

1974 No. 668 (L.12)

**MAGISTRATES' COURTS
PROCEDURE**

**The Magistrates' Courts (Reciprocal Enforcement of
Maintenance Orders) Rules 1974**

<i>Made</i>	- - -	<i>4th April 1974</i>
<i>Laid before Parliament</i>		<i>17th April 1974</i>
<i>Coming into Operation</i>		<i>8th May 1974</i>

The Lord Chancellor, in exercise of the powers conferred on him by section 15 of the Justices of the Peace Act 1949(a), as extended by section 122 of the Magistrates' Courts Act 1952(b) and sections 2(3) and (4), 3(5)(b) and (c), 5(4) and 9(a), 6(2) and (3), 7(2) and (5), 8(5) and (6), 9(5) and (10), 10(1) to (5) and (7), 11(1)(b), 14(1), 16(1), 18(1) and 23(3) of the Maintenance Orders (Reciprocal Enforcement) Act 1972(c), after consultation with the Rule Committee appointed under the said section 15, hereby makes the following Rules:—

1. These Rules may be cited as the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) Rules 1974 and shall come into operation on 8th May 1974.

2.—(1) In these Rules, unless the context otherwise requires—

“the Act” means the Maintenance Orders (Reciprocal Enforcement) Act 1972; and

“his register”, in relation to a justices' clerk, means the register kept by that clerk in pursuance of rule 54 of the Magistrates' Courts Rules 1968(d).

(2) The Interpretation Act 1889(e) shall apply for the interpretation of these Rules as it applies for the interpretation of an Act of Parliament.

3. The officer of any court, by or in relation to whom anything is to be done in pursuance of any provision of Part I of the Act shall, where that court is a magistrates' court, be the justices' clerk.

4.—(1) An application under section 2 of the Act (transmission of maintenance order made in the United Kingdom for enforcement in reciprocating country) may, where the court which made the maintenance order to which the application relates is a magistrates' court, be made in writing by or on behalf of the payee under the order.

(2) Any application made in pursuance of paragraph (1) above shall—

(a) specify the date on which the order was made;

(a) 1949 c. 101.

(b) 1952 c. 55.

(c) 1972 c. 18.

(d) S.I. 1968/1920 (1968 III, p. 5175).

(e) 1889 c. 63.

- (b) contain such particulars as are known to the applicant of the whereabouts of the payer;
- (c) specify any matters likely to assist in the identification of the payer;
- (d) where possible, be accompanied by a recent photograph of the payer.

(3) In this rule, "the payer" means the payer under the order to which the application relates.

5. A document setting out or summarising any evidence, required by section 3(5)(b), 5(4) or 9(5) of the Act (provisional orders) to be authenticated shall be authenticated by a certificate, signed by one of the justices before whom that evidence was given, that the document is the original document containing or recording or, as the case may be, summarising that evidence or a true copy of that document.

6.—(1) Subject to paragraph (2) below, any documents required by section 5(4) or 9(5) of the Act to be sent to a court in a reciprocating country shall be sent to that court by post.

(2) Where the court to which the documents are to be sent is in a country specified in Schedule 1 to these Rules, such documents shall be sent to the Secretary of State for transmission to that court.

7.—(1) For the purposes of compliance with section 5(9) of the Act (revocation by United Kingdom court of provisional order) there shall be served on the person on whose application the maintenance order was made a notice which shall—

- (a) set out the evidence received or taken, as the case may be, in pursuance of that subsection;
- (b) inform that person that it appears to the court that the maintenance order ought not to have been made; and
- (c) inform that person that if he wishes to make representations with respect to the evidence set out in the notice he may do so orally or in writing and that if he wishes to adduce further evidence he should notify the clerk of the magistrates' court which made the maintenance order.

(2) Where a justices' clerk receives notification that the person on whose application the maintenance order was made wishes to adduce further evidence, he shall fix a date for the hearing of such evidence and shall send that person written notice of the date fixed.

8.—(1) Where a certified copy of an order, not being a provisional order, is received by a justices' clerk who is required under any provision of Part I of the Act to register the order, he shall cause the order to be registered in his court by means of a minute or memorandum entered and signed by him in his register.

(2) Where any magistrates' court makes or confirms an order which is required under section 7(5) or 9(10) of the Act to be registered, the justices' clerk shall enter and sign a minute or memorandum thereof in his register.

(3) Every minute or memorandum entered in pursuance of paragraph (1) or (2) above shall specify the section of the Act under which the order in question is registered.

9.—(1) Payment of sums due under a registered order shall, while the order is registered in a magistrates' court, be made to the clerk of the registering court during such hours and at such place as that clerk may direct; and a justices' clerk to whom payments are made under this rule shall send those payments by post to the court which made the order or to such other person or authority as that court or the Secretary of State may from time to time direct:

Provided that if the court which made the order is in one of the countries or territories specified in Schedule 2 to these Rules the justices' clerk shall send any such sums to the Crown Agents for Overseas Governments and Administrations for transmission to the person to whom they are due.

(2) Where it appears to a justices' clerk to whom payments under any maintenance order are made by virtue of paragraph (1) above that any sums payable under the order are in arrear he may and, if such sums are in arrear to an amount equal to four times the sum payable weekly under the order, he shall, whether the person for whose benefit the payment should have been made requests him to do so or not, proceed in his own name for the recovery of those sums, unless it appears to him that it is unreasonable in the circumstances to do so.

