



# Maintenance Orders (Reciprocal Enforcement) Act 1972

## 1972 CHAPTER 18

### PART III

#### MISCELLANEOUS AND SUPPLEMENTAL

*Further provisions relating to enforcement of maintenance orders and to applications for recovery of maintenance*

#### **40 Power to apply Act to maintenance orders and applications for recovery of maintenance made in certain countries.**

Where Her Majesty is satisfied—

- (a) that arrangements have been or will be made in a country or territory outside the United Kingdom to ensure that maintenance orders made by courts in the United Kingdom . . . <sup>F1</sup> can be enforced in that country or territory or that applications by persons in the United Kingdom for the recovery of maintenance from persons in that country or territory can be entertained by courts in that country or territory; and
- (b) that in the interest of reciprocity it is desirable to ensure that maintenance orders made by courts in that country or territory . . . <sup>F2</sup> can be enforced in the United Kingdom or, as the case may be, that applications by persons in that country or territory for the recovery of maintenance from persons in the United Kingdom can be entertained by courts in the United Kingdom,

Her Majesty may by Order in Council make provision for applying the provisions of this Act, with such exceptions, adaptations and modifications as may be specified in the Order, to such orders or applications as are referred to in paragraphs (a) and (b) above and to maintenance and other orders made in connection with such applications by courts in the United Kingdom or in that country or territory.

*Changes to legislation: There are currently no known outstanding effects for the Maintenance Orders (Reciprocal Enforcement) Act 1972, Part III. (See end of Document for details)*

#### Textual Amendments

- F1** Words repealed by [Civil Jurisdiction and Judgments Act 1982 \(c. 27, SIF 45:3\)](#), ss. 37(1), 52, 54, [Sch. 11 Pt. III para. 17\(a\)](#), Sch. 14
- F2** Words repealed by [Civil Jurisdiction and Judgments Act 1982 \(c. 27, SIF 45:3\)](#), ss. 37(1), 52, 54, [Sch. 11 Pt. III para. 17\(b\)](#), Sch. 14

#### *Provisions with respect to certain orders of magistrates' courts*

#### **[<sup>F3</sup>41 Complaint for variation, etc. of certain orders by or against persons outside England and Wales.**

- (1) The jurisdiction to revoke, revive or vary an order for the periodical payment of money conferred on magistrates' courts by [<sup>F4</sup>section 60 of the <sup>M1</sup>Magistrates' Courts Act 1980] shall, in the case of [<sup>F5</sup>an affiliation order] be exercisable notwithstanding that the proceedings for the revocation, revival or variation, as the case may be, of the order are brought by or against a person residing outside England and Wales.
- [ The jurisdiction to revoke or vary an order for the periodical payment of money
- <sup>F6</sup>(2) conferred on magistrates' courts by sections 9, 10 or 11 of the <sup>M2</sup>Guardianship of Minors Act 1971 shall be exercisable notwithstanding that the proceedings for the revocation or variation of the order are brought by or against a person residing outside England and Wales.
- (2A) Subject to subsection (2B) below, a magistrates' court may, if it is satisfied that the respondent has been outside the United Kingdom during such period as may be prescribed by rules made under [<sup>F4</sup>section 144 of the <sup>M3</sup>Magistrates' Courts Act 1980], proceed on—
- (a) an application made under [<sup>F4</sup>section 60 of the Magistrates' Courts Act 1980] for the revocation, revival or variation of an affiliation order, or
  - (b) an application made under section 9, 10, 11 or 12C(5) of the Guardianship of Minors Act 1971 for the revocation, revival or variation of an order for the periodical payment of money made under the said section 9, 10 or 11,
- notwithstanding that the respondent has not been served with the summons; and rules may prescribe any other matters as to which the court is to be satisfied before proceeding in such a case.
- (2B) A magistrates' court shall not—
- (a) exercise its powers under [<sup>F4</sup>section 60 of the Magistrates' Courts Act 1980] so as to increase the amount of any periodical payments required to be made by any person under an affiliation order; or
  - (b) exercise its powers under section 9, 10 or 11 of the Guardianship of Minors Act 1971 so as to increase the amount of any periodical payments required to be made by any person by an order under one of those sections,
- unless those powers are exercised at a hearing at which the person required to make the periodical payment appears or the requirements of [<sup>F4</sup>section 55(3) of the Magistrates' Courts Act 1980] with respect to proof of service of summons or appearance on a previous occasion are satisfied in respect of that person.]
- <sup>X1</sup>(3) In section 15(1) of the <sup>M4</sup>Maintenance Orders Act 1950 (service of process on a person residing in Scotland or Northern Ireland), after the words "Act 1971" there shall be

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inserted the words “or section 41 of the Maintenance Orders (Reciprocal Enforcement) Act 1972”.

