

STATUTORY INSTRUMENTS

1979 No. 1317

MAINTENANCE OF DEPENDANTS

**The Reciprocal Enforcement of Maintenance Orders
(Hague Convention Countries) Order 1979***Made* - - - - - 19th October 1979*Laid before Parliament* - - 29th October 1979*Coming into Operation* - - 1st March 1980

At the Court at Buckingham Palace, the 19th day of October 1979

Present,

The Queen's Most Excellent Majesty in Council

Whereas Her Majesty is satisfied that arrangements have been made in the countries and territories specified in Schedule 1 to this Order to ensure that maintenance orders made by courts in the United Kingdom against persons in those countries and territories can be enforced there:

And whereas Her Majesty is satisfied that in the interest of reciprocity it is desirable to ensure that maintenance orders made by courts in the countries and territories specified in Schedule 1 to this Order against persons in the United Kingdom can be enforced in the United Kingdom:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 40 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 (a), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1.—(1) This Order may be cited as the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1979.

(2) This Order shall come into operation on 1st March 1980.

2. In this Order, unless the context otherwise requires—

“Act” means the Maintenance Orders (Reciprocal Enforcement) Act 1972, as amended by or under any other enactment;

“court in a Hague Convention country” includes any judicial or administrative authority in a Hague Convention country;

“Hague Convention” means the Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations concluded at The Hague on 2nd October 1973;

“Hague Convention country” means a country or territory specified in Schedule 1 to this Order, being a country or territory (other than the United Kingdom) in which the Hague Convention is in force.

3. The provisions of Part I of the Act shall apply in relation to a Hague Convention country as they apply in relation to a reciprocating country, subject to the exceptions, adaptations and modifications set out in Schedule 2 to this Order, and accordingly Part I of the Act shall, in relation to maintenance orders made by courts in the United Kingdom against persons in a Hague Convention country and to maintenance orders made by courts in a Hague Convention country against persons in the United Kingdom, have effect as set out in Schedule 3 to this Order.

N. E. Leigh,

Clerk of the Privy Council.

SCHEDULE 1

Article 2

HAGUE CONVENTION COUNTRIES

Czechoslovakia

France

Norway

Portugal

Sweden

Switzerland

Article 3

SCHEDULE 2

1. Section 1 shall not apply.
2. Section 2 shall be amended as follows:—
 - (1) In subsection (1)—
 - (a) for the words “before or after the commencement of this Part of this Act” there shall be substituted the words “before, on or after 1st March 1980”;
 - (b) for the word “reciprocating” there shall be substituted the words “Hague Convention”; and
 - (c) before the word “enforcement” there shall be inserted the words “recognition and”.
 - (2) In subsection (2) for the words “provisional order” there shall be substituted the words “maintenance order made under section 3 of this Act”.
 - (3) In subsection (4) for the word “reciprocating” where it first occurs there shall be substituted the words “Hague Convention”.
 - (4) For subsection (4)(b) there shall be substituted the following paragraph:—

“(b) a certificate signed by that officer certifying that the order is enforceable and that it is no longer subject to the ordinary forms of review;”.
 - (5) In subsection (4)(e) the word “and” shall be omitted.
 - (6) After subsection (4)(f) there shall be inserted the following paragraphs:—
 - “(g) a written statement signed by that officer as to whether or not the payer appeared in the proceedings in which the maintenance order was made, and, if he did not appear, the original or a certified copy of a document which establishes that notice of the institution of the proceedings, including notice of the substance of the claim, was served on the payer;
 - (h) a document which establishes that notice of the order was sent to the payer; and
 - (i) a written statement signed by that officer as to whether or not the payee received legal aid either in the said proceedings or in connection with the said application;”.
 - (7) In subsection (4) for the words “responsible authority in the reciprocating country” there shall be substituted the words “appropriate authority in the Hague Convention country”.
 - (8) In subsection (5) after the words “applies, and” there shall be inserted the words “subject to section 5”.
3. Section 3 shall be amended as follows:—
 - (1) In subsection (1)—

- (a) after the words "magistrates' court" there shall be inserted the words "by a person who is habitually resident in England and Wales";
- (b) for the word "reciprocating" there shall be substituted the words "Hague Convention";
- (c) after the word "if" there shall be inserted the words "at any time when the proceedings were instituted";
- (d) for the words "that person" there shall be substituted the words "the defendant"; and
- (e) for the words "subject to subsection (2) below" there shall be substituted the words "subject to the following provisions of this section".

(2) Subsection (2) shall be omitted.

(3) For subsection (5) the following subsection shall be substituted:—

"(5) On the making of a complaint to which subsection (1) above applies, the following documents, that is to say:—

- (a) notice of the institution of the proceedings, including notice of the substance of the complaint;
- (b) a statement signed by the prescribed officer of the court, giving such information as he possesses as to the whereabouts of the defendant;
- (c) a statement giving such information as the officer possesses for facilitating the identification of the defendant; and
- (d) where available, a photograph of the defendant;

shall be sent by that officer to the Secretary of State with a view to their being transmitted by the Secretary of State to the appropriate authority in the Hague Convention country in which the defendant is residing for service on him of the document mentioned in paragraph (a) above if he is satisfied that the statement relating to the whereabouts of the defendant gives sufficient information to justify that being done."

(4) For subsection (6) the following subsections shall be substituted:—

"(6) In considering whether or not to make a maintenance order pursuant to a complaint to which subsection (1) above applies the court shall take into account any representations made and any evidence adduced by or on behalf of the defendant.

(6A) Where the defendant makes any representations or adduces any evidence, a copy of the representations or evidence shall be served on the complainant by the prescribed officer of the court before the hearing.

(6B) The prescribed officer of the court shall give the defendant notice in writing of the date fixed for the hearing by sending the notice by post addressed to his last known or usual place of abode.

(6C) A maintenance order pursuant to a complaint to which subsection (1) above applies shall not be made unless the document mentioned in subsection (5)(a) above has been served on the defendant in accordance with the law for the service of such documents in the Hague Convention country in which he is residing or in such other manner as may be authorised by the Secretary of State not less than six weeks previously.

(6D) Where a maintenance order has been made under this section, the prescribed officer of the court shall send the following documents, that is to say:—

- (a) a certified copy of the order;
- (b) a certificate signed by that officer certifying that the order is enforceable and that it is no longer subject to the ordinary forms of review;
- (c) a written statement signed by that officer as to whether or not the defendant appeared in the proceedings in which the order was made, and, if he did not appear, the original or a certified copy of a document which establishes that the document mentioned in subsection (5)(a) above has been served on the payer in accordance with subsection (6C) above;
- (d) a document which establishes that notice of the order was sent to the defendant; and
- (e) a written statement signed by that officer as to whether or not the complainant received legal aid in the proceedings;

to the Secretary of State with a view to their being transmitted by the Secretary of State to the appropriate authority in the Hague Convention country in which the defendant resides for recognition and enforcement of the order.

(6E) A maintenance order made under this section may, subject to section 5 of this Act, be enforced, varied or revoked in like manner as any other maintenance order made by a magistrates' court."

4. Section 4 shall be amended as follows:—

(1) In subsection (1)—

- (a) after the word "if" there shall be inserted the words "at the time when the proceedings were instituted";
- (b) after the words "the pursuer" there shall be inserted the words "is habitually resident in Scotland and";
- (c) for the word "reciprocating" there shall be substituted the words "Hague Convention";
- (d) the words from "but" to the end of the subsection shall be omitted.

(2) In subsection (2) after the word "payment" there shall be inserted the words "variation or revocation".

(3) For subsection (4) there shall be substituted the following subsection:—

"(4) In any action in which the sheriff has jurisdiction by virtue of subsection (1) above, no decree shall be granted in favour of the pursuer unless a copy of the initial writ or summons has been served on the defender in the prescribed manner and in sufficient time to enable him to arrange for his defence."

