

SCHEDULE 3

Article 3(2)

PART I OF THE ACT AS MODIFIED BY SCHEDULE 2

Orders made by courts in the United Kingdom

Transmission of maintenance order made in United Kingdom for recognition and enforcement in Hague Convention country.

2.—(1) Subject to subsection (2) below, where the payer under a maintenance order made, whether before, on or after 5th April 1993, by a court in the United Kingdom is residing in a Hague Convention country, the payee under the order may apply for the order to be sent to that country for recognition and enforcement.

(2) Subsection (1) above shall not have effect in relation to a maintenance order made under section 3 of this Act or to an order by virtue of a provision of Part II of this Act.

(3) Every application under this section shall be made in the prescribed manner to the prescribed officer of the court which made the maintenance order to which the application relates.

(4) If, on an application duly made under this section to the prescribed officer of a court in the United Kingdom, that officer is satisfied that the payer under the maintenance order to which the application relates is residing in a Hague Convention country, the following documents, that is to say—

- (a) a certified copy of the maintenance order;
- (b) a certificate signed by that officer certifying that the order is enforceable and that it is no longer subject to the ordinary forms of review;
- (c) a certificate of arrears so signed;
- (d) a statement giving such information as the officer possesses as to the whereabouts of the payer;
- (e) a statement giving such information as the officer possesses for facilitating the identification of the payer;
- (f) where available, a photograph of the payer;
- (g) a written statement signed by that officer as to whether or not the payer appeared in the proceedings in which the maintenance order was made and, if he did not appear, the original or a certified copy of a document which establishes that notice of the institution of the proceedings, including notice of the substance of the claim, was served on the payer;
- (h) a document which establishes that notice of the order was sent to the payer; and
- (i) a written statement signed by that officer as to whether or not the payee received legal aid either in the said proceedings or in connection with the said application,

shall be sent by that officer, in the case of a court in England and Wales or Northern Ireland, to the Lord Chancellor, or, in the case of a court in Scotland, to the Secretary of State, with a view to their being transmitted by the Lord Chancellor, or, as the case may be, the Secretary of State, to the appropriate authority in the Hague Convention country if he is satisfied that the statement relating to the whereabouts of the payer gives sufficient information to justify that being done.

(5) Nothing in this section shall be taken as affecting any jurisdiction of a court in the United Kingdom with respect to a maintenance order to which this section applies, and subject to section 5 any such order may be enforced, varied or revoked accordingly.

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Power of magistrates' court to make maintenance order against person residing in Hague Convention country.

3.—(1) Where an application is made to a magistrates' court for a maintenance order by a person who is habitually resident in England and Wales against a person residing in a Hague Convention country and the court would have jurisdiction to determine the application under the Domestic Proceedings and Magistrates' Courts Act 1978(1) or the Children Act 1989(2) if at any time when the proceedings were instituted that person—

- (a) were residing in England and Wales, and
- (b) received reasonable notice of the date of the hearing of the application,

the court shall subject to the following provisions of this section have jurisdiction to determine the application.

(4) No enactment (or provision made under an enactment) requiring or enabling—

- (a) a court to transfer proceedings from a magistrates' court to a county court or the High Court, or
- (b) a magistrates' court to refuse to make an order on an application on the ground that any matter in question is one that would be more conveniently dealt with by the High Court,

shall apply in relation to an application to which subsection (1) above applies.

(5) On the making of an application to which subsection (1) above applies, the following documents, that is to say—

- (a) notice of the institution of the proceedings, including notice of the substance of the application;
- (b) a statement signed by the prescribed officer of the court giving such information as he possesses as to the whereabouts of the respondent;
- (c) a statement giving such information as the officer possesses for facilitating the identification of the respondent; and
- (d) where available, a photograph of the respondent,

shall be sent by that officer to the Lord Chancellor with a view to their being transmitted by the Lord Chancellor to the appropriate authority in the Hague Convention country in which the respondent is residing for service on him of the document mentioned in paragraph (a) above if the Lord Chancellor is satisfied that the statement relating to the whereabouts of the respondent gives sufficient information to justify that being done.

