

## SCHEDULE 5

Regulation 9

### AMENDMENTS RELATING TO THE MAINTENANCE REGULATION

#### **Maintenance Orders (Facilities for Enforcement) Act 1920 (c.33)**

1.—(1) The Maintenance Orders (Facilities for Enforcement) Act 1920 is amended as follows.

(2) In section 3<sup>M1</sup> (power to make provisional orders of maintenance against persons resident in Her Majesty's dominions)—

- (a) in subsection (1), after “if that person had been” insert “habitually”;
- (b) in subsection (3), after “if the person against whom the order is made had been” insert “habitually”;
- (c) in subsection (6), after “the order is sought to be made been” insert “habitually”.

(3) In section 4A<sup>M2</sup> (variation and revocation of maintenance orders)—

- (a) in subsection (2), for the second “residing” substitute “habitually resident”;
- (b) in subsection (3), for the second “residing” substitute “habitually resident”.

#### **Marginal Citations**

**M1** Section 3 is prospectively repealed by section 22(2)(a) of the Maintenance Orders (Reciprocal Enforcement) Act 1972 from a date to be appointed. Subsections (1), (3) and (6) were amended by section 1(1) of and paragraph 1 of Part I of Schedule 1 to the [Maintenance Orders \(Reciprocal Enforcement\) Act 1992 \(c.56\)](#).

**M2** Section 4A was inserted by section 1(1) of and paragraph 3 of Part I of Schedule 1 to the Maintenance Orders (Reciprocal Enforcement) Act 1992. It is prospectively repealed as from a day to be appointed by section 22(2) of the Maintenance Orders (Reciprocal Enforcement) Act 1972. Subsection (3) was amended by Article 185(1) of and paragraph 5 of Schedule 9 to [S.I. 1995/755](#).

#### **Maintenance Orders (Reciprocal Enforcement) Act 1972 (c.18)**

2.—(1) The Maintenance Orders (Reciprocal Enforcement) Act 1972 is amended as follows.

(2) In section 3<sup>M3</sup> (power of magistrates' court to make provisional maintenance order against person residing in reciprocating country)—

- (a) in subsection (1)(a), for “residing” substitute “habitually resident”;
- (b) in subsection (7)(a), in subsection (1)(a) as substituted by that provision, for “residing” substitute “habitually resident”.

(3) In section 17<sup>M4</sup> (proceedings in magistrates' courts)—

- (a) in subsection (5A), for the second “residing” substitute “habitually resident”;
- (b) in subsection (6), for the second “residing” substitute “habitually resident”.

(4) In section 27A<sup>M5</sup>, in subsection (2), after “Lord Chancellor.” insert —

“This subsection does not confer jurisdiction on a court in England and Wales that it would not otherwise have.”

(5) In section 28C<sup>M6</sup>, in subsection (2), after “Lord Chancellor.” insert—

“This subsection does not confer jurisdiction on a court in Northern Ireland that it would not otherwise have.”

**Changes to legislation:** There are currently no known outstanding effects for the *The International Recovery of Maintenance (Hague Convention 2007 etc.) Regulations 2012, SCHEDULE 5*. (See end of Document for details)

(6) In section 35<sup>M7</sup> (further provisions with respect to variation etc of orders by magistrates' courts in England and Wales)—

(a) for subsection (1) substitute—

“(1) Subsection (1A) applies in relation to an application for the variation or revocation of a registered order registered in a magistrates' court in England and Wales (“the registering court”) made—

- (a) by the person against whom or on whose application the registered order was made, and
- (b) in circumstances where the person by or against whom the application is made is residing outside England and Wales.

(1A) The registering court has jurisdiction to hear the application even though—

- (a) a party to the application is residing outside England and Wales, and
- (b) the requirement in section 30(1) of the Domestic Proceedings and Magistrates' Courts Act 1978<sup>M8</sup> as applied by section 28(2) or 28A(6) of this Act<sup>M9</sup>, is not satisfied.

