

## SCHEDULE 3

## Article 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<sup>(1)</sup>.

(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.

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### **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.

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

(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.

#### *Orders made by courts in specified States*

#### **Registration in United Kingdom court of maintenance order made in a specified State.**

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

(2) Where a certified copy of an order to which this section applies is received by the Lord Chancellor or the Secretary of State from the appropriate authority in a specified State, and it appears to him that the payer under the order is residing or has assets in the United Kingdom, he shall send the copy of the order to the prescribed officer of the appropriate court.

(3) Where the prescribed officer of the appropriate court receives from the Lord Chancellor or the Secretary of State a certified copy of an order to which this section applies, he shall, subject to subsection (4) below, register the order in the prescribed manner in that court.

(4) Before registering an order under this section an officer of a court shall take such steps as he thinks fit for the purpose of ascertaining whether the payer under the order is residing or has assets within the jurisdiction of the court, and if after taking those steps he is satisfied that the payer is not residing and has no assets within the jurisdiction of the court he shall return the certified copy of the order to the Lord Chancellor or the Secretary of State, as the case may be, with a statement giving such information as he possesses as to the whereabouts of the payer and the nature and location of his assets.

#### **Enforcement of maintenance order registered in United Kingdom court.**

8.—(1) Subject to subsection (2) below, a registered order may be enforced in the United Kingdom as if it had been made by the registering court and as if that court had had jurisdiction to make it; and proceedings for or with respect to the enforcement of any such order may be taken accordingly.

(2) Subsection (1) above does not apply to an order which is for the time being registered in the High Court under Part I of the Maintenance Orders Act 1958<sup>(3)</sup> or to an order which is for the time being registered in the High Court of Justice in Northern Ireland under Part II of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966<sup>(4)</sup>.

(3) Any person for the time being under an obligation to make payments in pursuance of a registered order shall give notice of any change of address to the clerk of the registering court, and any person failing without reasonable excuse to give such a notice shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

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(3) 1958 c. 39.

(4) 1966 c. 35 (NI).

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(4) An order which by virtue of this section is enforceable by a magistrates' court shall, subject to the modifications of sections 76 and 93 of the Magistrates' Courts Act 1980<sup>(5)</sup> specified in subsections (4A) and (4B) below, and subject to the modifications of Article 98 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>(6)</sup> specified in subsection (4C) below, be enforceable as if it were a magistrates' courts maintenance order made by that court.

In this subsection "magistrates' court maintenance order" has the same meaning as in section 150(1) of the Magistrates' Courts Act 1980.

(4A) Section 76 (enforcement of sums adjudged to be paid) shall have effect as if for subsections (4) to (6) there were substituted the following subsections—

"(4) Where proceedings are brought for the enforcement of a magistrates' court maintenance order under this section, the court may vary the order by exercising one of its powers under subsection (5) below.

(5) The powers of the court are—

- (a) the power to order that payments under the order be made directly to the clerk of the court or the clerk of any other magistrates' court;
- (b) the power to order that payments under the order be made to the clerk of the court, or to the clerk of any other magistrates' court, by such method of payment falling within section 59(6) above (standing order, etc.) as may be specified;
- (c) the power to make an attachment of earnings order under the Attachment of Earnings Act 1971<sup>(7)</sup> to secure payments under the order.

(6) In deciding which of the powers under subsection (5) above it is to exercise, the court shall have regard to any representations made by the debtor (within the meaning of section 59 above).

(7) Subsection (4) of section 59 above (power of court to require debtor to open account) shall apply for the purposes of subsection (5) above as it applies for the purposes of that section but as if for paragraph (a) there were substituted—

"(a) the court proposes to exercise its power under paragraph (b) of section 76(5) below, and".

(4B) In section 93 (complaint for arrears), subsection (6) (court not to impose imprisonment in certain circumstances) shall have effect as if for paragraph (b) there were substituted—

"(b) if the court is of the opinion that it is appropriate—

- (i) to make an attachment or earnings order; or
- (ii) to exercise its power under paragraph (b) of section 76(5) above."