(4) Subsections (5) and (6) shall be omitted.

5. For section 5 there shall be substituted the following section:—

"5.—(1) This section applies to a maintenance order a certified copy of which has been sent to a Hague Convention country for recognition and enforcement of the order.

(2) The jurisdiction of a magistrates' court to revoke or vary a maintenance order shall be exercisable notwithstanding that the proceedings for the revocation or variation, as the case may be, of the order are brought by or against a person residing in a Hague Convention country.

(3) Where an application is made by the payee to a court in England and Wales or Northern Ireland for the variation or revocation of an order to which this section applies, and the payer is residing in a Hague Convention country, the prescribed officer of the court shall send to the Secretary of State notice of the institution of the proceedings, including notice of the substance of the application, with a view to it being transmitted to the appropriate authority in the Hague Convention country for service on the payer.

(4) Where an application is made by the payee to a court in England and Wales or Northern Ireland for the variation or revocation of an order to which this section applies, and the payer is residing in a Hague Convention country—

- (a) the court, in considering whether or not to vary or revoke the order, shall take into account any representations made and any evidence adduced by or on behalf of the payer;
- (b) a copy of any such representations or evidence shall be served on the payee in the prescribed manner before the hearing;
- (c) the prescribed officer of the court shall give the payer notice in writing of the date fixed for the hearing by sending the notice by post addressed to his last known or usual place of abode.

(5) Where an application is made by the payee to a court in England and Wales or Northern Ireland for the variation or revocation of an order to which this section applies, and the payer is residing in a Hague Convention country, the order shall not be varied or revoked unless the document mentioned in subsection (3) above has been served on the payer in accordance with the law for the service of such a document in the Hague Convention country not less than six weeks previously.

(6) Where an application is made by the payer to a court in England and Wales or Northern Ireland for the variation or revocation of an order to which this section applies, the prescribed officer of the court shall arrange for the service of the document mentioned in subsection (3) above on the payee.

(7) Where an order to which this section applies is varied or revoked by a court in the United Kingdom the prescribed officer of the court shall send the following documents, that is to say:—

- (a) a certified copy of the order of variation or revocation;
- (b) a certificate signed by that officer certifying that the order of variation or revocation is enforceable and that it is no longer subject to the ordinary forms of review;
- (c) a written statement signed by that officer as to whether or not the defendant or, in Scotland the defender, appeared in the proceedings for the variation or revocation of the order, and, if he did not appear, the original or a certified copy of a document which establishes that notice of the institution of the proceedings has been served on the defendant, or, as the case may be, the defender; and

(d) a document which establishes that notice of the order of variation or revocation was sent to the defendant; and

(e) a written statement signed by that officer as to whether or not the payer or the payee received legal aid in the proceedings;

to the Secretary of State with a view to their being transmitted by the Secretary of State to the appropriate authority in the Hague Convention country for recognition and enforcement of the order of variation or revocation.

(8) Where a maintenance order to which this section applies has been varied by an order made by a court in the United Kingdom or by a competent court in a Hague Convention country the maintenance order shall, as from the date on which the order of variation took effect, have effect as varied by that order.

(9) Where a maintenance order to which this section applies has been revoked by an order made by a court in the United Kingdom or by a competent court in a Hague Convention country the maintenance order shall, as from the date on which the order of revocation took effect, be deemed to have ceased to have effect except as respects any arrears due under the maintenance order at that date.

(10) Where a maintenance order to which this section applies has been varied or revoked by an order made by a competent court in a Hague Convention country, the prescribed officer of the court shall register the order of variation or revocation in the prescribed manner.”.

6. For section 6 there shall be substituted the following section:—

“6.—(1) This section applies to a maintenance order made whether before or on or after 1st March 1980 by a competent court in a Hague Convention country.

(2) Where a certified copy of an order to which this section applies is received by the Secretary of State from a Hague Convention country, and it appears to the Secretary of State that the payer under the order is residing in the United Kingdom, he shall send the copy of the order and the accompanying documents to the prescribed officer of the appropriate court.

(3) Where the prescribed officer of the appropriate court receives from the Secretary of State a certified copy of an order to which this section applies, he shall, subject to the following subsections, register the order in the prescribed manner in that court.

(4) Before registering an order under this section an officer of a court shall take such steps as he thinks fit for the purpose of ascertaining whether the payer under the order is residing within the jurisdiction of the court, and if after taking those steps he is satisfied that the payer is not so residing he shall return the certified copy of the order and the accompanying documents to the Secretary of State with a statement giving such information as he possesses as to the whereabouts of the payer.

- (5) (a) The prescribed officer of the appropriate court may refuse to authorise the registration of the order if the court in the Hague Convention country by or before which the order was made did not have jurisdiction to make the order and for these purposes a court in a Hague Convention country shall be considered to have jurisdiction if—
- (i) either the payer or the payee had his habitual residence in the Hague Convention country at the time when the proceedings were instituted; or
 - (ii) the payer and the payee were nationals of that country at that time; or
 - (iii) the defendant in those proceedings had submitted to the jurisdiction of the court, either expressly or by defending on the merits of the case without objecting to the jurisdiction; or
 - (iv) in the case of an order made by reason of a divorce or a legal separation or a declaration that a marriage is void or annulled, the court is recognised by the law of the part of the United Kingdom in which enforcement is sought as having jurisdiction to make the order.
- (b) In deciding whether a court in a Hague Convention country had jurisdiction to make an order the prescribed officer shall be bound by any finding of fact on which the court based its jurisdiction.
- (6) The prescribed officer of the appropriate court may refuse to authorise the registration of the order—
- (a) if such registration is manifestly contrary to public policy;
 - (b) if the order was obtained by fraud in connection with a matter of procedure;
 - (c) if proceedings between the same parties and having the same purpose are pending before a court in the same part of the United Kingdom and those proceedings were the first to be instituted; or
 - (d) if the order is incompatible with an order made in proceedings between the same parties and having the same purpose, either in the United Kingdom or in another country, provided that the latter order itself fulfils the conditions necessary for its registration and enforcement under this Part of this Act.
- (7) Without prejudice to subsection (6) above, if the payer did not appear in the proceedings in the Hague Convention country in which the order was made, the prescribed officer of the appropriate court shall refuse to authorise the registration of the order unless notice of the institution of the proceedings, including notice of the substance of the claim, was served on the payer in accordance with the law of that Hague Convention country and if, having regard to the circumstances, the payer had sufficient time to enable him to defend the proceedings.
- (8) If the order is registered under subsection (3) above, the prescribed officer of the appropriate court shall serve notice in a prescribed form on the payer and give notice to the payee that the order has been registered.

(9) The payer may, within one calendar month from the date of service of the said notice, appeal to the court in which the order is registered to set aside the registration of the order on one of the grounds set out in paragraphs (5), (6) and (7) above.

(10) If the payer appeals to the court in which the order is registered to set aside the registration of the order, the prescribed officer of the court shall give notice to the payee of the appeal and of the date of the hearing of the appeal.

(11) If the prescribed officer refuses to register the order, he shall give notice to the payee in a prescribed form that registration has been refused.

(12) A payee to whom notice has been given by the prescribed officer of any court under subsection (11) above may within one calendar month from the date when the notice was given, appeal to that court against the refusal to register the order.

(13) If the payee appeals to the court against the refusal to register the order, the prescribed officer of the court shall give notice to the payer of the appeal and of the date of the hearing of the appeal.

