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STATUTORY INSTRUMENTS

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**2011 No. 1329 (L. 10)**

**MAGISTRATES' COURTS,  
ENGLAND AND WALES**

**The Magistrates' Courts (Enforcement or  
Variation of Orders Made in Family Proceedings  
and Miscellaneous Provisions) Rules 2011**

<i>Made</i>	- - - -	<i>27th May 2011</i>
<i>Laid before Parliament</i>		<i>27th May 2011</i>
<i>Coming into force</i>	- -	<i>18th June 2011</i>

The Lord Chief Justice, with the concurrence of the Lord Chancellor, makes the following Rules in exercise of the powers conferred by section 144 of the Magistrates' Courts Act 1980(1), having consulted the rule committee appointed under section 144(A1) of that Act:

**PART 1  
INTRODUCTORY**

**Citation and commencement**

1. These Rules may be cited as the Magistrates' Courts (Enforcement or Variation of Orders Made in Family Proceedings and Miscellaneous Provisions) Rules 2011 and shall come into force on 18th June 2011.

**Interpretation**

2. In these Rules—

“the 1950 Act” means the Maintenance Orders Act 1950(2);

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(1) 1980 c.43. Section 144 was amended by section 125(3) of and paragraph 25 of Schedule 18 to the Courts and Legal Services Act 1990 (c.41), section 78(2) of and paragraphs 26 and 29 of Schedule 11 to the Access to Justice Act 1999 (c.22), section 109(1) and (3) of and paragraph 245 of Schedule 8 and Schedule 10 to the Courts Act 2003 (c.39), and section 15(1) of and paragraphs 99 and 102 of Schedule 4 to the Constitutional Reform Act 2005 (c.4).

(2) 1950 c.37.

- “the 1958 Act” means the Maintenance Orders Act 1958<sup>(3)</sup>;
- “the 1972 Act” means the Maintenance Orders (Reciprocal Enforcement) Act 1972<sup>(4)</sup>;
- “the 1980 Act” means the Magistrates’ Courts Act 1980;
- “the 1986 Act” means the Family Law Act 1986<sup>(5)</sup>;
- “the 1989 Act” means the Children Act 1989<sup>(6)</sup>;
- “the 1996 Act” means the Family Law Act 1996<sup>(7)</sup>;
- “the FPR” means the Family Procedure Rules 2010<sup>(8)</sup>;
- “designated officer” has the meaning given in section 37(1) of the Courts Act 2003<sup>(9)</sup>;
- “justices’ clerk” has the meaning given in section 27(1) of the Courts Act 2003<sup>(10)</sup>;
- “legal representative” means a—
- (a) barrister;
  - (b) solicitor;
  - (c) solicitor’s employee;
  - (d) manager of a body recognised under section 9 of the Administration of Justice Act 1985<sup>(11)</sup>; or
  - (e) a person who, for the purposes of the Legal Services Act 2007<sup>(12)</sup> is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of that Act),
- who has been instructed to act for a party in relation to proceedings;
- “the Forms Practice Direction” means the practice direction issued by the Lord Chief Justice listing the forms to be used in relation to the matters to which provisions in these Rules relate;
- “the register” means the register kept in accordance with rule 66 of the Magistrates’ Courts Rules 1981<sup>(13)</sup>; and
- “statement of truth” means a statement as follows “[I believe] [the applicant believes] that the facts stated in this document are true.”.

### **Application of these Rules**

- 3.—**(1) These Rules apply to the proceedings referred to in rules 4 to 81 in a magistrates’ court.
- (2) Nothing in these Rules is to be construed as conferring upon a magistrate a function which a magistrate is not permitted by statute to perform.

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(3) 1958 c.39.

(4) 1972 c.18.

(5) 1986 c.55.

(6) 1989 c.41.

(7) 1996 c.27.

(8) S.I. 2010/2955.

(9) 2003 c.39.

(10) Section 27(1)(b) was amended by section 15(1) of and paragraphs 308 and 326(1) and (2) of Schedule 4 to the Constitutional Reform Act 2005.

(11) 1985 c.61.

(12) 2007 c. 29.

(13) S.I. 1981/552. Rule 66 was amended by S.I. 1983/523, 1988/2132, 1992/709 and 2072, 1993/1183, 2001/610, 2003/1236 and 2005/617.

**PART 2**  
**GENERAL PROVISION**  
**CHAPTER 1**  
**PROCEEDINGS WHERE THE FPR ARE NOT APPLIED**

**Application of this Chapter**

4. This Chapter applies in respect of Parts 3 and 4, rule 54, Chapter 2 of Part 5 and rules 73, 77 and 79.

**The overriding objective**

5.—(1) The provisions to which this Part applies have the overriding objective of enabling the court to deal with cases justly, having regard to any welfare issues involved.

(2) Dealing with a case justly includes, so far as is practicable—

- (a) ensuring that it is dealt with expeditiously and fairly;
- (b) dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues;
- (c) ensuring that the parties are on an equal footing;
- (d) saving expense; and
- (e) allotting to it an appropriate share of the court’s resources, while taking into account the need to allot resources to other cases.

**Application by the court of the overriding objective**

6. The court must seek to give effect to the overriding objective when it—

- (a) exercises any power given to it by the provisions to which this Part applies; or
- (b) interprets any such provision.

**Duty of the parties**

7. The parties are required to help the court to further the overriding objective.

**Court’s duty to manage cases**

8.—(1) The court must further the overriding objective by actively managing cases.

(2) Active case management includes—

- (a) encouraging the parties to co-operate with each other in the conduct of the proceedings;
- (b) identifying at an early stage—
  - (i) the issues; and
  - (ii) who should be a party to the proceedings;
- (c) deciding promptly—
  - (i) which issues need full investigation and hearing and which do not; and
  - (ii) the procedure to be followed in the case;
- (d) deciding the order in which issues are to be resolved;

- (e) encouraging the parties to use an alternative dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure;
- (f) helping the parties to settle the whole or part of the case;
- (g) fixing timetables or otherwise controlling the progress of the case;
- (h) considering whether the likely benefits of taking a particular step justify the cost of taking it;
- (i) dealing with as many aspects of the case as it can on the same occasion;
- (j) dealing with the case without the parties needing to attend at court;
- (k) making use of technology; and
- (l) giving directions to ensure that the case proceeds quickly and efficiently.

### **The court's general powers of management**

#### **9.—(1) In this rule—**

“disclosure” means stating that a document exists or has existed;

“hearing” includes a directions appointment;

“inspection” of a document occurs when a party is permitted to inspect a document disclosed by another person.

#### **(2) For the purposes of the references to disclosure and inspection in this rule—**

“document” means anything in which information of any description is recorded; and

“copy” in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly.

(3) The list of powers in this rule is in addition to any powers given to the court by any other rule or practice direction or by any other enactment or any powers it may otherwise have.

#### **(4) Except where any provision to which this rule applies provides otherwise, the court may—**

(a) extend or shorten the time for compliance with any rule, practice direction or court order (even if an application for extension is made after the time for compliance has expired);

(b) make such order for disclosure and inspection, including specific disclosure of documents, as it thinks fit;

(c) adjourn or bring forward a hearing;

(d) require a party or a party's legal representative to attend the court;

(e) hold a hearing and receive evidence by telephone or by using any other method of direct oral communication;

(f) direct that part of any proceedings be dealt with as separate proceedings;

(g) consolidate proceedings;

(h) hear two or more applications on the same occasion;

(i) direct a separate hearing of any issue;

(j) decide the order in which issues are to be heard;

(k) exclude an issue from consideration;

(l) dismiss or give a decision on an application after a decision on a preliminary issue;

(m) direct any party to file and serve an estimate of costs; and

(n) take any other step or make any other order for the purpose of managing the case and furthering the overriding objective.

(5) When the court makes an order, it may—

- (a) make it subject to conditions, including a condition to pay a sum of money into court; and
- (b) specify the consequences of failure to comply with the order or a condition.

(6) Where the court gives directions, it will take into account whether or not a party has complied with any relevant pre-action protocol (being a statement of best practice about pre-action conduct which has been approved by the Lord Chief Justice and which is annexed to a practice direction).

(7) A power of the court under the provisions to which this Part applies to make an order includes a power to vary or revoke the order.

(8) Any provision to which this Part applies—

- (a) requiring or permitting directions to be given by the court is to be taken as including provision for such directions to be varied or revoked; and
- (b) requiring or permitting a date to be set is to be taken as including provision for that date to be changed or cancelled.

#### **Designated officer's power to refer to the court**

**10.** Where in any provision to which this Part applies a step is to be taken by a designated officer the designated officer may consult the court before taking that step.

#### **General power of the court to rectify matters where there has been an error of procedure**

**11.** Where there has been an error of procedure such as a failure to comply with a rule or a practice direction—

- (a) the error does not invalidate any step taken in the proceedings unless the court so orders; and
- (b) the court may make an order to remedy the error.

#### **Forms**

**12.—(1)** The forms referred to in the provisions to which this Chapter applies and in the Forms Practice Direction must be used in the cases to which they apply.

(2) A form may be varied by the court or a party if the variation is required by the circumstances of a particular case.

(3) A form must not be varied so as to leave out any information or guidance which the form gives to the recipient.

(4) Where the provisions to which this Part applies require a form to be sent by the court or by a party for another party to use, it must be sent without variation except such as is required by the circumstances of the particular case.

#### **Documents to be attached to a form**

**13.** Subject to any provision to which this Part applies, unless the court directs otherwise, a form must have attached to it any documents which, in the form, are—

- (a) stated to be required; or
- (b) referred to.

#### **Power of the single justice to perform functions conferred on the court by rules 4 to 13**

**14.** Where—

- (a) by virtue of section 65 of the 1980 Act the proceedings are treated by the court as family proceedings; and
- (b) rules 4 to 13 provide for a court to perform any function,

that function may be performed by a single justice of the peace except that such a justice cannot perform the functions referred to in rule 9(4)(k) and (l), 9(5)(a) and 9(6).

### **Power of a justices' clerk to perform functions conferred on the court by rules 4 to 13**

**15.** Where rules 4 to 13 provide for a court to perform any function, that function may be performed by a justices' clerk except that such a justices' clerk cannot perform the functions referred to in rule 9(4)(k) and (l).

(Provision in respect of the enforcement of a magistrates' court maintenance order, or an order enforceable as a magistrates' court maintenance order is made in the Magistrates' Courts Rules 1981.)

## CHAPTER 2

### PROCEEDINGS WHERE THE FPR ARE APPLIED

#### **Application of this Chapter**

**16.** This Chapter applies in respect of rules 50 to 53, 69, 71, 74 to 76, 78 and 80.

#### **Power of the single justice where the FPR are applied**

**17.** Where proceedings are not treated by the court as family proceedings by virtue of section 65 of the 1980 Act, rule 2.5 of the FPR will not apply in respect of the powers of the single justice.

#### **Power of a justices' clerk where the FPR are applied**

**18.—(1)** Subject to the Justices' Clerks Rules 2005(14), a justices' clerk may perform all the functions which a single justice may perform in accordance with rule 2.5(1)(c)(ii) of the FPR.

(2) Where a justices' clerk—

- (a) is performing the function of a single justice in accordance with paragraph (1); and
- (b) considers, for whatever reason, that it is inappropriate to perform the function,

the justices' clerk must refer the matter to the magistrates' court which may perform the function.

(3) Paragraph (1) applies irrespective of whether proceedings are treated by the court as family proceedings by virtue of section 65 of the 1980 Act.

## CHAPTER 3

### ALL PROCEEDINGS TO WHICH THESE RULES APPLY

#### **Delegation by justices' clerk**

**19.—(1)** Anything authorised to be done by, to or before a justices' clerk under these Rules may be done instead by, to or before an assistant clerk where the assistant clerk has been specifically authorised in writing by the justices' clerk for that purpose.

(2) In this rule "assistant clerk" has the meaning assigned to it by section 27 of the Courts Act 2003.

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(14) S.I. 2005/545; amended by S.I. 2011/633; there are other amending instruments but none is relevant.

**PART 3**  
**PROCEEDINGS UNDER THE 1950 ACT**  
**CHAPTER 1**  
**INTERPRETATION OF THIS PART**

**Interpretation**

**20.—(1)** In this Part—

“appropriate officer of the High Court” means the District Judge of the Principal Registry of the Family Division of the High Court or the district judge of the relevant district registry;

“certified copy” means a copy order certified by the designated officer of the court to be a true copy of the order or of the official record of the order; and

“maintenance order” has the meaning assigned in section 16(2) of the 1950 Act(15).

(2) References in Chapter 3 of this Part to the clerk of the court by which the order was made are to be construed, in relation to a maintenance order made by a county court in Northern Ireland, as references to the Chief Clerk for the appropriate county in Northern Ireland.

**CHAPTER 2**  
**MAINTENANCE ORDERS MADE BY A**  
**MAGISTRATES’ COURT IN ENGLAND AND WALES**

**Procedure under Part 2 of the 1950 Act in relation to a maintenance order made by a magistrates’ court in England and Wales**

**21.—(1)** An application under Part 2 of the 1950 Act for the registration in a court in Scotland or Northern Ireland of a maintenance order made by a magistrates’ court in England and Wales—

(a) may be made either orally or in writing; and

(b) must be made to a justice or justices acting in the same place as the court which made the order.

(2) Unless the applicant appears in person, the applicant must file with the court a document verified by a statement of truth signed by the applicant or the applicant’s legal representative which states—

(a) the address of the person liable to make payments under the order;

(b) the reason why it is convenient that the order should be enforced in Scotland or Northern Ireland, as the case may be;

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(15) Section 16 was amended by section 95(1) of and paragraph 34 of Schedule 8 of the Social Work (Scotland) Act 1968 (c.49), sections 14 and 15(3) of and paragraph 4 of Schedule 5 to the Guardianship Act 1973 (c.29), section 54 of and paragraph 3 of Schedule 2 to the Matrimonial Causes Act 1973 (c.18), section 12 of and paragraph 1 of Schedule 1 to the Divorce (Scotland) Act 1976 (c.39), section 35(2) of and paragraph 13 of Schedule 7 to the Supplementary Benefits Act 1976 (c.71), section 3 of and Schedule 3 to the Administration of Justice Act 1977 (c.38), section 89(a) of and paragraph 13 of Schedule 2 to the Domestic Proceedings and Magistrates’ Courts Act 1978 (c.22), section 48(5) of and Schedule 4 to the Social Security and Housing Benefit Act 1982 (c.24), section 54 of and Schedule 14 to the Civil Jurisdiction and Judgments Act 1982 (c.27), section 46 of and paragraph 1 of Schedule 1 to the Matrimonial and Family Proceedings Act 1984 (c.42), section 28(1) of and Part 5 of Schedule 15 to the Family Law (Scotland) Act 1985 (c.37), section 86 of and paragraph 39 of Part 2 to Schedule 10 of the Social Security Act 1986 (c.50), section 33 of and Schedules 2, 3 and 4 to the Family Law Reform Act 1987 (c.42), section 116 of and paragraph 35 of Schedule 16 to the Courts and Legal Services Act 1990, section 4 of and paragraph 3(1) of Schedule 2 to the Social Security (Consequential Provisions) Act 1992 (c.6), section 66(1) of and paragraph 3(b) of Schedule 8 to the Family Law Act 1996, section 261(1) of and paragraph 18 of Schedule 27 to the Civil Partnership Act 2004 (c.33) and section 166 of and Part 5 of Schedule 15 to the Health and Social Care Act 2008 (c.14) and by S.I. 1977/2158, 1980/564, 1989/678, 1995/756.

