

2007 No. 355

MAINTENANCE OF DEPENDANTS

**The Recovery of Maintenance (United States of America)
(Scotland) Order 2007**

Made - - - - - *25th July 2007*

Laid before the Scottish Parliament *1st August 2007*

Coming into force - - - *1st October 2007*

At the Court at Buckingham Palace, the 25th day of July 2007

Present,

The Queen's Most Excellent Majesty in Council

This Order in Council is made in exercise of the powers conferred by sections 40 and 45(1) of the Maintenance Orders (Reciprocal Enforcement) Act 1972(a).

Her Majesty is satisfied that arrangements have been made in the United States of America to ensure that applications by persons in the United Kingdom for the recovery of maintenance from persons in the United States of America can be entertained by courts in the United States of America.

Her Majesty is also satisfied that in the interest of reciprocity it is desirable to ensure that applications by persons in the United States of America for the recovery of maintenance from persons in the United Kingdom can be entertained by courts in the United Kingdom.

Accordingly, Her Majesty is pleased, by and with the advice of Her Privy Council, to order as follows.

Citation, commencement and extent

1.—(1) This Order may be cited as the Recovery of Maintenance (United States of America) (Scotland) Order 2007 and shall come into force on 1st October 2007.

(2) It extends to Scotland only.

(a) 1972 c.18 ("the 1972 Act"); section 40 was amended by the Civil Jurisdiction and Judgments Act 1982 (c.27), Schedules 11 and 14. Section 118(4) of the Scotland Act 1998 (c.46) requires Orders in Council within devolved competence to be laid before the Scottish Parliament.

Interpretation

2. In this Order–

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

“the applicant” means the applicant under section 26 of the Act;

“child” has the meaning it bears in the Child Support Act 1991(b);

“maintenance” includes aliment and any sums which are payable, following divorce, by one former spouse for the support of the other; and

“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).

Scope – devolved competence

3. This Order applies in respect of a claim for the recovery of maintenance unless the Secretary of State would have had jurisdiction to make a maintenance calculation (within the meaning of the Child Support Act 1991(c)) as regards that maintenance with respect to a child–

(a) who is the applicant claiming the maintenance; or

(b) where the applicant claiming the maintenance is another person in relation to whom the Secretary of State has arranged for the collection of payments for that child’s benefit.

Application of Part II of the Act to the United States of America

4.—(1) The provisions of Part II of the Act (other than section 25) shall apply to the United States of America as they apply in relation to a convention country(d), subject to the modification set out in paragraph (2).

(2) After section 26(3) of the Act, insert–

“(3A) An application under subsection (1) or (2) above, for the purpose of recovering maintenance from a person in the United States of America within the meaning of the Recovery of Maintenance (United States of America) (Scotland) Order 2007(e), and a certificate signed by the sheriff to the effect that the application sets forth facts from which it may be determined that the respondent owes a duty to maintain the applicant and any other person named in the application and that a court in the United States of America may obtain jurisdiction of the respondent or the respondent’s property, shall be registered in the court in the prescribed manner by the appropriate officer in the Maintenance Orders (Reciprocal Enforcement) Act 1972 Register(f).”.

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- (a) The 1972 Act is relevantly amended by S.I. 1973/2163; the Magistrates’ Courts Act 1980 (c.43), Schedule 7; S.I. 1980/564 and 1981/1675 (NI26); the Matrimonial and Family Proceedings Act 1984 (c.42), sections 31, 45, 47, 48 and Schedule 1; the Family Law (Scotland) Act 1985 (c.37), section 29 and Schedules 1 and 2; the Legal Aid (Scotland) Act 1986 (c.47), Schedules 3 and 5; the Family Law Reform Act 1987 (c.42), Schedules 2 and 4; S.I. 1989/677 (NI4); the Courts and Legal Services Act 1990 (c.41), Schedules 16 and 20; S.I. 1992/709; the Maintenance Orders (Reciprocal Enforcement) Act 1992 (c.56), Schedule 1; S.I. 1995/755 and 756; the Access to Justice Act 1999 (c.22), Schedule 13; and S.I. 2004/2035.
- (b) 1991 c.48. Section 55 defines a “child” for the purposes of that Act.
- (c) See section 44. The Recovery of Maintenance (United States of America) Order 2007 (S.I. 2007/2006), which applies throughout the United Kingdom, includes provision for Scotland equivalent to this Order for maintenance claims outwith the scope of this Order.
- (d) Convention countries are declared under section 25 of the 1972 Act.
- (e) S.S.I. 2007/355.
- (f) Established under paragraph 13 of the Act of Sederunt (Maintenance Orders (Reciprocal Enforcement) Act 1972 Rules) 1974 (S.I. 1974/939).

Transitional arrangements

5.—(1) This Order applies to—

- (a) an application made on or after 1st October 2007 to the Scottish Ministers under section 26(1) of the Act for a claim for the recovery of maintenance from a person in the United States of America to be transmitted to the United States of America;
- (b) an application made on or after 1st October 2007 to the Scottish Ministers under section 26(2) of the Act for the variation of provision made in the United States of America for the payment by another person of maintenance to the applicant, and for the application to be transmitted to the United States of America;
- (c) an application received by the Scottish Ministers on or after 1st October 2007 from the appropriate authority in the United States of America under section 31(1) of the Act for the recovery of maintenance from a person who is for the time being residing in Scotland;
or
- (d) an application made under Part II of the Act in respect of an application falling within paragraph (a), (b) or (c).

(2) Subject to paragraph (1), the Recovery of Maintenance (United States of America) Order 1993^(a) shall continue in full force and effect.

Judith Simpson
Clerk of the Privy Council

^(a) S.I. 1993/591.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for reciprocal enforcement between Scotland and the United States of America (as defined in article 2) of claims for the recovery of maintenance falling outwith the jurisdiction of the Secretary of State in respect of child support (specified in article 3).

It applies, by article 4, the provisions of Part II of the Maintenance Orders (Reciprocal Enforcement) Act 1972 in relation to the United States of America, with the modification set out in article 4(2).

The Order comes into force on 1st October 2007.

By virtue of article 5, the arrangements under the Recovery of Maintenance (United States of America) Order 1993 between the United Kingdom and specified States of the United States of America as individual reciprocating territories continue in full force and effect for Part II matters commenced before 1st October 2007.

The Recovery of Maintenance (United States of America) Order 2007 S.I. 2007/2006 provides for reciprocal enforcement between the United States of America and Scotland (in relation to claims for the recovery of maintenance other than those to which this Order applies as specified in article 3) and for such enforcement in relation to the rest of the United Kingdom.

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