(1B) But if the application or part of it relates to a matter where jurisdiction falls to be determined by reference to the jurisdictional requirements of the Maintenance Regulation<sup>M10</sup> and Schedule 6 to the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011<sup>M11</sup>, the registering court may not entertain the application or that part of it unless it has jurisdiction to do so by virtue of that Regulation and that Schedule.”;

(b) after subsection (3) insert—

“(4) In subsection (1B) “the Maintenance Regulation” means Council Regulation (EC) No 4/2009 including as applied in relation to Denmark by virtue of the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark.”.

(7) In section 35A<sup>M12</sup> (further provisions with respect to variation etc of orders by magistrates' courts in Northern Ireland)—

(a) for subsection (1) substitute—

“(1) Subsection (1A) applies in relation to an application for the variation or revocation of a registered order registered in a magistrates' court in Northern Ireland (“the registering court”) made—

- (a) by the person against whom or on whose application the registered order was made, and
- (b) in circumstances where the person by or against whom the application is made is residing outside Northern Ireland.

(1A) The registering court has jurisdiction to hear the application even though—

- (a) a party to the application is residing outside England and Wales, and
- (b) the requirement in Article 32 of the Domestic Proceedings (Northern Ireland) Order 1980<sup>M13</sup>, as applied by section 29(2) or 29A(6) of this Act<sup>M14</sup>, is not satisfied.

(1B) But if the application or part of it relates to a matter where jurisdiction falls to be determined by reference to the jurisdictional requirements of the Maintenance Regulation and Schedule 6 to the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011, the registering court may not entertain the application or that part of it unless it has jurisdiction to do so by virtue of that Regulation and that Schedule.”;

(b) after subsection (3) insert—

“(4) In subsection (1B) “the Maintenance Regulation” means Council Regulation (EC) 4/2009 including as applied in relation to Denmark by virtue of the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark.”.

#### Marginal Citations

- M3** Subsection (1) was substituted by section 1(2) of and paragraph 6 of Part II of Schedule 1 to the Maintenance Orders (Reciprocal Enforcement) Act 1992. Subsection (7) was substituted by article 185(1) of and paragraph 66 of Schedule 9 to [S.I. 1995/755](#).
- M4** Subsection (5A) was inserted by Section 1(2) of and paragraph 10 of Part II of Schedule 1 to the Maintenance Orders (Reciprocal Enforcement) Act 1992. Subsection (6) was substituted by article 185(1) of and paragraph 70 of Schedule 9 to [S.I.1995/755](#).
- M5** [Section 27A](#) was substituted by section 1(2) of and paragraph 13 of Part II to Schedule 1 of the [Maintenance Orders \(Reciprocal Enforcement\) Act 1992 \(c.56\)](#).
- M6** [Section 28C](#) was substituted by section 1(2) of and paragraph 13 of Part II to Schedule 1 of the Maintenance Orders (Reciprocal Enforcement) Act 1992.
- M7** [Section 35](#) was substituted by section 1(2) of and paragraph 16 of Part II to Schedule 1 of the Maintenance Orders (Reciprocal Enforcement) Act 1992. Section 35(1) was amended by article 11 of and paragraph 15 of Schedule 1 to S.I.1 1993/ 1576.
- M8** 1978 (c.22). Section 30(1) was amended by regulation 9 of and paragraph 8 of Schedule 7 to [S.I. 2011/1484](#), [section 68\(1\)](#) of and paragraph 24 of Schedule 1 to the [Family Law Act 1986 \(c.55\)](#), [section 154](#) of and paragraph 163 of Schedule 7 to the [Magistrates' Courts Act 1980 \(c.43\)](#), and section 109(1) of and paragraph 194 of Schedule 8 to the [Courts Act 2003 \(c.39\)](#).
- M9** [Sections 28](#) and [28A](#) were substituted by section 1(2) of and paragraph 13 of Part II to Schedule 1 of the Maintenance Orders (Reciprocal Enforcement) Act 1992.
- M10** O.J. No. L 7, 10.1.2009, p.1-79.
- M11** [S.I. 2011/1484](#).
- M12** [Section 35A](#) was substituted by section 1(2) of and paragraph 16 of Part II to Schedule 1 of the Maintenance Orders (Reciprocal Enforcement) Act 1992, and article 185(1) of and paragraph 75 of Schedule 9 to S.I. 1995/ 755.
- M13** [S.I. 1980/563 \(NI 5\)](#)
- M14** [Sections 29](#) and [29A](#) substituted by article 185(1) of and paragraph 72 of Schedule 9 to [S.I. 1995/755](#).

