
STATUTORY INSTRUMENTS

1997 No. 291

Act of Sederunt (Child Care and Maintenance Rules) 1997

CHAPTER 5

MAINTENANCE ORDERS

PART I

GENERAL

Interpretation

5.1 In this Chapter, unless the context otherwise requires—

“the 1950 Act” means the Maintenance Orders Act 1950(1);

“the 1958 Act” means the Maintenance Orders Act 1958(2);

“the 1972 Act” means the Maintenance Orders (Reciprocal Enforcement) Act 1972(3);

“the 1982 Act” means the Civil Jurisdiction and Judgments Act 1982(4);

“clerk of court” means the clerk to the magistrates' court in England or Northern Ireland and, in relation to a county court in England or Northern Ireland, means the registrar of that court;

“clerk of the magistrates' court” means the clerk to the magistrates' court in England or Northern Ireland as the case may be;

“Court in a Hague Convention Country” includes any judicial or administrative authority in a Hague Convention Country;

“Hague Convention” means the convention on the Recognition and Enforcement of Decisions relating to maintenance obligations concluded at the Hague on 2nd October 1973;

“Hague Convention Country” means a country or territory specified in Schedule 1 to the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1993(5), being a country or territory (other than the United Kingdom) in which the Hague Convention is in force;

“order” includes decree;

“reciprocating country” has the meaning assigned to it by section 1 of the 1972 Act; and

“the Registrar”, in relation to the High Court in England, means the Senior Registrar of the principal Registry of the Family Division of the High Court in England.

(1) 1950 c. 37.

(2) 1958 c. 39.

(3) 1972 c. 18.

(4) 1982 c. 27.

(5) S.I. 1993/593; Schedule 1 was substituted by S.I. 1994/1902.

Application

5.2.—(1) Part II of this Chapter shall have effect in relation to the registration in other parts of the United Kingdom of orders granted by the sheriff to which the 1950 and 1958 Acts apply and such orders are referred to in this Chapter as “outgoing orders under the 1950 Act”.

(2) Part III of this Chapter shall have effect in relation to the registration outwith the United Kingdom of orders to which the 1972 Act, or the 1972 Act as amended by any order in Council made under Part III of the 1972 Act, applies and such orders are referred to as “outgoing orders under the 1972 Act”.

(3) Part IV of this Chapter shall have effect in relation to the registration in the sheriff court of orders made by courts in other parts of the United Kingdom to which the 1950 Act applies and such orders are referred to in this Chapter as “incoming orders under the 1950 Act”.

(4) Part V of this Chapter shall have effect in relation to the registration in the sheriff court of orders made by courts outwith the United Kingdom to which the 1972 Act, or the 1972 Act as amended by any Order in Council made under Part III of the 1972 Act, applies and such orders are referred to in this Chapter as “incoming orders under the 1972 Act”.

(5) Part VI of this Chapter shall have effect in relation to the registration in the sheriff court of orders made by courts outwith the United Kingdom to which the 1982 Act applies and such orders are referred to in this Chapter as “incoming orders under the 1982 Act”.

Prescribed officer

5.3.—(1) The sheriff clerk shall be—

- (a) the prescribed officer for the purposes of the 1950, 1958 and 1972 Acts, the 1972 Act as amended by any Order in Council, and the 1982 Act; and
- (b) the proper officer for the purposes of Schedules 6 and 7 to the 1982 Act (enforcement of U.K. judgments).

(2) Unless otherwise provided, all communications which the prescribed officer is required to send to—

- (a) an addressee in the United Kingdom shall be sent by first class recorded delivery post; and
- (b) an addressee outwith the United Kingdom shall be sent registered letter or the nearest equivalent which the available postal service permits.

Maintenance Orders Register

5.4.—(1) The sheriff clerk shall maintain a Register called “the Maintenance Orders Register” for the purpose of the 1950, 1958 and 1972 Acts, the 1972 Act as amended by any Order in Council, and the 1982 Act, Part I of which shall relate to outgoing orders and Part II to incoming orders.