- <sup>x1</sup>(4) Section 3(3) of the said Act of 1950 (jurisdiction in proceedings by or against a person residing in Scotland or Northern Ireland for the revocation, etc., of an affiliation order) is hereby repealed.]

#### Editorial Information

- X1** The text of ss. 41(3)(4), 42(3) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

#### Textual Amendments

- F3** S. 41 repealed (E.W.) (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch.15** (with Sch. 14 paras. 1(1), 27(4)); S.I. 1991/828, **art. 3(2)**.
- F4** Words substituted by Magistrates' Courts Act 1980 (c. 43), s. 154, **Sch. 7 para. 110**
- F5** Words substituted for s. 41(1)(a)(b) by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), s. 89, **Sch. 2 para. 36(a)**
- F6** S. 41(2)(2A)(2B) substituted for s. 41(2) by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), s. 89, **Sch. 2 para. 36(b)**

#### Marginal Citations

- M1** 1980 c. 43.
- M2** 1971 c. 3.
- M3** 1980 c. 34.
- M4** 1950 c. 37.

## 42 Provisional order for maintenance of party to marriage made by <sup>F7</sup>... court to cease to have effect on remarriage of party.

- (1) Where a <sup>F8</sup>... court has, by virtue of section 3 of this Act, made a provisional maintenance order consisting of, or including, a provision such as is mentioned in [<sup>F9</sup>section 2(1)(a) of the <sup>M5</sup>Domestic Proceedings and Magistrates' Courts Act 1978 (making of periodical payments by husband or wife)][<sup>F10</sup>or Article 4(1)(a) of the <sup>M6</sup>Domestic Proceedings (Northern Ireland) Order 1980] and the order has been confirmed by a competent court in a reciprocating country, then, if after the making of that order the marriage of the parties to the proceedings in which the order was made is dissolved or annulled but the order continues in force, that order or, as the case may be, that provision thereof shall cease to have effect on the remarriage of the party in whose favour it was made, except in relation to any arrears due under it on the date of such remarriage and shall not be capable of being revived.
- (2) For the avoidance of doubt it is hereby declared that references in this section to remarriage include references to a marriage which is by law void or voidable.
- <sup>x2</sup>(3) In section 30(2) of the <sup>M7</sup> Matrimonial Proceedings and Property Act 1970 (which makes, in relation to such an order as is referred to in subsection (1) above which was confirmed in accordance with section 3 of the <sup>M8</sup>Maintenance Orders (Facilities for Enforcement) Act 1920, provision to the like effect as that subsection) the words from “but with the modification” to the end are hereby repealed.

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### Editorial Information

- X2** The text of ss. 41(3)(4), 42(3) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

### Textual Amendments

- F7** Word in s. 42 heading omitted (22.4.2014) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 56](#); S.I. 2014/954, art. 2(e) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F8** Word in s. 42(1) omitted (22.4.2014) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 56](#); S.I. 2014/954, art. 2(e) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F9** Words substituted by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22\)](#), s. 89, [Sch. 2 para. 37](#)
- F10** Words inserted by S.I. 1980/564, art. 4(6)

### Marginal Citations

- M5** 1978 c. 22.
- M6** S.I. 1980/563 (N.I. 15).
- M7** 1970 c. 45.
- M8** 1920 c. 33.

### Supplemental provisions

- 43** (1) ..... **F11**
- (2) ..... **F12**

### Textual Amendments

- F11** S. 43(1) repealed by [Legal Aid Act 1974 \(c. 4\)](#), [Sch. 5 Pt. I](#)
- F12** S. 43(2)(3) repealed by S.I. 1981/228 (N.I. 8), [Sch. 4](#)

### [<sup>F13</sup>43A Eligibility for Legal Aid in Scotland.

- (1) In connection with proceedings under Part I of this Act in relation to a maintenance order made by a court in a reciprocating country, where there is produced a certificate from the responsible authority in that country to the effect that the payee would, in that country, be financially eligible for complete or partial—
- (i) legal aid; or
  - (ii) exemption from costs or expenses, in proceedings there in relation to that maintenance order, [<sup>F14</sup>section 2(1) and (6)(c), 3 and 4 of the <sup>M9</sup>Legal Aid (Scotland) Act 1967][<sup>F14</sup>sections 15 and 17 of the Legal Aid (Scotland) Act 1986] shall not apply in respect of the payee and, subject to the other provisions of that Act, legal aid shall under that Act be available to the payee without inquiry into the payee's resources.
- (2) In connection with proceedings under Part II of this Act—

