

SCHEDULE 3

PART I OF THE ACT AS MODIFIED BY SCHEDULE 2

Orders made by courts in the United Kingdom

Transmission of maintenance order made in United Kingdom for recognition and enforcement in Hague Convention country.

2.—(1) Subject to subsection (2) below, where the payer under a maintenance order made, whether before, on or after 5th April 1993, by a court in the United Kingdom is residing in a Hague Convention country, the payee under the order may apply for the order to be sent to that country for recognition and enforcement.

(2) Subsection (1) above shall not have effect in relation to a maintenance order made under section 3 of this Act or to an order by virtue of a provision of Part II of this Act.

(3) Every application under this section shall be made in the prescribed manner to the prescribed officer of the court which made the maintenance order to which the application relates.

(4) If, on an application duly made under this section to the prescribed officer of a court in the United Kingdom, that officer is satisfied that the payer under the maintenance order to which the application relates is residing in a Hague Convention country, the following documents, that is to say—

- (a) a certified copy of the maintenance order;
- (b) a certificate signed by that officer certifying that the order is enforceable and that it is no longer subject to the ordinary forms of review;
- (c) a certificate of arrears so signed;
- (d) a statement giving such information as the officer possesses as to the whereabouts of the payer;
- (e) a statement giving such information as the officer possesses for facilitating the identification of the payer;
- (f) where available, a photograph of the payer;
- (g) a written statement signed by that officer as to whether or not the payer appeared in the proceedings in which the maintenance order was made and, if he did not appear, the original or a certified copy of a document which establishes that notice of the institution of the proceedings, including notice of the substance of the claim, was served on the payer;
- (h) a document which establishes that notice of the order was sent to the payer; and
- (i) a written statement signed by that officer as to whether or not the payee received legal aid either in the said proceedings or in connection with the said application,

shall be sent by that officer, in the case of a court in England and Wales or Northern Ireland, to the Lord Chancellor, or, in the case of a court in Scotland, to the Secretary of State, with a view to their being transmitted by the Lord Chancellor, or, as the case may be, the Secretary of State, to the appropriate authority in the Hague Convention country if he is satisfied that the statement relating to the whereabouts of the payer gives sufficient information to justify that being done.

(5) Nothing in this section shall be taken as affecting any jurisdiction of a court in the United Kingdom with respect to a maintenance order to which this section applies, and subject to section 5 any such order may be enforced, varied or revoked accordingly.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Power of magistrates' court to make maintenance order against person residing in Hague Convention country.

3.—(1) Where an application is made to a magistrates' court for a maintenance order by a person who is habitually resident in England and Wales against a person residing in a Hague Convention country and the court would have jurisdiction to determine the application under the Domestic Proceedings and Magistrates' Courts Act 1978(1) or the Children Act 1989(2) if at any time when the proceedings were instituted that person—

- (a) were residing in England and Wales, and
- (b) received reasonable notice of the date of the hearing of the application,

the court shall subject to the following provisions of this section have jurisdiction to determine the application.

(4) No enactment (or provision made under an enactment) requiring or enabling—

- (a) a court to transfer proceedings from a magistrates' court to a county court or the High Court, or
- (b) a magistrates' court to refuse to make an order on an application on the ground that any matter in question is one that would be more conveniently dealt with by the High Court,

shall apply in relation to an application to which subsection (1) above applies.

(5) On the making of an application to which subsection (1) above applies, the following documents, that is to say—

- (a) notice of the institution of the proceedings, including notice of the substance of the application;
- (b) a statement signed by the prescribed officer of the court giving such information as he possesses as to the whereabouts of the respondent;
- (c) a statement giving such information as the officer possesses for facilitating the identification of the respondent; and
- (d) where available, a photograph of the respondent,

shall be sent by that officer to the Lord Chancellor with a view to their being transmitted by the Lord Chancellor to the appropriate authority in the Hague Convention country in which the respondent is residing for service on him of the document mentioned in paragraph (a) above if the Lord Chancellor is satisfied that the statement relating to the whereabouts of the respondent gives sufficient information to justify that being done.

(6) In considering whether or not to make a maintenance order pursuant to an application to which subsection (1) above applies the court shall take into account any representations made and any evidence adduced by or on behalf of the respondent.