10.—(1) Subject to paragraph (2) below, where a request is made by or on behalf of a court in a reciprocating country for the taking in England and Wales of the evidence of a person residing therein, the following magistrates' courts shall have power under section 14(1) of the Act (obtaining of evidence needed for purpose of certain proceedings) to take that evidence, that is to say:—

- (a) where the maintenance order to which the proceedings in the court in the reciprocating country relate was made by a magistrates' court, the court which made the order;
- (b) where the maintenance order to which those proceedings relate is registered in a magistrates' court, the court in which the order is registered;
- (c) a magistrates' court which has received such a request from the Secretary of State.

(2) The power conferred by paragraph (1) above may, with the agreement of a court having that power, be exercised by any other magistrates' court which, because the person whose evidence is to be taken resides within its jurisdiction or for any other reason, the first-mentioned court considers could more conveniently take the evidence; but nothing in this paragraph shall derogate from the power of any court specified in paragraph (1) above.

(3) Subject to paragraph (4) below, where the evidence of any person is to be taken by a magistrates' court under the foregoing provisions of this rule—

- (a) the evidence shall be taken in the same manner as if that person were a witness in proceedings on a complaint;
- (b) any oral evidence so taken shall be put into writing and read to the person who gave it, who shall be required to sign the document; and
- (c) the justices by whom the evidence of any person is so taken shall certify at the foot of any document setting out the evidence of, or produced in evidence by, that person that such evidence was taken, or document received in evidence, as the case may be, by them.

(4) Where such a request as is mentioned in paragraph (1) above includes a request that the evidence be taken in a particular manner, the magistrates' court by which the evidence is taken shall, so far as circumstances permit, comply with that request.

(5) Any document such as is mentioned in paragraph (3)(c) above shall be sent—

- (a) where the request for the taking of the evidence was made by or on behalf of a court in a country specified in Schedule 1 to these Rules, to the Secretary of State for transmission to that court;
- (b) in any other case, to the court in the reciprocating country by or on behalf of which the request was made.

11. Any request under section 14(5) of the Act for the taking or providing of evidence by a court in a reciprocating country shall, where made by a magistrates' court, be communicated in writing to the court in question.

12.—(1) Where a magistrates' court makes an order, not being a provisional order, varying a maintenance order to which section 5 of the Act (variation and revocation of maintenance order made in the United Kingdom) applies, the justices' clerk shall send written notice of the making of the order to the Secretary of State; and where the order is made by virtue of paragraph (a) or (b) of subsection (3) of that section, he shall send such written notice to the court in a reciprocating country which would, if the order had been a provisional order, have had power to confirm the order.

(2) Where a magistrates' court revokes a maintenance order to which section 5 of the Act applies, the justices' clerk shall send written notice of the revocation to the Secretary of State and to the court in a reciprocating country which has power to confirm that maintenance order, or by which the order has been confirmed, or in which the order is registered for enforcement, as the case may be.

(3) Where under section 9 of the Act (variation and revocation of maintenance order registered in United Kingdom court) a magistrates' court makes an order, not being a provisional order, varying or revoking a registered order, the justices' clerk shall send written notice of the making of the order to the court in a reciprocating country which made the registered order.

(4) Where under section 7(2) of the Act (confirmation by United Kingdom court of provisional maintenance order made in reciprocating country) a magistrates' court confirms an order to which section 7 of the Act applies, the justices' clerk shall send written notice of the confirmation to the court in a reciprocating country which made the order.

13.—(1) Where a justices' clerk—

- (a) registers under section 6(3) of the Act (registration in United Kingdom court of maintenance order made in reciprocating country) an order to which section 6 of the Act applies; or
- (b) registers under section 7(5) of the Act an order which has been confirmed in pursuance of section 7(2) of the Act,

he shall send written notice to the Secretary of State that the order has been duly registered.

(2) Where a justices' clerk cancels the registration of a maintenance order under section 10(1) of the Act (cancellation of registration and transfer of order), he shall send written notice of the cancellation to the payer under the order.

(3) Where a justices' clerk registers a maintenance order under section 10(4) of the Act, he shall send written notice to the Secretary of State and to the

payer under the order that the order has been duly registered.

Dated 4th April 1974.

Elwyn-Jones, C.

Rules 6(2) and 10(5)

SCHEDULE 1

RECIPROCATING COUNTRIES TO WHICH DOCUMENTS ARE TRANSMITTED
VIA THE SECRETARY OF STATE

British Columbia

New Zealand

Nova Scotia

Ontario

Rule 9(1)

SCHEDULE 2

COUNTRIES AND TERRITORIES IN WHICH SUMS ARE PAYABLE THROUGH
CROWN AGENTS FOR OVERSEAS GOVERNMENTS AND ADMINISTRATIONS

Gibraltar

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules make provision, in relation to magistrates' courts, for the various matters which are to be prescribed under Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972 and for the giving of notice of things done under that part of the Act.

In particular, the Rules prescribe the manner of applying for a maintenance order to be sent for enforcement to a reciprocating country, the manner in which maintenance orders are to be registered in magistrates' courts, the manner of enforcing orders so registered and the manner in which evidence is to be taken at the request of a foreign court.

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