
STATUTORY INSTRUMENTS

2010 No. 2955

The Family Procedure Rules 2010

PART 34

RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS

CHAPTER 3

**ENFORCEMENT OF MAINTENANCE ORDERS UNDER THE
CIVIL JURISDICTION AND JUDGMENTS ACT 1982, THE
JUDGMENTS REGULATION AND THE LUGANO CONVENTION**

SECTION 1

*Registration and Enforcement in a Magistrates' Court of Maintenance Orders
made in a Contracting State to the 1968 Convention, a Contracting State to the
1988 Convention, a Regulation State or a State bound by the Lugano Convention*

Interpretation

34.29. In this Section—

- (a) an expression defined in the 1982 Act has the meaning given to it in that Act; and
- (b) “the 1958 Act” means the Maintenance Orders Act 1958.

Registration of maintenance orders

34.30.—(1) In this rule, “assets to which the 1958 Act applies” means assets against which, after registration in the High Court, the maintenance order could be enforced under Part 1 of the 1958 Act.

(2) This rule applies where the court officer for a magistrates’ court receives—

- (a) an application under Article 31 of the 1968 Convention for the enforcement of a maintenance order made in a Contracting State other than the United Kingdom;
- (b) an application under Article 31 of the 1988 Convention for the enforcement of a maintenance order made in a State bound by the 1988 Convention other than a Member State of the European Union;
- (c) an application under Article 38 of the Judgments Regulation for the enforcement of a maintenance order made in a Regulation State other than the United Kingdom; or
- (d) an application under Article 38 of the Lugano Convention for the enforcement of a maintenance order made in a State bound by the Lugano Convention other than a Member State of the European Union.

(3) The court officer must—

- (a) take such steps as appear appropriate for ascertaining whether the payer resides within the local justice area for which the court acts; and

- (b) consider any available information as to the nature and location of the payer's assets.
- (4) If the court officer is satisfied that the payer—
 - (a) does not reside within the local justice area for which the court acts; and
 - (b) does not have assets to which the 1958 Act applies,
 the court officer must refuse the application and return the application to the Lord Chancellor stating the information the court officer has as to the whereabouts of the payer and the nature and location of the payer's assets.
- (5) If the court officer is satisfied that the payer—
 - (a) does not reside within the local justice area for which the court acts; but
 - (b) has assets to which the 1958 Act applies,
 then either—
 - (i) the court officer must register the order; or
 - (ii) if the court officer believes that the payer is residing within the local justice area in which another magistrates' court acts, the court officer may refuse the application and return the documents to the Lord Chancellor with the information referred to in paragraph (4) above.
- (6) Except where paragraphs (4) or (5) apply, the court officer must register the order unless—
 - (a) in the case of an application under Article 31 of the 1968 Convention, Articles 27 or 28 of that Convention apply; and
 - (b) in the case of an application under Article 31 of the 1988 Convention, Articles 27 or 28 of that Convention apply.
- (7) If the court officer refuses to register an order to which this rule relates the court officer must notify the applicant.
- (8) If the court officer registers an order the court officer must send written notice of that fact to—
 - (a) the Lord Chancellor;
 - (b) the payer; and
 - (c) the applicant.
- (9) If the court officer considers that it would be appropriate for all or part of a registered order to be enforced in the High Court the court officer must notify the applicant—
 - (a) that the court officer so considers it appropriate; and
 - (b) that the applicant may apply under the 1958 Act for the order to be registered in the High Court.

Appeal from a decision relating to registration

- 34.31.**—(1) This rule applies to an appeal under—
- (a) Article 36 or Article 40 of the 1968 Convention;
 - (b) Article 36 or Article 40 of the 1988 Convention;
 - (c) Article 43 of the Judgments Regulation; or
 - (d) Article 43 of the Lugano Convention.
- (2) The appeal must be to the magistrates' court—
- (a) in which the order is registered; or
 - (b) in which the application for registration has been refused,
- as the case may be.

Payment of sums due under a registered order

34.32.—(1) Where an order is registered in accordance with section 5(3) of the 1982 Act or Article 38 of the Judgments Regulation or Article 38 of the Lugano Convention, the court must order that payment of sums due under the order be made—

- (a) to the court officer for the registering court; and
- (b) at such time and place as the court officer directs.

(2) Where the court orders payments to be made to the court officer, whether in accordance with paragraph (1) or otherwise, the court officer must send the payments by post either—

- (a) to the court which made the order; or
- (b) to such other person or authority as that court, or the Lord Chancellor, directs.

