
STATUTORY INSTRUMENTS

1986 No. 1962

**The Magistrates' Courts (Civil Jurisdiction
and Judgments Act 1982) Rules 1986**

PART II

REGISTRATION OF MAINTENANCE ORDERS

The prescribed officer

3. The prescribed officer of a magistrates' court for the purposes of the 1982 Act shall be the justices' clerk.

Registration of maintenance orders

4.—(1) Where a justices' clerk receives an application under Article 31 of the 1968 Convention for enforcement of a maintenance order made in a Contracting State other than the United Kingdom he shall, subject to Articles 27 and 28 of that Convention and to paragraph (3) and (4) of this Rule, 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) Before registering an order under paragraph (1) of this Rule the justices' clerk shall take such steps as he thinks fit for the purpose of ascertaining whether the payer under the order to which the application relates is residing within the jurisdiction of the court, and shall consider any information he possesses (whether provided by the applicant or otherwise) as to the nature and location of the payer's assets.

(3) If, after taking such steps and considering such information as are mentioned in paragraph (2) above, the justices' clerk is satisfied that the payer under the order is not residing within the jurisdiction of the court he shall, subject to paragraph (4) of this Rule, refuse the application and return the documents relating thereto to the Secretary of State with a statement giving such information as he possesses as to the whereabouts of the payer and the nature and location of his assets.

(4) If, after taking such steps and considering such information as are mentioned in paragraph (2) above, the justices' clerk is satisfied that the payer is not residing within the jurisdiction of the court but that there are assets against which, after registration in the High Court under Part I of the Maintenance Orders Act 1958, the order could be enforced, he shall cause the order to be registered in accordance with paragraph (1) of this Rule.

Provided that where the justices' clerk is of the opinion that the payer is residing within the jurisdiction of another magistrates court in England and Wales he may, if he thinks fit, and notwithstanding the provisions of this paragraph, refuse the application and return the documents relating thereto to the Secretary of State in accordance with paragraph (3) above.

(5) If the justices' clerk refuses an application made under Article 31 of the 1968 Convention, he shall cause notice of his decision to be sent to the applicant, at the address provided by the applicant.

(6) Where an order has been registered under paragraph (1) of this Rule the justices' clerk who was responsible for its registration shall cause a written notice stating that it has been duly registered in his court to be sent to:

- (a) the Secretary of State;
- (b) the payer under the order to which the registration relates;
- (c) the applicant, at the address provided by the applicant.

(7) Where an order has been registered under paragraph (1) of this Rule and the justices' clerk who was responsible for its registration is of the opinion that the order, or a part thereof, is one which would be appropriate for enforcement in the High Court he shall notify the applicant accordingly and shall notify the applicant also of the possibility of an application by the applicant for registration of the whole or part of the order in the High Court under Part I of the Maintenance Orders Act 1958.

Appeals from decision as to registration

5. An appeal under Article 36 or under Article 40 of the 1968 Convention shall be by way of complaint to the magistrates' court in which the order is registered, or in which the application for its registration has been refused, as the case may be.

Payment of sums due under a registered order

6.—(1) Payment of sums due under a registered order shall, while the order is so 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 the justices' clerk to whom payments are made under this paragraph shall send those payments by post to the court which made the order or to such other person or authority as that court or the Secretary of State may from time to time direct.

(2) Where it appears to a justices' clerk to whom payments by way of periodical payments under any maintenance order are made by virtue of paragraph (1) above that any sums payable under the order are in arrear he may and, if such sums are in arrear to an amount equal to four times the sum payable weekly, 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.

(3) Without prejudice to the foregoing provisions of this Rule, the justices' clerk of the registering court shall take reasonable steps to notify the person to whom payments are due under a registered order of the means of enforcement available in respect of it, including, in an appropriate case, the possibility of registration of the whole or part of the order in the High Court under Part I of the Maintenance Orders Act 1958.

Variation and revocation of registered orders

7. Where a maintenance order which has been registered for enforcement in a magistrates' court has been varied or revoked by an order made by a competent court in a Contracting State the justices' clerk for the court in which the order is registered shall, on receiving notice of the variation or revocation, register the order of variation or revocation by means of a minute or memorandum entered and signed by him in his register, and shall cause notice of the same to be given in writing by post to the payee and to the payer under the order to which the variation or revocation relates.

Transfer of registered orders

8.—(1) Where the justices' clerk for the court where an order is registered is of the opinion that the payer under the registered order is residing within the jurisdiction of another magistrates' court in England and Wales he shall transfer the order to that other court by sending the information and

documents relating to the registration of the order (that is, the information and documents required under Articles 46 and 47 of the Convention) to the justices' clerk for that other court, and shall cause notice of the same to be given to the payee under the order to which the transfer relates, and to the Secretary of State.

Provided that where an application is pending in the registering court for the registration of the whole or part of the order in the High Court under Part I of the Maintenance Orders Act 1958, the justices' clerk shall not transfer the order, or such part of it to which the application relates, under this paragraph.

(2) On the transfer of an order under paragraph (1) above the justices' clerk for the court to which it is transferred shall register the order in the like manner as if an application for registration had been received under Rule 4 of these Rules.

(3) The justices' clerk who is required by the foregoing provisions of this Rule to send to the justices' clerk for another court information and documents relating to the registration of an order shall send with that information and those documents:—

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

Cancellation of registered orders

9. Subject to Rule 8 of these Rules, where the justices' clerk for the court where an order is registered is of the opinion that the payer under the registered order is not residing within the jurisdiction of that court and has no assets against which, after registration in the High Court under Part I of the Maintenance Orders Act 1958, the order could be enforced he shall cancel the registration of the order and shall cause notice of the same to be given to the payee under the order to which the cancellation relates and shall send the information and documents relating to the registration of the order (that is, the information and documents required under Articles 46 and 47 of the Convention) to the Secretary of State, together with such information and documents as are referred to in Rule 8(3)(a), (b) and (c) of these Rules.