(2) The sheriff clerk shall make appropriate entries in the Maintenance Orders Register in respect of any action taken by him or notified to him in accordance with the provisions of those Acts, and shall keep in such manner as he considers appropriate any documents sent to him in connection with any such action.

(3) Every entry registering a maintenance order shall specify the section of the Act and where appropriate any Order in Council under which the maintenance order in question is registered.

(4) When a registered maintenance order is varied, revoked or cancelled, the sheriff clerk shall make an appropriate entry against the entry for the original order.

Inspection

5.5.—(1) The sheriff clerk shall, on an application by—

(a) any person entitled to, or liable to make, payments under an order in respect of which any entry has been made in the Maintenance Orders Register; or

(b) a solicitor acting on behalf of any such person,

permit that person or his solicitor, as the case may be, to inspect any such entry and any document in his possession relating to that entry and to take copies of any such entry or document.

(2) On an application by or on behalf of any other person, the sheriff clerk may, on being satisfied of that person's interest, grant that person or his solicitor permission to inspect or take copies of any such entry or document.

PART II

OUTGOING ORDERS UNDER THE 1950 ACT

Commencement of proceedings

5.6.—(1) Every writ by which proceedings are begun in a sheriff court having jurisdiction under or by virtue of Part I of the 1950 Act against a person residing in another part of the United Kingdom, and all parts of process (other than productions) lodged in any proceedings taken in a sheriff court under or by virtue of the 1950 Act or the 1958 Act, shall be headed "Maintenance Orders Act 1950" or as the case may be "Maintenance Orders Act 1958".

(2) The warrant of citation granted upon any writ which by virtue of those Acts is to be served upon a person residing in another part of the United Kingdom shall proceed upon a period of notice of 21 days, and such warrant of citation may be signed by the sheriff clerk.

(3) In connection with the service under section 15 of the 1950 Act (service of process) of a writ from a sheriff court the expressions "initial writ", "writ" and "summons" in the said section and in the forms contained in the Second Schedule to that Act shall include the warrant of citation relative thereto.

Application for registration

5.7.—(1) An application for registration in a magistrates' court in England or Northern Ireland of an order granted by a sheriff court to which the 1950 Act applies shall be made by lodging with the sheriff clerk—

- (a) a letter of application;
- (b) an affidavit by the applicant;
- (c) a copy of that affidavit; and
- (d) a certified copy of the order.

(2) An affidavit under this rule shall include—

- (a) the name and address of the person liable to make payments under the order;
- (b) details of any arrears due under the order and the date to which they are calculated;
- (c) the reason for the application; and
- (d) a statement that the order is not already registered under the 1950 Act.

Transmission

5.8 On the grant of an application under rule 5.7, the sheriff clerk shall send to the clerk of the magistrates' court—

- (a) the affidavit of the applicant;
- (b) the certified copy of the order; and

- (c) a letter requesting registration of the order.

Application to adduce evidence

5.9.—(1) An application to a sheriff court under section 22(5) of the 1950 Act to adduce evidence in connection with an order granted by that court and registered in a court in England or Northern Ireland shall be made by initial writ.

(2) Any evidence adduced in pursuance of such an application shall be recorded in such manner as the sheriff shall direct and the record of evidence certified by the sheriff shall be the transcript or summary of the evidence adduced, and shall be signed by the deponent, together with any documentary productions referred to therein.

(3) Where the sheriff clerk of a court in which an order was granted receives a transcript or summary of evidence connected with that order adduced, under section 22(5) of the 1950 Act, in the court where the order was registered, he shall lodge such transcript or summary in the process containing that order.

Re-registration in the High Court

5.10.—(1) When an order has been registered in the magistrates' court, an application to the sheriff court for the re-registration of that order in the High Court in England under the 1958 Act shall be made by lodging with the sheriff clerk—

- (a) a letter of application;
 - (b) an affidavit by the applicant;
 - (c) a certified copy of that affidavit; and
 - (d) a certified copy of the order.
- (2) An affidavit under this rule shall include—
- (a) the name and address of the person liable to make payments under the order;
 - (b) details of any arrears due under the order and the date to which they are calculated;
 - (c) the reason for the application;
 - (d) the date and place of the original registration;
 - (e) where the order has been re-registered, the date and place of the last re-registration and whether or not that has been cancelled, or where any of these facts is not known a statement to that effect; and
 - (f) a declaration that no process remains in force for the enforcement of the registered order.