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- (a) arising out of an application received from a convention country for the recovery of maintenance; or
  - (b) relating to an order made in respect of such an application,
- where there is produced a certificate from the appropriate authority in that country to the effect that the applicant would, in that country, be financially eligible for complete or partial—
- (i) legal aid; or
  - (ii) exemption from costs or expenses, in proceedings there for the recovery of maintenance, [F15sections 2(1) and (6)(c), 3 and 4 of the said Act of 1967][F15sections 15 and 17 of the said Act of 1986] shall not apply in respect of the applicant and, subject to the other provisions of that Act, legal aid shall under that Act be available to the applicant without inquiry into the applicant's resources.
- (3) Where, in connection with proceedings under Part I or II of this Act, a person has received legal aid by virtue of subsection (1) or (2) above, [F16legal advice and assistance under the M10Legal Advice and Assistance Act 1972 shall, notwithstanding—
- (i) any financial conditions imposed by, or by virtue of sections 1 and 4(2), (3) and (4); and
  - (ii) in relation to the effect of subsections (1) to (4) and (7) of section 4 of the said Act of 1967, the provisions of section 6(1)(b), of the said Act of 1972 (but subject otherwise to the provisions of the said Act of 1972)[F16advice and assistance under the said Act of 1986, shall, notwithstanding any financial conditions or requirements to make contributions imposed by sections 8 and 11 of that Act,], be available in Scotland for that person, without inquiry into his resources, in connection with any matter incidental to, or arising out of, those proceedings.
- (4) In subsection (1) above “maintenance order”, “reciprocating country”, “responsible authority” and “payee” have the same meanings respectively as in Part I of this Act; and in subsection (2) above “convention country” means a country or territory specified in an Order in Council under section 25(1) of this Act, “maintenance” has the same meaning as in Part II of this Act, and “appropriate authority” means the authority from which the Secretary of State received the application.]

#### Textual Amendments

- F13** S. 43A inserted by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), ss. 61, 89
- F14** Words substituted (S.) by Legal Aid (Scotland) Act 1986 (c. 47, SIF 77:2), ss. 45, 46(4), Sch. 3 para. 2(2)
- F15** Words substituted (S.) by Legal Aid (Scotland) Act 1986 (c. 47, SIF 77:2), ss. 45, 46(4), Sch. 3 para. 2(3)
- F16** Words substituted (S.) by Legal Aid (Scotland) Act 1986 (c. 47, SIF 77:2), ss. 45, 46(4), Sch. 3 para. 2(4)

#### Marginal Citations

- M9** 1967 c. 43.
- M10** 1972 c. 50

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#### 44 Exclusion of certain enactments relating to evidence.

- (1) Section 20 of the <sup>M11</sup>Family Law Reform Act 1969 (power of court hearing certain proceedings to require use of blood tests to determine paternity) and any corresponding enactment of the Parliament of Northern Ireland shall not apply to any proceedings under this Act, but the foregoing provision is without prejudice to the power of a court to allow the the report of any person who has carried out such tests to be given in evidence in those proceedings.
- (2) [<sup>F17</sup>The <sup>M12</sup>Evidence (Proceedings in Other Jurisdictions) Act 1975] shall not apply to the taking of evidence in the United Kingdom for the taking of which section 14 or section 38 of this Act provides.

##### Textual Amendments

**F17** Words substituted by [Evidence \(Proceedings in Other Jurisdictions\) Act 1975 \(c. 34\), Sch. 1](#)

##### Marginal Citations

**M11** 1969 c. 48.

**M12** 1975 c. 34.

#### 45 Orders in Council.

- (1) An Order in Council under section 1, section 25 or section 40 of this Act may be varied or revoked by a subsequent Order in Council thereunder, and an Order made by virtue of this section may contain such incidental, consequential and transitional provisions as Her Majesty considers expedient for the purposes of that section.
- (2) An Order in Council made under the said section 1 or the said section 40 shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### 46 Financial provisions.

There shall be paid out of moneys provided by Parliament—

- (a) any sums ordered by a court under section 14(2) or 38(3) of this Act to be paid out of moneys so provided; and
- (b) any increase attributable to the provisions of this Act in the sums payable under [<sup>F18</sup>the <sup>M13</sup>Legal Aid Act 1974] or the <sup>M14</sup>Legal Aid (Scotland) Act 1967 out of moneys so provided.