(4C) Article 98 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>(8)</sup> (enforcement of sums adjudged to be paid) shall have effect—

(a) as if for paragraph (7)(a) there were substituted the following paragraph—

- "(a) if the court is of the opinion that it is appropriate—
- (i) to make an attachment of earnings order; or
  - (ii) to exercise its power under paragraph (8C)(b)";

(b) as if for paragraphs (8B) to (8D) there were substituted the following paragraphs—

<sup>(5)</sup> 1980 c. 43; section 76 was amended by the Criminal Justice Act 1982 (c. 48), Schedule 16 and by the Maintenance Enforcement Act 1991 (c. 17), section 7. Section 93 was amended by the Family Law Reform Act 1987 (c. 42), Schedule 2 and by the Maintenance Enforcement Act 1991, Schedule 2.

<sup>(6)</sup> S.I. 1981/1675 (N.I. 26).

<sup>(7)</sup> 1971 c. 32.

<sup>(8)</sup> S.I. 1981/1675 (N.I. 26).

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“(8B) Upon the appearance of a person or proof of service of the summons on him as mentioned in paragraph (4) for the enforcement of an order to which this Article applies, the court or resident magistrate may vary the order, by exercising one of the powers under paragraph (8C).

(8C) The powers mentioned in paragraph (8B) are—

- (a) the power to order that payments under the order be made directly to the collecting officer;
- (b) the power to order that payments under the order be made to the collecting officer, by such method of payment falling within Article 85(7) (standing order, etc.) as may be specified;
- (c) the power to make an attachment of earnings order under Part IX to secure payments under the order.

(8D) In deciding which of the powers under paragraph (8C) is to be exercised, the court or, as the case may be, a resident magistrate shall have regard to any representations made by the debtor (within the meaning of Article 85).

(8E) Paragraph (5) of Article 85 (power of court to require debtor to open account) shall apply for the purposes of paragraph (8C) as it applies for the purposes of that Article but as if for sub-paragraph (a) there were substituted—

“(a) the court proposes to exercise its power under sub-paragraph (b) of Article 98(8C), and”.

(5) The magistrates' court by which an order is enforceable by virtue of this section, and the officers thereof, shall take all such steps for enforcing or facilitating the enforcement of the order as may be prescribed.

(6) In any proceedings for or with respect to the enforcement of an order which is for the time being registered in any court under this Part of this Act a certificate of arrears sent to the prescribed officer of the court shall be evidence of the facts stated therein.

(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.

(9) In the application of this section to Scotland—

- (a) subsections (2) to (5) shall be omitted; and
- (b) in subsection (6), for the word “evidence” there shall be substituted the words “sufficient evidence”.

### **Variation of maintenance order registered in United Kingdom court.**

**9.—**(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.

(1ZA) Where the registering court is a magistrates' court in England and Wales, section 60 of the Magistrates' Courts Act 1980<sup>(9)</sup> (revocation, variation, etc. of orders for periodical payment) shall have effect in relation to the registered order—

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(9) 1980 c. 43; section 60 was substituted by section 4 of the Maintenance Enforcement Act 1991 (c. 17).

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- (za) as if in subsection (1) for the words “by order on complaint” there were substituted “on an application being made, by order”;
  - (a) as if in subsection (3) for the words “paragraphs (a) to (d) of section 59(3) above” there were substituted “subsection (3A) below” and after that subsection there were inserted—
    - “(3A) The powers of the court are—
      - (a) the power to order that payments under the order be made directly to the clerk of the court or the clerk of any other magistrates' court;
      - (b) the power to order that payments under the order be made to the clerk of the court, or to the clerk of any other magistrates' court, by such method of payment falling within section 59(6) above (standing order, etc.) as may be specified;
      - (c) the power to make an attachment of earnings order under the Attachment of Earnings Act 1971<sup>(10)</sup> to secure payments under the order.”;
  - (b) as if in subsection (4) for paragraph (b) there were substituted—
    - “(b) payments under the order are required to be made to the clerk of the court, or to the clerk of any other magistrates' court, by any method of payment falling within section 59(6) above (standing order, etc.)”,
 and as if after the words “the court” there were inserted “which made the order”;
  - (c) as if in subsection (5) for the words “to the clerk” there were substituted “in accordance with paragraph (a) of subsection (3A) above”;
  - (d) as if in subsection (7), paragraph (c) and the word “and” immediately preceding it were omitted;
  - (e) as if in subsection (8) for the words “paragraphs (a) to (d) of section 59 (3) above” there were substituted “subsection (3A) above”;
  - (f) as if for subsections (9) and (10) there were substituted the following subsections—
    - “(9) In deciding, for the purposes of subsections (3) and (8) above, which of the powers under subsection (3A) above it is to exercise, the court shall have regard to any representations made by the debtor.
    - (10) Subsection (4) of section 59 above (power of court to require debtor to open account) shall apply for the purposes of subsection (3A) above as it applies for the purposes of that section but as if for paragraph (a) there were substituted—
      - “(a) the court proposes to exercise its power under paragraph (b) of section 60 (3A) below, and”.
- (1ZB) Where the registering court is a court of summary jurisdiction in Northern Ireland, Article 86 of the Magistrates' Courts (Northern Ireland) Order 1981 (revocation, variation, etc. of orders for periodical payment) shall have effect in relation to the registered order—
- (a) as if in paragraph (3) for the words “sub-paragraphs (a) to (d) of Article 85(3)” there were substituted “paragraph (3A)” and after that paragraph there were inserted—
    - “(3A) The powers of the court are—
      - (a) the power to order that payments under the order be made directly to the collecting officer;
      - (b) the power to order that payments under the order be made to the collecting officer by such method of payment falling within Article 85(7) (standing order, etc.) as may be specified;

