

SCHEDULE 2

Article 3

MODIFICATIONS TO PART I OF THE ACT

1. Section 1 shall not apply.
- 2.—(1) Section 2 shall be amended as follows.
  - (2) In subsection (1)—
    - (a) for the words “before or after the commencement of this Part of this Act” there shall be substituted the words “before, on or after 1st December 1995”;
    - (b) for the words “reciprocating country” there shall be substituted the words “specified State”; and
    - (c) for the word “country” there shall be substituted the word “State”.
  - (3) In subsection (2)—
    - (a) the words “a provisional order or to” shall be omitted; and
    - (b) after the word “Act” there shall be added the words “as applied to a specified State by the Recovery of Maintenance (United States of America) Order 1993(1)”.
  - (4) In subsection (4)—
    - (a) for the words “reciprocating country” where they first occur there shall be substituted the words “specified State”;
    - (b) in paragraph (a), for the words “a certified copy” there shall be substituted the words “three certified copies”;
    - (c) in paragraph (c), at the end there shall be inserted the words “or, in Scotland, signed by the applicant or his solicitor”;
    - (d) for paragraph (d) there shall be substituted—
      - “(d) a sworn statement signed by the payee giving the following information—
        - (i) the address of the payee;
        - (ii) such information as is known as to the whereabouts of the payer; and
        - (iii) a description, so far as is known, of the nature and location of any assets of the payer available for execution;”;
    - (e) after the words “that officer” where they last occur there shall be inserted the words “, 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,”;
    - (f) for the words “Secretary of State” in the second place where they occur, there shall be substituted the word “him”; and
    - (g) for the words “responsible authority in the reciprocating country” there shall be substituted the words “appropriate authority in the specified State”.
  - (5) In subsection (5), after the word “and” there shall be inserted the words “, subject to section 5 below,”.
3. Sections 3 and 4 shall not apply.
4. For section 5 there shall be substituted—
  - (1) This section applies to a maintenance order certified copies of which have been sent in pursuance of section 2 to a specified State for enforcement.

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(2) The jurisdiction of a court in the United Kingdom to revoke, revive or vary a maintenance order shall 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 in a specified State.

(3) Where subsection (1) of section 60 of the Magistrates' Courts Act 1980<sup>(2)</sup> (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 the United Kingdom for the variation or revocation of an order to which this section applies, and the payer is residing in a specified State, the prescribed officer of the court shall—

- (a) in the case of a court in England and Wales or Northern Ireland, send to the Lord Chancellor, or, in the case of a court in Scotland, send to the Secretary of State, notice of the institution of the proceedings, including notice of the substance of the application, with a view to its being transmitted to the appropriate authority in the specified State for service on the payer; and
- (b) 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.

(5) Where such an application is made—

- (a) the order shall not be varied or revoked unless the document mentioned in subsection (4)(a) above has been served on the payer in accordance with the law for the service of such a document in the specified State;
- (b) 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; and
- (c) a copy of any such representations or evidence shall be served on the payee in the prescribed manner before the hearing.

(6) Where an application is made by the payer to a court in the United Kingdom 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 notice of institution of the proceedings, including notice of the substance of the application, on the payee.

(7) Where an order to which this section applies is 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) three certified copies of the order of variation or revocation; and
- (b) a written statement, signed by that officer as to whether both the payer and the payee under the order appeared in the proceedings, and, if only the applicant appeared, the original or a certified copy of a document which establishes that notice of the institution of the proceedings had been served on the other party,

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 specified State for registration and enforcement of the order of variation or revocation.

(8) 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 court in a specified State, the maintenance

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(2) 1980 c. 43; section 60(1) was substituted by section 4 of the Maintenance Enforcement Act 1991 (c. 17).

order shall, as from the date on which the order of variation took effect, have effect as varied by that order.

(9) 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 court in a specified State, 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 in respect of any arrears due under the maintenance order at that date.

(10) Where a maintenance order to which this section applies has been varied or revoked by an order made by a court in a specified State, the prescribed officer of the court shall register the order of variation or revocation in the prescribed manner.”.

**5.**—(1) Section 6 shall be amended as follows.

(2) For subsection (1) there shall be substituted—

“(1) This section applies to a maintenance order made, whether before, on or after 1st December 1995, by a court in a specified State.”.

(3) In subsection (2)—

- (a) after the words “received by” there shall be inserted the words “the Lord Chancellor or”;
- (b) for the words “responsible authority in a reciprocating country” there shall be substituted the words “appropriate authority in a specified State”; and
- (c) for the words “Secretary of State” in the second place where they occur, there shall be substituted the word “him”.

(4) In subsection (3), after the words “receives from” there shall be inserted the words “the Lord Chancellor or”.

(5) In subsection (4), after the words “copy of the order to” there shall be inserted the words “the Lord Chancellor or” and after the words “Secretary of State” there shall be inserted “, as the case may be,”.

**6.** Section 7 shall not apply.

**7.**—(1) Section 8 shall be amended as follows.

(2) For subsection (7) there shall be substituted—

“(7) Sums of money payable under a registered order shall be payable in accordance with the order as from the date on which the order was made.”.