(6) In considering whether or not to make a maintenance order pursuant to an application to which subsection (1) above applies the court shall take into account any representations made and any evidence adduced by or on behalf of the respondent.

(6A) Where the respondent makes any representations or adduces any evidence, a copy of the representations or evidence shall be served on the applicant by the prescribed officer of the court before the hearing.

(6B) The prescribed officer of the court shall give the respondent notice in writing of the date fixed for the hearing by sending the notice by post addressed to his last known or usual place of abode.

(6C) A maintenance order pursuant to an application to which subsection (1) above applies shall not be made unless the document mentioned in paragraph (a) of subsection (5) above has been served on the respondent in accordance with the law for the service of such documents in the Hague

(1) 1978 c. 22.
(2) 1989 c. 41.

Convention country in which he is residing or in such other manner as may be authorised by the Lord Chancellor not less than six weeks previously.

(6D) Where a maintenance order has been made under this section, the prescribed officer of the court shall send the following documents, that is to say—

- (a) a certified copy of the order;
- (b) a certificate signed by that officer certifying that the order is enforceable and that it is no longer subject to the ordinary forms of review;
- (c) a written statement, signed by that officer as to whether or not the respondent appeared in the proceedings in which the order was made, and, if he did not appear, the original or a certified copy of a document which establishes that the document mentioned in paragraph (a) of subsection (5) above has been served on the payer in accordance with subsection (6C) above;
- (d) a document which establishes that notice of the order was sent to the respondent; and
- (e) a written statement signed by that officer as to whether or not the applicant received legal aid in the proceedings,

to the Lord Chancellor with a view to their being transmitted by him to the appropriate authority in the Hague Convention country in which the respondent resides for recognition and enforcement of the order.

(6E) A maintenance order made under this section may, subject to section 5 of this Act, be enforced, varied or revoked in like manner as any other maintenance order made by a magistrates' court.

(7) In the application of this section to Northern Ireland—

(a) for subsection (1) there shall be substituted—

“(1) Where a complaint is made to a magistrates' court by a person who is habitually resident in Northern Ireland against a person residing in a Hague Convention country and the complaint is one on which the court would have jurisdiction by virtue of any enactment to make a maintenance order if—

- (a) that person were residing in Northern Ireland, and
- (b) a summons to appear before the court to answer the complaint had been duly served on him,

the court shall have jurisdiction to hear the complaint and may make a maintenance order on the complaint.”,

and

(b) for subsection (4) there shall be substituted—

“(4) No enactment empowering a magistrates' court to refuse to make an order on a complaint on the ground that any matter in question is one which would be more conveniently dealt with by the High Court of Justice in Northern Ireland shall apply in relation to a complaint to which subsection (1) above applies.”.

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

4.—(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; and

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- (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.

Variation and revocation of maintenance order made in United Kingdom.

5.—(1) This section applies to a maintenance order a certified copy of which has been sent to a Hague Convention country for recognition and enforcement of the order.

(2) The jurisdiction of a magistrates' 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.

(3) Where subsection (1) of section 60 of the Magistrates' Courts Act 1980⁽³⁾ (revocation, variation etc. of orders for periodical payment) applies in relation to a maintenance order to which this section applies, that subsection shall have effect as if for the words “by order on complaint,” there were substituted “on an application being made, by order”.

(4) Where an application is made by the payee to a court in England and Wales or Northern Ireland for the variation or revocation of an order to which this section applies, and the payer is residing in a Hague Convention country, the prescribed officer of the court shall send to the Lord Chancellor notice of the institution of the proceedings, including notice of the substance of the application, with a view to its being transmitted by him to the appropriate authority in the Hague Convention country for service on the payer.

(5) Where an application is made by the payee to a court in England and Wales or Northern Ireland for the variation or revocation of an order to which this section applies, and the payer is residing in a Hague Convention country—

- (a) the court, in considering whether or not to vary or revoke the order, shall take into account any representations made and any evidence adduced by or on behalf of the payer;
- (b) a copy of any such representations or evidence shall be served on the payee in the prescribed manner before the hearing;

(3) 1980 c. 43; section 60(1) was substituted by section 4 of the Maintenance Enforcement Act 1991 (c. 17).