(Practice Direction 34A contains further provisions relating to the payment of sums due under registered orders.)

Enforcement of payments under registered orders

34.33.—(1) This rule applies where a court has ordered periodical payments under a registered maintenance order to be made to the court officer for a magistrates' court.

(2) The court officer must take reasonable steps to notify the payee of the means of enforcement available.

(3) Paragraph (4) applies where periodical payments due under a registered order are in arrears.

(4) The court officer, on that officer's own initiative—

- (a) may; or
- (b) if the sums due are more than 4 weeks in arrears, must,

proceed in that officer's own name for the recovery of the sums due unless of the view that it is unreasonable to do so.

Variation and revocation of registered orders

34.34.—(1) This rule applies where the court officer for a registering court receives notice that a registered maintenance order has been varied or revoked by a competent court in a Contracting State to the 1968 Convention, a Contracting State to the 1988 Convention (other than a Member State of the European Union), a Regulation State or a State bound by the Lugano Convention, other than a Member State of the European Union.

(2) The court officer for the registering court must—

- (a) register the order of variation or revocation; and
- (b) send notice of the registration by post to the payer and payee under the order.

Transfer of registered order

34.35.—(1) This rule applies where the court officer for the court where an order is registered considers that the payer is residing within the local justice area in England and Wales for which another magistrates' court acts.

(2) Subject to paragraph (4), the court officer must transfer the order to the other court by sending to that court—

- (a) the information and documents relating to the registration;
- (b) a certificate of arrears, if applicable, signed by the court officer;

- (c) a statement giving such information as the court officer possesses as to the whereabouts of the payer and the nature and location of the payer's assets; and
 - (d) any other relevant documents which the court officer has relating to the case.
- (3) The information and documents referred to in paragraph (2)(a) are those required, as appropriate, under—
- (a) Articles 46 and 47 of the 1968 Convention;
 - (b) Articles 46 and 47 of the 1988 Convention;
 - (c) Article 53 of the Judgments Regulation; or
 - (d) Article 53 of the Lugano Convention.
- (4) If 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 1 of the 1958 Act, the court officer must not transfer the order, or the part to which the application relates, under paragraph (2).
- (5) The court officer must give notice of the transfer of an order to—
- (a) the payee; and
 - (b) the Lord Chancellor.
- (6) If an order is transferred, the court officer for the court to which it is transferred must register the order.

Cancellation of registered orders

- 34.36.**—(1) Where the court officer for the registering court—
- (a) has no reason to transfer a registered order under rule 34.35; and
 - (b) considers that the payer under the registered order is not residing within the local justice area for which the court acts and has no assets to which the 1958 Act applies,
- the court officer must cancel the registration of the order.
- (2) The court officer must—
- (a) give notice of cancellation to the payee; and
 - (b) send the information and documents relating to the registration and the other documents referred to in rule 34.35(2) to the Lord Chancellor.

SECTION 2

Reciprocal enforcement in a Contracting State or Regulation State of Orders of a court in England and Wales

Application in a magistrates' court for a maintenance order, or revocation of a maintenance order, to which the 1982 Act, the Judgments Regulations or the Lugano Convention applies

- 34.37.**—(1) This rule applies where a person applies to a magistrates' court for a maintenance order, or for the revocation of a maintenance order, in relation to which the court has jurisdiction by virtue of the 1982 Act, the Judgments Regulation or the Lugano Convention, and the respondent is outside the United Kingdom.
- (2) On the making of the application the court officer shall send the following documents to the Lord Chancellor—
- (a) notice of the proceedings, including a statement of the grounds of the application;

(b) a statement signed by the court officer giving such information as he has regarding the whereabouts of, and information to assist in identifying, the respondent; and

(c) where available, a photograph of the respondent.

(3) In considering whether or not to make a maintenance order pursuant to an application to which paragraph (1) applies, where the respondent does not appear and is not represented at the hearing the court shall take into account any written representations made and any evidence given by the respondent under these rules.

(Part 27 makes provision relating to attendance at hearings and directions appointments.)

(Part 9 makes provision for applications relating to financial remedies including those under Schedule 1 to the 1989 Act, Part 1 of the 1978 Act, and Schedule 6 to the 2004 Act.)

(Rules made under section 144 of the Magistrates' Courts Act 1980 make provision for applications to vary maintenance orders made in magistrates' courts.)