(c) unless a certificate of arrears is lodged under section 20 of the 1950 Act, the amount of any arrears due under the order;

(d) that the order is not already registered under Part 2 of the 1950 Act.

(3) If it appears to the justice that the person liable to make payments under the order resides in Scotland or Northern Ireland and that it is convenient that the order should be enforceable there, the designated officer for the court which made the order will send to the sheriff-clerk of the sheriff court in Scotland or to the clerk of the court of summary jurisdiction in Northern Ireland (as the case may be) having jurisdiction in the place in which the person liable to make payments under the order appears to be—

(a) a certified copy of the order;

(b) the certificate of arrears or the document referred to in paragraph (2) (if there is any such document);

(c) if no document referred to in paragraph (2) has been lodged, written notice of the address of the person liable to make payments under the order.

(4) A memorandum of any proceedings taken under paragraph (1) must be entered in the register.

(5) The designated officer for the court which made the order must, on receipt of notice under section 17(4)(16) of the 1950 Act of the registration of the order, enter a memorandum of that notice in the register.

(6) The designated officer for the court which made the order is the prescribed officer for the purposes of section 17(4) of the 1950 Act.

#### **Application under section 22 of the 1950 Act to adduce evidence: maintenance order made by a magistrates' court in England and Wales**

**22.**—(1) An application to a magistrates' court in England and Wales under section 22(5) of the 1950 Act to adduce evidence in connection with a maintenance order made by that court and registered in a court in Scotland or Northern Ireland may be made orally.

(2) The application may be made, and the proceedings heard, without notice to the respondent.

(3) The court in which the application is made must ensure that a transcript or summary of any evidence taken is sent to the clerk of the court in which the order is registered.

(4) The designated officer for the court in England and Wales which made the maintenance order will be the prescribed officer to whom any transcript or summary of evidence adduced in the court in Scotland or Northern Ireland under section 22(5) of the 1950 Act must be sent.

#### **Variation of a maintenance order made by a magistrates' court in England and Wales: section 22(1) of the 1950 Act**

**23.**—(1) Where a maintenance order made by a magistrates' court in England and Wales and registered in a court in Scotland or Northern Ireland is varied under section 22(1) of the 1950 Act (17) by the court in which it is registered—

(a) the designated officer for the court which made the order will be the prescribed officer to whom, under section 23(1) of the 1950 Act(18), notice of the variation must be given;

(b) on receipt of a notice under section 23(1) of the 1950 Act, the designated officer must enter a memorandum of that notice in the register.

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(16) Section 17 was amended by section 109(1) of and paragraph 87 of Schedule 8 to the Courts Act 2003 and section 59(5) of and paragraph 19(1)(and (2) of Schedule 11 to the Constitutional Reform Act 2005.

(17) Section 22(1) was amended by section 89(2) of and paragraph 14 of Schedule 2 to the Domestic Proceedings and Magistrates' Courts Act 1978.

(18) Section 23 was substituted by section 3 of and paragraph 8 of Schedule 3 to the Administration of Justice Act 1977.



(2) Where a maintenance order made by a magistrates' court in England and Wales and registered in a court in Scotland or Northern Ireland is discharged or varied by the court which made it, the designated officer for the court which made the order must give notice of the discharge or variation to the clerk of the court in which the order is registered by sending a certified copy of the order discharging or varying the maintenance order.

### **Cancellation of registration of a maintenance order made by a magistrates' court in England and Wales: section 24 of the 1950 Act**

**24.**—(1) An application under section 24(2) of the 1950 Act<sup>(19)</sup> for the cancellation of the registration of a maintenance order made by a magistrates' court in England and Wales and registered in a court in Scotland or in Northern Ireland—

- (a) may be made orally or in writing by the person liable to make the payments under the order; and
- (b) must be made to a justice acting in the same place as the court which made the order.

(2) Unless the applicant appears in person, the applicant must file with the court a document verified by a statement of truth signed by the applicant or the applicant's legal representative stating the facts relied upon in support of the application.

(3) If it appears to the justice dealing with the application that the person liable to make payments under the order has ceased to reside in Scotland or Northern Ireland (as the case may be), the designated officer for the court which made the order must send notice to that effect to the clerk of the court in which the order is registered.

(4) On the cancellation of the registration of an order, the designated officer for the court in England and Wales which made the order is the prescribed officer to whom, under section 24(3)(a) of the 1950 Act<sup>(20)</sup>, notice of the cancellation must be given.

(5) On receipt of notice of the cancellation of the registration of an order, the designated officer must enter a memorandum of that notice in the register.

## CHAPTER 3

### MAINTENANCE ORDERS REGISTERED IN A MAGISTRATES' COURT IN ENGLAND AND WALES

### **Procedure under Part 2 of the 1950 Act in relation to a maintenance order made by a court in Scotland or Northern Ireland**

**25.**—(1) The designated officer for the magistrates' court specified in section 17(3)(b) of the 1950 Act will be the prescribed officer for the purpose of section 17(2) of the 1950 Act.

(2) On receipt, further to section 17 of the 1950 Act, of a certified copy of a maintenance order made by a court in Scotland or Northern Ireland, the designated officer must—

- (a) enter a memorandum of that order in the register; and
- (b) send written notice that the order has been so registered to the clerk of the court by which the order was made.

### **Payments in respect of a maintenance order registered in a magistrates' court in England and Wales**

**26.**—(1) This rule applies where in exercise of—

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<sup>(19)</sup> Section 24(2) was amended by section 3 of and paragraph 9 of Schedule 3 to the Administration of Justice Act 1977.

<sup>(20)</sup> Section 24(3)(a) was amended by section 3 of and paragraph 9 of Schedule 3 to the Administration of Justice Act 1977.

(a) the duty imposed by section 19(2) of the 1950 Act; or  
 (b) the powers conferred by section 18(2ZA)(21) or 22(1A) or (1E)(22) of the 1950 Act,  
 a magistrates' court in England and Wales orders that payments under a maintenance order registered in that court are to be made by a particular means.

(2) The justices' clerk must record on a copy of the order the means of payment which the court has ordered.

(3) As soon as practicable, the designated officer must notify in writing the person liable to make payments under the order of how payments are to be made.

(4) Where the court orders payment to the designated officer for the court, or to the designated officer for any other magistrates' court, by a method of payment falling within section 59(6) of the 1980 Act (standing order etc.), the designated officer to whom payments are to be made must notify the person liable to make the payments under the order of sufficient details of the account into which the payments should be made to enable payments to be made into that account.

(5) Where, under section 60(4) of the 1980 Act(23) as modified by section 22(1E) of the 1950 Act, the court receives an application from an interested party for the method of payment to be varied—

- (a) the designated officer must, as soon as practicable, notify in writing that interested party and, where practicable, any other interested party, of the result of the application, including any decision to refer the matter to the court; and
- (b) where the justices' clerk grants the application, the justices' clerk must record the variation on a copy of the order.

**Application under section 21(2) of the 1950 Act to adduce evidence: maintenance order made by the Court of Session and registered in a magistrates' court in England and Wales**

27.—(1) An application to a magistrates' court under section 21(2) of the 1950 Act to adduce evidence in connection with a maintenance order made by the Court of Session and registered in the magistrates' court under Part 1 of the 1958 Act by virtue of section 1(2) of that Act(24) may be made orally.

(2) The complaint may be made, and the proceedings heard, without notice to the respondent.

(3) The court in which the application is made must ensure that a transcript or summary of any evidence taken is sent to the Deputy Principal Clerk of Session.

**Variation of a maintenance order registered in a magistrates' court in England and Wales: section 22(1) of the 1950 Act**

28.—(1) An application under section 22(1) of the 1950 Act for the variation of the rate of the payments under a maintenance order registered under Part 2 of the 1950 Act in a magistrates' court in England and Wales must be made by way of complaint in accordance with the 1980 Act.

(2) When the complaint is made, a summons may be issued directed to any person to whom the justice to whom the complaint is made may consider proper to answer it.

(3) Where the maintenance order is varied, the designated officer must—

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(21) Section 18(2ZA) was inserted by section 10 of and paragraph 3 of Schedule 1 to the Maintenance Enforcement Act 1991 (c.17) and amended by section 108(1) of and paragraph 88(1) and (2) of Schedule 8 to the Courts Act 2003.

(22) Section 22(1A) and(1E) were inserted by section 10 of and paragraph 5 of Schedule 1 to the Maintenance Enforcement Act 1991 and amended by section 106 of and Part 5 of Schedule 15 to the Access to Justice Act 1999 (c.22) and section 109(1) of and Schedule 8, paragraph 89(1) and (2) of the Courts Act 2003.

(23) Section 60(4) was amended by section 109(1) and (3) of and paragraphs 211(1) and (2) of Schedule 10 to the Courts Act 2003.

(24) Section 1(2) was substituted by section 3 of and paragraph 1 of Schedule 3 to the Administration of Justice Act 1977.

- (a) give notice of the variation to the clerk of the court in Scotland or Northern Ireland by which the order was made; and
- (b) if the order is registered in the High Court under Part 1 of the 1958 Act by virtue of section 1(2) of that Act, give notice of the variation to the appropriate officer of the High Court,

by sending to the clerk of the court and, where necessary, the appropriate officer of the High Court, a certified copy of the order of variation.

(4) Where a maintenance order registered under Part 2 of the 1950 Act in a magistrates' court is discharged or varied by any other court, the designated officer for the court in which it is registered will be the prescribed officer to whom, under section 23(1)(a) of the 1950 Act, notice of the discharge or variation must be given.

(5) On receipt of a certified copy of an order discharging or varying the registered order, the designated officer must enter a memorandum of that order in the register.

#### **Application under section 22(5) of the 1950 Act to adduce evidence: maintenance order registered in England and Wales**

**29.**—(1) An application to a magistrates' court in England and Wales under section 22(5) of the 1950 Act to adduce evidence in connection with a maintenance order registered in that court may be made orally.

(2) The application may be made, and the proceedings heard, without notice to the respondent.

(3) The court in which the application is made must ensure that a transcript or summary of any evidence taken is sent to the clerk of the court in Scotland or Northern Ireland by which the order was made.

(4) The designated officer for the court in England and Wales in which the maintenance order is registered will be the prescribed officer under section 22(5) of the 1950 Act to whom any transcript or summary of evidence adduced in the court in Scotland or Northern Ireland by which the order was made must be sent.

#### **Cancellation of registration of a maintenance order registered in a magistrates' court in England and Wales: section 24 of the 1950 Act**

**30.**—(1) An application under section 24(1) of the 1950 Act for the cancellation of the registration of a maintenance order registered under Part 2 of the 1950 Act in a magistrates' court in England and Wales must—

- (a) be made to the designated officer for the court in which the maintenance order is registered;
- (b) be made in writing and state the date of the registration of the order; and
- (c) have attached to it a copy of the order the registration of which it is sought to cancel.

(2) Where the designated officer cancels the registration of the maintenance order, the designated officer must send written notice of the cancellation—

- (a) to the clerk of the court by which the order was made; and
- (b) where the order is registered in the High Court under Part 1 of the 1958 Act by virtue of section 1(2) of that Act, to the appropriate officer of the High Court.

(3) Where a maintenance order is registered under Part 2 of the 1950 Act in a magistrates' court in England and Wales, the designated officer for the court in which the order is registered will be the prescribed officer to whom notice must be sent under section 24(2) of the 1950 Act<sup>(25)</sup> that the person liable to make the payments under the order has ceased to reside in England and Wales.

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(25) Section 24(2) was amended by section 3 of and paragraph 9 of Schedule 3 to the Administration of Justice Act 1977.

- (4) On receipt of a notice referred to in paragraph (3), the designated officer must—
- (a) cancel the registration of the order; and
  - (b) send written notice of the cancellation to—
    - (i) the clerk of the court by which the order was made; and
    - (ii) where the order is registered in the High Court under Part 1 of the 1958 Act by virtue of section 1(2) of that Act, to the appropriate officer of the High Court.
- (5) Where the designated officer for a magistrates' court in which a maintenance order is registered under Part 1 of the 1958 Act receives a notice of cancellation under section 24(3) of the 1950(26) Act from the appropriate officer of the High Court, the designated officer must—
- (a) ensure that the particulars of the notice are entered in the register;
  - (b) cancel the registration under Part 1 of the 1958 Act; and
  - (c) give notice of the cancellation to, the appropriate officer of the court in Scotland or Northern Ireland which made the order, being—
    - (i) the Deputy Principal Clerk of Session, in the case of the Court of Session; or
    - (ii) the Chief Registrar of the Queen's Bench Division (Matrimonial), in the case of the High Court of Justice in Northern Ireland.

## CHAPTER 4

### FORMS

#### Notices under section 19(4) of the 1950 Act

**31.**—(1) A notice under section 19(4) of the 1950 Act that the payments under a maintenance order made by a sheriff court in Scotland or a court of summary jurisdiction in Northern Ireland have become payable through or to any officer or person will be in the form number 1 in Schedule 1.

(2) The notice referred to in paragraph (1) must be sent by recorded delivery by the designated officer to the person liable to make the payments under the order at that person's last known address.

(3) A notice under section 19(4) of the 1950 Act that the payments under a maintenance order made by a magistrates' court in England and Wales have, on its registration under Part 2 of the 1950 Act in a court in Scotland or Northern Ireland, ceased to be payable through or to any officer or person will be in the form number 2 in Schedule 1.