(14) In the application of this section to Scotland:—

- (a) in subsection (8) for the words “serve notice in a prescribed form on” there shall be substituted the words “intimate in the prescribed manner to”;
- (b) in subsection (9) for the words “service of the said notice” there shall be substituted the words “the said intimation”;
- (c) in subsections (9), (10), (12) and (13), for any reference to an appeal there shall be substituted a reference to an application and cognate expressions shall be construed accordingly; and
- (d) in subsection (12) for the words “in a prescribed form” there shall be substituted the words “in the prescribed manner”.

7. Section 7 shall not apply.

8. Section 8 shall be amended as follows:—

(1) In subsection (1) for the words “subsection (2)” there shall be substituted the words “subsections (2), (2A) and (2B)”.

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

“(2A) Where in a maintenance order made in a Hague Convention country there are provisions which are not enforceable under this Part of this Act, this section shall apply only to the remaining provisions of the order.

(2B) The payee under a registered order may request the partial enforcement of that order.”.

(3) In subsection (3) for the words “£10” there shall be substituted the words “£50”.

(4) For subsections (7) and (8) there shall be substituted the following subsections:—

“(7) Subject to subsection (8) below, a sum of money payable under a registered order shall be payable in accordance with the order, or such part thereof as the payee may have requested should be enforced, as from the date on which the order took effect.

(8) Where a registered order was made by a court in a Hague Convention country prior to the date of the entry into force of the Hague Convention between the United Kingdom and that country, no sum of money falling due before that date shall be payable in accordance with the order.”.

(5) In subsection (9)(a) for the words “subsections (2) to (5)” there shall be substituted the words “subsections (2), (3), (4) and (5)”.

9. Section 9 shall be amended as follows:—

(1) For subsection (1) there shall be substituted the following subsection:—

“(1) Subject to the provisions of this section—

(a) the registering court shall have the like power, on an application made by the payer or payee under a registered order, to vary the order as if it had been made by the registering court and as if that court had had jurisdiction to make it;

(b) the jurisdiction of a magistrates’ court to vary a registered order shall be exercisable notwithstanding that the proceedings for the variation of the order are brought by or against a person residing in a Hague Convention country.”.

(2) For subsections (2) to (11) there shall be substituted the following subsections:—

“(2) The registering court shall not vary a registered order unless—

(a) the payer under the order had his habitual residence in the United Kingdom at the time when the proceedings to vary the order were instituted, or

(b) the defendant in those proceedings had submitted to the jurisdiction of the registering court, either expressly or by defending on the merits of the case without objecting to the jurisdiction.

(3) Where an application is made to a registering court in England and Wales or Northern Ireland by the payer for the variation of a registered order, and the payee is residing in a Hague Convention country, the prescribed officer of the court shall send to the Secretary of State notice of the institution of the proceedings, including notice of the substance of the application, with a view to it being transmitted to the appropriate authority in the Hague Convention country for service on the payee.

(4) Where an application is made by the payer to a registering court in England and Wales or Northern Ireland for the variation of a registered order—

(a) the court, in considering whether or not to vary the order, shall take into account any representations made and any evidence adduced by or on behalf of the payee;

- (b) a copy of any such representations and evidence shall be served on the payer by the prescribed officer of the court before the hearing;
- (c) the prescribed officer of the court shall give the payee notice in writing of the date fixed for the hearing by sending the notice by post addressed to his last known or usual place of abode.

(5) Where an application is made by the payer to a registering court in England and Wales or Northern Ireland for the variation of a registered order and the payee is residing in a Hague Convention country, the order shall not be varied unless the document mentioned in subsection (3) above has been served on the payee in accordance with the law for the service of such a document in the Hague Convention country not less than six weeks previously.

(6) Where an application is made by the payee to a registering court in England and Wales or Northern Ireland for the variation of a registered order, the prescribed officer of the court shall serve the document mentioned in subsection (3) above on the payer.

(7) Where a registered order is varied by a registering court in the United Kingdom the prescribed officer of the court shall send the following documents, that is to say:—

- (a) a certified copy of the order of variation;
- (b) a certificate signed by that officer certifying that the order of variation is enforceable and that it is no longer subject to the ordinary forms of review;
- (c) a written statement signed by that officer as to whether or not the defendant or, in Scotland, the defender appeared in the proceedings for the variation of the order, and, if he did not appear, the original or a certified copy of a document which establishes that notice of the institution of the proceedings has been served on the defendant or, as the case may be, the defender; and
- (d) a written statement signed by that officer as to whether or not the payer or the payee received legal aid in the proceedings,

to the Secretary of State with a view to their being transmitted by the Secretary of State to the appropriate authority in the Hague Convention country for recognition and enforcement of the order of variation.

(8) Where a registered order has been varied by the registering court or by a court in a Hague Convention country, the prescribed officer of the registering court shall register the variation order in the prescribed manner.

(9) Where a registered order has been varied by the registering court or by a court in a Hague Convention country, the registered order shall, as from the date on which the variation order took effect, have effect as so varied.”.

10. In section 10 for subsection (1) there shall be substituted the following subsection:—

“(1) Where a registered order is revoked by an order made by a court in a Hague Convention country and notice of the revocation is received by the registering court, the prescribed officer of the registering court shall cancel the registration, but any arrears due under the registered order at the date on which the order of revocation took effect, other than, in the case of a registered order made by a court in a Hague Convention country prior to the date of the entry into force of the Hague Convention between the United Kingdom and that country, arrears due before that date, shall continue to be recoverable as if the registration had not been cancelled.”.

11. Section 11 shall be amended as follows:—

(1) In subsection (1) for the word “responsible” where it first occurs there shall be substituted the word “appropriate”.

(2) In subsection (1) the words “or, if having regard to all the circumstances he thinks it proper to do so, to the responsible authority in another reciprocating country” shall be omitted.

(3) Subsection (2) shall be omitted.

12. For section 12 there shall be substituted the following section:—

“12. Where in pursuance of section 9 above a registering court makes, or refuses to make, an order varying a registered order, the payer or the payee under the registered order shall have the like right of appeal (if any) from the order of variation or from the refusal to make it as he would have if the registered order had been made by the registering court.”.

13. Section 13 shall be amended as follows:—

(1) In subsection (1)—

(a) in paragraph (a) for the word “reciprocating” there shall be substituted the words “Hague Convention”;

(b) after paragraph (c) there shall be added the following paragraph:—

“(d) a document purporting to be signed by a judicial officer, official or other competent person in a Hague Convention country which establishes that certain documents were served on a person,”.

(2) In subsection (2) for the words “judge, magistrate” there shall be substituted the words “judicial officer”.

(3) In subsection (3) the word “magistrate” shall be omitted.

14. Section 14 shall be amended as follows:—

(1) In subsection (1)—

(a) for the word “reciprocating” there shall be substituted the words “Hague Convention”;

(b) for the words from “in the prescribed manner” to the end there shall be substituted the words “by the prescribed officer of the court to the Secretary of State for transmission to the appropriate authority in the Hague Convention country”.

(2) In subsection (2) for paragraphs (a) and (b) there shall be substituted the words “out of moneys provided by Parliament”.

(3) In subsections (3) and (4) respectively for the word “reciprocating” there shall be substituted the words “Hague Convention”.

(4) In subsection (5) for the words “request a court in a reciprocating country” there shall be substituted the words “send to the Secretary of State for transmission to the appropriate authority in a Hague Convention country a request for a court in a Hague Convention country” and the words “and may remit the case to that court for that purpose” shall be omitted.

15. In section 15—

(1) In paragraphs (a) and (c) respectively for the word “reciprocating” there shall be substituted the words “Hague Convention”.

(2) The word “magistrate” in each place where it occurs shall be omitted.

16. Section 16 shall be amended as follows:—

(1) In subsections (3) and (5)(a) for the word “reciprocating” there shall be substituted the words “Hague Convention”.

(2) In subsection (5)(a) the words “or (if earlier) the date on which it is confirmed by a court in the United Kingdom” shall be omitted.