Admissibility of Documents

34.38.—(1) This rule applies to a document, referred to in paragraph (2) and authenticated in accordance with paragraph (3), which comprises, records or summarises evidence given in, or information relating to, proceedings in a court in another part of the UK, another Contracting State to the 1968 Convention or the 1988 Convention, Regulation State or State bound by the Lugano Convention, and any reference in this rule to “the court”, without more, is a reference to that court.

(2) The documents referred to at paragraph (1) are documents which purport to—

- (a) set out or summarise evidence given in the court;
- (b) have been received in evidence the court;
- (c) set out or summarise evidence taken in the court for the purpose of proceedings in a court in England and Wales to which the 1982 Act applies; or
- (d) record information relating to payments made under an order of the court.

(3) A document to which paragraph (1) applies shall, in any proceedings in a magistrates' court in England and Wales relating to a maintenance order to which the 1982 Act applies, be admissible as evidence of any fact stated in it to the same extent as oral evidence of that fact is admissible in those proceedings.

(4) A document to which paragraph (1) applies shall be deemed to be authenticated—

- (a) in relation to the documents listed at paragraph 2(a) or (c), if the document purports to be—
 - (i) certified by the judge or official before whom the evidence was given or taken; or
 - (ii) the original document recording or summarising the evidence, or a true copy of that document;
- (b) in relation to a document listed at paragraph (2)(b), if the document purports to be certified by a judge or official of the court to be, or to be a true copy of, the document received in evidence; and
- (c) in relation to the document listed at paragraph (2)(d), if the document purports to be certified by a judge or official of the court as a true record of the payments made under the order.

(5) It shall not be necessary in any proceedings in which evidence is to be received under this rule to prove the signature or official position of the person appearing to have given the certificate referred to in paragraph (4).

(6) Nothing in this rule shall prejudice the admission in evidence of any document which is admissible in evidence apart from this rule.

(7) Any request by a magistrates' court in England and Wales for the taking or providing of evidence by a court in another part of the United Kingdom or in another Contracting State to the 1968 Convention or the 1988 Convention or the Lugano Convention (other than a Member State of the European Union) for the purpose of proceedings to which the 1982 Act applies shall be communicated in writing to the court in question.

(Chapter 2 of Part 24 makes provision for taking of evidence by a court in another Regulation State).

Enforcement of orders of a magistrates' court

34.39.—(1) This rule applies to applications to a magistrates' court under—

- (a) section 12 of the 1982 Act⁽¹⁾;
- (b) article 54 of the Judgments Regulation; or
- (c) article 54 of the Lugano Convention.

(2) A person who wishes to enforce in a Contracting State to the 1968 Convention, a Contracting State to the 1988 Convention (other than a Member State of the European Union), a Regulation State or a State bound by the Lugano Convention (other than a Member State of the European Union) a maintenance order obtained in a magistrates' court must apply for a certified copy of the order.

(3) An application under this rule must be made in writing to the court officer and must specify—

- (a) the names of the parties to the proceedings;
- (b) the date, or approximate date, of the proceedings in which the maintenance order was made and the nature of those proceedings;
- (c) the Contracting State or Regulation State in which the application for recognition or enforcement has been made or is to be made; and
- (d) the postal address of the applicant.

(4) The court officer must, on receipt of the application, send a copy of the order to the applicant certified in accordance with a practice direction.

(5) Paragraph (6) applies where—

- (a) a maintenance order is registered in a magistrates' court in England and Wales; and
- (b) a person wishes to obtain a certificate giving details of any payments made or arrears accrued under the order while it has been registered, for the purposes of an application made or to be made in connection with that order in—
 - (i) another Contracting State to the 1968 Convention;
 - (ii) another Contracting State to the 1988 Convention (other than a Member State of the European Union);
 - (iii) another Regulation State;
 - (iv) another State bound by the Lugano Convention (other than a Member State of the European Union); or
 - (v) another part of the United Kingdom.

(6) The person wishing to obtain the certificate referred to in paragraph (5) may make a written application to the court officer for the registering court.

(7) On receipt of an application under paragraph (6) the court officer must send to the applicant a certificate giving the information requested.

(1) Section 12 was amended by section 3 of and paragraph 7 of Schedule 2 to the Civil Jurisdiction and Judgments Act 1991 (c.12).

(Rule 74.12 (application for certified copy of a judgment) and 74.13 (evidence in support) of the CPR apply in relation to the application for a certified copy of a judgment obtained in the High Court or a county court.)