) In any case where—
- (a) a registered order is registered in a magistrates' court in England and Wales, and
 - (b) payments under the order are required to be made to the clerk of the court, or to the clerk of any other magistrates' court in England and Wales, by any method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (standing order, etc.),
- an interested party may apply in writing to the clerk of the court in which the order is registered for the order to be varied as mentioned in subsection (5) below.
- (5) Subject to subsection (8) below, where an application has been made under subsection (4) above, the clerk, after giving written notice (by post or otherwise) of the application to any other interested party and allowing that party, within the period of 14 days beginning with the date of the giving of that notice, an opportunity to make written representations, may vary the

order to provide that payments under the order shall be made in accordance with paragraph (a) of subsection (3) above.

- (6) The clerk may proceed with an application under subsection (4) above notwithstanding that any such interested party as is referred to in subsection (5) above has not received written notice of the application.
- (7) In subsections (4) to (6) above “interested party”, in relation to an order, means the debtor or the creditor.
- (8) Where an application has been made under subsection (4) above, the clerk may, if he considers it inappropriate to exercise his power under subsection (5) above, refer the matter to the court which may vary the order by exercising one of its powers under subsection (3) above.
- (9) In deciding, for the purposes of subsections (2) and (8) above, which of the powers under subsection (3) above it is to exercise, the court shall have regard to any representations made by the debtor.
- (10) Subsection (4) of section 59 of the Magistrates' Courts Act 1980 (power of court to require debtor to open account) shall apply for the purposes of subsection (3) above as it applies for the purposes of that section but as if for paragraph (a) there were substituted—
 - “(a) the court proposes to exercise its power under paragraph (b) of section 34A(3) of the Maintenance Orders (Reciprocal Enforcement) Act 1972, and”.
- (11) In this section “creditor” and “debtor” have the same meaning as they have in section 59 of the Magistrates' Courts Act 1980.”

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In section 35 of that Act (further provisions with respect to variation etc. of orders by magistrates' courts), at the end of subsection (1) (court to have jurisdiction to hear application for variation or revocation notwithstanding one of the parties is outside England and Wales) there shall be inserted the words “but none of the powers of the court, or of the clerk of the court, conferred by section 34A of this Act shall be exercisable in relation to such an application”.