(3) In subsection (5)(b) for the words “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” there shall be substituted the words “the registering court”.

17. Section 17 shall be amended as follows:—

(1) Subsections (1) to (3) shall be omitted.

(2) For subsections (6) and (7) of section 17 there shall be substituted the following subsections:—

“(6) A magistrates’ court in Northern Ireland shall have jurisdiction—

(a) to hear a complaint for the variation or revocation of a maintenance order made by such a court, being an order to which section 5 of this Act applies; or

(b) to hear a complaint for the variation of a registered order which is registered in that court,

if the defendant to the complaint is residing in a Hague Convention country and if the court would have had jurisdiction to hear the complaint had the defendant been residing in Northern Ireland and been served with a summons to appear before the court to answer the complaint.

(7) Where the defendant to a complaint—

(a) for the variation or revocation of a maintenance order made by a magistrates’ court, being an order to which section 5 of this Act applies; or

(b) for the variation 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 Hague Convention country and that the requirements of section 5(4), (6) or (7) or section 9(3), as the case may be, have been complied with, the court may proceed to hear and determine the complaint at the time and place appointed for the hearing or for any adjourned hearing as if the defendant had appeared at that time and place.”.

18. Section 18 shall be amended as follows:—

(1) in subsection (1)(b), (c), (d) and (f) respectively for the word “reciprocating” there shall be substituted the words “Hague Convention”.

(2) Subsection (1)(e) shall be omitted.

19. Section 19 shall be amended as follows:—

(1) In paragraphs (a), (b), (c) and (e) respectively for the word “reciprocating” there shall be substituted the words “Hague Convention”.

(2) Paragraph (d) shall be omitted.

20. Section 20 shall not apply.

21. Section 21 shall be amended as follows:—

(1) In subsection (1) after the word “Act” where it first occurs there shall be inserted the words “unless the context otherwise requires”.

(2) In subsection (1) in the definition of “certificate of arrears” for the words “or as the case may be” to the end there shall be substituted the words “except any arrears that accrued prior to the date of the entry into force of the Hague Convention between the United Kingdom and the Hague Convention country in which the payer is residing or, as the case may be, that to the best of his information or belief there are no arrears due thereunder at the date of the certificate”.

(3) In subsection (1) in the definition of “court” at the end there shall be inserted the words “and ‘competent court in a Hague Convention country’ means a court having jurisdiction on one of the grounds specified in section 6(5)(a) above;”.

(4) In subsection (1) for the definition of “maintenance order” there shall be substituted the following definition:—

“‘maintenance order’ means an order (however described), including a settlement made by or before a court in a Hague Convention country, of any of the following descriptions, and, in the case of an order which is not limited to the following descriptions, the part of the order which is so limited, 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;

(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) 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

- (c) an order within the foregoing provisions of this definition made against a payer on the application of a public body which claims reimbursement of sums of money payable under the order with respect to the payee if reimbursement can be obtained by the public body under the law to which it is subject,

and in the case of a maintenance order which has been varied (including a maintenance order which has been varied either by a court in the United Kingdom or by a competent court in a Hague Convention country whether or not the original order was made by such a court), means that order as varied:

Provided that the expression "maintenance order" shall not include an order made in a Hague Convention country of a description which that country or the United Kingdom has reserved the right under Article 26 of the Hague Convention not to recognise or enforce."

(5) In subsection (1) in the definition of "order" before the words "as respects Scotland" there shall be inserted the words "means an order however described giving effect to a decision rendered by a court and".

(6) In subsection (1) in the definition of "payee" at the end there shall be inserted the words "and includes a public body which has provided benefits for the payee and which is entitled *ipso jure* under the law to which it is subject to claim enforcement of the said order to the extent of the benefits so provided in place of the said person;".

(7) In subsection (1) the definition of "provisional order" shall be omitted.

(8) In subsection (1) the definition of "reciprocating country" shall be omitted.

(9) In subsection (1) in the definition of "registered order" there shall be inserted at the end the words "and 'registered' and 'registration' shall be construed accordingly".

(10) In subsection (1) the definition of "the responsible authority" shall be omitted.

(11) Subsection (2) shall be omitted.

22. Sections 22, 23 and 24 shall not apply.

SCHEDULE 3

Article 3

Orders made by courts in the United Kingdom

2.—(1) Subject to subsection (2) below, where the payer under a maintenance order made, whether before, on or after 1980, by a court in the United Kingdom is residing in a Hague Convention country, the payee under the order may apply for the order to be sent to that country for recognition and enforcement.

Transmission of maintenance order made in United Kingdom for recognition and enforcement in Hague Convention country.

(2) Subsection (1) above shall not have effect in relation to a maintenance order made under section 3 of this Act or to an order made by virtue of a provision of Part II of this Act.

(3) Every application under this section shall be made in the prescribed manner to the prescribed officer of the court which made the maintenance order to which the application relates.

(4) If, on an application duly made under this section to the prescribed officer of a court in the United Kingdom, that officer is satisfied that the payer under the maintenance order to which the application relates is residing in a Hague Convention country, the following documents, that is to say:—

- (a) a certified copy of the maintenance order;
- (b) a certificate signed by that officer certifying that the order is enforceable and that it is no longer subject to the ordinary forms of review;
- (c) a certificate of arrears so signed;
- (d) a statement giving such information as the officer possesses as to the whereabouts of the payer;
- (e) a statement giving such information as the officer possesses for facilitating the identification of the payer;
- (f) where available, a photograph of the payer;
- (g) a written statement signed by that officer as to whether or not the payer appeared in the proceedings in which the maintenance order was made, and, if he did not appear, the original or a certified copy of a document which establishes that notice of the institution of the proceedings, including notice of the substance of the claim, was served on the payer;
- (h) a document which establishes that notice of the order was sent to the payer; and
- (i) a written statement signed by that officer as to whether or not the payee received legal aid either in the said proceedings or in connection with the said application;

shall be sent by that officer to the Secretary of State with a view to their being transmitted by the Secretary of State to the appropriate authority in the Hague Convention country if he is satisfied that the statement relating to the whereabouts of the payer gives sufficient information to justify that being done.

(5) Nothing in this section shall be taken as affecting any jurisdiction of a court in the United Kingdom with respect to a maintenance order to

which this section applies, and subject to section 5 any such order may be enforced, varied or revoked accordingly.

Power of magistrates' court to make maintenance order against person residing in Hague Convention country.

3.—(1) Where a complaint is made to a magistrates' court by a person who is habitually resident in England and Wales against a person residing in a Hague Convention country and the complaint is one on which the court would have jurisdiction by virtue of any enactment to make a maintenance order if at the time when the proceedings were instituted—

- (a) the defendant were residing in England and Wales; and
- (b) a summons to appear before the court to answer to the complaint had been duly served on him,

the court shall have jurisdiction to hear the complaint and may subject to the following provisions of this section make a maintenance order on the complaint.

(3) If the court hearing a complaint to which subsection (1) above applies is satisfied—

- (a) that there are grounds on which a maintenance order containing a provision requiring the making of payments for the maintenance of a child may be made on that complaint, but
- (b) that it has no jurisdiction to make that order unless it also makes an order providing for the legal custody of that child,

then, for the purpose of enabling the court to make the maintenance order, the complainant shall be deemed to be the person to whom the legal custody of that child has been committed by an order of the court which is for the time being in force.

(4) No enactment empowering a magistrates' court to refuse to make an order on a complaint on the ground that the matter in question is one which would be more conveniently dealt with by the High Court shall apply in relation to a complaint to which subsection (1) above applies.