#### Children Act 1989 (c.41)

3. In Schedule 1 to the Children Act 1989, for the italic heading before paragraph 14 <sup>M15</sup>, substitute— “ *Jurisdiction in relation to matters relating to maintenance* ”

#### Marginal Citations

- M15** [Paragraph 14](#) of Schedule 1 was substituted by regulation 9 of and paragraph 12 of Schedule 7 to [S.I. 2011/1484](#).

#### Recovery Abroad of Maintenance (Convention Countries) Order 1975

4.—(1) In the Schedule to the Recovery Abroad of Maintenance (Convention Countries) Order 1975 <sup>M16</sup>, references to the following countries are revoked—

- (a) Austria;
- (b) Belgium;
- (c) Cyprus;

**Changes to legislation:** There are currently no known outstanding effects for the The International Recovery of Maintenance (Hague Convention 2007 etc.) Regulations 2012, SCHEDULE 5. (See end of Document for details)

- (d) Czech Republic;
- (e) Denmark;
- (f) Finland;
- (g) France, including the overseas departments of Guadeloupe, Guiana, Martinique and Reunion;
- (h) Germany;
- (i) Greece;
- (j) Hungary;
- (k) Ireland;
- (l) Italy;
- (m) Luxembourg;
- (n) Netherlands (Kingdom in Europe);
- (o) Poland;
- (p) Portugal;
- (q) Romania;
- (r) Slovakia;
- (s) Slovenia;
- (t) Spain;
- (u) Sweden.

<sup>F1</sup>(2) .....

<sup>F2</sup>(3) .....

<b>F1</b>	Sch. 5 para. 4(2) omitted (31.12.2020) by virtue of The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/519), reg. 1(1), <b>Sch. para. 39(10)(a)</b> (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)
<b>F2</b>	Sch. 5 para. 4(3) omitted (31.12.2020) by virtue of The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/519), reg. 1(1), <b>Sch. para. 39(10)(a)</b> (with reg. 8) (as amended by S.I. 2020/1574, regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)
<b>Marginal Citations</b>	
<b>M16</b>	S.I.1975/423. In the Schedule, the references to Cyprus, Romania, Slovakia, and Slovenia were inserted by article 2(2) of S.I. 1996/1925; the reference to the Czech Republic substituted by article 2(2) of that S.I.; and the reference to Ireland inserted by article 2(2) of S.I. 2002/2839.

**Reciprocal Enforcement of Maintenance Orders (Designation of Reciprocating Countries) Order 1975**

5.—(1) In the Schedule to the Reciprocal Enforcement of Maintenance Orders (Designation of Reciprocating Countries) Order 1975 <sup>M17</sup>, the reference to Malta in column (1) and the corresponding entry in column (2) are revoked.

[<sup>F3</sup>(2) Despite sub-paragraph (1), Malta is to continue to be treated as a reciprocating country for the purposes of Part 1 of the Act—

- (a) in relation to any matter relating to maintenance which is—
  - (i) within scope of the Act, and

**Changes to legislation:** There are currently no known outstanding effects for the *The International Recovery of Maintenance (Hague Convention 2007 etc.) Regulations 2012, SCHEDULE 5.* (See end of Document for details)