(4) The notice referred to in paragraph (3) must be sent by recorded delivery by the designated officer for the court in England and Wales to the person liable to make payments under the order at that person's last known address.

#### Certificates under section 20(1) of the 1950 Act

**32.** A certificate lodged under section 20(1) of the 1950 Act as to the amount of any arrears due under a maintenance order made by a magistrates' court in England and Wales will be in the form number 3 in Schedule 1.

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(26) Section 24(3)(a) and (b) was amended by section 3 of and paragraph 9 of Schedule 3 to the Administration of Justice Act 1977. Section 24(3)(b) was amended by sections 15, 23 and 36 of and Part 3 of Schedule 10 to the Civil Jurisdiction and Judgments Act 1982.

### Notices under section 24 of the 1950 Act

**33.**—(1) A notice under section 24(5) or (5A) of the 1950 Act(**27**) of the cancellation of the registration under Part 2 of the 1950 Act of a maintenance order in a magistrates’ court in England and Wales will be in the form number 4 in Schedule 1.

(2) The notice referred to in paragraph (1) must be sent by recorded delivery by the designated officer for the court which cancelled the registration to the person liable to make the payments under the order at that person’s last known address.

## PART 4

### PROCEEDINGS UNDER THE 1958 ACT

#### CHAPTER 1

#### INTERPRETATION OF THIS PART

### Interpretation

**34.**—(1) Section 1(3) of the 1958 Act applies to the interpretation of Chapter 2 of this Part as it applies to the interpretation of Part 1 of the 1958 Act.

(2) Section 21 of the 1958 Act(**28**) applies to the interpretation of this Part as it applies to the interpretation of the 1958 Act.

(3) In this Part, “appropriate officer of the original court” means—

- (a) the Sheriff-clerk, in the case of a sheriff court in Scotland;
- (b) the clerk of petty sessions, in the case of a magistrates’ court in Northern Ireland;
- (c) the Deputy Principal Clerk of Session, in the case of the Court of Session;
- (d) the Chief Registrar of the Queen’s Bench Division (Matrimonial), in the case of the High Court of Justice in Northern Ireland.

(4) In this Part any reference to “the administering court” in relation to a maintenance order is a reference to the magistrates’ court—

- (a) which made the maintenance order;
- (b) in which the maintenance order is registered under the 1958 Act, under Part 2 of the 1950 Act or under the Maintenance Orders (Facilities for Enforcement) Act 1920(**29**); or
- (c) by which the maintenance order was confirmed under the Maintenance Orders (Facilities for Enforcement) Act 1920.

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(27) Section 24(5A) was inserted by section 10 of and paragraph 6 of Schedule 1 to the Maintenance Enforcement Act 1991(c.17) and amended by section 109(1) of and paragraph 90 of Schedule 8 to the Courts Act 2003.

(28) Section 21 was amended by section 33(4) of and Schedule 4 to the Family Law Reform Act 1987, section 76(2) and 106 of and paragraph 33 and Part 5 of Schedule 10 and Schedule 15 to the Access to Justice Act 1999, section 154 of and Schedule 7 to the Magistrates’ Courts Act 1980 and section 109(1) and (3) of and paragraph 104 of Schedules 8 and Schedule 10 to the Courts Act 2003.

(29) 1920 c.33.

## CHAPTER 2

### PROCEDURE UNDER PART 1 OF THE 1958 ACT

#### **Applications for registration under section 2(3) of the 1958 Act**

**35.** An application under section 2(3) of the 1958 Act<sup>(30)</sup> for the registration in the High Court of a magistrates' courts order need not be in writing or on oath.

#### **Manner in which a magistrates' court is to be satisfied as to various matters**

**36.**—(1) An applicant wishing to show, in accordance with section 2A(1) of the 1958 Act<sup>(31)</sup>, that—

(a) the order to which the application relates, though deemed to have been made by a magistrates' court in England and Wales, was in fact made in another part of the United Kingdom or a country or territory outside the United Kingdom; and

(b) by the law of that part or of that country or territory, interest is recoverable under the order, may do so by producing the original court order or an authenticated copy of that order showing the date or time from which, and the rate at which, interest is so recoverable.

(2) For the purposes of paragraph (1), a copy is deemed to be authenticated if it purports to be certified by a judge or official of the court which made the original order to be a true copy of the original order, but it is not necessary to prove the signature or official position of the person appearing to have given such a certificate.

(3) Where an application for the registration in the High Court of a magistrates' court order is granted, the court must be satisfied in the manner provided by paragraph (5) that no process for the enforcement of the order issued before the grant of the application remains in force.

(4) Where the court receives notice under section 5 of the 1958 Act<sup>(32)</sup>, the court must be satisfied in the manner provided by paragraph (5) that no process for the enforcement of the order issued before the giving of the notice remains in force and that no proceedings for the variation of the order are pending in a magistrates' court.

(5) For the purpose of satisfying the court as to the matters referred to in paragraphs (3) and (4)—

(a) if the person through or to whom payments are ordered to be made is the designated officer for a magistrates' court, a certificate signed by the designated officer must be produced;

(b) in any other case, a document verified by a statement of truth from a Justice of the Peace must be produced.

#### **Receipt by a magistrates' court of a notice of registration in the High Court of an order previously registered in a magistrates' court**

**37.** Where a magistrates' court receives from the High Court notice of the registration in the High Court of an order made by a sheriff court in Scotland or a court of summary jurisdiction in Northern Ireland and previously registered in the magistrates' court in accordance with section 17(4) of the 1950 Act, the designated officer for the court will enter the particulars of such a notice in the register.

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<sup>(30)</sup> Section 2(3) was amended by section 37 and Part 2 of Schedule 11 to the Civil Jurisdiction and Judgments Act 1982.

<sup>(31)</sup> Section 2A was inserted by section 37 of and Part 2 of Schedule 11 to the Civil Jurisdiction and Judgments Act 1982.

<sup>(32)</sup> Section 5 was amended by section 3 of and paragraph 4(a) and (b) of Schedule 3 to the Administration of Justice Act 1977, section 10 of and paragraph 11 of Schedule 10 to the Maintenance Enforcement Act 1991, sections 97(1)(b) and 106 of and Part 5 of Schedule 15 to the Access to Justice Act 1999 and section 109(1) of and paragraphs 101(1) to (3) of Schedule 8 to the Courts Act 2003.

### **Copy of a magistrates' court order sent to the High Court for registration**

**38.**—(1) Where—

- (a) an application for the registration of a magistrates' court order is granted; and
- (b) the court is satisfied that no process issued for the enforcement of the order before the grant of the application remains in force,

the court will, in accordance with section 2(4)(c) of the 1958 Act, direct the designated officer to send a copy of the order, which is certified to be a true copy, to the appropriate officer of the High Court.

(2) Where the court is satisfied in accordance with rule 36 that interest is recoverable under the order in respect of which the application has been granted, the court will, in accordance with section 2A(1) of the 1958 Act, direct the designated officer to send, together with the certified copy of the order mentioned in paragraph (1), a certificate in respect of the interest so recoverable in the form numbered 1 in Schedule 2 to the appropriate officer of the High Court.

### **Registration of a High Court or county court order in a magistrates' court**

**39.** Where a designated officer for a magistrates' court, in accordance with section 2(2)(b) of the 1958 Act(**33**), receives from a court officer of the High Court or the county court a certified copy of a High Court or county court order, the designated officer will—

- (a) register the order in the designated officer's court by means of a memorandum in the register; and
- (b) send written notice to the court officer of the High Court or the county court (as the case may be) that the order has been registered.

### **Registration in a magistrates' court of an order made in the Court of Session or in the High Court in Northern Ireland**

**40.** Where a designated officer for a magistrates' court, in accordance with section 2(2)(b) of the 1958 Act, receives from the appropriate officer of the original court in Scotland or Northern Ireland a certified copy of an order made by the Court of Session or by the High Court in Northern Ireland, the designated officer will—

- (a) register the order in the designated officer's court by means of a memorandum in the register; and
- (b) send written notice to the appropriate officer of the High Court and to the appropriate officer of the original court that the order has been registered.

### **Notices: payments made through a designated officer**

**41.**—(1) A notice under section 2(6ZC)(**34**) of the 1958 Act that the payments under a High Court or county court order or an order made by the Court of Session or by the High Court in Northern Ireland have, on its registration in a magistrates' court, become payable through the designated officer for a magistrates' court will be given by the designated officer for the court of registration in the form numbered 2 in Schedule 2.

(2) Paragraphs (3) and (4) apply in relation to a notice under section 2(6ZC) of the 1958 Act that payments under—

- (a) a magistrates' court order; or

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**(33)** Section 2(2)(b) was amended by section 109(1) of and paragraphs 98(1) and (2) of Schedule 8 to the Courts Act 2003.

**(34)** Section 2(6ZC) was inserted by section 10 of and paragraph 7 of Schedule 1 to the Maintenance Enforcement Act 1991 and amended by section 109(1) of and paragraphs 98(1) and (2) of Schedule 8 to the Courts Act 2003.

(b) an order which is registered in a magistrates' court under Part 2 of the 1950 Act and which was made by—

- (i) a sheriff court in Scotland; or
- (ii) a court of summary jurisdiction in Northern Ireland,

have, on the registration of the order in the High Court, ceased to be payable to a designated officer for a magistrates' court.

(3) The notice must be—

- (a) given by the designated officer for the administering court; and
- (b) in form numbered 3 in Schedule 2.

(4) Where payments have been made through a designated officer other than the designated officer for the administering court, the designated officer for the administering court must send a copy of the notice to the designated officer through whom payments have been made.

(5) Paragraphs (6) and (7) apply in relation to a notice under section 5(5)(b) of the 1958 Act that the registration in a magistrates' court of an order of the High Court, a county court, the Court of Session or the High Court in Northern Ireland has been cancelled and that payments under the order have ceased to be payable through a designated officer for a magistrates' court.

(6) The notice must be—

- (a) given by the designated officer for the court of registration; and
- (b) be in the form numbered 4 in Schedule 2.

(7) Where payments have been payable through a designated officer other than the designated officer for the court of registration, the designated officer for the court of registration must send a copy of the notice to the designated officer through whom payments have been payable.

(8) A notice given in accordance with this rule must be served personally on to the person liable to make payments under the order to which the notice relates or sent by post to that person at that person's last known address.

### **Method of payment**

**42.**—(1) This rule applies where the court exercises its duties or powers under section 2(6ZA), 3(2A) or (2B) or 4(2A), (5A) or (5B) of the 1958 Act<sup>(35)</sup>.

(2) Where the court orders that payments under a registered order are to be made by a particular means—

- (a) the justices' clerk will record on a copy of the order the means of payment which the court has ordered; and
- (b) as soon as practicable, the designated officer will notify in writing the person liable to make payments under the order, how payments are to be made.

(3) Paragraph (4) applies where the court orders that payments be made—

- (a) by the debtor to the creditor;
- (b) by the debtor to the designated officer for the court; or
- (c) to the designated officer for any other court,

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(35) Sections 2(6ZA), 3(2A) and (2B), 4(2A),(5A) and (5B) were inserted by section 10 of and paragraphs 7 to 9 of Schedule 1 to the Maintenance Enforcement Act 1991. Section 2(6ZA) was amended by section 109(1) of and paragraphs 98(1) and (5) of Schedule 8 to the Courts Act 2003. Section 4(5A) and (5B) were amended by section 261(c) of and paragraph 22(1) and (2) of Schedule 27 to the Civil Partnership Act 2004. Section 4(5B) was amended by section 109(1) of and paragraphs 100 (a) to (c) of Schedule 8 to the Courts Act 2003 and sections 106 and 90(1) of paragraphs 25, 28(1) and (4) of Schedule 13 and Part 5 of Schedule 15 to the Access to Justice Act 1999.



by a method of payment falling within section 59(6) of the 1980 Act.

(4) The designated officer to whom payments are to be made must notify the person liable to make payments under the order of sufficient details of the account into which the payments should be made to enable payments to be made into that account.

### **Variation of method of payment**

**43.**—(1) This rule applies where, under section 60(4) of the 1980 Act as applied by section 4(5A) of the 1958 Act or as modified by section 4(5B) of the 1958 Act, the designated officer receives an application from an interested party for the method of payment to be varied.

(2) The designated officer must as soon as practicable notify in writing the interested party who made the application and, where practicable, any other interested party, of the result of the application including any decision to refer the matter to the court.

(3) Where the justices' clerk grants the application, the justices' clerk must record the variation on a copy of the order.

### **Notice of variation, remission, discharge or cancellation of registration by a magistrates' court of a registered order**

**44.**—(1) Where, under section 4(2) of the 1958 Act(**36**), a High Court or county court order registered in a magistrates' court is varied by a magistrates' court, the designated officer for the magistrates' court making the variation must give notice of the variation to the High Court or county court, as the case may be.

(2) Where, under section 4(4) of the 1958 Act, an application for the variation of a High Court or county court order registered in a magistrates' court is remitted to the original court by a magistrates' court, the designated officer for the remitting court must give notice of the remission to the High Court or county court, as the case may be.

(3) Where, under section 5(4) of the 1958 Act, the registration of a High Court or county court order in a magistrates' court is cancelled by the court of registration, the designated officer for the court of registration must give notice of cancellation to the High Court or county court, as the case may be, stating (if applicable) that the cancellation is in consequence of a notice given under section 5(1) of the 1958 Act.

(4) Where under section 5(4) of the 1958 Act the registration in a magistrates' court of an order made in the Court of Session or the High Court in Northern Ireland is cancelled by that magistrates' court, the designated officer for that magistrates' court must give notice of the cancellation to—

- (a) the appropriate officer of the original court; and
- (b) where the order is registered by virtue of Part 2 of the 1950 Act, to the appropriate officer of the High Court.

(5) Where under section 5(4) of the 1958 Act(**37**) the registration in a magistrates' court of an order under Part 2 of the 1950 Act is cancelled by that magistrates' court, the designated officer for that magistrates' court must give notice of the cancellation to—

- (a) the appropriate officer of the original court; and
- (b) where the order is registered under Part 1 of the 1958 Act, to the appropriate officer of the High Court.

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(36) Section 4(4) was amended by section 48(3) of the Administration of Justice Act 1970 (c.31).

(37) Section 5(4) was amended by sections 97(1)(b) and 106 of and Part 5 of Schedule 15 to the Access to Justice Act 1999.