(3) Subsection (8) shall be omitted.

**8.**—(1) Section 9 shall be amended as follows.

(2) For subsection (1) there shall be substituted—

“(1) Subject to the provisions of this section—

- (a) the registering court shall have the like power, on an application made by the payer or payee under a registered order, to vary the order as if it had been made by the registering court and as if that court had had jurisdiction to make it;
- (b) the jurisdiction of a magistrates' court to vary a registered order shall be exercisable notwithstanding that proceedings for the variation of the order are brought by or against a person residing in a specified State.”.

(3) In subsection (1B), the words “or revoke” shall be omitted.

(4) For subsections (2) to (11) there shall be substituted—

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“(2) Where an application is made by the payer to a registering court in the United Kingdom for the variation of a registered order, and the payee is residing in a specified State, the prescribed officer of the court shall—

- (a) in the case of a court in England and Wales or Northern Ireland, send to the Lord Chancellor, or, in the case of a court in Scotland, send to the Secretary of State, notice of the institution of the proceedings with a view to its being transmitted by him to the appropriate authority in the specified State for service on the payee; and
- (b) give the payee 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.

(3) Where such an application is made—

- (a) the order shall not be varied unless the document mentioned in paragraph (a) of subsection (2) above has been served on the payee in accordance with the law for the service of such a document in the specified State;
- (b) the court, in considering whether or not to make or vary the order, shall take into account any representations made and any evidence adduced by or on behalf of the payee; and
- (c) a copy of any such representations and evidence shall be served on the payer by the prescribed officer of the court before the hearing.

(4) Where an application is made by the payee to a registering court in the United Kingdom for the variation of a registered order, and the payer is residing in the United Kingdom, the prescribed officer of the court shall serve the document mentioned in paragraph (a) of subsection (2) above on the payer.

(5) Where a registered order is varied by a registering court in the United Kingdom the prescribed officer of the court shall send the following documents, that is to say—

- (a) three certified copies of the order of variation; and
- (b) a written statement signed by that officer as to whether both the payer and the payee under the order appeared in the proceedings for the variation of the order and, if only the applicant appeared, the original or a certified copy of a document which establishes that notice of the institution of the proceedings had been served on the other party,

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 specified State.

(6) Where a registered order has been varied by the registering court or by a court in a specified State, the prescribed officer of the registering court shall register the variation order in the prescribed manner.

(7) Where a registered order has been varied by the registering court or by a court in a specified State, the registered order shall, as from the date on which the variation order took effect, have effect as so varied.”.

9.—(1) Section 10 shall be amended as follows.

(2) For subsection (1) there shall be substituted—

“(1) Where a registered order is revoked by an order made by a court in a specified State and notice of the revocation is received by the registering court, the prescribed officer of the registering court shall cancel the registration; but any arrears due under the registered order at the date on which the order of revocation took effect, shall continue to be recoverable as if the registration had not been cancelled.”.

(3) In subsections (2), (5), (6) and (7), for the words “Secretary of State” in each place where they occur, there shall be substituted the words “Lord Chancellor”.

(4) In paragraph (a) of subsection (7), there shall be added the words “or, in Scotland, by the applicant or his solicitor”.

(5) In subsection (8), in paragraph (a), the word “and” shall be omitted and after paragraph (b) there shall be inserted—

“; and

(c) for the words “Lord Chancellor”, in each place where they occur, there shall be substituted the words “Secretary of State”.

**10.**—(1) Section 11 shall be amended as follows.

(2) In subsection (1)—

(a) after the words “appears to” there shall be inserted the words “the Lord Chancellor or”;

(b) for the words “reciprocating country” where they first occur there shall be substituted the words “specified State”;

(c) for the words “responsible authority in that country” there shall be substituted the words “appropriate authority in that State”;

(d) for the words “responsible authority in another reciprocating country” there shall be substituted the words “appropriate authority in another specified State”;

(e) in paragraph (b), at the end there shall be added the words “or, in Scotland, by the applicant or his solicitor”; and

(f) after the words “information as” there shall be inserted the words “the Lord Chancellor or”.

(3) For subsection (2) there shall be substituted—

“(2) Where the documents mentioned in subsection (1) are sent to the appropriate authority in a specified State other than that in which the order in question was made, the Lord Chancellor or the Secretary of State shall inform the appropriate authority in the specified State in which that order was made of what he has done.”.

**11.** For section 12 there shall be substituted the following section—

“**12.** Where in pursuance of section 9 a registering court makes, or refuses to make, an order varying a registered order, the payer or the payee under the registered order shall have the like right of appeal (if any) from the order of variation or from the refusal to make it as he would have if the registered order had been made by the registering court.”.

**12.**—(1) Section 13 shall be amended as follows.

(2) In subsection (1)—

(a) for the words “reciprocating country” there shall be substituted the words “specified State”; and

(b) in paragraphs (b) and (c), for the word “country” there shall be substituted the word “State”.

(3) In subsection (3), for the words “officer of the court in question” there shall be substituted the words “other person before whom the evidence was given”.