(c) the prescribed officer of the court shall give the payer notice in writing of the date fixed for the hearing by sending the notice by post addressed to his last known or usual place of abode.

(6) Where an application is made by the payee to a court in England and Wales or Northern Ireland for the variation or revocation of an order to which this section applies, and the payer is residing in a Hague Convention country, the order shall not be varied or revoked unless the document mentioned in subsection (4) above has been served on the payer in accordance with the law for the service of such a document in the Hague Convention country not less than six weeks previously.

(7) Where an application is made by the payer to a court in England and Wales or Northern Ireland for the variation or revocation of an order to which this section applies, the prescribed officer of the court shall arrange for the service of the document mentioned in subsection (4) above on the payee.

(8) Where an order to which this section applies has been varied or revoked by a court in the United Kingdom the prescribed officer of the court shall send the following documents, that is to say—

- (a) a certified copy of the order of variation or revocation;
- (b) a certificate signed by that officer certifying that the order of variation or revocation is enforceable and that it is no longer subject to the ordinary forms of review;
- (c) a written statement, signed by that officer as to whether or not the respondent or, in Scotland the defender, appeared in the proceedings for the variation or revocation of the order, and, if he did not appear, the original or a certified copy of a document which establishes that notice of the institution of the proceedings has been served on the respondent, or, as the case may be, the defender; and
- (d) a document which establishes that notice of the order of variation or revocation was sent to the respondent; and
- (e) a written statement signed by that officer as to whether or not the payer or the payee received legal aid in the proceedings,

in the case of a court in England and Wales or Northern Ireland, to the Lord Chancellor, or, in the case of a court in Scotland, to the Secretary of State, with a view to their being transmitted by him to the appropriate authority in the Hague Convention country for recognition and enforcement of the order of variation or revocation.

(9) Where a maintenance order to which this section applies has been varied by an order made by a court in the United Kingdom or by a competent court in a Hague Convention country the maintenance order shall, as from the date on which the order of variation took effect, have effect as varied by that order.

(10) Where a maintenance order to which this section applies has been revoked by an order made by a court in the United Kingdom or by a competent court in a Hague Convention country the maintenance order shall, as from the date on which the order of revocation took effect, be deemed to have ceased to have effect except as respects any arrears due under the maintenance order at that date.

(11) Where a maintenance order to which this section applies has been varied or revoked by an order made by a competent court in a Hague Convention country, the prescribed officer of the court shall register the order of variation or revocation in the prescribed manner.

(12) In the application of this section to Northern Ireland, in subsection (8), for the word “respondent” in each place where it occurs, there shall be substituted “defendant”.

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Orders made by courts in Hague Convention countries

Registration in United Kingdom court of maintenance order made in Hague Convention country.

6.—(1) This section applies to a maintenance order made whether before, on or after 5th April 1993 by a competent court in a Hague Convention country.

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

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

(4) Before registering an order under this section an officer of a court shall take such steps as he thinks fit for the purpose of ascertaining whether the payer under the order is residing within the jurisdiction of the court, and if after taking those steps he is satisfied that the payer is not so residing he shall return the certified copy of the order and the accompanying documents to the Lord Chancellor or the Secretary of State, as the case may be, with a statement giving such information as he possesses as to the whereabouts of the payer.

(a) (5) (a) The prescribed officer of the appropriate court may refuse to authorise the registration of the order if the court in the Hague Convention country by or before which the order was made did not have jurisdiction to make the order; and for these purposes a court in a Hague Convention country shall be considered to have jurisdiction if—

(i) either the payer or the payee had his habitual residence in the Hague Convention country at the time when the proceedings were instituted; or

(ii) the payer and the payee were nationals of that country at that time; or

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

(iv) in the case of an order made by reason of a divorce or a legal separation or a declaration that a marriage is void or annulled, the court is recognised by the law of the part of the United Kingdom in which enforcement is sought as having jurisdiction to make the order.

(b) In deciding whether a court in a Hague Convention country had jurisdiction to make an order the prescribed officer shall be bound by any finding of fact on which the court based its jurisdiction.

