

## SCHEDULE 3

### PART 1 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 enforcement in specified State.**

2.—(1) Subject to subsection (2) below, where the payer under a maintenance order made, whether before, on or after 1st December 1995, by a court in the United Kingdom is residing or has assets in a specified State, the payee under the order may apply for the order to be sent to that State for enforcement.

(2) Subsection (1) above shall not have effect in relation to an order made by virtue of a provision of Part II of this Act as applied to a specified State by the Recovery of Maintenance (United States of America) Order 1993(1).

(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 or has assets in a specified State, the following documents, that is to say—

- (a) three certified copies of the maintenance order;
- (b) a certificate signed by that officer certifying that the order is enforceable in the United Kingdom;
- (c) a certificate of arrears so signed or, in Scotland, signed by the applicant or his solicitor;
- (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) a statement giving such information as the officer possesses for facilitating the identification of the payer; and
- (f) where available, a photograph of the payer;

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 him to the appropriate authority in the specified State if he is satisfied that the statement relating to the whereabouts of the payer and the nature and location of his assets 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 below, any such order may be enforced, varied or revoked accordingly.

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(1) S.I.1993/591.

*Status: This is the original version (as it was originally made).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

### **Variation and revocation of maintenance order made in United Kingdom.**

5.—(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.

(2) The jurisdiction of a court in the United Kingdom to revoke, revive or vary 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.

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

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(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 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.