



# Maintenance Orders (Reciprocal Enforcement) Act 1972

## 1972 CHAPTER 18

### PART II

#### RECIPROCAL ENFORCEMENT OF CLAIMS FOR THE RECOVERY OF MAINTENANCE

##### *Supplemental*

#### **36 Admissibility of evidence given in convention country.**

[<sup>F1</sup>(A1) A statement contained in a document mentioned in subsection (1) shall—

- (a) in any proceedings in the family court arising out of an application to which section 27A(1) of this Act applies or an application made by any person for the variation or revocation of a registered order, or
- (b) in proceedings on appeal from proceedings within paragraph (a),

be admissible as evidence of any fact stated to the same extent as oral evidence of that fact is admissible in those proceedings.]

(1) [<sup>F2</sup>The documents referred to in subsections (A1) and (1A) are—]

- (a) a document, duly authenticated, which purports to set out or summarise evidence given in proceedings in a court in a convention country; <sup>F3</sup> ...
- (b) a document, duly authenticated, which purports to set out or summarise evidence taken in such a country for the purpose of proceedings in a court in the United Kingdom under this Part of this Act, whether in response to a request made on behalf of such a court or otherwise; <sup>F3</sup> ...
- (c) a document, duly authenticated, which purports to have been received in evidence in proceedings in a court in such a country, or to be a copy of a document so received,

[<sup>F4</sup>(1A) A statement contained in a document mentioned in subsection (1)] shall, in any proceedings in a magistrates' court [<sup>F5</sup>in Northern Ireland] or [<sup>F6</sup>in, or remitted from, a] sheriff court arising out of <sup>F7</sup>... [<sup>F8</sup>an application [<sup>F9</sup>to which section 28C(1) of

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this Act applies], an application received by the Secretary of State as mentioned in section 31(1) of this Act or] an application made by any person for the variation or revocation of a registered order or in proceedings on appeal from any such proceedings, be admissible as evidence of any fact stated therein to the same extent as oral evidence of that fact is admissible in those proceedings.

- (2) A document purporting to set out or summarise evidence given as mentioned in subsection (1)(a) above, or taken as mentioned in subsection (1)(b) above, shall be deemed to be duly authenticated for the purposes of that subsection if the document purports to be certified by the judge, magistrate or other person before whom the evidence was given or, as the case may be, by whom it was taken, to be the original document containing or recording, or, as the case may be, summarising, that evidence or a true copy of that document.
- (3) A document purporting to have been received in evidence as mentioned in subsection (1)(c) above, or to be a copy of a document so received, shall be deemed to be duly authenticated for the purposes of that subsection if the document purports to be certified by a judge, magistrate or officer of the court in question to have been, or to be a true copy of a document which has been, so received.
- (4) It shall not be necessary in any such proceedings to prove the signature or official position of the person appearing to have given such a certificate.
- (5) Nothing in this section shall prejudice the admission in evidence of any document which is admissible in evidence apart from this section.

#### Textual Amendments

- F1** S. 36(A1) inserted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 53\(2\)](#); [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F2** Words in s. 36(1) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 53\(3\)\(a\)](#); [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F3** Words in s. 36(1) omitted (22.4.2014) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 53\(3\)\(b\)](#); [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F4** Words in s. 36(1A) inserted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 53\(3\)\(c\)](#); [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F5** Words in s. 36(1A) inserted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 53\(3\)\(d\)](#); [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F6** Words inserted by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22\)](#), [ss. 60\(3\)](#), 89
- F7** Words in s. 36(1A) omitted (22.4.2014) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 53\(3\)\(e\)](#); [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F8** Words substituted (5.4.1993) by [Maintenance Orders \(Reciprocal Enforcement\) Act 1992 \(c. 56\)](#), s. 1, [Sch. 1 Pt. II para. 17](#); [S.I. 1993/618](#), [art. 2](#)
- F9** Words substituted (N.I.) (4.11.1996) by [S.I. 1995/755 \(N.I. 2\)](#), art. 185(1), [Sch. 9 para. 76](#) (with [Sch. 8 para. 1\(1\)](#)); [S.R. 1996/297](#), [art. 2\(2\)](#)

