

SCHEDULE

Amendment of primary and secondary legislation

PART 2

Amendment of secondary legislation

Amendment of the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1993

31.—(1) The Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1993(1) is amended as follows.

(2) In Schedule 1—

(a) after Australia, insert “Denmark”;

(b) at the end, for “special provision about Norway” substitute “special provision about Federal Republic of Germany, Finland, France, Italy, Luxembourg, Netherlands, Norway, Portugal, Republic of Estonia, Republic of Poland, Slovakia, Spain, Sweden and the Czech Republic”.

(3) Schedule 2 (modifications to Part I of the Act) is amended as follows.

(4) In paragraph 3—

(a) in sub-paragraph (2), in subsection 3(1)(b) of the substituted text, for “the Maintenance Regulation and Schedule 6 to the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011” substitute “the Domestic Proceedings and Magistrates’ Courts Act 1978 or the Children Act 1989 if at any time when the proceedings were instituted that person was residing in England and Wales, and received reasonable notice of the date of the hearing of the application.”;

(b) for sub-paragraph (6), substitute—

“(6) In subsection (7)—

(a) after the words “a magistrates’ court” insert the words “by a person who is habitually resident in Northern Ireland”;

(b) for the word “reciprocating” substitute the words “Hague Convention”.”.

(5) At paragraph 4 insert—

“(1) Section 4 is amended as follows.

(2) For subsection (1) substitute—

“(1) The sheriff has jurisdiction in any action to which this section applies if at the time when the proceedings were instituted—

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

(b) the sheriff is satisfied that, to the best of the information or belief of the pursuer, the defender is residing in a Hague Convention country; and

(c) the sheriff would not, apart from this subsection, have jurisdiction in that action.

(2) This section applies to any action for the payment, variation or revocation of aliment which is competent in the sheriff court, and includes an action of affiliation

(1) [S.I. 1993/593](#); relevant amending instruments are [S.I. 1999/1318](#), [2011/1484](#), [2014/879](#).

Status: This is the original version (as it was originally made).

and aliment, but does not apply to an action of separation and aliment or adherence and aliment, or any action containing a crave for the custody of a child.”

(3) In subsection (3), for the words “referred to in” substitute “in which the sheriff has jurisdiction by virtue of”.

(4) For subsection (4) substitute—

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

(5) Omit subsections (5) and (6).”.

(6) In paragraph 5, in the substituted text—

(a) in subsection 5(1), omit “, and in relation to which the court has jurisdiction to entertain proceedings for revocation and variation of that order by virtue of the Maintenance Regulation and Schedule 6 to the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011”;

(b) after subsection 5(1) insert—

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

(7) In paragraph 9—

(a) in sub-paragraph (2), in the substituted text, after subsection (1)(a) insert—

“(b) The jurisdiction of a court to vary the method of payment of a registered order shall be exercisable notwithstanding that the proceedings for the variation of the order are brought by or against a person residing in a Hague Convention country.”;

(b) in sub-paragraph (4), in the substituted text—

(i) after section 9(1) insert—

“(2) The registering court may not vary a registered order unless—

(a) the payer under the order had his habitual residence in the United Kingdom at the time when the proceedings to vary the order were instituted; or

(b) the respondent in those proceedings had submitted to the jurisdiction of the registering court, either expressly or by defending on the merits of the case without objecting to the jurisdiction.”;

(ii) omit subsection (8A).

(8) For paragraph 17 substitute—

“(1) Section 17 is amended as follows.

(2) In subsection (5A) for the word “reciprocating” substitute the words “Hague Convention”.

(3) For subsections (6) and (7) substitute—

“(6) A magistrates’ court in Northern Ireland shall have jurisdiction to hear a complaint for the variation or revocation—

(a) of a maintenance order made by such a court, and to which section 5 of this Act applies, or

(b) to hear a complaint for the variation of a registered order which is registered in that court,”

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

“(7) Where the respondent to an application—

- (a) for the variation or revocation of a maintenance order made by a court, and to which section 5 of this Act applies; or
- (b) for the variation of a registered order registered in a court, does not appear at the time and place appointed for the hearing on the application, but the court is satisfied that the respondent is residing in a Hague Convention country and the requirements of section 5(4), (6) or (7) or section 9(3), as the case may be, have been complied with, the court may proceed to hear and determine the application at the time and place appointed for the hearing or for any adjourned hearing as if the respondent had appeared at that time and place.”

(9) In paragraph 21, in sub-paragraph (2), in the substituted text, omit paragraph (ea).

(10) Schedule 3 (Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972) (as it has effect as set out in that Schedule) is amended as follows.

(11) In the modified subsection 3(1)(b), for “the Maintenance Regulation and Schedule 6 to the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011” substitute “the Domestic Proceedings and Magistrates’ Courts Act 1978 or the Children Act 1989 if at any time when the proceedings were instituted that person was residing in England and Wales, and received reasonable notice of the date of the hearing of the application.”

(12) At the modified section 4 insert—

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

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

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

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

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

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

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

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

(13) In the modified section 5—

(a) in subsection (1), omit “, and in relation to which the court has jurisdiction to entertain proceedings for revocation and variation of that order by virtue of the Maintenance Regulation and Schedule 6 to the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011”;

(b) after subsection (1) insert—

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

(14) In the modified section 9—

(a) after subsection (1)(a) insert—

“(b) the jurisdiction of a court to vary the method of payment of a registered order be exercisable notwithstanding that the proceedings for the variation of the order are brought by or against a person residing in a Hague Convention country.”;

(b) after subsection (1) insert—

“(2) The registering court may not vary a registered order unless—

(a) the payer under the order is habitually resident in the United Kingdom at the time when the proceedings to vary the order were instituted; or

(b) the respondent in those proceedings had submitted to the jurisdiction of the registered court, either expressly or by defending on the merits of the case without objecting to the jurisdiction.”;

(c) omit subsection (8A).

(15) In the modified section 17, after subsection (4) insert—

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

(a) a maintenance order made by the family court, being an order to which section 5 of this Act applies; or

(b) a registered order which is registered in the family court,

is residing in a Hague Convention country, the family court shall have jurisdiction to hear the application (where it would not have such jurisdiction apart from this subsection) if it would have had jurisdiction to hear it had the respondent been habitually resident in England and Wales.

(6) A magistrates’ court in Northern Ireland has jurisdiction to hear a complaint for the variation or revocation—

(a) of a maintenance order made by such a court, and to which section 5 of this Act applies, or

(b) to hear a complaint for the variation of a registered order which is registered in that court,

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

(7) Where the respondent to an application—

- (a) for the variation or revocation of a maintenance order made by a court, and to which section 5 of this Act applies; or
- (b) for the variation of a registered order registered in a court, does not appear at the time and place appointed for the hearing on the application, but the court is satisfied that the respondent is residing in a Hague Convention country and the requirements of section 5(4), (6) or (7) or section 9(3), as the case may be, have been complied with, the court may proceed to hear and determine the application at the time and place appointed for the hearing or for any adjourned hearing as if the respondent had appeared at that time and place.”.

(16) In the modified section 21, in subsection (1), omit the definition of “the Maintenance Regulation”.