

1980 No. 108 (L.I)

MAGISTRATES' COURTS

PROCEDURE

The Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Hague Convention Countries) Rules 1980

<i>Made</i>	- - -	31st January 1980
<i>Laid before Parliament</i>		8th February 1980
<i>Coming into Operation</i>		1st March 1980

The Lord Chancellor, in exercise of the powers conferred on him by the provisions specified in Schedule 1 to these Rules and after consultation with the Rule Committee appointed under section 15 of the Justices of the Peace Act 1949(a) hereby makes the following Rules:—

1. These Rules may be cited as the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Hague Convention Countries) Rules 1980 and shall come into operation on 1st March 1980.

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

“the Act” means the Maintenance Orders (Reciprocal Enforcement) Act 1972(b) as applied with such exceptions, adaptations and modifications as are specified in the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1979(c); 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).

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 recognition and enforcement in Hague Convention country) shall 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;
- (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.

(a) 1949 c.101.

(b) 1972 c.18.

(c) S.I. 1979/1317.

(d) S.I. 1968/1920, to which there are amendments not relevant to these Rules.

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

5.—(1) Where a justices' clerk is required under any provision of Part I of the Act to register a maintenance 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) Every minute or memorandum entered in pursuance of paragraph (1) above shall specify the section of the Act under which the order in question is registered.

(3) Where a maintenance order is under any provision of Part I of the Act registered in a magistrates' court, the justices' clerk shall send written notice of the registration to the Secretary of State.

6. Where under section 5(4)(b) of the Act a copy of any representations made or evidence adduced by or on behalf of the payer in an application by the payee for the variation or revocation of a maintenance order to which section 5 of the Act applies, is required to be served on the payee before the hearing, the clerk of the magistrates' court to which the application is made shall arrange for a copy of such representations or evidence to be sent to the payee by post.

7.—(1) Any notice required under section 6(8) of the Act (notice of registration in United Kingdom court of maintenance order made in Hague Convention country) to be served on the payer under a maintenance order shall, where the order is registered in a magistrates' court, be in the form in Part I of Schedule 2 to these Rules, or in a form to the like effect.

(2) Where a magistrates' court to which an appeal is made under section 6(9) of the Act sets aside the registration of a maintenance order, the justices' clerk shall send written notice of the court's decision to the Secretary of State.

(3) Any notice required under section 6(11) of the Act (notice that maintenance order made in Hague Convention country has not been registered in United Kingdom court) to be given to the payee under a maintenance order shall, where the appropriate court is a magistrates' court, be in the form in Part II of Schedule 2 to these Rules or in a form to the like effect.

8.—(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 shall send those payments by post to the payee under the order.

(2) Where it appears to a justices' clerk to whom payments under any maintenance order are to be 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.

9.—(1) Subject to paragraph (2) below, where a request is made by or on behalf of a court in a Hague Convention 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 Hague Convention country relate was made by a magistrates' court, the court which made the order;

- (b) where the maintenance order to which those proceedings in the court in the Hague Convention country relate was made by a court in a Hague Convention country, 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.

10.—(1) 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.

(2) 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.

11. Where a justices' clerk serves a notice on a payer under a maintenance order who resides in a Hague Convention country under any provision of Part I of the Act, he shall send a document which establishes that the notice was so served to the Secretary of State.

12.—(1) Where the clerk of a magistrates' court receives from the Secretary of State notice of the institution of proceedings, including notice of the substance of the claim, in a Hague Convention country in relation to the making, variation or revocation of a maintenance order and it appears to that justices' clerk that the person against whom those proceedings have been instituted is residing within the petty sessions area for which the court acts, the justices' clerk shall serve the notice on that person by sending it by post in a registered letter addressed to him at his last known or usual place of abode.

(2) Where it appears to a justices' clerk who has received such a notice from the Secretary of State that the person against whom the proceedings have been instituted is not so residing, the justices' clerk shall return the notice to the Secretary of State with an intimation to that effect.

Dated 31st January 1980.

Hailsham of St. Marylebone, c.

SCHEDULE 1

Enabling Powers

Section 15 of the Justices of the Peace Act 1949, as extended by section 122 of the Magistrates' Courts Act 1952(a);

The following provisions of the Maintenance Orders (Reciprocal Enforcement) Act 1972, as extended by Article 3 of the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1979, namely,

- section 2(3) and (4) (see Rules 3 and 4(b));
- section 3(5)(b), (6A), (6B) and (6D) (see Rule 3(b));
- section 5(3), (4)(c), (6), (7) and (10) (see Rules 3 and 5(b));
- section 5(4)(b) (see Rule 6(b));
- section 6(2), (3), (5), (6), (7), (8), (10), (11) and (12) (see Rules 3, 5, 7 and Schedule 2(b));
- section 8(5) (see Rule 8(b));
- section 8(6) (see Rule 3(b));
- section 9(3), (4)(b) and (c), (6), (7) and (8) (see Rules 3 and 5(b));
- section 10(1), (2), (3), (4), (5) and (7) (see Rules 3, 5 and 10(b));
- section 11(1)(b) (see Rule 3(b));
- section 14(1) (see Rule 9(b));
- section 16(1) (see Rule 8(b));
- section 18(1) (see Rule 9(b)).