(5) On the making of a complaint to which subsection (1) above applies, the following documents, that is to say:—

- (a) notice of the institution of the proceedings, including notice of the substance of the complaint;
- (b) a statement, signed by the prescribed officer of the court, giving such information as he possesses as to the whereabouts of the defendant;
- (c) a statement giving such information as the officer possesses for facilitating the identification of the defendant; and
- (d) where available, a photograph of the defendant;

shall be sent by that officer to the Secretary of State with a view to their being transmitted by the Secretary of State to the appropriate authority in the Hague Convention country in which the defendant is residing for service on him of the document mentioned in paragraph (a) above if he is satisfied that the statement relating to the whereabouts of the defendant gives sufficient information to justify that being done.

(6) In considering whether or not to make a maintenance order pursuant to a complaint to which subsection (1) above applies the court shall take into

account any representations made and any evidence adduced by or on behalf of the defendant.

(6A) Where the defendant makes any representations or adduces any evidence, a copy of the representations or evidence shall be served on the complainant by the prescribed officer of the court before the hearing.

(6B) The prescribed officer of the court shall give the defendant notice in writing of the date fixed for the hearing by sending the notice by post addressed to his last known or usual place of abode.

(6C) A maintenance order pursuant to a complaint in which subsection (1) above applies shall not be made unless the document mentioned in subsection (5)(a) above has been served on the defendant in accordance with the law for the service of such documents in the Hague Convention country in which he is residing or in such other manner as may be authorised by the Secretary of State not less than six weeks previously.

(6D) Where a maintenance order has been made under this section, the prescribed officer of the court shall send the following documents, that is to say:—

- (a) a certified copy of the order;
- (b) a certificate signed by that officer certifying that the order is enforceable and that it is no longer subject to the ordinary forms of review;
- (c) a written statement signed by that officer as to whether or not the defendant appeared in the proceedings in which the order was made, and, if he did not appear, the original or a certified copy of a document which establishes that the document mentioned in subsection (5)(a) above has been served on the payer in accordance with subsection (6C) above;
- (d) a document which establishes that notice of the order was sent to the defendant; and
- (e) a written statement signed by that officer as to whether or not the complainant received legal aid in the proceedings;

to the Secretary of State with a view to their being transmitted by the Secretary of State to the appropriate authority in the Hague Convention country in which the defendant resides for recognition and enforcement of the order.

(6E) A maintenance order made under this section may, subject to section 5 of this Act, be enforced, varied or revoked in like manner as any other maintenance order made by a magistrates' court.

(7) In the application of this section to Northern Ireland, in subsection (1), for the reference to England and Wales there shall be substituted a reference to Northern Ireland and in subsection (4), for the reference to the High Court there shall be substituted a reference to the High Court of Justice in Northern Ireland.

4.—(1) The sheriff shall have jurisdiction in any action to which this section applies if at the time when the proceedings were instituted—

- (a) the pursuer is habitually resident in Scotland and resides within the jurisdiction of the sheriff; and
- (b) the sheriff is satisfied that, to the best of the information or belief of the pursuer, the defender is residing in a Hague Convention country; and

Power of
sheriff
to make
maintenance
order
against
person
residing
in Hague
Convention
country.

(c) the sheriff would not, apart from this subsection, have jurisdiction in that action.

(2) This section applies to any action for the payment, variation or revocation of aliment which is competent in the sheriff court, and includes an action of affiliation and aliment, but does not include an action of separation and aliment or adherence and aliment, or any action containing a crave for the custody of a child.

(3) Where in any action in which the payment of aliment in respect of a child is claimed, being an action in which the sheriff has jurisdiction by virtue of subsection (1) above, the sheriff is satisfied—

- (a) that there are grounds on which a maintenance order containing a provision requiring the payment of aliment in respect of that child may be made in that action, but
- (b) that he has no power to make that order unless he also makes an order providing for the custody of the child,

then, for the purpose of enabling the sheriff to make the maintenance order, the pursuer shall be deemed to be a person to whom the custody of the child has been committed by a decree of the sheriff which is for the time being in force.

(4) In any action in which the sheriff has jurisdiction by virtue of subsection (1) above, no decree shall be granted in favour of the pursuer unless a copy of the initial writ or summons has been served on the defender in the prescribed manner and in sufficient time to enable him to arrange for his defence.

Variation
and
revocation
of
maintenance
order
made in
United
Kingdom.

5.—(1) This section applies to a maintenance order a certified copy of which has been sent to a Hague Convention country for recognition and enforcement of the order.

(2) The jurisdiction of a magistrates' court to revoke or vary a maintenance order shall be exercisable notwithstanding that the proceedings for the revocation or variation, as the case may be, of the order are brought by or against a person residing in a Hague Convention country.

(3) Where an application is made by the payee to a court in England and Wales or Northern Ireland for the variation or revocation of an order to which this section applies, and the payer is residing in a Hague Convention country, the prescribed officer of the court shall send to the Secretary of State notice of the institution of the proceedings, including notice of the substance of the application, with a view to it being transmitted to the appropriate authority in the Hague Convention country for service on the payer.

(4) Where an application is made by the payee to a court in England and Wales or Northern Ireland for the variation or revocation of an order to which this section applies, and the payer is residing in a Hague Convention country—

- (a) the court, in considering whether or not to vary or revoke the order, shall take into account any representations made and any evidence adduced by or on behalf of the payer;
- (b) a copy of any such representations or evidence shall be served on the payee in the prescribed manner before the hearing;

- (c) the prescribed officer of the court shall give the payer notice in writing of the date fixed for the hearing by sending the notice by post addressed to his last known or usual place of abode.

(5) Where an application is made by the payee to a court in England and Wales or Northern Ireland for the variation or revocation of an order to which this section applies, and the payer is residing in a Hague Convention country, the order shall not be varied or revoked unless the document mentioned in subsection (3) above has been served on the payer in accordance with the law for the service of such a document in the Hague Convention country not less than six weeks previously.

(6) Where an application is made by the payer to a court in England and Wales or Northern Ireland for the variation or revocation of an order to which this section applies, the prescribed officer of the court shall arrange for the service of the document mentioned in subsection (3) above on the payee.

(7) Where an order to which this section applies is varied or revoked by a court in the United Kingdom the prescribed officer of the court shall send the following documents, that is to say:—

- (a) a certified copy of the order of variation or revocation;
- (b) a certificate signed by that officer certifying that the order of variation or revocation is enforceable and that it is no longer subject to the ordinary forms of review;
- (c) a written statement, signed by that officer as to whether or not the defendant or, in Scotland the defender, appeared in the proceedings for the variation or revocation of the order, and, if he did not appear, the original or a certified copy of a document which establishes that notice of the institution of the proceedings has been served on the defendant, or, as the case may be, the defender;
- (d) a document which establishes that notice of the order of variation or revocation was sent to the defendant; and
- (e) a written statement signed by that officer as to whether or not the payer or the payee received legal aid in the proceedings;

to the Secretary of State with a view to their being transmitted by the Secretary of State to the appropriate authority in the Hague Convention country for recognition and enforcement of the order of variation or revocation.

(8) Where a maintenance order to which this section applies has been varied by an order made by a court in the United Kingdom or by a competent court in a Hague Convention country the maintenance order shall, as from the date on which the order of variation took effect, have effect as varied by that order.

(9) Where a maintenance order to which this section applies has been revoked by an order made by a court in the United Kingdom or by a competent court in a Hague Convention country the maintenance order shall, as from the date on which the order of revocation took effect, be deemed to have ceased to have effect except as respects any arrears due under the maintenance order at that date.

(10) Where a maintenance order to which this section applies has been varied or revoked by an order made by a competent court in a Hague Convention country, the prescribed officer of the court shall register the order of variation or revocation in the prescribed manner.

Registration
in United
Kingdom
court of
maintenance
order made
in Hague
Convention
country.

Orders made by courts in Hague Convention countries

6.—(1) This section applies to a maintenance order made whether before or on or after 1st March 1980 by a competent court in a Hague Convention country.