(6) The prescribed officer of the appropriate court may refuse to authorise the registration of the order—

(a) if such registration is manifestly contrary to public policy;

(b) if the order was obtained by fraud in connection with a matter of procedure;

(c) if proceedings between the same parties and having the same purpose are pending before a court in the same part of the United Kingdom and those proceedings were the first to be instituted; or

(d) if the order is incompatible with an order made in proceedings between the same parties and having the same purpose, either in the United Kingdom or in another country, provided that the latter order itself fulfils the conditions necessary for its registration and enforcement under this Part of this Act.

(7) Without prejudice to subsection (6) above, if the payer did not appear in the proceedings in the Hague Convention country in which the order was made, the prescribed officer of the appropriate court shall refuse to authorise the registration of the order unless notice of the institution of the proceedings, including notice of the substance of the claim, was served on the payer in accordance with the law of that Hague Convention country and if, having regard to the circumstances, the payer had sufficient time to enable him to defend the proceedings.

(8) If the order is registered under subsection (3) above, the prescribed officer of the appropriate court shall serve notice in a prescribed form on the payer and give notice to the payee that the order has been registered.

(9) The payer may, before the end of the period of one calendar month beginning with the date of service of the said notice, appeal to the court in which the order is registered to set aside the registration of the order on one of the grounds set out in paragraphs (5), (6) and (7) above.

(10) If the payer appeals to the court in which the order is registered to set aside the registration of the order, the prescribed officer of the court shall give notice to the payee of the appeal and of the date of the hearing of the appeal.

(11) If the prescribed officer refuses to register the order, he shall give notice to the payee in a prescribed form that registration has been refused.

(12) A payee to whom notice has been given by the prescribed officer of any court under subsection (11) above may, before the end of the period of one calendar month beginning with the date when notice was given, appeal to that court against the refusal to register the order.

(13) If the payee appeals to the court against the refusal to register the order, the prescribed officer of the court shall give notice to the payer of the appeal and of the date of the hearing of the appeal.

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

- (a) in subsection (8), for the words “serve notice in a prescribed form on” there shall be substituted the words “intimate to in the prescribed manner”;
- (b) in subsection (9), for the words “service of the said notice” there shall be substituted the words “the said intimation”;
- (c) in subsections (9), (10), (12) and (13) for any reference to an appeal there shall be substituted a reference to an application and cognate expressions shall be construed accordingly; and
- (d) in subsection (11), for the words “in a prescribed form” there shall be substituted the words “in the prescribed manner”.

(15) In the application of this section to Northern Ireland, in subsection (5), for the word “respondent” there shall be substituted “defendant”.

Enforcement of maintenance order registered in United Kingdom court.

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

(2) Subsection (1) above does not apply to an order which is for the time being registered in the High Court under Part I of the Maintenance Orders Act 1958⁽⁴⁾ or to an order which is for time being registered in the High Court of Justice in Northern Ireland under Part II of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966⁽⁵⁾.

(4) 1958 c. 39.

(5) 1966 c. 35 (N.I.).

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(2A) Where in a maintenance order made in a Hague Convention country there are provisions which are not enforceable under this Part of this Act, this section shall apply only to the remaining provisions of the order.

(2B) The payee under a registered order may request the partial enforcement of that order.

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

(4) An order which by virtue of this section is enforceable by a magistrates' court in England and Wales shall, subject to the modifications of sections 76 and 93 of the Magistrates' Courts Act 1980⁽⁶⁾ specified in subsections (4A) and (4B) below, be enforceable as if it were a magistrates' court maintenance order made by that court.

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

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

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

(5) The powers of the court are—

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

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

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

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

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

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

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

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

(6) 1980 c. 43; section 76 was amended by the Criminal Justice Act 1982 (c. 48), Schedule 16 and by the Maintenance Enforcement Act 1991 (c. 17), section 7. Section 93 was amended by the Family Law Reform Act 1987 (c. 42), Schedule 2 and by the Maintenance Enforcement Act 1991, Schedule 2.

(7) 1971 c. 32.

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

(7) Subject to subsection (8) below, a sum of money payable under a registered order shall be payable in accordance with the order, or such part thereof as the payee may have requested should be enforced, as from the date on which the order took effect.

