

SCHEDULE 5

AMENDMENTS RELATING TO THE MAINTENANCE REGULATION

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 ^{M1}(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 ^{M2} (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 ^{M3}, 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 ^{M4}, 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.”.

(6) In section 35 ^{M5}(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 ^{M6} as applied by section 28(2) or 28A(6) of this Act ^{M7}, 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 ^{M8} and Schedule 6 to the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011 ^{M9}, 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.”.

Changes to legislation: There are currently no known outstanding effects for the The International Recovery of Maintenance (Hague Convention 2007 etc.) Regulations 2012, Paragraph 2. (See end of Document for details)

(7) In section 35A ^{M10}(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 ^{M11}, as applied by section 29(2) or 29A(6) of this Act ^{M12}, 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

- M1** 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](#).
- M2** 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](#).
- M3** [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 \(c.56\)](#).
- M4** [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.
- M5** [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](#).
- M6** 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 \(c.39\)](#).
- M7** [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.
- M8** O.J. No. L 7, 10.1.2009, p.1-79.
- M9** [S.I. 2011/1484](#).

Changes to legislation: *There are currently no known outstanding effects for the The International Recovery of Maintenance (Hague Convention 2007 etc.) Regulations 2012, Paragraph 2. (See end of Document for details)*

- M10** [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.
- M11** [S.I. 1980/563](#) (NI 5)
- M12** [Sections 29](#) and [29A](#) substituted by article 185(1) of and paragraph 72 of Schedule 9 to [S.I. 1995/755](#).

Changes to legislation:

There are currently no known outstanding effects for the The International Recovery of Maintenance (Hague Convention 2007 etc.) Regulations 2012, Paragraph 2.