(2) Where a certified copy of an order to which this section applies is received by the Secretary of State from a Hague Convention country, and it appears to the Secretary of State that the payer under the order is residing in the United Kingdom, he shall send the copy of the order and the accompanying documents to the prescribed officer of the appropriate court.

(3) Where the prescribed officer of the appropriate court receives from the Secretary of State a certified copy of an order to which this section applies, he shall, subject to the following subsections, register the order in the prescribed manner in that court.

(4) Before registering an order under this section an officer of a court shall take such steps as he thinks fit for the purpose of ascertaining whether the payer under the order is residing within the jurisdiction of the court, and if after taking those steps he is satisfied that the payer is not so residing he shall return the certified copy of the order and the accompanying documents to the Secretary of State with a statement giving such information as he possesses as to the whereabouts of the payer.

(5) (a) The prescribed officer of the appropriate court may refuse to authorise the registration of the order if the court in the Hague Convention country by or before which the order was made did not have jurisdiction to make the order; and for these purposes a court in a Hague Convention country shall be considered to have jurisdiction if—

- (i) either the payer or the payee had his habitual residence in the Hague Convention country at the time when the proceedings were instituted; or
- (ii) the payer and the payee were nationals of that country at that time; or
- (iii) the defendant in those proceedings had submitted to the jurisdiction of the court, either expressly or by defending on the merits of the case without objecting to the jurisdiction; or
- (iv) in the case of an order made by reason of a divorce or a legal separation or a declaration that a marriage is void or annulled, the court is recognised by the law of the part of the United Kingdom in which enforcement is sought as having jurisdiction to make the order.

(b) In deciding whether a court in a Hague Convention country had jurisdiction to make an order the prescribed officer shall be bound by any finding of fact on which the court based its jurisdiction.

(6) The prescribed officer of the appropriate court may refuse to authorise the registration of the order—

- (a) if such registration is manifestly contrary to public policy;
- (b) if the order was obtained by fraud in connection with a matter of procedure;
- (c) if proceedings between the same parties and having the same purpose are pending before a court in the same part of the United Kingdom and those proceedings were the first to be instituted; or

- (d) if the order is incompatible with an order made in proceedings between the same parties and having the same purpose, either in the United Kingdom or in another country, provided that the latter order itself fulfils the conditions necessary for its registration and enforcement under this Part of this Act.

(7) Without prejudice to subsection (6) above, if the payer did not appear in the proceedings in the Hague Convention country in which the order was made, the prescribed officer of the appropriate court shall refuse to authorise the registration of the order unless notice of the institution of the proceedings, including notice of the substance of the claim, was served on the payer in accordance with the law of that Hague Convention country and if, having regard to the circumstances, the payer had sufficient time to enable him to defend the proceedings.

(8) If the order is registered under subsection (3) above, the prescribed officer of the appropriate court shall serve notice in a prescribed form on the payer and give notice to the payee that the order has been registered.

(9) The payer may, within one calendar month from the date of service of the said notice, appeal to the court in which the order is registered to set aside the registration of the order on one of the grounds set out in paragraphs (5), (6) and (7) above.

(10) If the payer appeals to the court in which the order is registered to set aside the registration of the order, the prescribed officer of the court shall give notice to the payee of the appeal and of the date of the hearing of the appeal.

(11) If the prescribed officer refuses to register the order, he shall give notice to the payee in a prescribed form that registration has been refused.

(12) A payee to whom notice has been given by the prescribed officer of any court under subsection (11) above may within one calendar month from the date when the notice was given, appeal to that court against the refusal to register the order.

(13) If the payee appeals to the court against the refusal to register the order, the prescribed officer of the court shall give notice to the payer of the appeal and of the date of the hearing of the appeal.

(14) In the application of this section to Scotland—

- (a) in subsection (8) for the words “serve notice in a prescribed form on” there shall be substituted the words “intimate in the prescribed manner to”;
- (b) in subsection (9) for the words “service of the said notice” there shall be substituted the words “the said intimation”;
- (c) in subsections (9), (10), (12) and (13), for any reference to an appeal there shall be substituted a reference to an application and cognate expressions shall be construed accordingly; and
- (d) in subsection (11) for the words “in a prescribed form” there shall be substituted the words “in the prescribed manner”.

Enforcement
of
maintenance
order
registered
in United
Kingdom
court.

8.—(1) Subject to subsections (2), (2A) and (2B) below, a registered order may be enforced in the United Kingdom as if it had been made by the registering court and as if that court had had jurisdiction to make it; and proceedings for or with respect to the enforcement of any such order may be taken accordingly.

(2) Subsection (1) above does not apply to an order which is for the time being registered in the High Court under Part I of the Maintenance Orders Act 1958 (a) or to an order which is for the time being registered in the High Court of Justice in Northern Ireland under Part II of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966 (b).

(2A) Where in a maintenance order made in a Hague Convention country there are provisions which are not enforceable under this Part of this Act, this section shall apply only to the remaining provisions of the order.

(2B) The payee under a registered order may request the partial enforcement of that order.

(3) Any person for the time being under an obligation to make payments in pursuance of a registered order shall give notice of any change of address to the clerk of the registering court, and any person failing without reasonable excuse to give such a notice shall be liable on summary conviction to a fine not exceeding £50.

(4) An order which by virtue of this section is enforceable by a magistrates' court shall be enforceable as if it were an affiliation order made by that court; and the provisions of any enactment with respect to the enforcement of affiliation orders (including enactments relating to the accrual of arrears and the remission of sums due) shall apply accordingly.

In this subsection "enactment" includes any order, rule or regulation made in pursuance of any Act.

(5) The magistrates' court by which an order is enforceable by virtue of this section, and the officers thereof, shall take all such steps for enforcing the order as may be prescribed.

(6) In any proceedings for or with respect to the enforcement of an order which is for the time being registered in any court under this Part of this Act a certificate of arrears sent to the prescribed officer of the court shall be evidence of the facts stated therein.

(7) Subject to subsection (8) below, sums of money payable under a registered order shall be payable in accordance with the order, or such part thereof as the payee may have requested should be enforced, as from the date on which the order took effect.

(8) Where a registered order was made by a court in a Hague Convention country prior to the date of the entry into force of the Hague Convention between the United Kingdom and that country, no sums of money falling due before that date shall be payable in accordance with the order.

(9) In the application of this section to Scotland—

(a) subsections (2), (3), (4) and (5) shall be omitted; and

(b) in subsection (6), for the word "evidence" there shall be substituted the words "sufficient evidence".

(a) 1958 c. 39.

(b) 1966 c. 35 (N.I.).

(10) For the purposes of the application of this section to Northern Ireland, in section 110(9) of the Magistrates' Courts Act (Northern Ireland) 1964 (a) (orders for periodical payment of money), after paragraph (a) there shall be inserted the following paragraph:—

(aa) maintenance orders made outside the United Kingdom and registered in a court of summary jurisdiction in Northern Ireland under Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972 (b);”.

9.—(1) Subject to the provisions of this section—

- (a) the registering court shall have the like power, on an application made by the payer or payee under a registered order, to vary the order as if it had been made by the registering court and as if that court had had jurisdiction to make it;
- (b) the jurisdiction of a magistrates' court to vary a registered order shall be exercisable notwithstanding that the proceedings for the variation of the order are brought by or against a person residing in a Hague Convention country.

Variation of maintenance order registered in United Kingdom court.

(2) The registering court shall not vary a registered order unless—

- (a) the payer under the order had his habitual residence in the United Kingdom at the time when the proceedings to vary the order were instituted; or
- (b) the defendant in those proceedings had submitted to the jurisdiction of the registering court, either expressly or by defending on the merits of the case without objecting to the jurisdiction.

