

SCHEDULE 1

Article 4(1)

MODIFICATIONS TO PART I OF THE ACT AS APPLIED TO THE USA

- 1.—(1) Amend section 2 in accordance with this paragraph.
 - (2) In the heading to that section, for “the United Kingdom” substitute “Scotland”.
 - (3) For subsection (1) substitute—

“(1) Subject to subsection (2) below, where the payer under a maintenance order made, whether before, on or after 1st October 2007, by a court in Scotland is residing or has assets in the United States of America, the payee under the Order may apply for the order to be sent to the United States of America for enforcement.”.
 - (4) In subsection (2), omit “a provisional order or to”.
 - (5) For subsection (4) substitute—

“(4) If, on an application duly made under this section to the prescribed officer of a court in Scotland, that officer is satisfied that the payer under the maintenance order to which the application relates is residing or has assets in the United States of America—

 - (a) three certified copies of the maintenance order;
 - (b) a certificate signed by that officer certifying that the order is enforceable in Scotland;
 - (c) a certificate of arrears so signed or signed by the applicant or the applicant’s solicitor;
 - (d) a sworn statement signed by the payee giving—
 - (i) the address of the payee;
 - (ii) such information as is known to the payee as to the whereabouts of the payer; and
 - (iii) a description, so far as is known to the payee, of the nature and location of any assets of the payer available for execution;
 - (e) a statement giving such information as the officer possesses for facilitating the identification of the payer; and
 - (f) where available, a photograph of the payer,

must be sent by that officer to the Scottish Ministers, with a view to those being transmitted by them to the responsible authority in the United States of America if they are satisfied that the statement relating to the whereabouts of the payer and the nature and location of the assets gives sufficient information to justify that being done.”.
 - (6) In subsection (5), after “and” insert “, subject to section 5 below,”.
2. Omit sections 3 and 4.
 3. For section 5 substitute—

“5 Variation and revocation of maintenance order made in Scotland

- (1) This section applies to a maintenance order certified copies of which have been sent in pursuance of section 2 to the United States of America for enforcement.
- (2) The jurisdiction of a court in Scotland to revoke, revive or vary a maintenance order shall be exercisable notwithstanding that the proceedings for the revocation, revival or variation, as the case may be, of the order are brought by or against a person residing in the United States of America.

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(4) Where an application is made by the payee to a court in Scotland for the variation or revocation of an order to which this section applies, and the payer is residing in the United States of America, the prescribed officer of the court must—

- (a) send to the Scottish Ministers notice of the institution of the proceedings, including notice of the substance of the application, with a view to its being transmitted by them to the responsible authority in the United States of America for service on the payer; and
- (b) give the payer notice in writing of the date fixed for the hearing by sending the notice by post addressed to the payer’s last known or usual place of abode.

(5) Where such an application is made—

- (a) the order shall not be varied or revoked unless the document mentioned in subsection (4)(a) above has been served on the payer in accordance with the law for the service of such a document in the United States of America;
- (b) the court, in considering whether or not to vary or revoke the order, shall take into account any representations made and any evidence adduced by or on behalf of the payer; and
- (c) a copy of any such representations or evidence shall be served on the payee in the prescribed manner before the hearing.

(6) Where an application is made by the payer to a court in Scotland for the variation or revocation of an order to which this section applies, the prescribed officer of the court shall arrange for the service of notice of institution of the proceedings, including notice of the substance of the application, on the payee.

(7) Where an order to which this section applies is varied or revoked by a court in Scotland the prescribed officer of the court shall send—

- (a) three certified copies of the order of variation or revocation; and
- (b) a written statement, signed by that officer, as to whether both the payer and the payee under the order appeared in the proceedings and, if only the applicant appeared, the original or a certified copy of a document which establishes that notice of the institution of the proceedings had been served on the other party,

to the Scottish Ministers, with a view to those documents being transmitted by them to the responsible authority in the United States of America for registration and enforcement of the order of variation or revocation.