Transmission for re-registration

5.11 If an application under rule 5.10 is granted, the sheriff clerk shall send to the Registrar—

- (a) the affidavit of the applicant; and
- (b) a letter stating that the application has been granted and requesting him to take steps to have the order registered in the High Court.

Discharge and variation

5.12 Where an interlocutor is pronounced in the sheriff court varying or discharging an order registered under the 1950 Act or the 1958 Act, the sheriff clerk shall send to the clerk of the magistrates' court and, as the case may be, to the Registrar—

- (a) a certified copy of the interlocutor; and

- (b) a letter requesting the clerk of the magistrates' court and, as the case may be, the Registrar to take the appropriate action under those Acts, in accordance with the interlocutor, and to notify him of the result.

Cancellation of registration

5.13.—(1) An application under section 24(2) of the 1950 Act (cancellation of registration)(6) in connection with an order granted by a sheriff court and registered in a court in England or Northern Ireland shall be made by lodging with the sheriff clerk an affidavit by the person liable to make payments under the order stating the facts on which the application is founded.

(2) Where it appears to the sheriff clerk that the applicant has ceased to reside in England or Northern Ireland, as the case may be, the sheriff clerk shall send notice to that effect to the clerk of the magistrates' court and the Registrar, as the case may be, of any court in which the order is registered.

PART III

OUTGOING ORDERS UNDER THE 1972 ACT

Application for transmission of order for enforcement in a reciprocating country

5.14.—(1) An application for the transmission of a maintenance order for enforcement in a reciprocating country shall be made by letter addressed to the sheriff clerk.

(2) There shall be lodged with any such application—

- (a) a certified copy of the relevant order;
- (b) a statement signed by the applicant or his solicitor of any arrears outstanding in respect of the order;
- (c) a statement signed by the applicant or his solicitor giving such information as to the whereabouts of the payer as he possesses;
- (d) a statement signed by the applicant or his solicitor giving such information as the applicant possesses for facilitating the identification of the payer;
- (e) where available, a photograph of the payer.

Application for transmission of order for enforcement in the Republic of Ireland

5.15.—(1) An application for the transmission of a maintenance order for enforcement in the Republic of Ireland(7) shall be made by letter addressed to the sheriff clerk.

(2) There shall be lodged with any such application—

- (a) a certified copy of the relevant order;
- (b) a statement signed by the applicant or his solicitor of any arrears outstanding in respect of the order;
- (c) a statement signed by the applicant or his solicitor giving such information as to the whereabouts of the payer as he possesses;
- (d) a statement signed by the applicant or his solicitor giving such information as the applicant possesses for facilitating the identification of the payer;
- (e) where available, a photograph of the payer;
- (f) a statement signed by the applicant or his solicitor which establishes that notice of the order was sent to the payer;

(6) Section 24(2) was amended by the Administration of Justice Act 1977 (c. 38), Schedule 3, paragraph 9.

(7) The 1972 Act is applied to the Republic of Ireland by S.I. 1993/594.

- (g) if the payee received legal aid in the proceedings, a statement to that effect; and
- (h) if the payer did not appear in the proceedings in which the maintenance order was made, the original or a certified true copy of a document which establishes that notice of the institution of the proceedings was served on the payer.

(3) On receipt of such an application and documents, the sheriff clerk shall send to the Secretary of State the documents specified in section 2(4) of the 1972 Act as applied to the Republic of Ireland.

Application for transmission of order to Hague Convention Country

5.16.—(1) An application for the transmission of a maintenance order to a Court in a Hague Convention Country for registration and enforcement shall be made by letter addressed to the sheriff clerk.