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### **37 Obtaining of evidence for purpose of proceedings in United Kingdom court.**

- (1) A court in the United Kingdom may for the purpose of any proceedings in that court under this Part of this Act arising out of an application received by the Secretary of State from a convention country request the Secretary of State to make to the appropriate authority or court in the convention country a request for the taking in that country of the evidence of a person residing therein relating to matters connected with the application.
- (2) A request made by a court under this section shall—
  - (a) give details of the application in question;
  - (b) state the name and address of the person whose evidence is to be taken; and
  - (c) specify the matters relating to which the evidence of that person is required.
- (3) If the Secretary of State is satisfied that a request made to him under this section contains sufficient information to enable the evidence of the person named in the request relating to the matters specified therein to be taken by a court or person in the convention country, he shall transmit the request to the appropriate authority or court in that country.

### **38 Taking of evidence at request of court in convention country.**

- (1) Where a request is made to the Secretary of State by or on behalf of a court in a convention country to obtain the evidence of a person residing in the United Kingdom relating to matters connected with an application to which section 26 of this Act applies, the Secretary of State shall request such court, or such officer of a court, as he may determine to take the evidence of that person relating to such matters connected with that application as may be specified in the request.
- (2) The court by which or officer by whom a request under subsection (1) above is received from the Secretary of State shall have power to take the evidence and, after giving notice of the time and place at which the evidence is to be taken to such persons and in such manner as it or he thinks fit, shall take the evidence of the person named in the request relating to the matters specified therein in such manner as may be prescribed; and the evidence so taken shall be sent in the prescribed manner by the prescribed officer to the court in the convention country by or on behalf of which the request referred to in subsection (1) above was made.
- (3) Where any person, not being the person by whom the application mentioned in subsection (1) above was made, is required by virtue of this section to give evidence before a court in the United Kingdom, the court may order that there shall be paid—
  - (a) if the court is a court in England, Wales or Scotland, out of moneys provided by Parliament; and
  - (b) if the court is a court in Northern Ireland, out of moneys provided by <sup>[F10]</sup>the Northern Ireland Assembly,such sums as appear to the court reasonably sufficient to compensate that person for the expense, trouble or loss of time properly incurred in or incidental to his attendance.
- (4) <sup>[F11]</sup>Articles 118(1), (3) and (4), 119 and 120 of the Magistrates' Courts (Northern Ireland) Order 1981] (which provide for compelling the attendance of witnesses, etc.) shall apply in relation to a magistrates' court <sup>[F12]</sup>in Northern Ireland] to which a request under subsection (1) above is made as if the application to which the request relates were a complaint to be heard by that court.

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(5) Paragraphs 71 and 73 of Schedule 1 to the <sup>M1</sup>Sheriff Courts (Scotland) Act 1907 (which provide for the citation of witnesses, etc.) shall apply in relation to a sheriff court to which a request under subsection (1) above is made as if the application to which the request relates were proceedings in that court.

<sup>F13</sup>(6) .....

**Textual Amendments**

- F10** Words in s. 38(3)(b) substituted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), **Sch. 18 para. 5** (with arts. 28-31)
- F11** Words in s. 38(4) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 11 para. 54(a)**; [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F12** Words in s. 38(4) inserted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 11 para. 54(b)**; [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F13** S. 38(6) omitted (22.4.2014) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 11 para. 54(c)**; [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)

**Marginal Citations**

- M1** 1907 c. 51.

**[<sup>F14</sup>38A [<sup>F15</sup>Rules of court]**

- (1) [<sup>F16</sup>Rules of court] may make provision with respect to the orders made or other things done by [<sup>F17</sup>the family court or] a magistrates' court, or an officer of such a court, by virtue of this Part of this Act, notice of which is to be given to such persons as the rules may provide and the manner in which such notice shall be given.
- (2) For the purpose of giving effect to this Part of this Act, [<sup>F18</sup>rules of court] may make, in relation to any proceedings brought under or by virtue of this Part of this Act, any provision not covered by subsection (1) above which—
  - (a) falls within subsection (2) of section 93 of the Children Act 1989, and
  - (b) may be made in relation to relevant proceedings under that section.