(8) Where a registered order was made by a court in a Hague Convention country before the date of the entry into force of the Hague Convention between the United Kingdom and that country, no sum of money falling due before that date shall be payable in accordance with the order.

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

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

Variation of maintenance order registered in United Kingdom court.

9.—(1) Subject to the provisions of this section—

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

(1ZA) Where the registering court is a magistrates' court in England and Wales, section 60 of the Magistrates' Courts Act 1980⁽⁸⁾(revocation, variation etc. of orders for periodical payment) shall have effect in relation to the registered order—

- (za) as if in subsection (1) for the words “by order on complaint” there were substituted “on an application being made, by order”;
- (a) as if in subsection (3) for the words “paragraphs (a) to (d) of section 59(3) above” there were substituted “subsection (3A) below” and after that subsection there were inserted—
 - “(3A) The powers of the court are—
 - (a) the power to order that payments under the order be made directly to the clerk of the court or the clerk of any other magistrates' court;
 - (b) the power to order that payments under the order be made to the clerk of the court, or to the clerk of any other magistrates' court, by such method of payment falling within section 59(6) above (standing order, etc.) as may be specified;
 - (c) the power to make an attachment of earnings order under the Attachment of Earnings Act 1971⁽⁹⁾to secure payments under the order.”;
- (b) as if in subsection (4) for paragraph (b) there were substituted—
 - “(b) payments under the order are required to be made to the clerk of the court, or to the clerk of any other magistrates' court, by any method of payment falling within section 59(6) above (standing order, etc.)”,and as if after the words “the court” there were inserted “which made the order”;

⁽⁸⁾ 1980 c. 43; section 60 was substituted by section 4 of the Maintenance Enforcement Act 1991.

⁽⁹⁾ 1971 c. 32.

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- (c) as if in subsection (5) for the words “to the clerk” there were substituted “in accordance with paragraph (a) of subsection (3A) above”;
 - (d) as if in subsection (7), paragraph (c) and the word “and” immediately preceding it were omitted;
 - (e) as if in subsection (8) for the words “paragraphs (a) to (d) of section 59(3) above” there were substituted “subsection (3A) above”;
 - (f) as if for subsections (9) and (10) there were substituted the following subsections—
 - “(9) In deciding, for the purposes of subsections (3) and (8) above, which of the powers under subsection (3A) above it is to exercise, the court shall have regard to any representations made by the debtor.
 - (10) Subsection (4) of section 59 above (power of court to require debtor to open account) shall apply for the purposes of subsection (3A) above as it applies for the purposes of that section but as if for paragraph (a) there were substituted—
 - “(a) the court proposes to exercise its power under paragraph (b) of section 60(3A) below, and”.
- (2) The registering court shall 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.
- (3) Where an application is made to a registering court in England and Wales or Northern Ireland by the payer for the variation of a registered order, and the payee is residing in a Hague Convention country, the prescribed officer of the court shall send to the Lord Chancellor notice of the institution of the proceedings, including notice of the substance of the application, with a view to its being transmitted by him to the appropriate authority in the Hague Convention country for service on the payee.
- (4) Where an application is made by the payer to a registering court in England and Wales or Northern Ireland for the variation of a registered order—
- (a) the court, in considering whether or not to vary the order, shall take into account any representations made and any evidence adduced by or on behalf of the payee;
 - (b) a copy of any such representations and evidence shall be served on the payer by the prescribed officer of the court before the hearing;
 - (c) the prescribed officer of the court shall give the payee notice in writing of the date fixed for the hearing by sending the notice by post addressed to his last known or usual place of abode.
- (5) Where an application is made by the payer to a registering court in England and Wales or Northern Ireland for the variation of a registered order and the payee is residing in a Hague Convention country, the order shall not be varied unless the document mentioned in subsection (3) above has been served on the payee in accordance with the law for the service of such a document in the Hague Convention country not less than six weeks previously.
- (6) Where an application is made by the payee to a registering court in England and Wales or Northern Ireland for the variation of a registered order, the prescribed officer of the court shall serve the document mentioned in subsection (3) above on the payer.
- (7) Where a registered order is varied by a registering court in the United Kingdom the prescribed officer of the court shall send the following documents, that is to say—
- (a) a certified copy of the order of variation;