- (2) There shall be lodged with any such application—
 - (a) a certified copy of the relevant order;
 - (b) a statement signed by the applicant or his solicitor of any arrears outstanding in respect of that order;
 - (c) a statement signed by the applicant or his solicitor giving such information as to the whereabouts of the payer as he possesses;
 - (d) a statement signed by the applicant or his solicitor giving such information as the applicant possesses for facilitating the identification of the payer;
 - (e) where available, a photograph of the payer;
 - (f) a statement signed by the applicant or his solicitor which establishes that notice of the order was sent to the payer;
 - (g) if the payee received legal aid in the proceedings, a statement to that effect; and
 - (h) if the payer did not appear in the proceedings in which the maintenance order was made, the original or a certified true copy of a document which establishes that notice of the institution of the proceedings was served on the payer.

Service on defender in Hague Convention Country

5.17 For the purposes of section 4(4) of the 1972 Act as applied in respect of a defender in a Hague Convention Country⁽⁸⁾, service on such a defender shall be effected in accordance with the Ordinary Cause Rules.

Provisional order made with a view to transmission to a reciprocating country

5.18 A certificate signed by the sheriff clerk in terms of section 3(5)(c) of the 1972 Act (certificate of grounds), as read with section 4(6) thereof, shall also be signed by the sheriff.

Evidence adduced prior to confirmation of provisional order

5.19.—(1) Where under section 5(9) of the 1972 Act it appears to the sheriff that a provisional order ought not to have been made, the sheriff clerk shall send by first class recorded delivery a notice on Form 66 to the person on whose application the order was made.

(2) Where such a person wishes to make representations, he shall lodge with the sheriff clerk within 21 days of the date of posting of the notice a minute narrating the representations and the further evidence which he intends to adduce.

(8) See S.I. 1993/593.

(3) On the expiry of the period of 21 days, the cause shall be enrolled before the sheriff who shall appoint a diet for the hearing of further evidence or make such other order as may be appropriate.

Provisions in relation to intimation and entering appearance

5.20.—(1) Where the 1972 Act provides that on intimation to a payee of the receipt by the Court of a provisional order the payee is to enter appearance within a prescribed period, intimation shall be given in Form 67 and the period shall be—

- (a) 21 days from the date of posting where the payee is resident in Europe; and
- (b) 42 days from the date of posting where the payee is resident outside Europe.

(2) To enter appearance in terms of section 5(6) of the 1972 Act, the payee shall lodge an application—

- (a) stating that he opposes confirmation of the order; and
- (b) setting forth averments in answer to the case upon which the provisional order was made, supported by the appropriate pleas-in-law.

(3) Where the payee enters appearance in terms of section 5(6) of the 1972 Act, the sheriff shall appoint a diet for the hearing of evidence or make such other order as may be appropriate to enable the court to proceed in accordance with the procedure and practice in ordinary civil proceedings in the sheriff court as if the application for the variation or revocation of the maintenance order had been made to it.

Authentication of documents

5.21 Where the 1972 Act provides that a document is to be authenticated in a prescribed manner, it shall be authenticated by a certificate signed by the sheriff clerk declaring that the document is authentic.

Application under section 4 or 5 of the 1972 Act

5.22 An application for a provisional order under section 4 of the 1972 Act⁽⁹⁾ or an application under section 5 of that Act for variation or revocation of a maintenance order shall be brought as an ordinary cause.

Evidence

5.23.—(1) Where any request to take evidence is made by or on behalf of a court in terms of section 14 of the 1972 Act, or the Act as amended by any Order in Council made under Part III of that Act, or by the Secretary of State in terms of section 38 thereof, such evidence shall be taken before a sheriff of the sheriffdom in which the witness resides and shall be taken down by a shorthand writer, or where the sheriff so directs, by the sheriff, and the extended notes of evidence certified by the sheriff shall be the notes of the evidence taken.

(2) Where a provisional order is made under section 4 or 5 of the 1972 Act and evidence has been taken by a shorthand writer, the applicant or his solicitor shall provide the sheriff clerk with a copy of the extended notes of evidence.

(9) Section 4 was amended by the Civil Jurisdiction and Judgments Act 1982 (c. 27), Schedule 12, Part II, paragraph 3 and the Children (Scotland) Act 1995, Schedule 5.