(3) Where an application is made to a registering court in England and Wales or Northern Ireland by the payer for the variation of a registered order, and the payee is residing in a Hague Convention country, the prescribed officer of the court shall send to the Secretary of State notice of the institution of the proceedings, including notice of the substance of the application, with a view to it being transmitted to the appropriate authority in the Hague Convention country for service on the payee.

(4) Where an application is made by the payer to a registering court in England and Wales or Northern Ireland for the variation of a registered order—

- (a) the court, in considering whether or not to vary the order, shall take into account any representations made and any evidence adduced by or on behalf of the payee;
- (b) a copy of any such representations and evidence shall be served on the payer by the prescribed officer of the court before the hearing;
- (c) the prescribed officer of the court shall give the payee notice in writing of the date fixed for the hearing by sending the notice by post addressed to his last known or usual place of abode.

(a) 1964 c. 21 (N.I.).

(b) 1972 c. 18.

(5) Where an application is made by the payer to a registering court in England and Wales or Northern Ireland for the variation of a registered order and the payee is residing in a Hague Convention country, the order shall not be varied unless the document mentioned in subsection (3) above has been served on the payee in accordance with the law for the service of such a document in the Hague Convention country not less than six weeks previously.

(6) Where an application is made by the payee to a registering court in England and Wales or Northern Ireland for the variation of a registered order, the prescribed officer of the court shall serve the document mentioned in subsection (3) above on the payer.

(7) Where a registered order is varied by a registering court in the United Kingdom the prescribed officer of the court shall send the following documents, that is to say:—

- (a) a certified copy of the order of variation;
- (b) a certificate signed by that officer certifying that the order of variation is enforceable and that it is no longer subject to the ordinary forms of review;
- (c) a written statement signed by that officer as to whether or not the defendant or, in Scotland, the defender appeared in the proceedings for the variation of the order, and, if he did not appear, the original or a certified copy of a document which establishes that notice of the institution of the proceedings has been served on the defendant or, as the case may be, the defender; and
- (d) a written statement signed by that officer as to whether or not the payer or the payee received legal aid in the proceedings,

to the Secretary of State with a view to their being transmitted by the Secretary of State to the appropriate authority in the Hague Convention country for recognition and enforcement of the order of variation.

(8) Where a registered order has been varied by the registering court or by a court in a Hague Convention country, the prescribed officer of the registering court shall register the variation order in the prescribed manner.

(9) Where a registered order has been varied by the registering court or by a court in a Hague Convention country, the registered order shall, as from the date on which the variation order took effect, have effect as so varied.

Cancellation
of
registration
and
transfer
of order.

10.—(1) Where a registered order is revoked by an order made by a court in a Hague Convention country and notice of the revocation is received by the registering court, the prescribed officer of the registering court shall cancel the registration, but any arrears due under the registered order at the date on which the order of revocation took effect, other than, in the case of a registered order made by a court in a Hague Convention country prior to the date of the entry into force of the Hague Convention between the United Kingdom and that country, arrears due before that date, shall continue to be recoverable as if the registration had not been cancelled.

(2) Where the prescribed officer of the registering court is of opinion that the payer under a registered order has ceased to reside within the jurisdiction of that court, he shall cancel the registration of the order and, subject to subsection (3) below, shall send the certified copy of the order to the Secretary of State.

(3) Where the prescribed officer of the registering court, being a magistrates' court, is of opinion that the payer is residing within the jurisdiction of another magistrates' court in that part of the United Kingdom in which the registering court is, he shall transfer the order to that other court by sending the certified copy of the order to the prescribed officer of that other court.

(4) On the transfer of an order under subsection (3) above the prescribed officer of the court to which it is transferred shall, subject to subsection (6) below, register the order in the prescribed manner in that court.

(5) Where the certified copy of an order is received by the Secretary of State under this section and it appears to him that the payer under the order is still residing in the United Kingdom, he shall transfer the order to the appropriate court by sending the certified copy of the order together with the related documents to the prescribed officer of the appropriate court and, subject to subsection (6) below, that officer shall register the order in the prescribed manner in that court.

(6) Before registering an order in pursuance of subsection (4) or (5) above an officer of a court shall take such steps as he thinks fit for the purpose of ascertaining whether the payer is residing within the jurisdiction of the court, and if after taking those steps he is satisfied that the payer is not so residing he shall send the certified copy of the order to the Secretary of State.

(7) The officer of a court who is required by any of the foregoing provisions of this section to send to the Secretary of State or to the prescribed officer of another court the certified copy of an order shall send with that copy—

- (a) a certificate of arrears signed by him;
- (b) a statement giving such information as he possesses as to the whereabouts of the payer; and
- (c) any relevant documents in his possession relating to the case.

(8) In the application of this section to Scotland—

- (a) in subsection (2), for the words "within the jurisdiction of that court" there shall be substituted the words "in Scotland"; and
- (b) subsections (3) and (4) shall be omitted.

11.—(1) If it appears to the Secretary of State that the payer under a maintenance order, a certified copy of which has been received by him from a Hague Convention country, is not residing in the United Kingdom or, in the case of an order which subsequently became a registered order, has ceased to reside therein, he shall send to the appropriate authority in that country—

- (a) the certified copy of the order in question and a certified copy of any order varying that order;
- (b) if the order has at any time been a registered order, a certificate of arrears signed by the prescribed officer;
- (c) a statement giving such information as the Secretary of State possesses as to the whereabouts of the payer; and
- (d) any other relevant documents in his possession relating to the case.

Steps to be taken by Secretary of State where payer under certain orders is not residing in the United Kingdom.

Appeals

12. Where in pursuance of section 9 above a registering court makes, or refuses to make, an order varying a registered order, the payer or the payee under the registered order shall have the like right of appeal (if any) from the order of variation or from the refusal to make it as he would have if the registered order had been made by the registering court.

Evidence

Admissibility
of evidence
given in
Hague
Convention
country.

13.—(1) A statement contained in—

- (a) a document, duly authenticated, which purports to set out or summarise evidence given in proceedings in a court in a Hague Convention country; or
- (b) a document, duly authenticated, which purports to set out or summarise evidence taken in that country for the purpose of proceedings in a court in the United Kingdom under this Part of this Act, whether in response to a request made by such a court or otherwise; or
- (c) a document, duly authenticated, which purports to have been received in evidence in proceedings in a court in that country or to be a copy of a document so received; or
- (d) a document purporting to be signed by a judicial officer, official or other competent person in a Hague Convention country which establishes that certain documents were served on a person,

shall in any proceedings in a court in the United Kingdom relating to a maintenance order to which this part of this Act applies be admissible as evidence of any fact stated therein to the same extent as oral evidence of that fact is admissible in those proceedings.

(2) A document purporting to set out or summarise evidence given as mentioned in subsection (1)(a) above, or taken as mentioned in subsection (1)(b) above, shall be deemed to be duly authenticated for the purposes of that subsection if the document purports to be certified by the judicial officer or other person before whom the evidence was given, or, as the case may be, by whom it was taken, to be the original document containing or recording, or, as the case may be, summarising, that evidence or a true copy of that document.

(3) A document purporting to have been received in evidence as mentioned in subsection (1)(c) above, or to be a copy of a document so received, shall be deemed to be duly authenticated for the purposes of that subsection if the document purports to be certified by a judge or officer of the court in question to have been, or to be a true copy of a document which has been, so received.

(4) It shall not be necessary in any such proceedings to prove the signature or official position of the person appearing to have given such a certificate.

(5) Nothing in this section shall prejudice the admission in evidence of any document which is admissible in evidence apart from this section.

Obtaining
of evidence
needed for
purpose of
certain
proceedings.