- (b) a certificate signed by that officer certifying that the order of variation is enforceable and that it is no longer subject to the ordinary forms of review;
- (c) a written statement signed by that officer as to whether or not the respondent or, in Scotland, the defender appeared in the proceedings for the variation of the order, and, if he did not appear, the original or a certified copy of a document which establishes that notice of the institution of the proceedings has been served on the respondent or, as the case may be, the defender; and
- (d) a written statement signed by that officer as to whether or not the payer or the payee received legal aid in the proceedings,

in the case of a court in England and Wales or Northern Ireland, to the Lord Chancellor, or, in the case of a court in Scotland, to the Secretary of State, with a view to their being transmitted by the Lord Chancellor, or, as the case may be, the Secretary of State, to the appropriate authority in the Hague Convention country for recognition and enforcement of the order of variation.

(8) Where a registered order has been varied by the registering court or by a court in a Hague Convention country, the prescribed officer of the registering court shall register the variation order in the prescribed manner.

(9) Where a registered order has been varied by the registering court or by a court in a Hague Convention country, the registered order shall, as from the date on which the variation order took effect, have effect as so varied.

(10) In the application of this section to Northern Ireland, in subsections (2) and (7), for the word “respondent” in each place where it occurs, there shall be substituted “defendant”.

Cancellation of registration and transfer of order.

10.—(1) Where a registered order is revoked by an order made by a court in a Hague Convention country and notice of the revocation is received by the registering court, the prescribed officer of the registering court shall cancel the registration; but any arrears due under the registered order at the date on which the order of revocation took effect, other than, in the case of a registered order made by a court in a Hague Convention country before the date of the entry into force of the Hague Convention between the United Kingdom and that country, arrears due before that date, shall continue to be recoverable as if the registration had not been cancelled.

(2) Where the prescribed officer of the registering court is of opinion that the payer under a registered order has ceased to reside within the jurisdiction of that court, he shall cancel the registration of the order and, subject to subsection (3) below, shall send the certified copy of the order to the Lord Chancellor.

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

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

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

(6) Before registering an order in pursuance of subsection (4) or (5) above an officer of a court shall take such steps as he thinks fit for the purpose of ascertaining whether the payer is so residing,

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and if after taking those steps he is satisfied that the payer is not residing within the jurisdiction of the court he shall send the certified copy of the order to the Lord Chancellor.

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

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

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

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

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

11.—(1) If it appears to the Lord Chancellor or the Secretary of State that the payer under a maintenance order, a certified copy of which has been received by him from a Hague Convention country, is not residing in the United Kingdom or, in the case of an order which subsequently became a registered order, has ceased to reside therein, he shall send to the appropriate authority in that country—

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

Appeals.

Appeals

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

Evidence

Admissibility of evidence given in Hague Convention country.

13.—(1) A statement contained in—

- (a) a document, duly authenticated, which purports to set out or summarise evidence given in proceedings in a court in a Hague Convention country; or

- (b) a document, duly authenticated, which purports to set out or summarise evidence taken in that country for the purpose of proceedings in a court in the United Kingdom under this Part of this Act, whether in response to a request made by such a court or otherwise; or
- (c) a document, duly authenticated, which purports to have been received in evidence in proceedings in a court in that country or to be a copy of a document so received; or
- (d) a document purporting to be signed by a judicial officer, official or other competent person in a Hague Convention country which establishes that certain documents were served on a person,

shall in any proceedings in a court in the United Kingdom relating to a maintenance order to which this Part of this Act applies be admissible as evidence of any fact stated therein to the same extent as oral evidence of that fact is admissible in those proceedings.

(2) A document purporting to set out or summarise evidence given as mentioned in subsection (1)(a) above, or taken as mentioned in subsection (1)(b) above, shall be deemed to be duly authenticated for the purposes of that subsection if the document purports to be certified by the judicial officer or other person before whom the evidence was given, or, as the case may be, by whom it was taken, to be the original document containing or recording, or, as the case may be, summarising, that evidence or a true copy of that document.