PART IV
INCOMING ORDERS UNDER THE 1950 ACT

Registration

5.24.—(1) On receiving a certified copy of a maintenance order made by a court in England or Northern Ireland, the sheriff clerk shall—

- (a) retain any certificate or affidavit sent with the certified copy of the order as to the amount of any arrears due under the order;
- (b) endorse on the certified copy order a declaration in Form 68 and retain such certified copy order and declaration; and
- (c) notify the clerk of the court which made the order that it has been registered.

(2) The sheriff clerk may issue an extract of the order with the declaration thereon, and such extract shall have the same force and effect as, and may be enforced in all respects as if it was, an extract decree of the sheriff court in which the certified copy is registered.

Variation of rate of payment

5.25 An application to a sheriff court under section 22(1) of the 1950 Act⁽¹⁰⁾ for variation of the rate of payment under a maintenance order made by a court in England or Northern Ireland and registered in that sheriff court shall be made by initial writ.

Application to adduce evidence

5.26.—(1) An application to a sheriff court under section 22(5) of the 1950 Act to adduce evidence in connection with a maintenance order made by a court in England or Northern Ireland and registered in that sheriff court shall be made by initial writ.

(2) Any evidence adduced in pursuance of such an application shall be recorded in such manner as the sheriff shall direct and the record of evidence certified by the sheriff shall be the transcript or summary of the evidence adduced.

(3) Where the sheriff clerk of a court in which an order is registered receives a transcript or summary of evidence connected with that order adduced under section 22(5) of the 1950 Act in the court where that order was made, he shall lodge such transcript or summary in the process of any proceedings for variation of the order before the sheriff court.

Discharge and variation

5.27.—(1) Where a maintenance order made by a court in England or Northern Ireland and registered under the 1950 Act in a sheriff court is varied by that sheriff court, the sheriff clerk shall give notice of the variation to the clerk of the court by which the order was made by sending him a certified copy of the interlocutor varying the order.

(2) Where a maintenance order made by a court in England or Northern Ireland and registered in a sheriff court is discharged or varied by any court other than that sheriff court, the sheriff clerk shall on receipt of a certified copy of the order discharging or varying the registered order notify the clerk of the appropriate court that the discharge or variation has been entered in the Maintenance Orders Register.

(3) Paragraphs (1)(a) and (b) and (2) of rule 5.24 shall apply to an order varying a registered order as they apply to the registered order.

⁽¹⁰⁾ Section 22(1) was amended by the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), Schedule 2, paragraph 14.

Cancellation of registration

5.28.—(1) An application under section 24(1) of the 1950 Act for the cancellation of the registration of a maintenance order made by a court in England or Northern Ireland and registered in a sheriff court shall be made by lodging with the sheriff clerk—

- (a) an application for that purpose which shall state the date of the registration of the order; and
- (b) a copy of the order the registration of which is sought to be cancelled.

(2) Where under section 24(1) or (2) of the 1950 Act the sheriff clerk cancels the registration of a maintenance order, he shall—

- (a) notify the clerk of the court by which the order was made; and
- (b) notify the person liable to make payments under the order.

PART V

INCOMING ORDERS UNDER THE 1972 ACT

Provisions in relation to intimation and entering appearance

5.29.—(1) Where the 1972 Act provides that on intimation to a payer of the receipt by the court of a provisional order the payer is to enter appearance within a prescribed period, intimation shall be given in Form 67 and the period shall be—

- (a) 21 days from the date of posting where the payer is resident in Europe; and
- (b) 42 days from the date of posting where the payer is resident outside Europe.

(2) To enter appearance in terms of section 7(4) or 9(7) of the 1972 Act, the payer shall lodge an application—

- (a) stating that he opposes confirmation of the order; and
- (b) setting forth averments in answer to the case upon which the provisional order was made, supported by appropriate pleas-in-law.

(3) Where the payer enters appearance in terms of section 7(4) of the 1972 Act, the sheriff shall appoint a diet for the hearing of evidence or make such other order as may be appropriate to enable the court to proceed in accordance with the procedure and practice in ordinary civil proceedings in the sheriff court as if an application for a maintenance order against the payer had been made to it.