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(10) 1971 c. 32.

- (c) the power to make an attachment of earnings order under Part IX to secure payments under the order.”;
- (b) as if in paragraph (4) for sub-paragraph (b) there were substituted—
  - “(b) payments under the order are required to be made to the collecting officer by any method of payment falling within Article 85(7) (standing order, etc.)”,
  - and as if the after words “petty sessions” there were inserted “for the petty sessions district for which the court which made the order acts”;
- (c) as if in paragraph (5) for the words “to the collecting officer” there were substituted “in accordance with sub-paragraph (a) of paragraph (3A)”;
- (d) as if in paragraph (7), sub-paragraph (c) and the word “and” immediately preceeding it were omitted;
- (e) as if in paragraph (8) for the words “sub-paragraphs (a) to (d) of Article 85(3)” there were substituted “paragraph (3A)”;
- (f) as if for paragraphs (9) and (10) there were substituted the following paragraphs—
  - “(9) In deciding, for the purposes of paragraphs (3) and (8) above, which of the powers under paragraph (3A) it is to exercise, the court shall have regard to any representations made by the debtor.
  - (10) Paragraph (5) of Article 85 (power of court to require debtor to open account) shall apply for the purposes of paragraph (3A) as it applies for the purposes of that Article but as if for sub-paragraph (a) there were substituted—
    - “(a) the court proposes to exercise its power under sub-paragraph (b) of Article 86(3A), and”.
- (1A) The powers conferred by subsection (1) above are not exercisable in relation to so much of a registered order as provides for the payment of a lump sum.
- (1B) The registering court shall not vary a registered order if neither the payer nor the payee under the order is resident in the United Kingdom.
- (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



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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;
- (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.

### **Cancellation of registration and transfer of order.**

**10.**—(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.

(2) Where the prescribed officer of the registering court is of opinion that the payer under a registered order is not residing within the jurisdiction of that court and has no assets within that jurisdiction against which the order can be effectively enforced, he shall cancel the registration of the order and, subject to subsection (3) below, shall send the certified copy of the order to the Lord Chancellor.

(3) Where the prescribed officer of the registering court, being a magistrates' court, is of opinion that the payer is residing or has assets within the jurisdiction of another magistrates' court in that part of the United Kingdom in which the registering court is, he shall transfer the order to that other court by sending the certified copy of the order to the prescribed officer of that other court.

(4) On the transfer of an order under subsection (3) above the prescribed officer of the court to which it is transferred shall, subject to subsection (6) below, register the order in the prescribed manner in that court.

(5) Where the certified copy of an order is received by the Lord Chancellor under this section and it appears to him that the payer under the order is residing or has assets in the United Kingdom, he shall transfer the order to the appropriate court by sending the certified copy of the order together with the related documents to the prescribed officer of the appropriate court and, subject to subsection (6) below, that officer shall register the order in the prescribed manner in that court.

(6) Before registering an order in pursuance of subsection (4) or (5) above an officer of a court shall take such steps as he thinks fit for the purpose of ascertaining whether the payer is residing or has assets within the jurisdiction of the court, and if after taking those steps he is satisfied that the payer is not residing and has no assets within the jurisdiction of the court he shall send the certified copy of the order to the Lord Chancellor.



