



Domestic Proceedings and Magistrates' Courts Act 1978

1978 CHAPTER 22

PART III

AMENDMENTS OF OTHER ENACTMENTS RELATING TO DOMESTIC PROCEEDINGS

Amendments of Maintenance Orders (Reciprocal Enforcement) Act 1972

60 Further amendments of Maintenance Orders (Reciprocal Enforcement) Act 1972 as respects Scotland.^{X1}

(1) In section 31 of the^{M1} Maintenance Orders (Reciprocal Enforcement) Act 1972 (which relates to applications for the recovery of maintenance in Scotland)—

[^{F1}(a) after subsection (1) there shall be inserted the following subsection—

“(1A) In any proceedings arising out of such an application as aforesaid the sheriff may subject to subsection (4) below make, with respect to an application under subsection (1) above, such order as he thinks fit having regard to the respective means of the applicant and the person from whom recovery of maintenance is sought and to all the circumstances of the case.” ;]

(b) in subsection (2)—

- (i) after the word “sheriff” where it first occurs there shall be inserted the words “, or (on appeal or remit) the Court of Session, ” ; and
- (ii) for the words “the sheriff clerk or sheriff clerk depute shall register the order in the prescribed manner in the court” there shall be substituted the words “the order shall be registered forthwith in the prescribed manner in the appropriate sheriff court by the sheriff clerk or sheriff clerk depute of that sheriff court ; and where an order of the Court of Session varies or revokes a registered order of the sheriff, the said sheriff clerk or sheriff clerk depute shall amend the register accordingly” ;

Changes to legislation: *Domestic Proceedings and Magistrates' Courts Act 1978, Section 60 is up to date with all changes known to be in force on or before 22 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (c) after subsection (2) there shall be inserted the following subsection—
- “(2A) In subsection (2) above “the appropriate sheriff court ” means the sheriff court making the order or (where the order is an order of the Court of Session) from which the remit or appeal has come.” ; and
- (d) after subsection (3) there shall be inserted the following subsections—
- “(4) Where an application under subsection (1) above is for the recovery of maintenance from a person who is a former spouse of the applicant an order containing a provision requiring the payment of such maintenance for the benefit of the applicant shall not be made in respect of that application unless—
- (i) the marriage between the applicant and the said former spouse has been dissolved by a divorce which has been granted in a convention country and which is recognised as valid by the law of Scotland ;
- (ii) an order for the payment of maintenance for the benefit of the applicant has, in or by reason of the divorce proceedings in the convention country. been made by the court which granted the divorce or by any other court in that country ; and
- (iii) the court making the order under this section is satisfied that the former spouse of the applicant has failed to comply with the order mentioned in paragraph (ii) above.
- (5) Without prejudice to any existing power of variation or revocation but subject to section 34(1) of this Act, subsections (4) and (5) of section 5 of the Divorce (Scotland) Act 1976 shall, where an order with respect to an application under subsection (1) above requires the payment of maintenance by a person to a former spouse of that person, apply to that order as they apply to an order under section 5 of the said Act of 1976.
- (6) Section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966 (which relates to the variation and recall by the sheriff of certain orders made by the Court of Session) shall not apply to an order of the Court of Session registered under subsection (2) above.”.
- (2) In section 34 of the said Act of 1972 (which provides for the variation and revocation of orders), in subsection (5) after the word “Scotland ” there shall be inserted the words—
- “—
- (a) the words “and no court other than the registering court shall have power to vary or revoke a registered order ” in subsection (1) above are subject to any power of the Court of Session on appeal ; and
- (b)”.
- (3) In section 36 of the said Act of 1972 (which provides for the admissibility of written evidence), in subsection (1) after the words “magistrates’ court or ” there shall be inserted the words “in, or remitted from, a ”.
- (4) In section 39 of the said Act of 1972 (which relates to the interpretation of Part II of that Act), in the definition of “maintenance ” for the words “means aliment ” there shall be substituted the words “includes aliment and any sums which are payable, following divorce, as a periodical allowance ”.

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Editorial Information

X1 The text of ss. 54-74 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991

Textual Amendments

F1 S. 60(1)(a) repealed (S.) by [Family Law \(Scotland\) Act 1985 \(c. 37, SIF 49:3\)](#), ss. 28(2), 29(4), [Sch. 2](#)

Marginal Citations

M1 1972 c. 18.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 1(c)(d) repealed (prosp.) by [1996 c. 27 s. 18\(1\)66\(3\)Sch. 10](#)