14.—(1) Where for the purpose of any proceedings in a court in a Hague Convention country relating to a maintenance order to which this Part of this Act applies a request is made by or on behalf of that court for the taking in the United Kingdom of the evidence of a person residing therein relating to matters specified in the request, such court in the United Kingdom as may be prescribed shall have power to take that evidence and, after giving notice of the time and place at which the evidence is to be taken to such persons and in such manner as it thinks fit, shall take the evidence in such manner as may be prescribed.

Evidence taken in compliance with such a request shall be sent by the prescribed officer of the court to the Secretary of State for transmission to the appropriate authority in the Hague Convention country.

(2) Where any person, not being the payer or the payee under the maintenance order to which the proceedings in question relate, is required by virtue of this section to give evidence before a court in the United Kingdom, the court may order that there shall be paid out of moneys provided by Parliament such sums as appear to the court reasonably sufficient to compensate that person for the expense, trouble or loss of time properly incurred in or incidental to his attendance.

(3) Section 77(1), (3) and (4) of the Magistrates' Courts Act 1952(a) (which provide for compelling the attendance of witnesses, etc.) shall apply in relation to a magistrates' court having power under subsection (1) above to take the evidence of any person as if the proceedings in the court in a Hague Convention country for the purpose of which a request for the taking of the evidence has been made were proceedings in the magistrates' court and had been begun by complaint.

(4) Paragraphs 71 and 73 of Schedule 1 to the Sheriff Courts (Scotland) Act 1907(b) (which provide for the citation of witnesses, etc.) shall apply in relation to a sheriff having power under subsection (1) above to take the evidence of any person as if the proceedings in the court in a Hague Convention country for the purpose of which a request for the taking of the evidence has been made were proceedings in the sheriff court.

(5) A court in the United Kingdom may for the purpose of any proceedings in that court under this Part of this Act relating to a maintenance order to which this Part of this Act applies send to the Secretary of State for transmission to the appropriate authority in a Hague Convention country a request for a court in a Hague Convention country to take or provide evidence relating to such matters as may be specified in the request.

(6) In the application of this section to Northern Ireland, in subsection (3), for the reference to section 77(1), (3) and (4) of the Magistrates' Courts Act 1952 there shall be substituted a reference to sections 120(1), (3) and (4), 121 and 122 of the Magistrates' Courts Act (Northern Ireland) 1964 (c).

15. For the purposes of this Part of this Act, unless the contrary is shown—
- (a) any order made by a court in a Hague Convention country purporting to bear the seal of that court or to be signed by any person in his capacity as a judge or officer of the court, shall be deemed without further proof to have been duly sealed or, as the case may be, to have been signed by that person;
 - (b) the person by whom the order was signed shall be deemed without further proof to have been a judge or officer, as the case may be, of that court when he signed it and, in the case of an officer, to have been authorised to sign it; and
 - (c) a document purporting to be a certified copy of an order made by a court in a Hague Convention country shall be deemed without further proof to be such a copy.

Order, etc.
made in
Hague
Convention
country need
not be
proved.

(a) 1952 c. 55.

(b) 1907 c. 51.

(c) 1964 c. 21 (N.I.).

Supplemental

Payment of sums under orders made in Hague Convention countries : conversion of currency.

16.—(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 Hague Convention 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 Hague Convention country, the date on which the order first becomes a registered order;
- (b) in relation to a registered order which has been varied, the date on which the last order varying that order is registered in the registering 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”.

Proceedings in magistrates' courts.

17.—(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—

- (a) to hear a complaint for the variation or revocation of a maintenance order made by such a court, being an order to which section 5 of this Act applies; or

- (b) to hear a complaint for the variation of a registered order which is registered in that court,

if the defendant to the complaint is residing in a Hague Convention country and if the court would have had jurisdiction to hear the complaint had the defendant been residing in Northern Ireland and been served with a summons to appear before the court to answer the complaint.

- (7) Where the defendant to a complaint—

- (a) for the variation or revocation of a maintenance order made by a magistrates' court, being an order to which section 5 of this Act applies; or
- (b) for the variation 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 Hague Convention country and that the requirements of section 5(4) (6) or (7) or section 9(3), as the case may be, have been complied with, 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.—(1) Without prejudice to the generality of the power to make rules under section 15 of the Justices of the Peace Act 1949(a) (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 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 Hague Convention 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 Hague Convention 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 Hague Convention country relating to a maintenance order to which this Part of this Act applies;

Magistrates'
courts rules.

(a) 1949 c. 101.

(f) the circumstances and manner in which magistrates' courts may for the purposes of this Part of this Act communicate with courts in Hague Convention 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(a) in relation to proceedings or matters in magistrates' courts in Northern Ireland under this Part of this Act.

Rules for
sheriff
court.

19. Without prejudice to the generality of the powers conferred on the Court of Session by section 32 of the Sheriff Courts (Scotland) Act 1971(b) 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 Hague Convention 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 Hague Convention 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 Hague Convention countries are to be informed of decrees granted, or other things done, by the sheriff under this Part of this Act;
- (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 Hague Convention countries.

Interpreta-
tion of
Part I.

21.—(1) In this Part of this Act, unless the context otherwise requires—

“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 except any arrears that accrued prior to the date of the entry into force of the Hague Convention between the United Kingdom and the Hague Convention country in which the payer is residing, or, as the case may be, that to the best of his information or belief there are no arrears due thereunder at the date of the certificate;

“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;

(a) 1964 c. 21 (N.I.).

(b) 1971 c. 58.

“court” includes any tribunal or person having power to make, enforce, vary or revoke a maintenance order and “competent court in a Hague Convention country” means a court having jurisdiction on one of the grounds specified in section 6(5)(a) above;

“maintenance order” means an order (however described), including a settlement made by or before a competent court in a Hague Convention country, of any of the following descriptions, and, in the case of an order which is not limited to the following descriptions, the part of the order which is so limited, 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;
 - (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) 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
- (c) an order within the foregoing provisions of this definition made against a payer on the application of a public body which claims reimbursement of sums of money payable under the order with respect to the payee if reimbursement can be obtained by the public body under the law to which it is subject,

and, in the case of a maintenance order which has been varied (including a maintenance order which has been varied either by a court in the United Kingdom or by a competent court in a Hague Convention country whether or not the original order was made by such a court), means that order as varied:

Provided that the expression “maintenance order” shall not include an order made in a Hague Convention country of a description which that country or the United Kingdom has reserved the right under Article 26 of the Hague Convention not to recognise or enforce;

“order” means an order however described giving effect to a decision rendered by a court and, 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 and includes a public body which has provided benefits for the payee and which is entitled *ipso jure* under the law to which it is subject to claim enforcement of the said order to the extent of the benefits so provided in place of the said person;

“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;

“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 and “registered” and “registration” shall be construed accordingly;

“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.

(2) 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.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order is made under section 40 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 and provides for the implementation in the United Kingdom of the Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations concluded at The Hague on 2nd October 1973. Article 3 of the Order provides that the provisions of Part I of the Act shall apply in relation to a country specified in Schedule 1 to the Order in which the Convention is in force (hereinafter referred to as "a Convention country") as they apply in relation to a reciprocating country designated under section 1 of the Act subject to the exceptions, adaptations and modifications set out in Schedule 2 to the Order. Schedule 3 to the Order sets out in full the provisions of Part I of the Act as they apply in relation to a Convention country.

The general effect of the Order is to provide for the transmission of maintenance orders made in the United Kingdom for recognition and enforcement in a Convention country; to enable maintenance orders to be made in the United Kingdom against any person residing in a Convention country after notice of the institution of proceedings has been served on that person and, if such an order is made, to provide for the sending of certain documents to that Convention country for recognition and enforcement there of such orders; to provide for the variation and revocation of maintenance orders which have been sent to a Convention country under the Act; to provide for the registration in the United Kingdom of maintenance orders made in a Convention country and to provide for the enforcement and variation of maintenance orders so registered.

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