(7) The officer of a court who is required by any of the foregoing provisions of this section to send to the Lord Chancellor or to the prescribed officer of another court the certified copy of an order shall send with that copy—

- (a) a certificate of arrears signed by him or, in Scotland, by the applicant or his solicitor;
- (b) a statement giving such information as he possesses as to the whereabouts of the payer and the nature and location of his assets; and
- (c) any relevant documents in his possession relating to the case.

(8) In the application of this section to Scotland—

- (a) in subsection (2), for the words “within the jurisdiction of that court” there shall be substituted the words “in Scotland”;
- (b) subsections (3) and (4) shall be omitted; and
- (c) for the words “Lord Chancellor”, in each place where they occur, there shall be substituted the words “Secretary of State”.

**Steps to be taken by Lord Chancellor or Secretary of State where payer under certain orders is not residing in United Kingdom.**

**11.**—(1) If at any time it appears to the Lord Chancellor or the Secretary of State that the payer under a maintenance order, a certified copy of which has been received by him from a specified State, is not residing and has no assets in the United Kingdom, he shall send to the appropriate authority in that State or, if having regard to all the circumstances he thinks it proper to do so, to the appropriate authority in another specified State—

- (a) the certified copy of the order in question and a certified copy of any order varying that order;
- (b) if the order has at any time been a registered order, a certificate of arrears signed by the prescribed officer or, in Scotland, by the applicant or his solicitor;
- (c) a statement giving such information as the Lord Chancellor or the Secretary of State possesses as to the whereabouts of the payer and the nature and location of his assets; and
- (d) any other relevant documents in his possession relating to the case.

(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.

*Appeals*

**Appeals.**

**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.

*Evidence*

**Admissibility of evidence given in specified State.**

**13.**—(1) A statement contained in—

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- (a) a document, duly authenticated, which purports to set out or summarise evidence given in proceedings in a court in a specified State; or
- (b) a document, duly authenticated, which purports to set out or summarise evidence taken in such a State 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 by such a court or otherwise; or
- (c) a document, duly authenticated, which purports to have been received in evidence in proceedings in a court in such a State or to be a copy of a document so received,

shall in any proceedings in a court in the United Kingdom relating to a maintenance order to which this Part of this Act applies 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 other person before whom the evidence was given 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.

### **Obtaining of evidence needed for purpose of certain proceedings.**

**14.—**(1) Where for the purpose of any proceedings in a court in a specified State relating to a maintenance order to which this Part of this Act applies a request is made by or on behalf of that court for the taking in the United Kingdom of the evidence of a person residing therein relating to matters specified in the request, such court in the United Kingdom as may be prescribed shall have power to take that 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 thinks fit, shall take the evidence in such manner as may be prescribed.

Evidence taken in compliance with such a request shall be sent 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.

(2) Where any person, not being the payer or the payee under the maintenance order to which the proceedings in question relate, 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 out of moneys provided by Parliament 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.

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(3) Section 97(1), (3) and (4) of the Magistrates' Courts Act 1980<sup>(11)</sup> (which provide for compelling the attendance of witnesses, etc.) shall apply in relation to a magistrates' court having power under subsection (1) above to take the evidence of any person as if the proceedings in the court in a specified State for the purpose of which a request for the taking of the evidence has been made were proceedings in the magistrates' court and had been begun by complaint.

(4) Paragraphs 71 and 73 of Schedule 1 to the Sheriff Courts (Scotland) Act 1907<sup>(12)</sup> (which provide for the citation of witnesses, etc.) shall apply in relation to a sheriff having power under subsection (1) above to take the evidence of any person as if the proceedings in the court in a specified State for the purpose of which a request for the taking of the evidence has been made were proceedings in the sheriff court.

(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.

(6) In the application of this section to Northern Ireland, in subsection (3), for the reference to section 97(1), (3) and (4) of the Magistrates' Courts Act 1980 there shall be substituted a reference to Articles 118(1), (3) and (4), 119 and 120 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>(13)</sup>.

### **Order etc. made in specified State need not be proved.**

**15.** For the purposes of this Part of this Act, unless the contrary is shown—

- (a) any order made by a court in a specified State purporting to bear the seal of that court or to be signed by any person in his capacity as a judge, magistrate or officer of the court, shall be deemed without further proof to have been duly sealed or, as the case may be, to have been signed by that person;
- (b) the person by whom the order was signed shall be deemed without further proof to have been a judge, magistrate or officer, as the case may be, of that court when he signed it and, in the case of an officer, to have been authorised to sign it; and
- (c) a document purporting to be a certified copy of an order made by a court in a specified State shall be deemed without further proof to be such a copy.