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

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

(10) Where an order has been varied or revoked in accordance with subsection (8) or (9) above, unless specifically provided for in the order, any arrears shall continue to be recoverable as if the order for variation or revocation had not been made.”.

4. For section 6 substitute—

“6 Registration in Scottish court of maintenance order made in the United States of America

(1) This section applies to a maintenance order made, whether before, on or after 1st October 2007, by a court in the United States of America.

(2) Where a certified copy of an order to which this section applies is received by the Scottish Ministers from the responsible authority in the United States of America, and it appears to them that the payer under the order is residing or has assets in the United Kingdom, they shall send the copy of the order to the prescribed officer of the appropriate court.

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

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

5. Omit section 7.

6.—(1) Amend section 8 in accordance with this paragraph.

(2) In subsection (1)—

- (a) omit “Subject to subsection (2) below,”; and
- (b) for “the United Kingdom” substitute “Scotland”.

(3) For subsection (7) substitute—

“(7) Sums of money payable under a registered order shall be payable in accordance with the order as from the date on which the order was made.”.

(4) Omit subsections (8) and (10).

7. For section 9 substitute—

“9 Variation and revocation of maintenance order registered in United Kingdom court

(1) Where a registered order has been varied by a court in the United States of America, the registered order shall, as from the date on which the order of variation took effect or 1st October 2007, whichever is the later, have effect as varied by that order.

(2) Where a registered order has been revoked by a court in the United States of America, the registered order shall, as from the date on which the order of revocation took effect or 1st October 2007, whichever is the later, be deemed to have ceased to have effect.

(3) Where an order has been varied or revoked in accordance with subsections (1) and (2) above, unless provided for in the order, any arrears due shall continue to be recoverable as if the order for variation or revocation had not been made.

(4) The prescribed officer of the registering court shall register in the prescribed manner any order varying a registered order.”.

8.—(1) Amend section 10 in accordance with this paragraph.

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(2) For subsection (1) substitute—

“(1) Where a registered order is revoked by an order made by a court in the United States of America and notice of the revocation is received by the registering court, the prescribed officer of the registering court shall cancel the registration; but any arrears due under the registered order at the date on which the order of revocation took effect shall continue to be recoverable as if the registration had not been cancelled”.

(3) In subsection (2)—

(a) for “within the jurisdiction of the court” substitute “in Scotland”; and

(b) omit “, subject to subsection (3) below,”.

(4) In subsections (2), (5), (6) and (7), for “Secretary of State” in each place where it occurs substitute “the Scottish Ministers”.

(5) In subsections (2), (6) and (7), for “he”, each time it occurs, substitute “the officer”.

(6) Omit subsections (3), (4) and (8).

(7) In subsection (5), for “him” substitute “them”; and for “he” substitute “they”.

(8) In subsection (6), omit “(4) or”.

(9) In subsection (7)—

(a) in paragraph (a), at the end add “or by the applicant or the applicant’s solicitor”; and

(b) in paragraph (b), for “such information as he possesses” substitute “any information possessed”; and for “his assets” substitute “the assets”; and

(c) in paragraph (c), for “in his possession” substitute “possessed”.

9.—(1) For section 11 substitute—

“11 Steps to be taken by the Scottish Ministers where payer under certain orders is not residing in the United Kingdom

(1) If at any time it appears to the Scottish Ministers that the payer under a maintenance order, a certified copy of which has been received by them from the United States of America, is not residing and has no assets in the United Kingdom, they shall send to the responsible authority in the United States of America or, if having regard to all the circumstances they think it proper to do so, to the appropriate authority in another reciprocating 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 or by the applicant or the applicant’s solicitor;

(c) a statement giving such information as the Scottish Ministers possess as to the whereabouts of the payer and the nature and location of the payer’s assets; and

(d) any other relevant documents in their possession relating to the case.

(2) Where the documents mentioned in subsection (1) are sent to the responsible authority in a reciprocating country other than that in which the order in question was made, the Scottish Ministers shall inform the responsible authority in the reciprocating country in which that order was made of what they have done.”.