(6) Where a magistrates' court order registered in the High Court is varied or discharged by a magistrates' court, the designated officer for the magistrates' court which varies or discharges the order must give notice of the variation or discharge to the High Court.

(7) Notice under this rule will be given by sending to the appropriate officer of the High Court or the registrar of the county court (as the case may be) a copy of the order in question, certified to be a true copy by the designated officer for the magistrates' court.

(8) For the purposes of this rule, the appropriate officer of the High Court will be—

- (a) in relation to a High Court order registered in a magistrates' court, the officer to whom notice of registration was given under rule 39; or
- (b) in relation to a magistrates' court order registered in the High Court, the officer to whom a copy of the order was sent under rule 38.

(9) In the case of a High Court maintenance order, the notice referred to in paragraph (6) must be marked with the title and case number, if any.

(10) In the case of a county court maintenance order, any notice referred to in this rule must be marked with the complaint or application number.

(11) Where a magistrates' court order registered in the High Court is discharged by a magistrates' court and it appears to the magistrates' court ordering the discharge that no arrears remain to be recovered, notice under section 5(3) of the 1958 Act<sup>(38)</sup> must be given by an endorsement on the certified copy of the order of discharge referred to in paragraph (7).

#### **Notices received from the High Court or a county court or from a person entitled to payments**

**45.**—(1) Subject to paragraph (4), this rule applies where any notice is received—

- (a) of the registration in the High Court of a magistrates' court order;
- (b) of the discharge or variation by the High Court or a county court of a High Court or county court order registered in a magistrates' court;
- (c) of the discharge or variation by the Court of Session or High Court in Northern Ireland of an order made by such a court and registered in a magistrates' court;
- (d) under section 5(1) or (2) of the 1958 Act.

(2) The designated officer for the magistrates' court must register the notice in that officer's court by means of a memorandum in the register.

(3) In the case of a notice under section 5(1) or (2) of the 1958 Act, the designated officer for the magistrates' court must ensure that the person in possession of any warrant of commitment, issued but not executed, for the enforcement of the order is informed of the giving of that notice.

(4) Where any notice is received by a court that the registration of an order in the High Court has been cancelled under section 5(4) of the 1958 Act, the designated officer must enter the particulars of the notice in the register.

#### **Complaints for variation of High Court maintenance orders: jurisdiction**

**46.** Rule 41 of the Magistrates' Courts Rules 1981<sup>(39)</sup> applies to a complaint for the variation of a High Court or county court order registered in a magistrates' court as if—

- (a) the order were a magistrates' court maintenance order made by the court of registration; and

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<sup>(38)</sup> Section 5(3) was amended by section 3 of and paragraph 4(a) of Schedule 3 to the Administration of Justice Act 1977.

<sup>(39)</sup> Rule 41 was amended by [S.I. 1989/384](#), [2001/610](#) and [2005/617](#).

- (b) in paragraph (4) of that rule, for the words “shall cause” there were substituted “may cause”.

### CHAPTER 3 MISCELLANEOUS

#### **Administering court to be informed of proceedings in a foreign court**

**47.**—(1) This rule applies where any decision is reached, or warrant of distress or commitment is issued, in pursuance of a complaint or application relating to a maintenance order or the enforcement of a maintenance order, being a complaint or application heard by a magistrates’ court other than the administering court.

(2) The designated officer for the magistrates’ court referred to in paragraph (1) must immediately send to the designated officer for the administering court an extract from the register containing a minute or memorandum of the decision, or the issue of the warrant, as the case may be.

(3) On receipt of the extract, the designated officer for the administering court must enter the minute or memorandum in the register for that officer’s court.

#### **Review of committals, etc.**

**48.**—(1) Paragraph (2) applies where, for the purposes of enforcing a maintenance order, a magistrates’ court has exercised its power to postpone the issue of a warrant of commitment under—

- (a) section 77(2) of the 1980 Act; or
- (b) section 18(3) or (5) of the 1958 Act<sup>(40)</sup>,

and, under the terms of the postponement, the warrant falls to be issued.

(2) The designated officer must—

- (a) give notice to the defendant; and
- (b) attach to that notice a copy of the form referred to in the Forms Practice Direction.

(3) An application under section 18(1) of the 1958 Act requesting that a warrant not be issued must be in the form referred to in the Forms Practice Direction and must be sent to the designated officer.

(4) For the purposes of section 18(2) of the 1958 Act, the period for the receipt by the designated officer of an application under section 18(1) of the 1958 Act is eight days beginning with the day on which the designated officer sends to the defendant the notice referred to in paragraph (2).

(5) Where the period of eight days referred to in paragraph (4) ends on a day when the court office is closed, an application received by the designated officer on the next day on which the court office is open will be made within time.

(6) An application under section 18(4) of the 1958 Act (requesting cancellation of a warrant of commitment which has been executed) must be in the form referred to in the Forms Practice Direction.

(7) Where an application by a defendant under section 18(1) or (4) of the 1958 Act is considered by the court, the designated officer must give notice of the decision of the court, if the person in question is not present—

- (a) to the person in whose favour the maintenance order in question was made; and

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<sup>(40)</sup> Section 18 was amended by section 154 of and paragraph 23 of Schedule 7 to the Magistrates’ Courts Act 1980 and section 109(1) of and paragraphs 102(1) to (3) of Schedule 8 to the Courts Act 2003.

- (b) except where an application under section 18(1) of the 1958 Act is dismissed, to the defendant.
- (8) Where, on considering an application by a defendant under section 18(4) of the 1958 Act, the court—
  - (a) makes an order under section 18(5)(b) of the 1958 Act for the cancellation of the warrant of commitment; or
  - (b) remits under section 18(6) of the 1958 Act the whole or any part of the sum in respect of which the warrant was issued,
 the designated officer must immediately give written notice of the decision to the person in charge of the prison or other place in which the defendant is detained.

## PART 5

### PROCEEDINGS UNDER THE 1972 ACT

#### CHAPTER 1

#### PROCEEDINGS UNDER PART 1 OF THE 1972 ACT

#### **Interpretation**

**49.**—(1) In this Chapter—

“Hague Convention Country” means a country listed in Schedule 1 to the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1993<sup>(41)</sup>;

“payee”, in relation to a maintenance order, means the person eligible to receive the payments for which the order provides;

“payer”, in relation to a maintenance order, means the person liable to make the payments for which the order provides; and

“reciprocating country” means a country to which Part 1 of the 1972 Act extends.

(2) In this Chapter, an expression defined in the 1972 Act has the meaning given to it in that Act.

#### **Confirmation of a provisional order made in a reciprocating country**

**50.**—(1) The FPR as modified by paragraph (2) shall apply to proceedings in a magistrates’ court for the confirmation of a provisional order made in a reciprocating country varying a maintenance order to which section 5(5) or 9(6) of the 1972 Act<sup>(42)</sup> applies.

(2) The modification is that in rule 34.16, paragraph (6) is omitted.

#### **Consideration of variation of a maintenance order made by a magistrates’ court: Hague Convention Countries**

**51.**—(1) The FPR as modified by paragraph (2) shall apply where—

(a) an application has been made to a magistrates’ court by a payee for the variation of an order to which section 5 of the 1972 Act applies; and

(b) the payer resides in a Hague Convention Country.

(2) The modifications are, in rule 34.17 as substituted by rule 34.27(5)—

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<sup>(41)</sup> S.I. 1993/593. Relevant amending instruments are S.I. 1994/1902, 1999/1318, 2001/2567 and 2002/2838.

<sup>(42)</sup> Sections 5 and 9 are modified for specified purposes by S.I. 1993/593 and 594, 1995/2709 and 2007/2005.

- (a) in the heading, after “Consideration of” insert “variation or”; and
- (b) in paragraph (1)(a), after “for the” insert “variation or”.

**Consideration of variation of a maintenance order made by a magistrates’ court: United States of America**

- 52.**—(1) The FPR as modified by paragraph (2) shall apply where—
- (a) an application has been made to a magistrates’ court by a payee for the variation of an order to which section 5 of the 1972 Act applies; and
  - (b) the payer resides in the United States of America.
- (2) The modifications are, in rule 34.17 as substituted by rule 34.28(5)—
- (a) in the heading, after “Consideration of” insert “variation or”; and
  - (b) in paragraph (1)(a), after “for the” insert “variation or”.

**Notification of variation of a maintenance order by a magistrates’ court**

- 53.**—(1) The FPR as modified by paragraph (2) shall apply where a magistrates’ court makes an order—
- (a) not being a provisional order, varying a maintenance order to which section 5 of the 1972 Act applies;
  - (b) under section 9 of the 1972 Act, varying a registered order.
- (2) The modifications are, in rule 34.19—
- (a) in the heading, after “confirmation” insert “, variation”;
  - (b) in paragraph (1)(a) and (b), before “revoking” insert “varying or”;
  - (c) in paragraph (2), after “making,” insert “variation,”; and
  - (d) omit paragraph (3).

**Notification of proceedings in a Hague Convention Country or in the United States of America**

- 54.**—(1) This rule applies where the designated officer receives from the Lord Chancellor notice of the institution of proceedings, including notice of the substance of the claim, in a Hague Convention Country or in the United States of America in relation to the making, variation or revocation of a maintenance order.
- (2) If it appears to the designated officer that the person against whom the proceedings were instituted is residing within the local justice area for which the court acts, the designated officer must serve the notice on that person by sending it by recorded delivery addressed to that person at that person’s last known or usual address.
- (3) If it appears to the designated officer that the person concerned is not residing within the area, the court officer must inform the Lord Chancellor and return the notice.

CHAPTER 2

PROCEEDINGS UNDER PART 2 OF THE 1972 ACT

**Interpretation**

- 55.** In this Chapter—

- (a) “convention country” means a country or territory specified in an Order in Council made under section 25 of the 1972 Act; and
- (b) an expression defined in the 1972 Act has the meaning given to it in that Act.

#### **Dismissal of an application under section 27A of the 1972 Act or application for variation**

**56.**—(1) Where a magistrates’ court dismisses an application under—

- (a) section 27A of the 1972 Act~~(43)~~ (application for recovery of maintenance); or
- (b) an application by a person in a convention country for the variation of a registered order,

the designated officer must send a written notice of the court’s decision to the Lord Chancellor.

(2) The notice referred to in paragraph (1) must include a statement of the justices’ reasons for their decision.

#### **Application for recovery of maintenance in England and Wales: section 27B of the 1972 Act**

**57.**—(1) Where a designated officer receives an application for the recovery of maintenance in England and Wales sent from the Lord Chancellor to a magistrates’ court under section 27B of the 1972 Act~~(44)~~—

- (a) the justices’ clerk must fix the date, time and place for a hearing or a directions appointment, allowing sufficient time for service under this rule to be effected at least 21 days before the date so fixed; and
- (b) the designated officer must serve copies of the application and any accompanying documents, together with a notice stating the date, time and place so fixed, on the respondent.

(2) Within 14 days of service under this rule, the respondent must file an answer to the application in the form referred to in the Forms Practice Direction.

#### **Application under section 26(1) or (2) of the 1972 Act and certificate under section 26(3A) of the 1972 Act: registration**

**58.** Where—

- (a) an application under section 26(1) or (2) of the 1972 Act; or
- (b) a certificate under section 26(3A)~~(45)~~ of the 1972 Act,

is required to be registered in a magistrates’ court in pursuance of the Recovery of Maintenance (United States of America) Order 2007~~(46)~~, the designated officer must enter a minute or memorandum of the application or certificate in the register.

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**(43)** Section 27A was inserted by section 1(2) of and paragraph 13 of Part 2 of Schedule 1 to the Maintenance Orders (Reciprocal Enforcement) Act 1992 (c.56). Part 2 of the 1972 Act applies with modifications to the United States of America by virtue of S.I. 2007/2006.

**(44)** Section 27B was inserted by section 1(2) of and paragraph 13 of Part 2 of Schedule 1 to the Maintenance Orders (Reciprocal Enforcement) Act 1992 and was amended by S.I. 1995/756 and by section 109(1) of and paragraph 159 of Schedule 8 to the Courts Act 2003.

**(45)** Section 26(3A) was inserted, in respect of specified cases, by S.I. 2007/2006.

**(46)** S.I. 2007/2006.

### **Registration of an order: sections 27C(7) and 32(2), (3) and (6) of the 1972 Act**

**59.**—(1) Where a magistrates' court makes an order which is required under section 27C(7)(47) of the 1972 Act to be registered, the justices' clerk must enter a minute or memorandum of the order in the register.

(2) Where a designated officer in pursuance of section 32(2) or (3) of the 1972 Act(48) receives a certified copy of an order, the officer must register the order in the officer's court by means of a minute or memorandum in the register.

(3) Every minute or memorandum entered in pursuance of paragraph (1) or (2) must specify the section and subsection of the 1972 Act under which the order in question is registered.

(4) Where a designated officer registers an order in pursuance of section 27C(7) or 32(2) or (3) of the 1972 Act, the designated officer must send written notice to the Lord Chancellor that the order has been duly registered.

(5) Where a designated officer is required by section 32(6) of the 1972 Act to give notice of the registration of an order, the designated officer will do so by sending written notice to the officer specified in that subsection that the order has been duly registered.

### **Payments made to a designated officer**

**60.**—(1) A designated officer to whom payments are made by virtue of section 27C, section 33(3A) or section 34A of the 1972 Act(49) must send those payments by post to such person or authority as the Lord Chancellor may from time to time direct.

(2) Subject to paragraph (3), where it appears to a designated officer to whom payments under a registered order are made that any sums payable under the order are in arrear, the designated officer may proceed in the designated officer's own name for the recovery of those sums.

(3) Where it appears to the designated officer referred to in paragraph (2) that sums payable under the order are in arrear to an amount equal—

- (a) in the case of payments to be made monthly or less frequently, to twice the sum payable periodically; or
- (b) in any other case, to four times the sum payable periodically,

the designated officer must proceed in the designated officer's own name for the recovery of those sums, unless it appears to the designated officer that it is unreasonable in the circumstances to do so.

### **Method of payment**

**61.**—(1) This rule applies where the court exercises its duties or powers under section 27C, 33(3A) or 34A of the 1972 Act.

(2) Where the court orders that payments under the order are to be made by a particular means—

- (a) the justices' clerk will record on the copy of the order the means of payment which the court has ordered; and
- (b) the designated officer will notify in writing, as soon as practicable, the person liable to make the payments under the order, how payments are to be made.