(6A) Where the respondent makes any representations or adduces any evidence, a copy of the representations or evidence shall be served on the applicant by the prescribed officer of the court before the hearing.

(6B) The prescribed officer of the court shall give the respondent notice in writing of the date fixed for the hearing by sending the notice by post addressed to his last known or usual place of abode.

(6C) A maintenance order pursuant to an application to which subsection (1) above applies shall not be made unless the document mentioned in paragraph (a) of subsection (5) above has been served on the respondent in accordance with the law for the service of such documents in the Hague

(1) 1978 c. 22.
(2) 1989 c. 41.

Convention country in which he is residing or in such other manner as may be authorised by the Lord Chancellor not less than six weeks previously.

(6D) Where a maintenance order has been made under this section, the prescribed officer of the court shall send the following documents, that is to say—

- (a) a certified copy of the order;
- (b) a certificate signed by that officer certifying that the order is enforceable and that it is no longer subject to the ordinary forms of review;
- (c) a written statement, signed by that officer as to whether or not the respondent appeared in the proceedings in which the order was made, and, if he did not appear, the original or a certified copy of a document which establishes that the document mentioned in paragraph (a) of subsection (5) above has been served on the payer in accordance with subsection (6C) above;
- (d) a document which establishes that notice of the order was sent to the respondent; and
- (e) a written statement signed by that officer as to whether or not the applicant received legal aid in the proceedings,

to the Lord Chancellor with a view to their being transmitted by him to the appropriate authority in the Hague Convention country in which the respondent resides for recognition and enforcement of the order.

(6E) A maintenance order made under this section may, subject to section 5 of this Act, be enforced, varied or revoked in like manner as any other maintenance order made by a magistrates' court.

(7) In the application of this section to Northern Ireland—

(a) for subsection (1) there shall be substituted—

“(1) Where a complaint is made to a magistrates' court by a person who is habitually resident in Northern Ireland against a person residing in a Hague Convention country and the complaint is one on which the court would have jurisdiction by virtue of any enactment to make a maintenance order if—

- (a) that person were residing in Northern Ireland, and
- (b) a summons to appear before the court to answer the complaint had been duly served on him,

the court shall have jurisdiction to hear the complaint and may make a maintenance order on the complaint.”,

and

(b) for subsection (4) there shall be substituted—

“(4) No enactment empowering a magistrates' court to refuse to make an order on a complaint on the ground that any matter in question is one which would be more conveniently dealt with by the High Court of Justice in Northern Ireland shall apply in relation to a complaint to which subsection (1) above applies.”.

Power of sheriff to make maintenance order against person residing in Hague Convention country.

4.—(1) The sheriff shall have jurisdiction in any action to which this section applies if at the time when the proceedings were instituted—

- (a) the pursuer is habitually resident in Scotland and resides within the jurisdiction of the sheriff; and

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- (b) the sheriff is satisfied that, to the best of the information or belief of the pursuer, the defender is residing in a Hague Convention country; and
- (c) the sheriff would not, apart from this subsection, have jurisdiction in that action.

(2) This section applies to any action for the payment, variation or revocation of aliment which is competent in the sheriff court, and includes an action of affiliation and aliment, but does not include an action of separation and aliment or adherence and aliment, or any action containing a crave for the custody of a child.

(3) Where in any action in which the payment of aliment in respect of a child is claimed, being an action in which the sheriff has jurisdiction by virtue of subsection (1) above, the sheriff is satisfied—

- (a) that there are grounds on which a maintenance order containing a provision requiring the payment of aliment in respect of that child may be made in that action, but
- (b) that he has no power to make that order unless he also makes an order providing for the custody of the child,

then, for the purpose of enabling the sheriff to make the maintenance order, the pursuer shall be deemed to be a person to whom the custody of the child has been committed by a decree of the sheriff which is for the time being in force.

(4) In any action in which the sheriff has jurisdiction by virtue of subsection (1) above, no decree shall be granted in favour of the pursuer unless a copy of the initial writ or summons has been served on the defender in the prescribed manner and in sufficient time to enable him to arrange for his defence.

Variation and revocation of maintenance order made in United Kingdom.

