SCHEDULE 3

PART 1 OF THE ACT AS MODIFIED BY SCHEDULE 2

Orders made by courts in specified States

Registration in United Kingdom court of maintenance order made in a specified State.

6.—(1) This section applies to a maintenance order made, whether before, on or after 1st December 1995, by a court in a specified State.

(2) Where a certified copy of an order to which this section applies is received by the Lord Chancellor or the Secretary of State from the appropriate authority in a specified State, and it appears to him that the payer under the order is residing or has assets in the United Kingdom, he shall send the copy of the order to the prescribed officer of the appropriate court.

(3) Where the prescribed officer of the appropriate court receives from the Lord Chancellor or the Secretary of State a certified copy of an order to which this section applies, he shall, subject to subsection (4) below, 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 or has assets within the jurisdiction of the court, and if after taking those steps he is satisfied that the payer is not residing and has no assets within the jurisdiction of the court he shall return the certified copy of the order to the Lord Chancellor or the Secretary of State, as the case may be, with a statement giving such information as he possesses as to the whereabouts of the payer and the nature and location of his assets.

Enforcement of maintenance order registered in United Kingdom court.

8.—(1) Subject to subsection (2) 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(**1**) 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(**2**).

(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 level 2 on the standard scale.

(4) An order which by virtue of this section is enforceable by a magistrates' court shall, subject to the modifications of sections 76 and 93 of the Magistrates' Courts Act 1980(**3**) specified in subsections (4A) and (4B) below, and subject to the modifications of Article 98 of the Magistrates' Courts (Northern Ireland) Order 1981(**4**) specified in subsection (4C) below, be enforceable as if it were a magistrates' courts maintenance order made by that court.

(**1**) 1958 c. 39.
(**2**) 1966 c. 35 (NI).
(**3**) 1980 c. 43; section 76 was amended by the Criminal Justice Act 1982 (c. 48), Schedule 16 and by the Maintenance Enforcement Act 1991 (c. 17), section 7. Section 93 was amended by the Family Law Reform Act 1987 (c. 42), Schedule 2 and by the Maintenance Enforcement Act 1991, Schedule 2.
(**4**) S.I.1981/1675 (N.I. 26).

In this subsection "magistrates' court maintenance order" has the same meaning as in section 150(1) of the Magistrates' Courts Act 1980.

(4A) Section 76 (enforcement of sums adjudged to be paid) shall have effect as it for subsections (4) to (6) there were substituted the following subsections—

"(4) Where proceedings are brought for the enforcement of a magistrates' court maintenance order under this section, the court may vary the order by exercising one of its powers under subsection (5) below.

(5) The powers of the court are—

(a) the power to order that payments under the order be made directly to the clerk of the court or the clerk of any other magistrates' court;

(b) the power to order that payments under the order be made to the clerk of the court, or to the clerk of any other magistrates' court, by such method of payment falling within section 59(6) above (standing order, etc.) as may be specified;

(c) the power to make an attachment of earnings order under the Attachment of Earnings Act 1971(**5**) to secure payments under the order.

(6) In deciding which of the powers under subsection (5) above it is to exercise, the court shall have regard to any representations made by the debtor (within the meaning of section 59 above).

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

"(a) the court proposes to exercise its power under paragraph (b) of section 76(5) below, and"."

(4B) In section 93 (complaint for arrears), subsection (6) (court not to impose imprisonment in certain circumstances) shall have effect as it for paragraph (b) there were substituted—

"(b) if the court is of the opinion that it is appropriate—

(i) to make an attachment or earnings order; or

(ii) to exercise its power under paragraph (b) of section 76(5) above."

(4C) Article 98 of the Magistrates' Courts (Northern Ireland) Order 1981(**6**) (enforcement of sums adjudged to be paid) shall have effect—

(a) as if for paragraph (7)(a) there were substituted the following paragraph—

"(a) if the court is of the opinion that it is appropriate—

(i) to make an attachment of earnings order; or

(ii) to exercise its power under paragraph (8C)(b)";

(b) as if for paragraphs (8B) to (8D) there were substituted the following paragraphs—

"(8B) Upon the appearance of a person or proof of service of the summons on him as mentioned in paragraph (4) for the enforcement of an order to which this Article applies, the court or resident magistrate may vary the order, by exercising one of the powers under paragraph (8C).

(8C) The powers mentioned in paragraph (8B) are—

(a) the power to order that payments under the order be made directly to the collecting officer;

(**5**) 1971 c. 32.
(**6**) S.I. 1981/1675 (N.I. 26).