**13.**—(1) Section 14 shall be amended as follows.

(2) In subsection (1)—

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- (a) for the words “reciprocating country” where they first occur there shall be substituted the words “specified State”; and
  - (b) for the words from “in the prescribed manner” to the end there shall be substituted the following words—
    - “by the prescribed officer of the court—
    - (a) in England and Wales or Northern Ireland, to the Lord Chancellor; or
    - (b) in Scotland, to the Secretary of State,for transmission to the appropriate authority in the specified State”.
- (3) In subsection (2), for paragraphs (a) and (b) there shall be substituted the words “out of moneys provided by Parliament”.
- (4) In subsections (3) and (4), for the words “reciprocating country” there shall be substituted the words “specified State”.
- (5) For subsection (5) there shall be substituted—
- “(5) A court in—
  - (a) England and Wales or Northern Ireland may, for the purpose of any proceedings in that court under this Part of this Act relating to a maintenance order to which this Part of this Act applies, send to the Lord Chancellor; or
  - (b) Scotland may, for the purpose of such proceedings in that court relating to such an order, send to the Secretary of State,
- for transmission to the appropriate authority in a specified State a request for a court in that State to take or provide evidence relating to such matters as may be specified in the request.”.
- 14.** In section 15, in paragraph (a) and (c), for the words “reciprocating country” there shall be substituted the words “specified State”.
- 15.—**(1) Section 16 shall be amended as follows.
- (2) In subsections (3) and (5) (a), for the words “reciprocating country” there shall be substituted the words “specified State”.
- (3) In subsection (5), the words “or (if earlier) the date on which it is confirmed by a court in the United Kingdom” shall be omitted.
- (4) In subsections (5) (b), for the words “a court in the United Kingdom or (if earlier) the date on which the last order varying that order is confirmed by such a court” there shall be substituted the words “the registering court”.
- 16.—**(1) Section 17 shall be amended as follows.
- (2) In subsection (5A), for the word “reciprocating” there shall be substituted the words “specified State”.
- (3) For subsections (6) and (7) there shall be substituted—
- “(6) A magistrates' court in Northern Ireland shall have jurisdiction—
  - (a) to hear a complaint for the variation or revocation of a maintenance order made by such a court, and to which section 5 of this Act applies; or
  - (b) to hear a complaint for the variation of a registered order which is registered in that court,

if the defendant to the complaint is residing in a specified State and if the court would have had jurisdiction to hear the complaint had the defendant been residing in Northern Ireland and been served with a summons to appear before the court to answer the complaint.

(7) Where the respondent to an application—

(a) for the variation or revocation of a maintenance order made by a magistrates' court, and to which section 5 of this Act applies; or

(b) for the variation of a registered order registered in a magistrates' court,

does not appear at the time and place appointed for the hearing of the application, but the court is satisfied that the respondent is residing in a specified State, and that the requirements of section 5(4) or (6) or section 9(2) and (4), as the case may be, have been complied with, the court may proceed to hear and determine the application at the time and place appointed for the hearing or for any adjourned hearing as if the respondent had appeared at that time and place.”.

**17.**—(1) Section 18 shall be amended as follows.

(2) In subsection (1)—

(a) in paragraphs (b) and (d), for the words “reciprocating country” there shall be substituted the words “specified State” and, in paragraphs (c) and (f), for the words “reciprocating countries” there shall be substituted the words “specified States”; and

(b) paragraph (e) shall be omitted.

**18.**—(1) Section 19 shall be amended as follows.

(2) In paragraphs (a) and (b), for the words “reciprocating country” there shall be substituted the words “specified State” and, in paragraphs (c) and (e), for the words “reciprocating countries” there shall be substituted the words “specified States”.

(3) Paragraph (d) shall be omitted.

**19.** Section 20 shall not apply.

**20.**—(1) Section 21 shall be amended as follows.

(2) In subsection (1)—

(a) after the word “Act” where it first occurs there shall be inserted the words “unless the context otherwise requires”;

(b) in the definition of “certificate of arrears”, after the word “officer” there shall be inserted the words “or, in Scotland, the applicant or his solicitor”;

(c) in the definition of “maintenance order”—

(i) the word “and” in the first place where it occurs shall be omitted; and

(ii) after paragraph (b) there shall be inserted the following paragraph—

“(c) an order within the foregoing provisions of this definition made against a payer on the application of a public body which claims reimbursement of sums of money payable under the order with respect to the payee if reimbursement can be obtained by the public body under the law to which it is subject.”;

(d) the definition of “provisional order” shall be omitted;

(e) the definition of “reciprocating country” shall be omitted;

(f) in the definition of “registered order” there shall be inserted at the end the words “and “registered” and “registration” shall be construed accordingly”;

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- (g) the definition of “the responsible authority” shall be omitted; and
- (h) after the definition of “revoke” and “revocation” there shall be inserted the following definition—

““specified State” means a State specified in Schedule 1 to the Reciprocal Enforcement of Maintenance Orders (United States of America) Order 1995~~(3)~~”

(3) Subsection (2) shall be omitted.

**21.** Sections 22, 23 and 24 shall not apply.