5.—(1) This section applies to a maintenance order a certified copy of which has been sent to a Hague Convention country for recognition and enforcement of the order.

(2) The jurisdiction of a magistrates' court to revoke or vary a maintenance order shall be exercisable notwithstanding that the proceedings for the revocation or variation, as the case may be, of the order are brought by or against a person residing in a Hague Convention country.

(3) Where subsection (1) of section 60 of the Magistrates' Courts Act 1980⁽³⁾ (revocation, variation etc. of orders for periodical payment) applies in relation to a maintenance order to which this section applies, that subsection shall have effect as if for the words “by order on complaint,” there were substituted “on an application being made, by order”.

(4) Where an application is made by the payee to a court in England and Wales or Northern Ireland for the variation or revocation of an order to which this section applies, and the payer is residing in a Hague Convention country, the prescribed officer of the court shall send to the Lord Chancellor notice of the institution of the proceedings, including notice of the substance of the application, with a view to its being transmitted by him to the appropriate authority in the Hague Convention country for service on the payer.

(5) Where an application is made by the payee to a court in England and Wales or Northern Ireland for the variation or revocation of an order to which this section applies, and the payer is residing in a Hague Convention country—

- (a) the court, in considering whether or not to vary or revoke the order, shall take into account any representations made and any evidence adduced by or on behalf of the payer;
- (b) a copy of any such representations or evidence shall be served on the payee in the prescribed manner before the hearing;

(3) 1980 c. 43; section 60(1) was substituted by section 4 of the Maintenance Enforcement Act 1991 (c. 17).

(c) the prescribed officer of the court shall give the payer notice in writing of the date fixed for the hearing by sending the notice by post addressed to his last known or usual place of abode.

(6) Where an application is made by the payee to a court in England and Wales or Northern Ireland for the variation or revocation of an order to which this section applies, and the payer is residing in a Hague Convention country, the order shall not be varied or revoked unless the document mentioned in subsection (4) above has been served on the payer in accordance with the law for the service of such a document in the Hague Convention country not less than six weeks previously.

(7) Where an application is made by the payer to a court in England and Wales or Northern Ireland for the variation or revocation of an order to which this section applies, the prescribed officer of the court shall arrange for the service of the document mentioned in subsection (4) above on the payee.

(8) Where an order to which this section applies has been varied or revoked by a court in the United Kingdom the prescribed officer of the court shall send the following documents, that is to say—

- (a) a certified copy of the order of variation or revocation;
- (b) a certificate signed by that officer certifying that the order of variation or revocation is enforceable and that it is no longer subject to the ordinary forms of review;
- (c) a written statement, signed by that officer as to whether or not the respondent or, in Scotland the defender, appeared in the proceedings for the variation or revocation of the order, and, if he did not appear, the original or a certified copy of a document which establishes that notice of the institution of the proceedings has been served on the respondent, or, as the case may be, the defender; and
- (d) a document which establishes that notice of the order of variation or revocation was sent to the respondent; and
- (e) a written statement signed by that officer as to whether or not the payer or the payee received legal aid in the proceedings,

in the case of a court in England and Wales or Northern Ireland, to the Lord Chancellor, or, in the case of a court in Scotland, to the Secretary of State, with a view to their being transmitted by him to the appropriate authority in the Hague Convention country for recognition and enforcement of the order of variation or revocation.

(9) Where a maintenance order to which this section applies has been varied by an order made by a court in the United Kingdom or by a competent court in a Hague Convention country the maintenance order shall, as from the date on which the order of variation took effect, have effect as varied by that order.

(10) Where a maintenance order to which this section applies has been revoked by an order made by a court in the United Kingdom or by a competent court in a Hague Convention country the maintenance order shall, as from the date on which the order of revocation took effect, be deemed to have ceased to have effect except as respects any arrears due under the maintenance order at that date.

(11) Where a maintenance order to which this section applies has been varied or revoked by an order made by a competent court in a Hague Convention country, the prescribed officer of the court shall register the order of variation or revocation in the prescribed manner.

(12) In the application of this section to Northern Ireland, in subsection (8), for the word “respondent” in each place where it occurs, there shall be substituted “defendant”.