(b) the power to order that payments under the order be made to the collecting officer, by such method of payment falling within Article 85(7) (standing order, etc.) as may be specified;

(c) the power to make an attachment of earnings order under Part IX to secure payments under the order.

(8D) In deciding which of the powers under paragraph (8C) is to be exercised, the court or, as the case may be, a resident magistrate shall have regard to any representations made by the debtor (within the meaning of Article 85).

(8E) Paragraph (5) of Article 85 (power of court to require debtor to open account) shall apply for the purposes of paragraph (8C) as it applies for the purposes of that Article but as if for sub-paragraph (a) there were substituted—

"(a) the court proposes to exercise its power under sub-paragraph (b) of Article 98(8C), and"."

(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 or facilitating the enforcement of 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) Sums of money payable under a registered order shall be payable in accordance with the order as from the date on which the order was made.

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

(a) subsections (2) to (5) shall be omitted; and

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

Variation of maintenance order registered in United Kingdom court.

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 proceedings for the variation of the order are brought by or against a person residing in a specified State.

(1ZA) Where the registering court is a magistrates' court in England and Wales, section 60 of the Magistrates' Courts Act 1980(**7**) (revocation, variation, etc. of orders for periodical payment) shall have effect in relation to the registered order—

(za) as if in subsection (1) for the words "by order on complaint" there were substituted "on an application being made, by order";

(a) as if in subsection (3) for the words "paragraphs (a) to (d) of section 59(3) above" there were substituted "subsection (3A) below" and after that subsection there were inserted—

"(3A) The powers of the court are—

(a) the power to order that payments under the order be made directly to the clerk of the court of the clerk of any other magistrates' court;

(**7**) 1980 c. 43; section 60 was substituted by section 4 of the Maintenance Enforcement Act 1991 (c. 17).

(b) the power to order that payments under the order be made to the clerk of the court, or to the clerk of any other magistrates' court, by such method of payment falling within section 59(6) above (standing order, etc.) as may be specified;

(c) the power to make an attachment of earnings order under the Attachment of Earnings Act 1971(**8**) to secure payments under the order.";

(b) as if in subsection (4) for paragraph (b) there were substituted—

"(b) payments under the order are required to be made to the clerk of the court, or to the clerk of any other magistrates' court, by any method of payment falling within section 59(6) above (standing order, etc.)",

and as if after the words "the court" there were inserted "which made the order";

(c) as if in subsection (5) for the words "to the clerk" there were substituted "in accordance with paragraph (a) of subsection (3A) above";

(d) as if in subsection (7), paragraph (c) and the word "and" immediately preceding it were omitted;

(e) as if in subsection (8) for the words "paragraphs (a) to (d) of section 59 (3) above" there were substituted "subsection (3A) above";

(f) as if for subsections (9) and (10) there were substituted the following subsections—

"(9) In deciding, for the purposes of subsections (3) and (8) above, which of the powers under subsection (3A) above it is to exercise, the court shall have regard to any representations made by the debtor.

(10) Subsection (4) of section 59 above (power of court to require debtor to open account) shall apply for the purposes of subsection (3A) above as it applies for the purposes of that section but as if for paragraph (a) there were substituted—

"(a) the court proposes to exercise its power under paragraph (b) of section 60 (3A) below, and"."

(1ZB) Where the registering court is a court of summary jurisdiction in Northern Ireland, Article 86 of the Magistrates' Courts (Northern Ireland) Order 1981 (revocation, variation, etc. of orders for periodical payment) shall have effect in relation to the registered order—

(a) as if in paragraph (3) for the words "sub-paragraphs (a) to (d) of Article 85(3)" there were substituted "paragraph (3A)" and after that paragraph there were inserted—

"(3A) The powers of the court are—

(a) the power to order that payments under the order be made directly to the collecting officer;

(b) the power to order that payments under the order be made to the collecting officer by such method of payment falling within Article 85(7) (standing order, etc.) as may be specified;

(c) the power to make an attachment of earnings order under Part IX to secure payments under the order.";

(b) as if in paragraph (4) for sub-paragraph (b) there were substituted—

"(b) payments under the order are required to be made to the collecting officer by any method of payment falling within Article 85(7) (standing order, etc.)",

and as if the after words "petty sessions" there were inserted "for the petty sessions district for which the court which made the order acts";

(**8**) 1971 c. 32.