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(47) Section 27C was inserted by section 1(2) of and paragraph 13 of Part 2 of Schedule 1 to the Maintenance Orders (Reciprocal Enforcement) Act 1992 and was amended by section 109(1) of and paragraph 160(1) and (3) of Schedule 8 to the Courts Act 2003.

(48) Section 32(2) was amended by section 90(1) of and paragraphs 71 and 79(1) and (2) of Schedule 13 to the Access to Justice Act 1999.

(49) Section 33(3A) was inserted by section 10 of and paragraph 18 of Schedule 1 to the Maintenance Enforcement Act 1991. Section 34A was inserted by section 10 of and paragraph 19 of Schedule 1 to the Maintenance Enforcement Act 1991 and was amended by section 109(1) of and paragraph 163 of Schedule 8 and Schedule 10 to the Courts Act 2003.

(3) Paragraph (4) applies where the court orders that payments be made to the designated officer for the court, or to the designated officer for any other magistrates' court, by a method of payment falling within section 59(6) of the 1980 Act<sup>(50)</sup>.

(4) The designated officer for the court to whom the payments are to be made must notify the person liable to make the payments under the order of sufficient details of the account into which the payments should be made to enable payments to be made into that account.

### **Variation of method of payment**

**62.**—(1) This rule applies where, under section 34A(4) of the 1972 Act, the designated officer receives an application from an interested party for the method of payment to be varied.

(2) As soon as practicable, the designated officer must notify in writing the interested party who made the application and, where practicable, any other interested party, of the result of the application, including any decision to refer the matter to the court.

(3) Where the justices' clerk grants the application, the justices' clerk must record the variation on the copy of the order.

### **Application under section 34 of the 1972 Act: variation or revocation**

**63.**—(1) This rule applies in relation to an application under section 34 of the 1972 Act<sup>(51)</sup> for the variation or revocation of a registered order.

(2) An application which is made directly to the registering court must be filed in the form referred to in the Forms Practice Direction.

(3) Where the designated officer receives an application, either filed in accordance with paragraph (2) or sent from the Lord Chancellor under section 34(3) of the 1972 Act—

- (a) the justices' clerk must set the date, time and place for a hearing or a directions appointment; and
- (b) the designated officer must notify the applicant of that date, time and place.

### **Application under section 35 of the 1972 Act: variation or revocation**

**64.**—(1) This rule applies in relation to an application under section 35 of the 1972 Act<sup>(52)</sup> for the variation or revocation of a registered order.

(2) Notice under section 35(3)(b) of the 1972 Act of the time and place appointed for the hearing of the application must be in the form specified in Schedule 3.

(3) The notice referred to in paragraph (2) must be sent by post by the designated officer to the Lord Chancellor for onward transmission to the appropriate authority in the convention country in which the respondent is residing.

(4) The time appointed for the hearing of the application must not be less than six weeks later than the date on which the notice referred to in paragraph (2) is sent to the Lord Chancellor.

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<sup>(50)</sup> Section 59(6) was substituted by section 2 of the Maintenance Enforcement Act 1991.

<sup>(51)</sup> Section 34 was amended by sections 60(2) and 89 of the Domestic Proceedings and Magistrates' Courts Act 1978, sections 45 and 46(4) of and paragraph 1(3) of Schedule 3 to the Legal Aid (Scotland) Act 1986 (c.47), section 10 of and paragraph 19 of Schedule 1 to the Maintenance Enforcement Act 1991, section 1(2) of and paragraph 15 of Part 2 of Schedule 1 to the Maintenance Orders (Reciprocal Enforcement) Act 1992, section 90(1) of and paragraphs 71 and 81 of Schedule 13 to the Access to Justice Act 1999, section 109(1) of and paragraph 162 of Schedule 8 to the Courts Act 2003 and by [S.I. 1995/755](#).

<sup>(52)</sup> Section 35 was substituted by section 1(2) of and paragraph 16 of Part 2 of Schedule 1 to the Maintenance Orders (Reciprocal Enforcement) Act 1992 and amended by [S.I. 1993/1576 \(N.I. 6\)](#).



### **Request under section 38(1) of the 1972 Act to a magistrates' court**

**65.**—(1) This rule applies where a magistrates' court receives from the Lord Chancellor a request under section 38(1) of the 1972 Act (taking evidence at the request of a court in a convention country) to take the evidence of any person.

(2) Subject to paragraph (3)—

- (a) the evidence must be taken in the same manner as if the person concerned were a witness in proceedings on a complaint;
- (b) any oral evidence so taken must be put into writing and read to the person who gave it, who must be required to sign the document; and
- (c) the justices by whom the evidence of any person is so taken must certify at the foot of any document setting out the evidence of, or produced in evidence by, that person that such evidence was taken, or document received in evidence, as the case may be, by them.

(3) Where the request referred to in section 38(1) of the 1972 Act includes a request that the evidence be taken in a particular manner, the court by which the evidence is taken must, so far as circumstances permit, comply with that request.

### **Request under section 38(1) of the 1972 Act to a designated officer**

**66.**—(1) This rule applies where a designated officer receives from the Lord Chancellor a request under section 38(1) of the 1972 Act to take the evidence of any person.

(2) Subject to paragraph (3)—

- (a) the person whose evidence is to be taken must be examined on oath by or before a justices' clerk;
- (b) any oral evidence must be put into writing and read to the person who gave it, who must be required to sign the document; and
- (c) the justices' clerk must certify at the foot of any document setting out the evidence of, or produced by, that person, that such evidence was taken, or document received in evidence, as the case may be, by that justices' clerk.

(3) Where the request referred to in section 38(1) of the 1972 Act includes a request that the evidence be taken in a particular manner, the justices' clerk by whom the evidence is taken must, so far as circumstances permit, comply with that request.

(4) For the purposes of this rule, a justices' clerk has the same power to administer oaths as a single justice of the peace.

### **Onward transmission of documents**

**67.** Any document mentioned in paragraph (2)(c) of rule 65 or 66 must be sent to the Lord Chancellor for onward transmission to the appropriate authority in the convention country in which the request referred to in section 38(1) of the 1972 Act originated.

### **Procedural rules: proceedings pursuant to rules 57 and 63**

**68.**—(1) Schedule 4 applies to proceedings pursuant to rules 57 and 63.

(2) In Schedule 4 as it applies to rule 57, “the resident party” and “the non-resident party” are to be taken mean the respondent and the applicant respectively.

(3) In Schedule 4 as it applies to rule 63, “the resident party” and “the non-resident party” are to be taken to mean the payer and the payee under the order in question respectively.

## PART 6

### THE DOMESTIC PROCEEDINGS AND MAGISTRATES' COURTS ACT 1978 AND THE CIVIL PARTNERSHIP ACT 2004

#### **Applications for variation under section 20 of the Domestic Proceedings and Magistrates' Courts Act 1978 or Schedule 6 to the Civil Partnership Act 2004**

- 69.**—(1) The FPR shall apply to an application in a magistrates' court—
- (a) under section 20 of the Domestic Proceedings and Magistrates' Courts Act 1978(**53**) for the variation of an order; or
  - (b) paragraphs 30 to 34 of Schedule 6 to the Civil Partnership Act 2004 for the variation of an order,

with the modifications in paragraph (2).

- (2) The modifications are—
- (a) in rule 9.10—
    - (i) in paragraph (1), for “The” substitute “Subject to paragraph (1A), the”; and
    - (ii) after paragraph (1), insert—
      - “(1A) Where the application is—
        - (a) for the variation of an order under section 2(1)(c), 6 or 7 of the 1978 Act(**54**) or paragraph 2(1)(c) of or Part 2 or 3 of Schedule 6 to the 2004 Act for periodical payments in respect of a child;
        - (b) the application is made by the child in question; and
        - (c) the child in question is aged 16 or over,the child does not require permission to make the application.”; and
  - (b) in the table in rule 9.21 “, except an application” is omitted in both of the places where those words occur.

## PART 7

### THE CIVIL JURISDICTION AND JUDGMENTS ACT 1982, THE LUGANO CONVENTION, THE 1988 CONVENTION AND THE MAINTENANCE REGULATION: APPLICATIONS FOR VARIATION OF MAINTENANCE ORDERS

#### **Interpretation**

- 70.** In this Part—
- “the 1982 Act” means the Civil Jurisdiction and Judgments Act 1982;

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(53) Section 29 was amended by sections 9, 11 and 46(1) of and Schedule 1 to the Matrimonial and Family Proceedings Act 1984, section 33(4) of and Schedule 4 to the Family Law Reform Act 1987, section 108(5) and (7) of and paragraph 38 of Schedule 13 and Schedule 15 to the Children Act 1989, section 26 of and paragraph 4(1) and (3) of Schedule 3 to the Child Support, Pensions and Social Security Act 2000 (c.19) and by S.I. 1993/623.

(54) Section 6 was substituted by section 10 of the Matrimonial and Family Proceedings Act 1984 and amended by section 109(1) of and paragraph 191 of Schedule 8 to the Courts Act 2003. Section 7 was amended by section 46(1) of and paragraph 22 of Schedule 1 to the Matrimonial and Family Proceedings Act 1984.

“the 1988 Convention” means the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters done at Lugano on 16th September 1988;

“the Lugano Convention” means the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, between the European Community and the Republic of Iceland, the Kingdom of Norway, the Swiss Confederation and the Kingdom of Denmark signed on behalf of the European Community on 30th October 2007; and

“the Maintenance Regulation” means Council Regulation (EC) No 4/2009(55) of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and co-operation in matters relating to maintenance obligations, including as applied in relation to Denmark by virtue of the Agreement(56) made on 19th October 2005 between the European Community and the Kingdom of Denmark.

### **Application for the variation of a maintenance order to which the 1982 Act, the Lugano Convention, the 1988 Convention or the Maintenance Regulation applies**

71.—(1) The FPR shall apply to an application for the variation of a maintenance order in relation to which the court has jurisdiction by virtue of the 1982 Act, the Lugano Convention, the 1988 Convention or the Maintenance Regulation, and the respondent is outside the United Kingdom, with the modification in paragraph (2).

(2) The modification is that that in rule 9.22(1)(57), after “or for” insert “the variation or”.

## **PART 8**

### **THE 1986 ACT**

#### **Interpretation of this Part**

72. In this Part—

“appropriate court” means, in relation to—

- (a) Scotland, the Court of Session;
- (b) Northern Ireland, the High Court in Northern Ireland; and
- (c) a specified dependent territory, the corresponding court in that territory;

“Part 1 Order” means an order under Part 1 of the 1986 Act; and

“specified dependent territory” means a dependent territory specified in column 1 of Schedule 1 to the Family Law Act 1986 (Specified Dependent Territories) Order 1991(58).

#### **Section 5 of the 1986 Act: staying of proceedings**

73.—(1) Where under section 5(2) of the 1986 Act(59) a magistrates’ court stays proceedings on an application for a Part 1 order, notice of the stay must be given to the parties to the proceedings.

(2) Where under section 5(3) of the 1986 Act(60) a magistrates’ court removes a stay granted in accordance with section 5(2) of the 1986 Act—

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(55) OJ No. L7, 10.1.2009 p.1-79.

(56) OJ No. L299 16.11.2005.

(57) Rule 9.22 was substituted by S.I. 2011/1328.

(58) S.I. 1991/1723; the relevant amending instrument is S.I. 2006/1456.

(59) Section 5(2) was amended by section 108(5) of and paragraph 62 of Schedule 13 to the Children Act 1989 and by S.I. 2001/310, 2005/265 and 2010/1898.

(60) Section 5(3) was amended by S.I. 2005/265.

- (a) notice of the removal of the stay must be given to the parties to the proceedings; and
- (b) the court must proceed to deal with the application accordingly.

### **Chapter 5 of the 1986 Act: registration and enforcement**

**74.**—(1) The FPR shall apply to an application under section 27 of the 1986 Act(**61**) for the registration and enforcement of a custody order made in a magistrates’ court, with the modifications in paragraph (2).

(2) The modifications are—

(a) in rule 32.25—

- (i) in the heading, omit “made by the High Court or a county court”;
- (ii) in paragraph (1), omit “made in the High Court or a county court”;
- (iii) in paragraph (5)(b), after “district judge,”, insert “or, in a magistrates’ court, to the court”; and
- (iv) after paragraph (5), insert—
  - “(6) A memorandum of the granting by a magistrates’ court of an application referred to in paragraph (1) must be entered in the register of the court to which the application was made.
  - (7) Where the court officer for a magistrates’ court which granted an application referred to in paragraph (1) receives notice of the registration of the order in the appropriate court, the court officer must enter particulars of the notice in the register of that court officer’s court.”; and

(b) in rule 32.32, in paragraphs (b) and (c), after “judge” insert “, or in a magistrates’ court, the court”.

(3) The FPR shall apply where an order under Part 1 of the 1986 Act registered in an appropriate court is varied or revoked, with the modifications in paragraph (4).

(4) The modification are that in rule 32.27—

- (a) in the heading, omit “in the High Court or a county court”; and
- (b) after paragraph (2), insert—

“(3) Where the court officer referred to in paragraph (1) or (2) is a court officer of a magistrates’ court, the court officer will record the fact referred to in paragraph (1) or (2) (a) or (b) by entering a notice in the register.”.

### **Orders under section 33 or 34 of the 1986 Act**

**75.** The FPR shall apply to an application in a magistrates’ court for an order—

- (a) for the disclosure of information of the whereabouts of a child under section 33 of the 1986 Act(**62**); and
- (b) authorising the taking charge and delivery of a child under section 34 of the 1986 Act(**63**).

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**(61)** Section 27 was amended by section 108(5) of and paragraph 62 of Schedule 13 to the Children Act 1989.

**(62)** Section 33 was amended by section 108(5) of and paragraph 62 of Schedule 13 to the Children Act 1989, section 105(4) of and paragraph 41(7) of Schedule 4 to the Children (Scotland) Act 1995 (c.36) and section 261(1) of and paragraph 124 of Schedule 27 to the Civil Partnership Act 2004.

**(63)** Section 34 was amended by section 108(5) of and paragraphs 62 and 70 of Schedule 13 to the Children Act 1989 and by S.I. 1995/756.

## PART 9

### THE 1989 ACT

#### Applications under the 1989 Act in respect of enforcement of contact orders

76.—(1) The FPR shall apply to—

- (a) an application in the magistrates' court under any of the following provisions of the 1989 Act<sup>(64)</sup>—
  - (i) section 11J (enforcement orders);
  - (ii) section 11O (compensation for financial loss);
  - (iii) paragraph 4 of Schedule A1 (enforcement orders: power to revoke);
  - (iv) paragraph 5, 6 or 7 of Schedule A1 (enforcement orders: amendment);
  - (v) paragraph 9 of Schedule A1 (breach of an enforcement order); or
- (b) an application in the magistrates' court under section 8(2)(a) of the Children and Adoption Act 2006<sup>(65)</sup>,

with the modifications in paragraph (2).