10. Omit section 12.

11.—(1) Amend section 13 in accordance with this paragraph.

(2) In subsection (1)—

- (a) in paragraph (a), for “a reciprocating country” substitute “the United States of America”;
 - (b) in paragraphs (b) and (c), for “such a country” substitute “the United States of America”;
and
 - (c) in the full out, for “the United Kingdom” substitute “Scotland”.
- (3) In subsection (3), for “officer of the court in question” substitute “other person before whom the evidence was given”.

12.—(1) Amend section 14 in accordance with this paragraph.

(2) In subsections (1), (2) and (5), for “the United Kingdom” in each place where it occurs substitute “Scotland”.

(3) In subsection (1)—

- (a) for “a reciprocating country” substitute “the United States of America”; and
- (b) for the words from “in the prescribed manner” to the end substitute “by the prescribed officer of the court to the Scottish Ministers for transmission to the responsible authority in the United States of America.”.

(4) In subsection (2)—

- (a) omit paragraphs (a) and (b); and
- (b) for “his” substitute “that”.

(5) Omit subsection (3).

(6) In subsection (4), for “a reciprocating country” substitute “the United States of America”.

(7) For subsection (5) substitute—

“(5) A court in Scotland 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 Scottish Ministers for transmission to the responsible authority in the United States of America a request for a court in the United States of America to take or provide evidence relating to such matters as may be specified in the request.”.

13.—(1) Amend section 15 in accordance with this paragraph.

(2) In paragraph (a), omit “in his capacity”.

(3) In paragraphs (a) and (c), for “a reciprocating country” substitute “the United States of America”.

(4) For “he signed it”, substitute “it was signed”.

(5) Omit “, magistrate” in each place where it occurs.

14.—(1) Amend section 16 in accordance with this paragraph.

(2) Omit subsections (1) and (6).

(3) In subsections (3) and (5)(a), for “a reciprocating country” substitute “the United States of America”.

(4) In subsection (4), for “evidence” substitute “sufficient evidence”.

(5) In subsection (5)—

- (a) in paragraph (a), omit “or (if earlier) the date on which it is confirmed by a court in the United Kingdom”; and
- (b) in paragraph (b), for “a court in the United Kingdom or (if earlier) the date on which the last order is confirmed by such a court” substitute “the registering court”.

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15. Omit sections 17 and 18.

16. In section 19–

- (a) in paragraph (a), for “cases and manner in which courts in” substitute “decrees granted, or other things done”;
- (b) in paragraphs (a), (b), (c) and (e), for “a reciprocating country” substitute “the United States of America”; and
- (c) omit paragraph (d).

17. Omit section 20.

18.—(1) Amend section 21 in accordance with this paragraph.

(2) In subsection (1)–

- (a) in the definition of “certificate of arrears”–
 - (i) after “officer” insert “or, in Scotland, the applicant or the applicant’s solicitor”; and
 - (ii) for “his” substitute “that person’s”;
- (b) in the definition of “maintenance order”–
 - (i) omit “and” where it first occurs; and
 - (ii) at the end of paragraph (b) insert
“; 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 reimbursement can be obtained by the public body under the law to which it is subject”;
- (c) omit the definition of “provisional order”;
- (d) at the end of the definition of “registered order”, add “and “registered” and “registration” shall be construed accordingly”;
- (e) in the definition of “the responsible authority”, for “the Secretary of State” substitute “the Scottish Ministers”; and
- (f) at the end, add–
““the United States of America” means the fifty States, the District of Columbia, Guam, Puerto Rico, the United States Virgin Islands, and any other jurisdiction of the United States participating in Title IV-D of the Social Security Act (Title 42, United States Code, Chapter 7, subchapter IV, Part D).”.

(3) Omit subsection (2).

(4) At the end, add–

“(4) Except in section 1, any reference in this Part of this Act to this Part shall be construed as including a reference to this Part as applied and modified by, or by any Order in Council under, Part III of this Act in respect of the United States of America.”.

19. Omit sections 22, 23 and 24.