(c) as if in paragraph (5) for the words "to the collecting officer" there were substituted "in accordance with sub-paragraph (a) of paragraph (3A)";

(d) as if in paragraph (7), sub-paragraph (c) and the word "and" immediately preceeding it were omitted;

(e) as if in paragraph (8) for the words "sub-paragraphs (a) to (d) of Article 85(3)" there were substituted "paragraph (3A)";

(f) as if for paragraphs (9) and (10) there were substituted the following paragraphs—

"(9) In deciding, for the purposes of paragraphs (3) and (8) above, which of the powers under paragraph (3A) it is to exercise, the court shall have regard to any representations made by the debtor.

(10) Paragraph (5) of Article 85 (power of court to require debtor to open account) shall apply for the purposes of paragraph (3A) as it applies for the purposes of that Article but as if for sub-paragraph (a) there were substituted—

"(a) the court proposes to exercise its power under sub-paragraph (b) of Article 86(3A), and"."

(1A) The powers conferred by subsection (1) above are not exercisable in relation to so much of a registered order as provides for the payment of a lump sum.

(1B) The registering court shall not vary a registered order if neither the payer nor the payee under the order is resident in the United Kingdom.

(2) Where an application is made by the payer to a registering court in the United Kingdom for the variation of a registered order, and the payee is residing in a specified State, the prescribed officer of the court shall—

(a) in the case of a court in England and Wales or Northern Ireland, send to the Lord Chancellor, or, in the case of a court in Scotland, send to the Secretary of State, notice of the institution of the proceedings with a view to its being transmitted by him to the appropriate authority in the specified State for service on the payee; and

(b) 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.

(3) Where such an application is made—

(a) the order shall not be varied unless the document mentioned in paragraph (a) of subsection (2) above has been served on the payee in accordance with the law for the service of such a document in the specified State;

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

(c) a copy of any such representations and evidence shall be served on the payer by the prescribed officer of the court before the hearing.

(4) Where an application is made by the payee to a registering court in the United Kingdom for the variation of a registered order, and the payer is residing in the United Kingdom, the prescribed officer of the court shall serve the document mentioned in paragraph (a) of subsection (2) above on the payer.

(5) 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) three certified copies of the order of variation;

(b) a written statement signed by that officer as to whether both the payer and the payee under the order appeared in the proceedings for the variation of the order, and, if only the

applicant appeared, the original or a certified copy of a document which establishes that notice of the institution of the proceedings had been served on the other party,

in the case of a court in England and Wales or Northern Ireland, to the Lord Chancellor, or, in the case of a court in Scotland, to the Secretary of State, with a view to their being transmitted by him to the appropriate authority in the specified State.

(6) Where a registered order has been varied by the registering court or by a court in a specified State, the prescribed officer of the registering court shall register the variation order in the prescribed manner.

(7) Where a registered order has been varied by the registering court or by a court in a specified State, 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 specified State 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, 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 is not residing within the jurisdiction of that court and has no assets within that jurisdiction against which the order can be effectively enforced, he shall cancel the registration of the order and, subject to subsection (3) below, shall send the certified copy of the order to the Lord Chancellor.

(3) Where the prescribed officer of the registering court, being a magistrates' court, is of opinion that the payer is residing or has assets 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 Lord Chancellor under this section and it appears to him that the payer under the order is residing or has assets 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 or has assets within the jurisdiction of the court, and if after taking those steps he is satisfied that the payer is not residing and has no assets within the jurisdiction of the court he shall send the certified copy of the order to the Lord Chancellor.

(7) The officer of a court who is required by any of the foregoing provisions of this section to send to the Lord Chancellor 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 or, in Scotland, by the applicant or his solicitor;

(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 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";

(b) subsections (3) and (4) shall be omitted; and

(c) for the words "Lord Chancellor", in each place where they occur, there shall be substituted the words "Secretary of State".

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

11.—(1) If at any time it appears to the Lord Chancellor or the Secretary of State that the payer under a maintenance order, a certified copy of which has been received by him from a specified State, is not residing and has no assets in the United Kingdom, he shall send to the appropriate authority in that State or, if having regard to all the circumstances he thinks it proper to do so, to the appropriate authority in another specified State—

(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 or, in Scotland, by the applicant or his solicitor;

(c) a statement giving such information as the Lord Chancellor or the Secretary of State possesses as to the whereabouts of the payer and the nature and location of his assets; and

(d) any other relevant documents in his possession relating to the case.

(2) Where the documents mentioned in subsection (1) are sent to the appropriate authority in a specified State other than that in which the order in question was made, the Lord Chancellor or the Secretary of State shall inform the appropriate authority in the specified State in which that order was made of what he has done.