(4) Where the payer enters appearance in terms of section 9(7) of the 1972 Act, the sheriff shall appoint a diet for the hearing of evidence or make such other order as may be appropriate to enable the court to proceed in accordance with the procedure and practice in ordinary civil proceedings in the sheriff court as if an application for the variation of the maintenance order had been made to it.

Authentication of documents

5.30 Where the 1972 Act provides that a document is to be authenticated in a prescribed manner, it shall be authenticated by a certificate signed by the sheriff clerk declaring that the document is authentic.

Application under sections 9 and 20 of the 1972 Act

5.31.—(1) An application under section 9 of the 1972 Act (variation and revocation of maintenance orders)(11) for variation or revocation of a maintenance order shall be brought as an ordinary cause.

(11) Section 9 was amended by the Civil Jurisdiction and Judgments Act 1982, Schedule 11, paragraphs 4 and 12.

(2) An application under section 20 of the 1972 Act (restriction on enforcement of arrears) for leave to enforce the payment of any arrears due under a maintenance order registered in Scotland shall be made by lodging a minute in the process.

Information to be provided where payer has ceased to reside in Scotland

5.32.—(1) Where the registration of an order is cancelled in the circumstances set out in section 10(2) of the 1972 Act, the payee or his solicitor shall provide the sheriff clerk so far as is possible with information to enable the sheriff clerk to prepare the certificate and statement referred to in section 10(7) of the 1972 Act⁽¹²⁾.

(2) Where the sheriff clerk is required in terms of section 32(1) of the 1972 Act (transfer of orders) to send to the Secretary of State the related documents specified in section 32(8) of that Act, the payee or his solicitor shall provide the sheriff clerk so far as possible with information to enable the sheriff clerk to prepare the certificate and statement to be included among those documents.

Evidence

5.33 Where a provisional order is made under section 9 of the 1972 Act and evidence has been taken by a shorthand writer, the applicant or his solicitor shall provide the sheriff clerk with a copy of the extended notes of evidence.

Intimation of registration of, or of decision not to register, an order made in the Republic of Ireland

5.34.—(1) Intimation of the registration of an order in terms of section 6 of the 1972 Act as applied to an order made in the Republic of Ireland shall be given by the sheriff clerk –

- (a) to the payer, by sending an intimation in Form 69; and
- (b) to the payee, by sending a notice in Form 70.

(2) Notice of a decision not to register an order on any of the grounds set out in section 6(5) of the 1972 Act as applied to an order made in the Republic of Ireland shall be given by the sheriff clerk to the payee, by sending a notice in Form 71.

Application to set aside registration of, or to set aside decision not to register, an order made in the Republic of Ireland

5.35.—(1) Application to the court under section 6(7) or (11) of the 1972 Act as applied to an order made in the Republic of Ireland⁽¹³⁾ shall be made by summary application setting out the grounds of the application.

(2) An application under section 6(11) of the 1972 Act as applied to an order made in the Republic of Ireland shall be made within one month from the date of service of the notice in terms of rule 5.34(2).

Intimation of registration of, or refusal to register, an order made in a Hague Convention Country

5.36.—(1) Intimation of the registration of a maintenance order in terms of section 6 of the 1972 Act as applied to an order made in a Hague Convention Country shall be given by the sheriff clerk–

- (a) to the payer, by sending an intimation in Form 72; and
- (b) to the payee, by sending a notice in Form 70.

⁽¹²⁾ Section 10(7) was amended by the Civil Jurisdiction and Judgments Act 1982, Schedule 11, paragraph 13.

⁽¹³⁾ Section 6(7) provides a time limit of one month from the date of service of notice of registration.

(2) Notice of a refusal to register a maintenance order on any of the grounds set out in section 6(5), (6) or (7) of the 1972 Act as applied to an order made in a Hague Convention Country shall be given by the sheriff clerk to the payee, by sending a notice in Form 71.