(a) 1952 c.55.

(b) The references to Rules are to the Rules in this statutory instrument which give effect to the enabling powers to which the Rules relate.

SCHEDULE 2

PART I

Rule 7(1) Notice to payer of registration of maintenance order.

To⁽¹⁾.....

I hereby give notice that on.....day of.....19.....I registered
 a maintenance order (copy attached) made by the
 court in⁽²⁾ ordering you to pay⁽³⁾ the sum of⁽⁴⁾

You are entitled to appeal to the.....magistrates' court within one
 calendar month from the date of the service of this notice to set aside the registration
 of the order on one of the following grounds:—

- (a) that the court making the order did not have jurisdiction to do so⁽⁵⁾;
- (b) that the registration is contrary to public policy;
- (c) that the order was obtained by fraud in connection with a matter of procedure;
- (d) that proceedings between you and the payee and having the same purpose
 are pending before a court in the United Kingdom and those proceedings
 were instituted before these proceedings;
- (e) that the order is incompatible with a judgment given in proceedings between
 you and the payee and having the same purpose, either in the United Kingdom
 or in a Hague Convention country;
- (f) if you did not appear in the proceedings in the Hague Convention country,
 that you were not given notice of the institution of the proceedings, including
 notice of the substance of the claim, in accordance with the law of that
 country and in sufficient time to enable you to defend the proceedings.

J. C.
 Clerk of the Court.

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- (1) Insert name and address of payer.
 - (2) Insert name of Hague Convention country.
 - (3) Insert name of payee.
 - (4) Insert amount in sterling and period, e.g. monthly.
 - (5) Jurisdiction may be based—
 - (a) on the habitual residence of the payer or payee in that State;
 - (b) on the payer and payee being nationals of that State;
 - (c) on your submission to the jurisdiction of the court; or
 - (d) in the case of an order made on divorce, etc. on any ground which is recognised
 by United Kingdom law.

PART II

Notice to payee that maintenance order has not been registered.

To⁽¹⁾..... Rule 7(3)

I hereby give notice that I have not registered a maintenance order made by thecourt in⁽²⁾.....ordering⁽³⁾.....to pay you the sum of⁽⁴⁾.....on the ground that⁽⁵⁾.....

You are entitled to appeal against my decision to the.....magistrates' court within one calendar month from the date when this notice was given to have the order registered.

If you wish to appeal, you may do so by completing and returning to me the notice of appeal set out opposite. Unless you are present in court or legally represented when the appeal is heard the court may dismiss the case. If you wish to be legally represented and need legal aid or advice you may apply to the Area Secretary, the Law Society, 14 (London West) Legal Aid Area, Area Headquarters, 29-37 Red Lion Street, London WC1R 4PP.

J. C.
Clerk of the Court.

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- (1) Insert name and address of payee.
 - (2) Insert name of Hague Convention country.
 - (3) Insert name and address of payer.
 - (4) Insert amount in sterling and period e.g. monthly.
 - (5) Insert one of the grounds specified in section 6(5), (6) or (7) of the Maintenance Orders (Reciprocal Enforcement) Act 1972 (as extended by the Reciprocal Enforcement of Maintenance (Hague Convention Countries) Order 1979).

MAINTENANCE ORDERS (RECIPROCAL ENFORCEMENT) ACT 1972

Appeal by way of complaint

.....Magistrates' Court (Code)

Date:

Defendant:

Address:

Matter of The Court at

Complaint: in having on
made a maintenance order requiring the defendant to pay the undersigned complainant the sum of £..... [weekly or as the case may be] and the order having been sent to the Justices' Clerk for the said Magistrates' Court for registration; the Justices' Clerk has refused to register the order on the ground that.....

I hereby appeal to the said Magistrates' Court against the refusal to register this order.

Signed.....(Complainant)

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, as set out in Schedule 3 to the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1979.

Rule 3 provides that the justices' clerk is the prescribed officer. Rule 4 specifies the matters to be included in an application under section 2 of the 1972 Act. Rule 5 provides for the form of registration of a maintenance order. Rule 6 lays down that certain documents to be served on the payee are to be sent by post. Rule 7 prescribes the form of notice of registration of a maintenance order which has to be served on the payer and the form of notice to the payee that a maintenance order has not been registered; it also requires a justices' clerk to send the Secretary of State written notice of a court's decision to set aside the registration of a maintenance order. Rule 8 provides for the enforcement of sums due under a registered maintenance order. Rule 9 provides for the taking of evidence needed for foreign proceedings. Rule 10 requires the clerk to give notice of the cancellation or registration of a maintenance order. Rule 11 requires the clerk to notify the Secretary of State of notices served on a payer who resides in a Hague Convention country. Rule 12 makes provision, in cases where proceedings are brought in a Hague Convention country against a person residing in England and Wales, for notice of the institution of those proceedings to be served on that person.