### *Supplemental*

### **Payment of sums due under orders made in specified State; conversion of currency.**

**16.—**(1) Payment of sums due under a registered order shall, while the order is registered in a court in England, Wales or Northern Ireland, be made in such manner and to such person as may be prescribed.

(2) Where the sums required to be paid under a registered order are expressed in a currency other than the currency of the United Kingdom, then, as from the relevant date, the order shall be treated

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(11) 1980 c. 43; section 97 was amended by the Contempt of Court Act 1981 (c. 49), Schedule 2; by S.I. 1984/447; and by the Criminal Justice (International Cooperation) Act 1990 (c. 5), Schedule 4.

(12) 1907 c. 51.

(13) S.I. 1981/1675 (N.I. 26).

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as if it were an order requiring the payment of such sums in the currency of the United Kingdom as, on the basis of the rate of exchange prevailing at that date, are equivalent to the sums so required to be paid.

(3) Where the sum specified in any statement, being a statement of the amount of any arrears due under a maintenance order made by a court in a specified State, is expressed in a currency other than the currency of the United Kingdom, that sum shall be deemed to be such sum in the currency of the United Kingdom as, on the basis of the rate of exchange prevailing at the relevant date, is equivalent to the sum so specified.

(4) For the purposes of this section a written certificate purporting to be signed by an officer of any bank in the United Kingdom certifying that a specified rate of exchange prevailed between currencies at a specified date and that at such rate a specified sum in the currency of the United Kingdom is equivalent to a specified sum in another specified currency shall be evidence of the rate of exchange so prevailing on that date and of the equivalent sums in terms of the respective currencies.

(5) In this section “the relevant date” means—

- (a) in relation to a registered order or to a statement of arrears due under a maintenance order made by a court in a specified State, the date on which the order first becomes a registered order;
- (b) in relation to a registered order which has been varied, the date on which the last order varying that order is registered in the registering court.

(6) In the application of this section to Scotland—

- (a) subsection (1) shall not apply; and
- (b) in subsection (4), for the word “evidence” there shall be substituted the words “sufficient evidence”.

### **Proceedings in magistrates' courts.**

**17.—**(4) Anything authorised or required by this Part of this Act to be done by, to or before the magistrates' court by, to or before which any other thing was done may be done by, to or before any magistrates' court acting for the same petty sessions area (or, in Northern Ireland, petty sessions district) as that court.

(5) Any application which by virtue of a provision of this Part of this Act is made to a magistrates' court in Northern Ireland shall be made by complaint.

(5A) Where the respondent to an application for the variation or revocation of—

- (a) a maintenance order made by a magistrates' court in England and Wales, being an order to which section 5 of this Act applies; or
- (b) a registered order which is registered in such a court,

is residing in a specified State, a magistrates' court in England and Wales shall have jurisdiction to hear the application (where it would not have such jurisdiction apart from this subsection) if it would have had jurisdiction to hear it had the respondent been residing in England and Wales.

(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.

(7A) In the application of this section to Northern Ireland, in subsection (7)—

- (a) for the word “respondent”, in each place where it occurs, there shall be substituted “defendant”; and
- (b) for the words “an application” and “the application”, in each place where they occur, there shall be substituted “a complaint” and “the complaint” respectively.

### **Magistrates' courts rules.**

**18.**—(1) Without prejudice to the generality of the power to make rules under section 144 of the Magistrates' Courts Act 1980 (magistrates' courts rules), provision may be made by such rules with respect to any of the following matters, namely—

- (a) the circumstances in which anything authorised or required by this Part of this Act to be done by, to or before a magistrates' court acting for a particular petty sessions area or by, to or before an officer of that court may be done by, to or before a magistrates' court acting for such other petty sessions area as the rules may provide or by, to or before an officer of that court;
- (b) the orders made, or other things done, by a magistrates' court, or an officer of such a court, under this Part of this Act, or by a court in a specified State, 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;
- (c) the cases and manner in which courts in specified States are to be informed of orders made, or other things done, by a magistrates' court under this Part of this Act;
- (d) the cases and manner in which a justices' clerk may take evidence needed for the purpose of proceedings in a court in a specified State relating to a maintenance order to which this Part of this Act applies;
- (f) the circumstances and manner in which magistrates' courts may for the purposes of this Part of this Act communicate with courts in specified States.