(3) A document purporting to have been received in evidence as mentioned in subsection (1)(c) above, or to be a copy of a document so received, shall be deemed to be duly authenticated for the purposes of that subsection if the document purports to be certified by a judge or officer of the court in question to have been, or to be a true copy of a document which has been, so received.

(4) It shall not be necessary in any such proceedings to prove the signature or official position of the person appearing to have given such a certificate.

(5) Nothing in this section shall prejudice the admission in evidence of any document which is admissible in evidence apart from this section.

Obtaining of evidence needed for purpose of certain proceedings.

14.—(1) Where for the purpose of any proceedings in a court in a Hague Convention country relating to a maintenance order to which this Part of this Act applies a request is made by or on behalf of that court for the taking in the United Kingdom of the evidence of a person residing therein relating to matters specified in the request, such court in the United Kingdom as may be prescribed shall have power to take that evidence and, after giving notice of the time and place at which the evidence is to be taken to such persons and in such manner as it thinks fit, shall take the evidence in such manner as may be prescribed.

Evidence taken in compliance with such a request shall be sent by the prescribed officer of the court—

- (a) in England and Wales or Northern Ireland, to the Lord Chancellor, or
- (b) in Scotland, to the Secretary of State,

for transmission to the appropriate authority in the Hague Convention country.

(2) Where any person, not being the payer or the payee under the maintenance order to which the proceedings in question relate, is required by virtue of this section to give evidence before a court in the United Kingdom, the court may order that there shall be paid out of moneys provided by Parliament such sums as appear to the court reasonably sufficient to compensate that person for the expense, trouble or loss of time properly incurred in or incidental to his attendance.

(3) Section 97(1), (3) and (4) of the Magistrates' Courts Act 1980⁽¹⁰⁾(which provide for compelling the attendance of witnesses, etc.) shall apply in relation to a magistrates' court having

⁽¹⁰⁾ 1980 c. 43; section 97 was amended by the Contempt of Court Act 1981 (c. 49), Schedule 2; by S.I.1984/447; and by the Criminal Justice (International Co-operation) Act 1990 (c. 5), Schedule 4.

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power under subsection (1) above to take the evidence of any person as if the proceedings in the court in a Hague Convention country for the purpose of which a request for the taking of the evidence has been made were proceedings in the magistrates' court and had been begun by complaint.

(4) Paragraphs 71 and 73 of Schedule 1 to the Sheriff Courts (Scotland) Act 1907⁽¹¹⁾(which provide for the citation of witnesses, etc.) shall apply in relation to a sheriff having power under subsection (1) above to take the evidence of any person as if the proceedings in the court in a Hague Convention country for the purpose of which a request for the taking of the evidence has been made were proceedings in the sheriff court.

(5) A court in—

- (a) England and Wales or Northern Ireland may for the purpose of any proceedings in that court under this Part of this Act relating to a maintenance order to which this Part of this Act applies send to the Lord Chancellor, or
- (b) Scotland may for the purpose of such proceedings in that court relating to such an action, send to the Secretary of State,

for transmission to the appropriate authority in a Hague Convention country a request for a court in a Hague Convention country to take or provide evidence relating to such matters as may be specified in the request.

(6) In the application of this section to Northern Ireland, in subsection (3), for the reference to section 97(1), (3) and (4) of the Magistrates' Courts Act 1980⁽¹²⁾ there shall be substituted a reference to Articles 118(1), (3) and (4), 119 and 120 of the Magistrates' Courts (Northern Ireland) Order 1981⁽¹³⁾.

Order, etc. made in Hague Convention country need not be proved.

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

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

Supplemental

Payment of sums under orders made in Hague Convention countries: conversion of currency.

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

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

⁽¹¹⁾ 1907 c. 51.

⁽¹²⁾ 1980 c. 43.

⁽¹³⁾ S.I. 1981/1685 (N.I. 26).

on the basis of the rate of exchange prevailing at that date, are equivalent to the sums so required to be paid.

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

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

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

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

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

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

Proceedings in magistrates' courts.

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

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

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

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

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

(6) A magistrates' court in Northern Ireland shall have jurisdiction 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.