Application to set aside registration of, or to set aside decision not to register, an order made in a Hague Convention Country

5.37 Application to the court under section 6(9) or (12) of the 1972 Act as applied to an order made in a Hague Convention Country⁽¹⁴⁾ shall be made by summary application setting out the grounds of the application.

PART VI

INCOMING ORDERS UNDER THE 1982 ACT

Applications under section 5 of the 1982 Act

5.38.—(1) An application under section 5 of the 1982 Act shall be in writing addressed to the Secretary of State, signed by the applicant, or a solicitor or professional person qualified to act in such matters in the Contracting State of origin on his behalf, and shall specify—

- (a) an address within Scotland for service on the applicant;
- (b) the usual and last known address of the person against whom judgement was granted;
- (c) the place where the applicant seeks to enforce the judgement;
- (d) whether at the date of the application the judgement has been satisfied in whole or in part;
- (e) whether interest is recoverable under the judgement in accordance with the law of the country in which it was granted and, if so, the rate of interest and the date from which interest became due; and
- (f) whether the time for bringing an appeal against the judgement has expired without an appeal having been brought or whether an appeal has been brought against the judgement and is pending or has been finally disposed of.

(2) An application under paragraph (1) shall be accompanied by—

- (a) a copy of the judgement authenticated by the court which made the order;
- (b) documents which establish that, according to the law of the country in which the judgement has been given, the judgement is enforceable and has been served;
- (c) in the case of a judgement given in default, documents which establish that the party in default was served with the documents instituting the proceedings;
- (d) where appropriate, a document showing that the applicant is in receipt of legal aid in the country in which the judgement was given; and
- (e) where the judgement or any of the documents specified in sub-paragraphs (b) to (d) are in a language other than English, a translation into English certified by a person qualified to do so in one of the Contracting States.

(3) Where the applicant does not produce a document required under paragraph (2)(c) or (d), the sheriff clerk may—

- (a) fix a time within which the document is to be produced;
- (b) accept an equivalent document; or
- (c) dispense with production of the document.

⁽¹⁴⁾ Sections 6(9) and 6(12) provide a time limit of one month from service of notice of registration or decision not to register.

Address of applicant's solicitor for service

5.39 Where the sheriff clerk is informed by a solicitor practising in Scotland that he is acting on behalf of the applicant, the business address of the solicitor shall thereafter be treated as the address for service on the applicant.

Notice of determination of application

5.40 Immediately after determination of an application for the recognition or enforcement of an order, the sheriff clerk shall serve, in accordance with the Ordinary Cause Rules so far as not inconsistent with the terms of this Chapter, a notice in Form 73 on the applicant and on the person against whom enforcement is sought.

Appeal by party against whom enforcement is authorised

5.41.—(1) Where enforcement of a maintenance order is authorised to any extent, the party against whom enforcement is authorised may appeal by way of summary application to the sheriff against the decision of the sheriff clerk—

- (a) within one month from the date of service of the notice under rule 5.40; or
- (b) if the person against whom enforcement is sought is domiciled in a Contracting State other than the United Kingdom, within two months from the date of service of such notice.

(2) The determination of the sheriff of such a summary application shall be subject to a final appeal on a point of law to the Inner House of the Court of Session in accordance with the Ordinary Cause Rules.

Appeal by applicant

5.42.—(1) Where the application for enforcement of a maintenance order is refused, the applicant may appeal by way of summary application to the sheriff within one month from the date of service of the notice under rule 5.40.

(2) The determination of the sheriff of such a summary application shall be subject to a final appeal on a point of law to the Inner House of the Court of Session in accordance with the Ordinary Cause Rules.

Enforcement of registered order

5.43 The applicant may obtain an extract of a registered order and proceed to arrest in execution, to intimate the order (for the purposes of section 54(1) of the Debtors (Scotland) Act 1987(15)), to inhibit and to charge and poind thereon, but may not proceed to an action of furthcoming in respect of an arrestment, serve a current maintenance arrestment schedule, make application for a conjoined arrestment order, proceed to adjudication in respect of inhibition or sale in respect of a poinding until the time for appeal against the determination of the sheriff under rules 5.41 or 5.42 has elapsed and any appeal has been disposed of.