(2) The modifications are—

- (a) where the proceedings referred to in paragraph (1)(a) are treated as family proceedings by virtue of section 65 of the 1980 Act, in rule 2.6—
  - (i) in paragraph (1)—
    - (aa) in sub-paragraph (f), delete “or”;
    - (bb) in sub-paragraph (g), for “;” substitute “; or”;
    - (cc) after sub-paragraph (g), insert—
      - “(h) under paragraph 5 of Schedule A1.”; and
  - (ii) in paragraph (3), for “paragraphs (a), (c) and (d)” substitute “paragraphs (a), (b), (d) and (h)”;
- (b) in rule 12.33(1), omit “to the High Court or a county court”; and
- (c) in rule 12.35(1), for “the High Court or a county court” substitute “the court”.

(3) The FPR shall apply in a case where a magistrates' court is considering exercising, or has exercised, a power under either of the following provisions of the 1989 Act<sup>(66)</sup>—

- (i) section 11L(5) (enforcement orders: provision of information); or
- (ii) section 11M(1) (enforcement orders: monitoring).

#### Enforcement of a residence order or a special guardianship order under the 1989 Act

77.—(1) Where a person in whose favour a residence order or a special guardianship order is in force wishes to enforce that order, that person must file with the court a written statement describing the alleged breach of the order.

(2) When a statement referred to in paragraph (1) is received by the court—

- (a) the justices' clerk must fix a date, time and place for a hearing of the proceedings;

<sup>(64)</sup> Sections 11J and 11O and paragraphs 4 to 7 and 9 of Schedule A1 were inserted by, respectively, section 4(1), 5 and 4(2) of and the Schedule to the Children and Adoption Act 2006 (c.20).

<sup>(65)</sup> 2006 c.20.

<sup>(66)</sup> Sections 11L and 11M were inserted by section 4(1) of the Children and Adoption Act 2006.

- (b) the designated officer must give notice of the hearing as soon as practicable to—
  - (i) the person wishing to enforce the order; and
  - (ii) any person who is alleged to be in breach of the order.
- (3) In this rule—
  - “residence order” has the meaning given in section 8(1) of the 1989 Act; and
  - “special guardianship order” has the meaning assigned to it by section 14A(1) of the 1989 Act(67).

#### **Application to vary a contribution order under the 1989 Act**

**78.**—(1) The FPR shall apply to an application under paragraph 23(8) of Schedule 2 to the 1989 Act to vary a contribution order, with the modifications in paragraph (2).

- (2) The modifications are—
  - (a) in rule 12.2, in the definition of “public law proceedings”, in paragraph (p), after “a contribution order,” insert “variation”; and
  - (b) in the table in rule 12.3(1), in the column 1 entry relating to proceedings for an order revoking a contribution order , after “order” insert “varying or”.

(Paragraph 6A of Schedule 1 to the 1989 Act sets out the procedure for an application for the variation of an order made by a magistrates’ court under Schedule 1 to the 1989 Act for periodical payments or for the payment of a lump sum by instalments.)

## **PART 10**

### **THE EDUCATION ACT 1996**

#### **Direction to a local authority under section 447(2) and (3) of the Education Act 1996**

**79.**—(1) For the purposes of section 447(2) and (3) of the Education Act 1996(68), a direction by a magistrates’ court to a local authority to apply for an education supervision order must be made in writing.

(2) Where following such a direction, a local authority informs the court that they have decided not to apply for an education supervision order, they must do so in writing.

(3) In this rule, “education supervision order” has the meaning assigned to it by section 36(2) of the 1989 Act.

## **PART 11**

### **THE 1996 ACT**

#### **Applications under Part 4 of the 1996 Act: enforcement and bail**

**80.**—(1) In respect of—

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(67) Section 14A was inserted by section 115(1) of the Adoption and Children Act 2002 (c.38) and amended by section 38 of the Children and Young Persons Act 2008 (c.23).

(68) 1996 c.56. Section 447(2) and (3) was amended by S.I. 2010/1158.

- (a) an application for enforcement of an order made on an application under Part 4 of the 1996 Act(69) in the magistrates' court; and
  - (b) an application for bail made to a magistrates' court by a person arrested under a power of arrest attached to an occupation order made under section 47 of the 1996 Act,
- the FPR shall apply, with the modifications in paragraph (2).
- (2) The modifications are that after rule 10.17 there is inserted—

**“Enforcement of orders made in a magistrates' court**

**10.18.**—(1) Where a power of arrest is attached to one or more of the provisions (“the relevant provisions”) of an occupation order, the relevant provisions must be set out in a separate form, which must not include any provisions of the order to which the power of arrest was not attached.

(2) Where the court makes a non-molestation order or paragraph (1) applies, the following documents must be delivered to the officer for the time being in charge of any police station for the applicant's address or of such other police station as the court may specify—

- (a) a copy of the non-molestation order or the form referred to in paragraph (1); and
  - (b) a statement showing that the respondent has been served with the order or informed of its terms (whether by being present when the order was made or by telephone or otherwise).
- (3) The documents referred to in paragraphs (2)(a) and (b) must be delivered by—
- (a) the applicant, if the applicant is responsible for serving the order on the respondent in accordance with rule 10.6(1); or
  - (b) the court officer, if the court is responsible for serving the order on the respondent in accordance with rule 10.6(2).

(4) Where an order is made varying or discharging the relevant provisions of the occupation order or, as the case may be, any provisions of the non-molestation order, the court officer must—

- (a) immediately inform the officer who received a copy of any order or form under paragraph (2) and, if the applicant's address has changed, the officer for the time being in charge of the police station for the new address; and
- (b) deliver a copy of the order to any officer so informed.

(5) Any warrant for the arrest of the respondent issued on an application under section 47(8) of the 1996 Act must be delivered by the court officer to the officer for the time being in charge of any police station for the respondent's address or of such other police station as the court may specify.

- (6) The court before which a person is brought following that person's arrest may—
- (a) determine whether the facts, and the circumstances which led to the arrest, amounted to disobedience of the order; or

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(69) Part 4 was amended by sections 133 and 135 of and paragraph 34 of Schedule 11 to and Schedule 13 to the Land Registration Act 2002 (c.9), section 139(1) of and paragraphs 85 to 88 of Schedule 3 to the Adoption and Children Act 2002, sections 1 to 4 and 58 of and paragraphs 34 to 41 of Schedule 10 to the Domestic Violence, Crime and Victims Act 2004 (c.28), section 82 of and paragraphs 1 to 14 of Part 1 of Schedule 9 to the Civil Partnership Act 2004, section 15(1) of and paragraphs 252 to 254 of Part 1 of Schedule 4 to the Constitutional Reform Act 2005, section 1(4) of and paragraph 20 of Part 2 of Schedule 1 to the Mental Health Act 2007 (c.12), section 3(1) of and paragraph 3 of Part 1 of Schedule 2 to the Forced Marriage (Civil Protection) Act 2007 (c.20), section 56 of and paragraph 37 of Part 1 of Schedule 6 to the Human Fertilisation and Embryology Act 2008 (c.22) and by S.I. 1994/74 and 2009/871.

- (b) adjourn the proceedings and, where such an order is made, the arrested person may be released and—
  - (i) unless the court directs otherwise, be dealt with within 14 days of the day on which the arrested person was arrested; and
  - (ii) be given not less than 2 business days' notice of the adjourned hearing.

Nothing in this paragraph prevents the issue of a notice under paragraph (10) if the arrested person is not dealt with within the period mentioned in sub-paragraph (b)(i) above.

(7) Paragraphs (8) to (15) apply for the enforcement of orders made on applications under Part 4 of the 1996 Act by committal order.

(8) Subject to paragraphs (13) and (14), an order must not be enforced by committal order unless—

- (a) a copy of the occupation order or non-molestation order has been served personally on the respondent; and
- (b) where the order requires the respondent to do an act, the copy has been so served before the expiration of the time within which the respondent was required to do the act and was accompanied by a copy of any order, made between the date of the order and the date of service, fixing that time.

(9) At the time when the order is drawn up, the court officer must—

- (a) where the order made is (or includes) a non-molestation order; and
- (b) where the order made is an occupation order and the court so directs,

issue a copy of the order, indorsed with or incorporating a notice as to the consequences of disobedience, for service in accordance with paragraph (8).

(10) If the respondent fails to obey the order, the court officer must, at the request of the applicant, issue a notice warning the respondent that an application will be made for the respondent to be committed and, subject to paragraph (14), the notice must be served on the respondent personally.

(11) The request for issue of the notice under paragraph (10) must be treated as a complaint and must—

- (a) identify the provisions of the order or undertaking which it is alleged have been disobeyed or broken;
- (b) list the ways in which it is alleged that the order or undertaking has been disobeyed or broken; and
- (c) be supported by a statement which is signed and is declared to be true and which states the grounds on which the application is made,

and, unless service is dispensed with under paragraph (14), a copy of the statement must be served with the notice.

(12) If a committal order is made, it must include provision for the issue of a warrant of committal and, unless the court otherwise orders—

- (a) a copy of the order must be served personally on the person to be committed either before or at the time of the execution of the warrant; or
- (b) the order for the issue of the warrant may be served on the person to be committed at any time within 36 hours after the execution of the warrant.

(13) An order requiring a person to abstain from doing an act may be enforced by committal order notwithstanding that a copy of the order has not been served personally if the court is satisfied that, pending such service, the respondent had notice thereof either by being—



- (a) present when the order was made;
- (b) notified of the terms of the order whether by telephone or otherwise.

(14) The court may dispense with service of a copy of the order under paragraph (8) or a notice under paragraph (10) if the court thinks it just to do so.

(15) Where service of a notice to show cause is dispensed with under paragraph (14) and a committal order is made, the court may of its own motion fix a date and time when the person to be committed is to be brought before the court.

(16) Paragraphs (8) to (12), (14) and (15) apply to the enforcement of undertakings with the necessary modifications and as if—

- (a) for paragraph (8) there were substituted the following—

“(8) A copy of a form recording the undertaking must be delivered by the court officer to the party giving the undertaking—

- (a) by handing a copy of the document to that person before that person leaves the court building; or
- (b) where that person’s place of residence is known, by posting a copy to that person’s place of residence; or
- (c) through that person’s solicitor,

and, where delivery cannot be effected in this way, the court officer must deliver a copy of the document to the party for whose benefit the undertaking is given and that party must serve it personally as soon as is practicable.”;

- (b) in paragraph (14), the words from “a copy” to “paragraph (8) or” were omitted.

(17) Where a person in custody under a warrant or order desires to apply to the court for discharge, that person must make an application in writing attested by the governor of the prison showing that that person has purged or is desirous of purging his or her contempt and the court officer must, not less than one day before the application is heard, serve notice of it on the party (if any) at whose instance the warrant or order was issued.

(18) The court by which an order of committal is made may by order direct that the execution of the order of committal be suspended for such period or on such terms or conditions as it may specify.

(19) Where execution of an order of committal is suspended by an order under paragraph (18), the applicant for the order of committal must, unless the court otherwise directs, serve on the person against whom it was made a notice informing that person of the making and terms of the order under that paragraph.

(20) The court may adjourn consideration of the penalty to be imposed for contempts found proved and such consideration may be restored if the respondent does not comply with any conditions specified by the court.

(21) Where the court makes a hospital order or a guardianship order under the Mental Health Act 1983(70), the court officer must—

- (a) send to the hospital any information which will be of assistance in dealing with the patient; and
- (b) inform the applicant when the respondent is being transferred to hospital.

(22) Where a transfer direction given by the Secretary of State under section 48 of the Mental Health Act 1983(71) is in force in respect of a person remanded in custody by the court, the court officer must notify—

- (a) the governor of the prison to which that person was remanded; and
- (b) the hospital where he is detained,

of any committal hearing which that person is required to attend and the court officer must give notice in writing to the hospital where that person is detained of any further remand.

(23) In paragraph (6) “arrest” means arrest under a power of arrest attached to an occupation order under section 47(2) or (3) of the 1996 Act or under a warrant of arrest issued on an application under section 47(8) of the 1996 Act.

#### **Applications under Part 4 of the 1996 Act: bail**

**10.19.**—(1) An application for bail made by a person arrested under a power of arrest attached to an occupation order or a warrant of arrest issued on an application under section 47(8) of the 1996 Act may be made either orally or in writing.

(2) Where an application is made in writing, it must contain—

- (a) the full name of the person making the application;
- (b) the address of the place where the person making the application is detained at the time when the application is made;
- (c) the address where the person making the application would reside if that person were to be granted bail;
- (d) the amount of the recognizance in which that person would agree to be bound; and
- (e) the grounds on which the application is made and, where a previous application has been refused, full particulars of any change in circumstances which has occurred since that refusal.

(3) An application made in writing must be signed by the person making the application or by a person duly authorised by that person or, where the person making the application is a minor or is for any reason incapable of acting, by a litigation friend or children’s guardian acting on that person’s behalf, and a copy must be served by the person making the application on the applicant for the order under Part 4 of the 1996 Act.

(4) A bail notice must be given to the respondent where the respondent is remanded on bail.

#### **Powers of a single justice**

**10.20.** Where the proceedings are treated by the court as family proceedings by virtue of section 65 of the 1980 Act, a single justice of the peace cannot perform the functions conferred on the court by rule 10.18(9)(b), (12) to (15) and (18) to (20).

#### **Powers of a justices’ clerk**

**10.21.** A justices’ clerk cannot perform the functions conferred on the court by rules 10.18(6), 10.18(9)(b), (12) to (15) and (18) to (20).”.

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(71) Section 48 was amended by sections 74 and 75 of and Schedules 7 and 8 to the Criminal Justice and Court Services Act 2000 (c.43), the Statute Law (Repeals) Act 2004 (c.14), section 62 of the Nationality, Immigration and Asylum Act 2002 (c.41) and sections 1(4), 5(1) and (3) and paragraphs 1 and 11 of Part 1 of Schedule 1 to the Mental Health Act 2007.