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- (7) Where the respondent to an application—
- (a) for the variation or revocation of a maintenance order made by a magistrates' court, and to which section 5 of this Act applies; or
 - (b) for the variation of a registered order registered in a magistrates' court,

does not appear at the time and place appointed for the hearing of the application, but the court is satisfied that the respondent is residing in a Hague Convention country, and that 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.

- (7A) In the application of this section to Northern Ireland, in subsection (7)—
- (a) for the word “respondent”, in each place where it occurs, there shall be substituted “defendant”; and
 - (b) for the words “an application” and “the application”, in each place where they occur, there shall be substituted “a complaint” and “the complaint” respectively.

Magistrates' courts rules.

18.—(1) Without prejudice to the generality of the power to make rules under section 144 of the Magistrates' Courts Act 1980⁽¹⁴⁾(magistrates' courts rules) provision may be made by such rules with respect to any of the following matters, namely—

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

(1A) For the purpose of giving effect to this Part of this Act, rules made under section 144 of the Magistrates' Courts Act 1980 may make, in relation to any proceedings brought under or by virtue of this Part of this Act, any provision not covered by subsection (1) above which—

- (a) falls within subsection (2) of section 93 of the Children Act 1989⁽¹⁵⁾, and
- (b) may be made in relation to relevant proceedings under that section.

(2) Rules with respect to the matters mentioned in subsection (1) above may be made in accordance with Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981⁽¹⁶⁾ in relation to proceedings or matters in magistrates' courts in Northern Ireland under this Part of this Act.

⁽¹⁴⁾ 1980 c. 43. There are no relevant amendments.

⁽¹⁵⁾ 1989 c. 41.

⁽¹⁶⁾ S.I. 1981/1685 (N.I. 26).

Rules for sheriff court.

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

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

Interpretation of Part I.

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

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

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

“certificate of arrears”, in relation to a maintenance order, means a certificate certifying that the sum specified in the certificate is to the best of the information or belief of the officer giving the certificate the amount of the arrears due under the order at the date of the certificate except any arrears that accrued before the date of the entry into force of the Hague Convention between the United Kingdom and the Hague Convention country in which the payer is residing, or, as the case may be, that to the best of his information or belief there are no arrears due thereunder at the date of the certificate;

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

“court” includes any tribunal or person having power to make, confirm, enforce, vary or revoke a maintenance order and “competent court in a Hague Convention country” means a court having jurisdiction on one of the grounds specified in section 6(5)(a) above;

“maintenance order” means an order (however described), including any settlement made by or before a competent court in a Hague Convention country, of any of the following descriptions, and in the case of an order which is not limited to the following descriptions, the part of the order which is so limited, that is to say—

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

(16) S.I. 1981/1685 (N.I. 26).

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- (b) an affiliation order or order consequent upon an affiliation order, being an order which provides for the payment by a person adjudged, found or declared to be a child's father of expenses incidental to the child's birth or, where the child has died, of his funeral expenses; and
- (c) an order within the foregoing provisions of this definition made against a payer on the application of a public body which claims reimbursement of sums of money payable under the order with respect to the payee if the reimbursement can be obtained by the public body under the law to which it is subject,

and in the case of a maintenance order which has been varied (including a maintenance order which has been varied either by a court in the United Kingdom or by a competent court in a Hague Convention country whether or not the original order was made by such a court), means that order as varied:

Provided that the expression "maintenance order" shall not include an order made in a Hague Convention country of a description which that country or the United Kingdom has reserved the right under Article 26 of the Hague Convention not to recognise or enforce;

"order" means an order however described giving effect to a decision rendered by a court and, as respects Scotland, includes any interlocutor, and any decree or provision contained in an interlocutor;

"payee", in relation to a maintenance order, means the person entitled to the payments for which the order provides and includes a public body which has provided benefits for the payee and which is entitled ipso jure under the law to which it is subject to claim enforcement of the said order to the extent of the benefits so provided in place of the said person;

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

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

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

"registering court", in relation to a registered order, means the court in which that order is for the time being registered under this Part of this Act;

"revoke" and "revocation" include discharge.

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