(1A) For the purpose of giving effect to this Part of this Act, rules made under section 144 of the Magistrates' Courts Act 1980 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 1980<sup>(14)</sup>, and
- (b) may be made in relation to relevant proceedings under that section.

(2) Rules with respect to the matters mentioned in subsection (1) above may be made in accordance with Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>(15)</sup> in relation to proceedings or matters in magistrates' courts in Northern Ireland under this Part of this Act.

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<sup>(14)</sup> 1989 c. 41.

<sup>(15)</sup> S.I. 1981/1675 (N.I. 26).

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## Rules for sheriff court.

19. Without prejudice to the generality of the powers conferred on the Court of Session by section 32 of the Sheriff Courts (Scotland) Act 1971(16) to regulate by act of sederunt the procedure of the sheriff court, the said powers shall include power—

- (a) to prescribe the decrees granted, or other things done, by the sheriff, or an officer of the sheriff court, under this Part of this Act, or by a court in a specified State, notice of which is to be given to such persons as the act of sederunt may provide and the manner in which such notice shall be given;
- (b) to provide that evidence needed for the purpose of proceedings in a court in a specified State relating to a maintenance order to which this Part of this Act applies may, in such cases and manner as the act of sederunt may provide, be taken by a sheriff clerk or sheriff clerk depute;
- (c) to prescribe the cases and manner in which courts in specified States are to be informed of decrees granted, or other things done, by the sheriff under this Part of this Act;
- (e) to prescribe the circumstances and manner in which the sheriff may for the purposes of this Part of this Act communicate with courts in specified States.

## Interpretation of Part I.

21.—(1) In this part of this Act unless the context otherwise requires—

“affiliation order” means an order (however described) adjudging, finding or declaring a person to be the father of a child, whether or not it also provides for the maintenance of the child;

“the appropriate court”, in relation to a person residing or having assets in England and Wales or in Northern Ireland means a magistrates' court, and in relation to a person residing or having assets in Scotland means a sheriff court, within the jurisdiction of which that person is residing or has assets;

“certificate of arrears”, in relation to a maintenance order, means a certificate certifying that the sum specified in the certificate is to the best of the information or belief of the officer or, in Scotland, the applicant or his solicitor giving the certificate the amount of the arrears due under the order at the date of the certificate or, as the case may be, that to the best of his information or belief there are no arrears due thereunder at that date;

“certified copy”, in relation to an order of a court, means a copy of the order certified by the proper officer of the court to be a true copy;

“court” includes any tribunal or person having power to make, confirm, enforce, vary or revoke a maintenance order;

“maintenance order” means an order (however described) of any of the following descriptions, that is to say—

- (a) an order (including an affiliation order or order consequent upon an affiliation order) which provides for the payment of a lump sum or the making of periodical payments towards the maintenance of any person, being a person whom the person liable to make payments under the order is, according to the law applied in the place where the order was made, liable to maintain;
- (aa) an order which has been made in Scotland, on or after the granting of a decree of divorce, for the payment of a periodical allowance by one party to the marriage to the other party;
- (b) an affiliation order or order consequent upon an affiliation order, being an order which provides for the payment by a person adjudged, found or declared to be a child's father

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(16) 1971 c. 58.

of expenses incidental to the child's birth or, where the child has died, of his funeral expenses;

- (d) 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,

and, in the case of a maintenance order which has been varied, means that order as varied;

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

"payee", in relation to a maintenance order, means the person entitled to the payments for which the order provides;

"payer", in relation to a maintenance order, means the person liable to make payments under the order;

"prescribed", in relation to a magistrates' court in England and Wales or in Northern Ireland, means prescribed by rules made under section 144 of the Magistrates' Courts Act 1980 or by rules made in accordance with Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981, as the case may be, and in relation to any other court means prescribed by rules of court;

"registered order" means a maintenance order which is for the time being registered in a court in the United Kingdom under this Part of this Act and "registered" and "registration" shall be construed accordingly;

"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;

"revoke" and "revocation" include discharge;

"specified State" means a State specified in Schedule 1 to the Reciprocal Enforcement of Maintenance Orders (United States of America) Order 1995(17).

(3) Any reference in this Part of this Act to the payment of money for the maintenance of a child shall be construed as including a reference to the payment of money for the child's education.