## PART 12

### AMENDMENTS

#### **Amendment of the Magistrates' Courts Rules 1981**

- 81.**—(1) The Magistrates' Courts Rules 1981 are amended as provided in this rule.
- (2) For the heading to rule 3(72), substitute “Provisions to which these Rules are subject”.
- (3) In rule 3—
- (a) for “and” substitute “,”; and
  - (b) after “2010” insert “and the Magistrates' Courts (Enforcement or Variation of Orders Made in Family Proceedings and Miscellaneous Provisions) Rules 2011”.
- (4) After rule 59 insert—

#### **“Court to which complaint for the enforcement of a maintenance decision to which Section 1 of Chapter IV of the Maintenance Regulation applies must be made**

- 59A.**—(1) In this rule and in rule 59B—

“the Maintenance Regulation” means Council Regulation (EC) No 4/2009 of 18 December 2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations including as applied in relation to Denmark by virtue of the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark;

“decision” has the meaning given in Article 2 of that Regulation.

- (2) A complaint for the enforcement of a decision to which Section 1 of Chapter IV of the Maintenance Regulation applies (that is, a decision made in any other Member State of the European Union except Denmark) shall be heard by the court for the local justice area in which—

- (a) the person against whom enforcement is sought is resident,
- (b) that person has assets to which the Maintenance Orders Act 1958 applies, or
- (c) any other matter relating to enforcement arises.

- (3) Where—

- (a) the complainant is the person in whose favour the order was made or, if that person is a child, is the child or the person with whom the child has his or her home,
- (b) the complainant resides in a local justice area other than that in which the court acts, and
- (c) payment is directed to be made to the complainant,

the complaint may be heard by the court for that local justice area.

- (4) Where an application for enforcement is made under Article 56 of the Maintenance Regulation on the form at Annex VI to that Regulation, the complaint may be made using that form.

**Complaint by debtor under Article 21 of the Maintenance Regulation for refusal or suspension of enforcement**

**59B.** A complaint by a debtor under Article 21 of the Maintenance Regulation for the refusal or suspension of enforcement of a decision shall be heard by—

- (a) the court to which a complaint for enforcement of that decision has been made in accordance with rule 59A, or
- (b) where no such complaint has been made at the date at which the debtor makes a complaint under this rule, the court to which a complaint for enforcement would be required to be made under rule 59A.”.

**PART 13**

**MISCELLANEOUS**

**Revocations**

**82.** The provisions in column 1 of the table in Schedule 5 are revoked to the extent specified in column 3 of the table.

**Transitional provision**

**83.—(1)** Rules 50 to 53, 69, 71, 74 to 76, 78 and 80 shall apply, so far as practicable, to proceedings to which those rules apply which have been started but have not been concluded by 18th June 2011.

(2) Where, by reason of paragraph (1), rules 50 to 53, 69, 71, 74 to 76, 78 and 80 do not apply to particular proceedings which have been started but not concluded before 18th June 2011, the rules in force immediately before that day shall continue to apply to those proceedings.

*Lord Judge, C.J.*

I concur  
Signed by authority of the Lord Chancellor

27th May 2011

*J Djanogly*  
Parliamentary Under Secretary of State  
Ministry of Justice

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SCHEDULE 1

Part 3

1950 ACT: FORMS

Form 1

Notice to person liable to make payments that sums payable under a maintenance order registered in a magistrates' court in England and Wales have become payable through a collecting officer

.....Magistrates' Court (*Code*)

Date:

To:

Address:

You are hereby given notice that the sums payable by you under (*insert particulars of maintenance order*) made on the ..... day of ..... 20...., by (*state court in Scotland or Northern Ireland by which order was made*) and registered in this Court under Part 2 of the Maintenance Orders Act 1950, have, under an order of this Court dated the..... day of ..... 20...., become payable through (*or to*) the Collecting Officer of this Court (*or the.....Magistrates' Court*).

Payments under the order (including payments in respect of any sums due at the date of the receipt by you of this notice) should henceforth be sent to me (*or to the said Collecting Officer*) at (*state address*).

A.B,

Designated Officer and Collecting Officer for the Court

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## Form 2

Notice to person liable to make payments that sums payable under a maintenance order made by a magistrates' court in England and Wales have ceased to be payable to or through any officer or person

..... Magistrates' Court (Code)

Date:

To:

Address:

You are hereby given notice that the sums payable by you under *(insert particulars of maintenance order)* made on the ..... day of ..... 20..., by this Court have, by reason of the registration of the said order in *(state court in Scotland or Northern Ireland in which order is registered)*, ceased to be payable through *(or to)* *(state officer or person through or to whom payments have hitherto been required to be made)*.

Payments under the order (including payments in respect of any sums due at the date of the receipt by you of this notice) should henceforth be paid to *(state name and address of person entitled to payments under the order)* (, unless you receive, or have meanwhile received, notice from the clerk of the said court in Northern Ireland that they are to be paid to any other person).

A.B,

Designated Officer and Collecting Officer for the Court

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### Form 3

#### Certificate of arrears

I hereby certify that the arrears due at the date of this certificate under (*insert particulars of maintenance order*) made on the ..... day of ..... 20...., by the magistrates' court sitting at....., the payments under which are at present required to be made to (*or through*) me, amount to .....

Dated the ..... day of ..... 20....

A.B.

Designated Officer of the .....Magistrates' Court

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### Form 4

#### Notice of cancellation of registration of maintenance order in a magistrates' court

..... Magistrates' Court (*Code*)

Date:

To:

Address:

You are hereby given notice that the registration in this Court under Part 2 of the Maintenance Orders Act 1950 of (*insert particulars of maintenance order*) made on the ..... day of..... 20..., by (*state court in Scotland or Northern Ireland by which order was made*) has been cancelled.

(Sums payable by you under the order have, by reason of the cancellation of the registration of the order, ceased to be payable through the designated officer for (this court) (the magistrates' court at.....) (by the following method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (standing order etc.), namely.....), (by an attachment of earnings order).

Payments under the order (including payments in respect of any sums due at the date of receipt by you of this notice) should henceforth be paid to (*state name and address of person entitled to payments under the order*), unless you receive, or meanwhile have received, notice from the designated officer for a competent court that they are to be paid to any other person.

A.B.

Designated officer for the Court



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SCHEDULE 2

Part 4

1958 ACT: FORMS

Form 1

Certificate in respect of interest recoverable under a maintenance order  
(Maintenance Orders Act 1958, section 2A(1))

I hereby certify that the rate of interest shown in accordance with section 2A(1) of the Maintenance Orders Act 1958 to be recoverable in respect of *(insert particulars of maintenance order, or, if applicable relates only to part of the order relating to a lump sum, insert particulars of the part of the order)* is ..... and that the date from which it is so recoverable is.....  
to.....

Dated the..... day of ..... 20

A.B.

Clerk of the .....Magistrates' Court.

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## Form 2

Notice that payments have become payable through the designated officer for a  
magistrates' court  
(Maintenance Orders Act 1958, section 2(6)  
Maintenance Orders Act 1950, section 19(4))

..... Magistrates' Court (Code)

Date:

To:

Address:

You are hereby given notice that the sums payable by you under (*insert particulars of maintenance order*) made on the ..... day of..... 20.... by the (High Court) (..... County Court) (Court of Session) (High Court in Northern Ireland) and registered in this Court under Part 1 of the Maintenance Orders Act 1958, have under an order of this Court dated the..... day of ..... 20....., become payable through (me) (the designated officer for .....Magistrates' Court).

Payments under the order (including payments in respect of any sums due at the date of the receipt by you of this notice) should henceforth be sent to the designated officer for the Magistrates' Court at (*state address*).

A.B.

Designated officer for the Court

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### Form 3

Notice that payments have ceased to be payable through the designated officer for the  
magistrates' court  
(Maintenance Orders Act 1958, section 2(5)  
Maintenance Orders Act 1950, section 19(4))

..... Magistrates' Court (Code)

Date:

To:

Address:

You are hereby given notice that the sums payable by you under *(insert particulars of maintenance order)* made on the ..... day of..... 20....., by (this Court) *(state court in Scotland or Northern Ireland which made the order)* and registered in this Court under Part 2 of the Maintenance Orders Act 1950 have by reason of the registration of the order in the High Court ceased to be payable to *(state designated officer for magistrates' court to whom payments have hitherto been required to be made)*.

Payments under the order (including payments in respect of any sums due at the date of the receipt by you of this notice) should henceforth be paid to *(state name and address of the person entitled to payments under the order)*.

A.B.

Designated officer for the Court.

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### Form 4

#### Notice of cancellation of registration (Maintenance Orders Act 1958, section 5(5))

..... Magistrates' Court

Date:

To:

Address:

You are hereby given notice that the registration in this Court under Part 1 of the Maintenance Orders Act 1958, of *(insert particulars of maintenance order)* made on the ..... day of..... 20....., by the (High Court) (.....County Court) (Court of Session) (High Court in Northern Ireland) has been cancelled.

Sums payable by you under the said order have by reason of the cancellation of the registration of the order ceased to be payable through the designated officer for (this court) (the ..... Magistrates' Court), (by the following method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (standing order etc), namely..... ), (by an attachment of earnings order) (by direct payment to.....).

Payments under the order (including payments in respect of any sums due on the date of the receipt by you of this notice) should henceforth be paid to *(state name and address of person entitled to payments under the order)*.

A.B.

Designated officer for the Court.

SCHEDULE 3

Rule 64

1972 ACT: FORM

Form of Notice

Notice under section 35(3) of the Maintenance Orders (Reciprocal Enforcement) Act  
1972

..... Magistrates' Court

Date:

To the defendant.....

of.....

..... Complaint has been made by

The complainant.....

of.....

..... who states that by an order made on.....

..... under the..... Act

..... by the ..... Magistrates' Court

..... you were ordered as follows:-

..... and applies for that order to be [revoked] [varied by an order requiring.....]

..... on the ground that

The hearing of the complaint will be on:

Date of hearing..... at ..... [am/pm]

at the..... Magistrates' Court

A.B.

Designated officer for the Court

Note: if you do not appear at the time and place specified above the court may proceed in your absence. If you wish to make written representations to the court you may do so on the enclosed form.

## SCHEDULE 4

Rule 68

## 1972 ACT: RULES OF PROCEDURE

**Interpretation**

1. In this Schedule, and in any rule where this Schedule applies to proceedings pursuant to that rule, unless the context otherwise requires—

“business day” means any day other than—

- (a) a Saturday, Sunday, Christmas or Good Friday; or
- (b) a day which is a bank holiday under the Banking and Financial Dealings Act 1971(73), in England and Wales;

“directions appointment” means a hearing for directions under paragraph 4;

“file” means deposit with the designated officer for a magistrates’ court;

“note” includes a record made by mechanical or electronic means;

“permission” includes approval; and

“proceedings” means proceedings to which this Schedule applies, as provided in rule 68.

**Transfer of proceedings**

2.—(1) Where—

- (a) any proceedings are relevant proceedings within the meaning of section 93 of the 1989 Act(74), and
- (b) the justices’ clerk or the court receives a request in writing from the resident party that the proceedings be transferred to another magistrates’ court,

the designated officer or the court must issue a certificate in the appropriate form, granting or refusing the request in accordance with any Order made by the Lord Chancellor under Part 1 of Schedule 11 to the 1989 Act(75).

(2) Where a request is granted under paragraph (1), the designated officer must send a copy of the certificate to—

- (a) the resident party;
- (b) the Ministry of Justice; and
- (c) the magistrates’ court to which the proceedings are to be transferred.

(3) Any consent given or refused by a justices’ clerk in accordance with any Order made by the Lord Chancellor under Part 1 of Schedule 11 to the 1989 Act must be recorded in writing by the justices’ clerk at the time it is given or refused or as soon as practicable afterwards.

**Service**

3.—(1) Where service of a document is required by this Schedule or by a rule where this Schedule applies to proceedings pursuant to that rule, it may be effected, unless the contrary is indicated—

---

(73) 1971 c.80.

(74) Section 93 was amended by section 116 of and paragraph 22 of Schedule 16 to the Courts and Legal Services Act 1990 and section 122(2) of the Adoption and Children Act 2002.

(75) Part 1 of Schedule 11 was amended by section 45 of the Child Support Act 1991 (c.48), sections 83(5) and 85 of and paragraph 10 of Schedule 8 to Part 9 of Schedule 9 to the Child Support, Pensions and Social Security Act 2000, section 139(1) of and paragraphs 54 and 75 of Schedule 3 to the Adoption and Children Act 2002 and section 15(1) of and paragraphs 203 and 210 of Part 1 of Schedule 4 to the Constitutional Reform Act 2005.

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- (a) if the person to be served is not known by the person serving to be acting by a legal representative—
    - (i) by delivering it to that person personally; or
    - (ii) by delivering it at, or by sending it by first-class post to, that person’s residence or last known residence; or
  - (b) if the person to be served is known by the person serving to be acting by a legal representative—
    - (i) by delivering the document at, or sending it by first-class post to, the legal representative’s address for service;
    - (ii) where the legal representative’s address for service includes a numbered box at a document exchange, by leaving the document at that document exchange or at a document exchange which transmits documents on every business day to that document exchange; or
    - (iii) by sending a legible copy of the document by facsimile transmission to the legal representative’s office.
- (2) In this paragraph, “first-class post” means first-class post which has been pre-paid or in respect of which pre-payment is not required.
- (3) Unless the contrary is proved, a document will be deemed to have been served—
- (a) in the case of service by first-class post, on the second business day after posting, and
  - (b) in the case of service in accordance with sub-paragraph (1)(b)(ii), on the second business day after the day on which it is left at the document exchange.
- (4) In any proceedings where this Schedule, or a rule where this Schedule applies, requires a document to be served, the court or the justices’ clerk may, without prejudice to any power under paragraph 4, direct that—
- (a) the requirement will not apply;
  - (b) the time specified by the rules for complying with the requirement will be abridged to such extent as may be specified in the direction;
  - (c) service is to be effected in such manner as may be specified in the direction.

## **Directions**

- 4.—(1) The court or the justices’ clerk may give, vary or revoke directions for the conduct of the proceedings, including—
- (a) the timetable for the proceedings;
  - (b) varying the time within which or by which an act is required by this Schedule, or by a rule where this Schedule applies to proceedings pursuant to that rule, to be done;
  - (c) the service of documents; and
  - (d) the submission of evidence.
- (2) Where the designated officer receives such an application or any document by which proceedings are commenced, the justices’ clerk must consider whether any directions need to be given under sub-paragraph (1).
- (3) Where the justices’ clerk or a single justice who is holding a directions appointment considers, for whatever reason, that it is inappropriate to give a direction on a particular matter, the matter must be referred to the court, which may give any appropriate direction.
- (4) Directions under sub-paragraph (1) may be given, varied or revoked—

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- (a) of the justices' clerk's or the court's own motion, having given the resident party an opportunity to attend and be heard or to make written representations; or
  - (b) on the written request of either party, specifying the direction sought.
- (5) Where the designated officer receives a request under sub-paragraph (4)(b), the justices' clerk must—
- (a) make the direction sought; or
  - (b) fix a date for a hearing to consider the request.