<sup>F19</sup>(3) .....

- <sup>F20</sup>[ For the purpose of giving effect to this Part of this Act, rules made under Article 13 (4) of the Magistrates' Courts (Northern Ireland) Order 1981 may make, in relation to any proceedings brought under or by virtue of this Part of this Act, any provision not covered by subsection (1) above which—
  - (a) falls within paragraph (2) of Article 165 of the Children (Northern Ireland Order) 1995, and
  - (b) may be made in relation to relevant proceedings under that Article.]]

**Textual Amendments**

- F14** S. 38A inserted (5.4.1993) by [Maintenance Orders \(Reciprocal Enforcement\) Act 1992 \(c. 56\)](#), s. 1, **Sch. 1 Pt. II para. 18**; [S.I. 1993/618](#), art. 2

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- F15** Words in s. 38A heading substituted (1.9.2004) by Courts Act 2003 (Consequential Amendments) Order 2004 (S.I. 2004/2035), art. 2(1), **Sch. para. 2(5)** (with art. 2(2))
- F16** Words in s. 38A(1) substituted (1.9.2004) by Courts Act 2003 (Consequential Amendments) Order 2004 (S.I. 2004/2035), art. 2(1), **Sch. para. 2(2)** (with art. 2(2))
- F17** Words in s. 38A(1) inserted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 11 para. 55**; S.I. 2014/954, art. 2(e) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F18** Words in s. 38A(2) substituted (1.9.2004) by Courts Act 2003 (Consequential Amendments) Order 2004 (S.I. 2004/2035), art. 2(1), **Sch. para. 2(3)** (with art. 2(2))
- F19** S. 38A(3) omitted (1.9.2004) by virtue of Courts Act 2003 (Consequential Amendments) Order 2004 (S.I. 2004/2035), art. 2(1), **Sch. para. 2(4)** (with art. 2(2))
- F20** S. 38A(4) inserted (N.I.) (4.11.1996) by S.I. 1995/755 (N.I. 2), art. 185(1), **Sch. 9 para. 78(1)** (with Sch. 8 para. 1(1)); S.R. 1996/297, **art. 2(2)**

### 39 Interpretation of Part II.

In this Part of this Act—

“maintenance”, as respects Scotland, [<sup>F21</sup>includes aliment and any sums which are payable, following divorce, [<sup>F22</sup>by one former spouse for the support of the other]]; [<sup>F23</sup>“maintenance order” has the same meaning as in Part I of this Act;]

“order”, as respects Scotland, includes any interlocutor, and any decree or provision contained in an interlocutor;

“prescribed” has the same meaning as in Part I of this Act;

“registered order” means an order which is for the time being registered in a court in the United Kingdom under this Part of this Act;

“registering court”, in relation to a registered order, means the court in which that order is for the time being registered under this Part of this Act.

[<sup>F24</sup>“revoke” and “revocation” include discharge.]

#### Textual Amendments

- F21** Words substituted by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), ss. 60(4), 89
- F22** Words substituted by Family Law (Scotland) Act 1985 (c. 37, SIF 49:3), ss. 28(1), 29(4), **Sch. 1 para. 7**
- F23** Definition in s. 39 inserted (5.4.1993) by Maintenance Orders (Reciprocal Enforcement) Act 1992 (c. 56), s. 1, **Sch. 1 Pt. II para.19**; S.I. 1993/618, **art.2**
- F24** Definition in s. 39 added (5.4.1993) by Maintenance Orders (Reciprocal Enforcement) Act 1992 (c. 56), s. 1, **Sch. 1 Pt. II para.19**; S.I. 1993/618, **art.2**

**Changes to legislation:**

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