##### Textual Amendments

**F18** Words substituted by virtue of [Legal Aid Act 1974 \(c. 4\), s. 42\(3\)](#)

##### Marginal Citations

**M13** 1974 c. 4.

**M14** 1967 c. 43.

#### 47 Interpretation: general.

- (1) In this Act—

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“enactment” includes an enactment of the Parliament of Northern Ireland; “magistrates’ court”, in relation to Northern Ireland, means a court of summary jurisdiction within the meaning of [<sup>F19</sup>Article 2(2)(a) of the Magistrates’ Courts (Northern Ireland) Order 1981].

(2) References in this Act to a part of the United Kingdom are references to England and Wales, to Scotland, or to Northern Ireland.

<sup>F20</sup>(3) .....

(4) Any reference in this Act to any other enactment is a reference thereto as amended, and includes a reference thereto as extended or applied, by or under any other enactment.

#### Textual Amendments

**F19** Words substituted by [S.I. 1981/1675 \(N.I. 26\)](#), **Sch. 6 Pt. I para. 26**

**F20** S. 47(3) repealed (N.I.) (31.10.2016) by [Justice Act \(Northern Ireland\) 2015 \(c. 9\)](#), s. 106(2), **Sch. 1 para. 66(6)**, **Sch. 9 Pt. 1** (with [Sch. 8 para. 1](#)); [S.R. 2016/387](#), art. 2(k)(m) (with art. 3)

#### Modifications etc. (not altering text)

**C1** Reference to an enactment of the Parliament of Northern Ireland to be construed as including a reference to a Measure of the Northern Ireland Assembly: [Northern Ireland Constitution Act 1973 \(c. 36\)](#), **Sch. 5 para. 1**

## 48 Special provisions relating to Northern Ireland.

<sup>F21</sup>(1) .....

<sup>F22</sup>(2) .....

(3) Any reference in this Act to an enactment of the Parliament of Northern Ireland or to an enactment which that Parliament has power to amend, shall be construed, in relation to Northern Ireland, as a reference to that enactment as amended or extended by any Act of that Parliament, whether passed before or after this Act, and to any enactment of that Parliament passed after this Act and re-enacting the said enactment with or without modifications.

(4) If the Parliament of Northern Ireland passes any enactment for purposes similar to those of any enactment in force in England and Wales which is referred to in this Act, Her Majesty may by Order in Council direct that this Act shall have effect subject to such modifications or adaptations as may be specified in the Order for the purpose of ensuring the continued operation of this Act in, or in relation to, Northern Ireland.

(5) Section 45 of this Act shall apply in relation to an Order in Council under subsection (4) above as it applies in relation to an Order in Council under section 1 or 40 of this Act.

[<sup>F23</sup>(6) In the application of this Act to Northern Ireland, for any reference to the Lord Chancellor (including any reference which is treated as a reference to the Lord Chancellor, but not including any such reference in section 49(2)) there shall be substituted a reference to the Department of Justice in Northern Ireland.]

*Changes to legislation:* There are currently no known outstanding effects for the Maintenance Orders (Reciprocal Enforcement) Act 1972, Part III. (See end of Document for details)

#### Textual Amendments

- F21** S. 48(1) omitted (12.4.2010) by virtue of [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), **Sch. 18 para. 6(2)** (with arts. 28-31)
- F22** S. 48(2) repealed by [Northern Ireland Constitution Act 1973 \(c. 36\)](#), **Sch. 6 Pt. I**
- F23** S. 48(6) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), **Sch. 18 para. 6(3)** (with arts. 28-31)

#### Modifications etc. (not altering text)

- C2** Reference to an enactment of the Parliament of Northern Ireland to be construed as including a reference to a Measure of the Northern Ireland Assembly: [Northern Ireland Constitution Act 1973 \(c. 36\)](#), **Sch. 5** para. 1

### 49 Short title and commencement.

- (1) This Act may be cited as the Maintenance Orders (Reciprocal Enforcement) Act 1972.
- (2) This Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be so appointed for different provisions of this Act, or for different purposes.

#### Subordinate Legislation Made

- P1** Power of appointment conferred by s. 49(2) partly exercised: [S.I. 1974/517](#), 1975/377 (Act wholly in force except for s. 22(2))



**Changes to legislation:**

There are currently no known outstanding effects for the Maintenance Orders (Reciprocal Enforcement) Act 1972, Part III.