### **Timing of proceedings**

5.—(1) Any period of time fixed by this Schedule, or by a rule where this Schedule applies to proceedings pursuant to that rule, or by any order or direction, for doing any act is to be reckoned in accordance with this rule.

(2) Where the period, being a period of seven days or fewer, would include a day which is not a business day, that day will be excluded.

(3) Where the time fixed for filing a document with the designated officer expires on a day on which the office of the designated officer is closed, and for that reason the document cannot be filed on that day, the document will be filed on time if it is filed on the next day on which the office of the designated officer is open.

(4) Where this Schedule, or a rule where this Schedule applies to proceedings pursuant to that rule, provides a period of time within which, or by which, a certain act is to be performed in the course of relevant proceedings, that period may not be extended otherwise than by a direction of the justices' clerk or the court under paragraph 4(1) above.

(5) Sub-paragraphs (6) and (7) apply at the—

- (a) transfer to a court of proceedings;
- (b) postponement or adjournment of any hearing or directions appointment in the course of relevant proceedings; or
- (c) conclusion of any such hearing or direction appointment other than one at which the proceedings are determined, or as soon as is practicable after that point.

(6) The justices' clerk must fix a date on which the proceedings will come before the justices' clerk or the court again for such purposes as the justices' clerk or the court directs, which date will, where sub-paragraph (5)(a) applies, be as soon as possible after the transfer.

(7) The designated officer must give notice to the resident party of the date fixed in accordance with sub-paragraph (6).

### **Attendance at a directions appointment and a hearing**

6.—(1) The resident party must attend a directions appointment of which that party has been given notice, unless the justices' clerk or the court directs otherwise.

(2) Where at the time and place appointed for a hearing or directions appointment the resident party does not appear, the justices' clerk or the court must not proceed with the hearing or appointment unless—

- (a) the proceedings relate to an application filed by the resident party; or
- (b) the court is satisfied that the resident party has received reasonable notice of the hearing or appointment.



(3) Where at the time and place appointed for a hearing or directions appointment the non-resident party does not appear, the court may proceed with the hearing or appointment where the proceedings relate to an order or application sent by the Lord Chancellor to the court under the 1972 Act.

(4) Nothing in this Schedule is to be taken as preventing either party from appearing at any hearing or directions appointment.

### **Documentary evidence**

7.—(1) A party must file, at or by such time as the justices' clerk or the court directs or, in the absence of a direction, before the hearing or directions appointment—

(a) written statements of the substance of the oral evidence which the party intends to adduce at a hearing or directions appointment, which must—

(i) be dated;

(ii) be signed by the person making the statement;

(iii) contain a declaration that the maker of the statement believes it to be true and understands that it may be placed before the court; and

(iv) show in the top right-hand corner of the first page—

(aa) the initials and surname of the person making the statement;

(bb) the number of the statement in relation to the maker;

(cc) the date on which the statement was made; and

(dd) the party on whose behalf it is filed; and

(b) copies of any documents on which the party intends to rely at a hearing or a directions appointment.

(2) Subject to any direction of the justices' clerk or the court about the timing of statements under this paragraph, a party may file a statement which is supplementary to a statement filed under sub-paragraph (1).

(3) Where a non-resident party files a statement or document under this paragraph, that party must also file a copy of it for service on the resident party and, on receipt of that copy, the designated officer must serve it on the resident party.

(4) At a hearing or directions appointment a party may not without the permission of the justices' clerk (in the case of a directions appointment) or the court—

(a) adduce evidence; or

(b) seek to rely on a document,

in respect of which the party has failed to comply with the requirements of sub-paragraph (1) and, where applicable, sub-paragraph (3).

### **Amendment**

8.—(1) A party amending a document must file the amended document with the designated officer, and the amendments must be identified.

(2) Paragraph 7(3) applies to an amended document filed under this paragraph.

### **Oral evidence**

9. The justices' clerk or the court must keep a note of the substance of any oral evidence given at a hearing or directions appointment.

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## Hearing

**10.**—(1) Before the hearing, the justice or justices who will be dealing with the case must read any documents which have been filed under paragraph 7 in respect of the hearing.

(2) The justices' clerk at a directions appointment, or the court at a hearing or directions appointment, may give directions as to the order of speeches and evidence.

(3) After the final hearing, the court must make its decision as soon as is practicable.

(4) Before the court makes an order or refuses an application, the justices' clerk must record in writing—

- (a) the names of the justice or justices constituting the court by which the decision is made; and
- (b) in consultation with the justice or justices, the reasons for the court's decision and any findings of fact.

(5) As soon as is practicable after the court announces its decision, the justices' clerk must make a record in writing of any order.

(6) Sub-paragraph (7) applies where, under section 7(4) of the Domestic Proceedings and Magistrates' Courts Act 1978, a court decides to treat an application under section 7 as if it were an application for an order under section 2 of that Act<sup>(76)</sup>.

(7) The court must indicate orally which of grounds (a) and (b) in that subsection it considers applicable and a memorandum of that decision and the grounds for it must be entered in the register.

## Confidentiality of documents

**11.**—(1) No document, other than a record of an order, held by the court and relating to any proceedings may be disclosed, other than to—

- (a) a party;
- (b) the legal representative of a party;
- (c) the Ministry of Justice; or
- (d) the Legal Services Commission,

without the permission of the justices' clerk or the court.

## SCHEDULE 5

Rule 82

### REVOCATIONS

<i>(1) Statutory Instrument revoked</i>	<i>(2) Reference</i>	<i>(3) Extent of revocation</i>
The Maintenance Orders Act 1950 (Summary Jurisdiction) Rules 1950	<a href="#">S.I. 1950/2035</a>	The whole Rules.
The Magistrates' Courts (Maintenance Orders Act 1958) Rules 1959	<a href="#">S.I. 1959/3</a>	The whole Rules.
The Magistrates' Courts (Attachment of Earnings) Rules 1971	<a href="#">S.I. 1971/809</a>	Rule 3(1) to the extent that it relates to amendments to the Magistrates' Courts

<sup>(76)</sup> Section 2 was amended by [S.I. 1992/709](#) and by sections 15(1) and 146 of and paragraph 96 of Schedule 4 and Part 2 of Schedule 18 to the Constitutional Reform Act 2005.

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<i>(1) Statutory Instrument revoked</i>	<i>(2) Reference</i>	<i>(3) Extent of revocation</i>
		(Maintenance Orders Act 1958) Rules 1959 and rule 3(2).
The Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) Rules 1974	<a href="#">S.I. 1974/668</a>	The whole Rules to the extent that they remain in force.
The Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Republic of Ireland) Rules 1975	<a href="#">S.I. 1975/286</a>	The whole Rules to the extent that they remain in force.
The Magistrates' Courts (Recovery Abroad of Maintenance) Rules 1975	<a href="#">S.I. 1975/488</a>	The whole Rules.
The Magistrates' Courts (Maintenance Orders Act 1958) (Amendment) Rules 1977	<a href="#">S.I. 1977/1890</a>	The whole Rules.
The Magistrates' Courts (Recovery Abroad of Maintenance) (Amendment) Rules 1979	<a href="#">S.I. 1979/1561</a>	The whole Rules.
The Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Hague Convention Countries) Rules 1980	<a href="#">S.I. 1980/108</a>	The whole Rules to the extent that they remain in force.
The Magistrates' Courts (Recovery Abroad of Maintenance) (Amendment) Rules 1980	<a href="#">S.I. 1980/1584</a>	The whole Rules
The Magistrates' Courts (Maintenance Orders Act 1950) (Amendment) Rules 1980	<a href="#">S.I. 1980/1895</a>	The whole Rules.
The Magistrates' Courts (Maintenance Orders Act 1958) (Amendment) Rules 1980	<a href="#">S.I. 1980/1896</a>	The whole Rules.
The Magistrates' Courts (Civil Jurisdiction and Judgments Act 1982) Rules 1986	<a href="#">S.I. 1986/1962</a>	The whole Rules to the extent that they remain in force.
The Magistrates' Courts (Family Law Act 1986) Rules 1988	<a href="#">S.I. 1988/329</a>	The whole Rules.
The Magistrates' Courts (Family Law Reform Act 1987) (Miscellaneous Amendments) Rules 1989	<a href="#">S.I. 1989/384</a>	Rule 2 to the extent that it relates to amendments to the Magistrates' Courts (Maintenance Orders Act 1985) Rules 1959.  Paragraph 2 of the Schedule.
The Family Proceedings Courts (Children Act 1989) Rules 1991	<a href="#">S.I. 1991/1395</a>	The whole Rules to the extent that they remain in force.

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<i>(1) Statutory Instrument revoked</i>	<i>(2) Reference</i>	<i>(3) Extent of revocation</i>
The Family Proceedings Courts (Matrimonial Proceedings etc) Rules 1991	<a href="#">S.I. 1991/1991</a>	The whole Rules to the extent that they remain in force.
The Magistrates' Courts (Maintenance Enforcement Act 1991) (Miscellaneous Amendments) Rules 1992	<a href="#">S.I. 1992/457</a>	Rule 2 to the extent that it relates to the paragraphs of the Schedule set out below.  Paragraphs 4, 5, 6, 7, 8, 9 of the Schedule.
The Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Miscellaneous Amendments) Rules 1993	<a href="#">S.I. 1993/617</a>	The whole Rules to the extent that they remain in force.
The Family Proceedings Courts (Children Act 1989) (Amendment) (No 2) Rules 1994	<a href="#">S.I. 1994/3156</a>	The whole Rules to the extent that they remain in force.
The Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (United States of America) Rules 1995	<a href="#">S.I. 1995/2802</a>	The whole of Rules to the extent that they remain in force, save that they are to continue in force to the extent required for the purposes of rule 4(2) of the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Miscellaneous Amendments) Rules 2007 ( <a href="#">S.I. 2007/2267</a> ).
The Family Proceedings Courts (Matrimonial Proceedings etc) (Amendment) Rules 1997	<a href="#">S.I. 1997/1894</a>	The whole Rules to the extent that they remain in force.
The Family Proceedings Courts (Children Act 1989) (Amendment) Rules 1997	<a href="#">S.I. 1997/1895</a>	The whole Rules to the extent that they remain in force.
The Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Hague Convention Countries) Rules 1999	<a href="#">S.I. 1999/2002</a>	The whole Rules to the extent that they remain in force.
The Magistrates' Courts (Civil Jurisdiction and Judgments Act 1982) (Amendment) Rules 2002	<a href="#">S.I. 2002/194</a>	The whole Rules to the extent that they remain in force.
The Magistrates' Courts (Miscellaneous Amendments) Rules 2005	<a href="#">S.I. 2005/2930</a>	Rule 2(a), (d) and (e).  In Schedule 1:  paragraph 1,  paragraphs 10 to 32 to the extent that they amend

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<i>(1) Statutory Instrument revoked</i>	<i>(2) Reference</i>	<i>(3) Extent of revocation</i>
		provisions of <a href="#">S.I. 1991/1991</a> which remain in force.  paragraphs 33 to 51 to the extent that they amend provisions of <a href="#">S.I. 1991/1395</a> which remain in force.
The Family Proceedings Courts (Matrimonial Proceedings etc.) (Amendment) Rules 2007	<a href="#">S.I. 2007/1628</a>	The whole Rules to the extent that they remain in force.
The Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Miscellaneous Amendments) Rules 2007	<a href="#">S.I. 2007/2267</a>	The whole Rules to the extent that they remain in force, except rules 1 and 4(2).
The Magistrates' Courts (Enforcement of Children Act 1989 Contact Orders) Rules 2008	<a href="#">S.I. 2008/2859</a>	The whole Rules.

## EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules consolidate various existing provisions in rules of court setting out the practice and procedure to be followed in magistrates' courts in certain proceedings, and apply the Family Procedure Rules 2010 ("the FPR") to certain other magistrates' courts proceedings in the place of existing rules.

Part 2 makes general case management provision applicable to certain rules and also makes provision in respect of powers of the court which are exercisable by a single justice of the peace or by a justices' clerk.

Part 3 makes provision in respect of the practice and procedure to be followed in proceedings for the registration and enforcement of a maintenance order under the Maintenance Orders Act 1950. Part 4 makes such provision in respect of the Maintenance Orders Act 1958.

Chapter 1 of Part 5 applies the FPR to proceedings for the variation of a maintenance order to which Part 1 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 ("the 1972 Act") applies. Chapter 2 of Part 5 makes provision in respect of applications under Part 2 of the 1972 Act.

Part 6 applies the FPR, with modifications, to an application for variation of a maintenance order under section 20 of the Domestic Proceedings and Magistrates' Courts Act 1978 or Schedule 6 to the Civil Partnership Act 2004.

Part 7 applies the FPR, with modifications, to an application for the variation of a maintenance order to which the Civil Jurisdiction and Judgments Act 1982, the Lugano Convention, the 1988 Convention or the Maintenance Regulation applies.

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Part 8 makes provision for the practice and procedure to be followed in certain applications to which the Family Law Act 1986 applies.

Part 9 applies the FPR, with modifications, to applications for the enforcement of contact orders under the Children Act 1989 (“the 1989 Act”) and to applications to vary contribution orders under the 1989 Act. Provision is also made in respect of the enforcement of residence orders and special guardianship orders made under the 1989 Act.

Part 10 sets out the practice and procedure to be followed where a magistrates’ court gives a direction under section 447 of the Education Act 1996 to a local authority to apply for an education supervision order under the 1989 Act.

Part 11 applies the FPR, with modifications, to applications to enforce orders made under Part 4 of the Family Law Act 1996 (occupation orders and non-molestation orders).

Part 12 amends the Magistrates’ Courts Rules 1981 (“the 1981 Rules”). Firstly, the 1981 Rules are made subject to these Rules. Secondly, the 1981 Rules are amended to reflect the application from 18 June 2011 of the Maintenance Regulation in relation to the enforcement of maintenance orders from the European Union.

Transitional provision and revocations are provided for in Part 13.