- (ii) not within scope of the 2007 Hague Convention”;
  - (b) in accordance with Article 56(2) of the 2007 Hague Convention, in relation to an application for recognition and enforcement of a maintenance decision given in Malta before the entry into force of that Convention for Malta where—
    - (i) the conditions of recognition and enforcement under the 2007 Hague Convention prevent the recognition and enforcement of the decision, and
    - (ii) but for sub-paragraph (1), the decision would have been recognised and enforced under Part 1 of the Act;
  - (c) in relation to—
    - (i) the enforcement or variation of a registered order pursuant to section 8 or 9 of the Act;
    - (ii) the cancellation of the registration, or the transfer, of a registered order pursuant to section 10 of the Act;
    - (iii) steps taken by the Lord Chancellor or the Secretary of State pursuant to section 11 of the Act in relation to a registered order.]
- (3) In sub-paragraph (2), “the Act” means the Maintenance Orders (Reciprocal Enforcement) Act 1972 <sup>M18</sup>[<sup>F4</sup>; and “the 2007 Hague Convention” means the Convention on the International Recovery of Child Support and other forms of Family Maintenance done at The Hague on 23rd November 2007].

- F3** Sch. 5 para. 5(2) substituted (31.12.2020) by [The Jurisdiction and Judgments \(Family\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/519\)](#), reg. 1(1), **Sch. para. 39(10)(b)(i)** (with reg. 8) (as amended by [S.I. 2020/1574](#), regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F4** Words in Sch. 5 para. 5(3) inserted (31.12.2020) by [The Jurisdiction and Judgments \(Family\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/519\)](#), reg. 1(1), **Sch. para. 39(10)(b)(ii)** (with reg. 8) (as amended by [S.I. 2020/1574](#), regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)

**Marginal Citations**

- M17** [S.I.1975/2187](#)  
**M18** [1972 c.18.](#)

**Reciprocal Enforcement of Maintenance Orders (United States of America) Order 1995**

6.—(1) The Reciprocal Enforcement of Maintenance Orders (United States of America) Order 1995 <sup>M19</sup> is amended as follows.

(2) In Schedule 2, in paragraph 16(3), in section 17(6) of the Maintenance Orders (Reciprocal Enforcement) Act 1972 (as substituted by paragraph 16(3)), for the second “residing” substitute “habitually resident”.

(3) In Schedule 3, section 17 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 (as it has effect as set out in that Schedule) is amended as follows—

- (a) in subsection (5A), for the second “residing” substitute “habitually resident”;
- (b) in subsection (6), for the second “residing” substitute “habitually resident”.

**Marginal Citations**

- M19** [S.I.1995/2709](#). Superseded by [S.I. 2007/2005](#) and [S.S.I. 2007/354](#) as from 1st October 2007.

**Changes to legislation:** There are currently no known outstanding effects for the The International Recovery of Maintenance (Hague Convention 2007 etc.) Regulations 2012, SCHEDULE 5. (See end of Document for details)

**Reciprocal Enforcement of Maintenance Orders (United States of America) Order 2007**

7.—(1) The Reciprocal Enforcement of Maintenance Orders (United States of America) Order 2007 <sup>M20</sup> is amended as follows.

- (2) In Schedule 1, in paragraph 15(2)—
  - (a) in section 17(5A) of the Maintenance Orders (Reciprocal Enforcement) Act 1972 (as substituted by paragraph 15(2)), for the second “residing”, substitute “habitually resident”;
  - (b) in section 17(6) of that Act (as substituted by paragraph (15(2)), for the second “residing”, substitute “habitually resident”.
- (3) In Schedule 2, section 17 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 (as it has effect as set out in that Schedule) is amended as follows—
  - (a) in subsection (5A), for the second “residing”, substitute “habitually resident”;
  - (b) in subsection (6), for the second “residing”, substitute “habitually resident”.

**Marginal Citations**  
**M20** [S.I. 2007/2005](#)

**Civil Jurisdiction and Judgments (Maintenance) Regulations 2011**

<sup>F5</sup>8. ....

**F5** [Sch. 5 para. 8](#) omitted (31.12.2020) by virtue of [The Jurisdiction and Judgments \(Family\) \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/519), reg. 1(1), **Sch. para. 39(10)(c)** (with reg. 8) (as amended by [S.I. 2020/1574](#), regs. 1, 5(2)); 2020 c. 1, Sch. 5 para. 1(1)

**Changes to legislation:**

There are currently no known outstanding effects for the The International Recovery of Maintenance (Hague Convention 2007 etc.) Regulations 2012, SCHEDULE 5.