

SCHEDULES

SCHEDULE 1

AMENDMENT OF THE 1920 AND 1972 ACTS

PART II

AMENDMENT OF THE MAINTENANCE ORDERS (RECIPROCAL ENFORCEMENT) ACT 1972 (C. 18)

- 6 (1) Section 3 (power of magistrates' court to make provisional maintenance order against person residing in reciprocating country) shall be amended as follows.
- (2) For subsection (1) there shall be substituted—
- “(1) Where an application is made to a magistrates' court for a maintenance order against a person residing in a reciprocating country and the court would have jurisdiction to determine the application under the Domestic Proceedings and Magistrates' Courts Act 1978 or the Children Act 1989 if 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 subsection (2) below) have jurisdiction to determine the application.”
- (3) For subsection (4) there shall be substituted—
- “(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.”
- (4) For subsection (7) there shall be substituted—
- “(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 against a person residing in a reciprocating 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

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- (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 (subject to subsection (2) below) 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.””
- 7 In section 5 (variation and revocation of maintenance order made in United Kingdom), after subsection (3) there shall be inserted—
- “(3A) Where subsection (1) of section 60 of the Magistrates' Courts Act 1980 (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”.”
- 8 (1) Section 7 (confirmation by United Kingdom court of provisional maintenance order made in reciprocating country) shall be amended as follows.
- (2) In subsection (2)(i), for the words “any such defence as he might have raised” there shall be substituted “any grounds on which he might have opposed the making of the order”.
- (3) In subsection (3), for the words from “raised a defence” to the end there shall be substituted “opposed the making of the order on any of those grounds.”.
- (4) In subsection (4), for the words “the court” there shall be substituted “a magistrates' court in Northern Ireland”.
- (5) In subsection (6), for the words “a summons to appear in” there shall be substituted “notice of”.
- (6) After subsection (7) there shall be added—
- “(8) In the application of this section to Northern Ireland—
- (a) in subsection (2)(i), for the words from “any grounds” to “making of the order” there shall be substituted “any such defence as he might have raised”,
- (b) in subsection (3), for the words from “opposed the making” to the end there shall be substituted “raised a defence on any of those grounds in the proceedings in which the order was made.”, and
- (c) in subsection (6), for the words “notice of” there shall be substituted “a summons to appear in”.”
- 9 In section 9 (variation and revocation of maintenance order registered in United Kingdom court), in subsection (1ZA) before paragraph (a) there shall be inserted—
- “(za) as if in subsection (1) for the words “by order on complaint,” there were substituted “on an application being made, by order”.”.

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- 10 (1) Section 17 (proceedings in magistrates' courts) shall be amended as follows.
- (2) In subsection (5), after the words “magistrates' court” there shall be inserted “in Northern Ireland”.
- (3) After subsection (5), there shall be inserted—
- “(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 reciprocating 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.”
- (4) In subsection (7)—
- (a) for the word “defendant”, in each place where it occurs, there shall be substituted “respondent”, and
- (b) for the words “a complaint” and “the complaint”, in each place where they occur, there shall be substituted “an application” and “the application” respectively.
- (5) After subsection (7), there shall be added—
- “(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.”
- 11 In section 18 (magistrates' courts rules), after subsection (1) there shall be inserted—
- “(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, and
- (b) may be made in relation to relevant proceedings under that section.”
- 12 In section 21 (interpretation of Part I), in subsection (1) at the end there shall be added—
- ““revoke” and “revocation” include discharge.”
- 13 For sections 27, 28 and 28A there shall be substituted—
- “27A Applications for recovery of maintenance in England and Wales**
- (1) This section applies to any application which—
- (a) is received by the Lord Chancellor from the appropriate authority in a convention country, and

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- (b) is an application by a person in that country for the recovery of maintenance from another person who is for the time being residing in England and Wales.
- (2) Subject to sections 27B to 28B of this Act, an application to which this section applies shall be treated for the purposes of any enactment as if it were an application for a maintenance order under the relevant Act, made at the time when the application was received by the Lord Chancellor.
- (3) In the case of an application for maintenance for a child (or children) alone, the relevant Act is the Children Act 1989.
- (4) In any other case, the relevant Act is the Domestic Proceedings and Magistrates' Courts Act 1978.
- (5) In subsection (3) above, "child" means the same as in Schedule 1 to the Children Act 1989.

27B Sending application to the appropriate magistrates' court

- (1) On receipt of an application to which section 27A of this Act applies, the Lord Chancellor shall send it, together with any accompanying documents, to the clerk of a magistrates' court acting for the petty sessions area in which the respondent is residing.
- (2) Subject to subsection (4) below, if notice of the hearing of the application by a magistrates' court having jurisdiction to hear it cannot be duly served on the respondent, the clerk of the court shall return the application and the accompanying documents to the Lord Chancellor with a statement giving such information as he possesses as to the whereabouts of the respondent.
- (3) If the application is returned to the Lord Chancellor under subsection (2) above, then, unless he is satisfied that the respondent is not residing in the United Kingdom, he shall deal with it in accordance with subsection (1) above or section 28C of this Act or send it to the Secretary of State to be dealt with in accordance with section 31 of this Act (as the circumstances of the case require).
- (4) If the clerk of a court to whom the application is sent under this section is satisfied that the respondent is residing within the petty sessions area for which another magistrates' court acts, he shall send the application and accompanying documents to the clerk of that other court and shall inform the Lord Chancellor that he has done so.
- (5) If the application is sent to the clerk of a court under subsection (4) above, he shall proceed as if it had been sent to him under subsection (1) above.

27C Applications to which section 27A applies: general

- (1) This section applies where a magistrates' court makes an order on an application to which section 27A of this Act applies.
- (2) Section 59 of the Magistrates' Courts Act 1980 (orders for periodical payment: means of payment) shall not apply.

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- (3) The court shall, at the same time that it makes the order, exercise one of its powers under subsection (4) below.
- (4) Those powers 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 in England and Wales;
 - (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 in England and Wales, by such method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (standing order, etc.) as may be specified;
 - (c) the power to make an attachment of earnings order under the Attachment of Earnings Act 1971 to secure payments under the order.
- (5) In deciding which of the powers under subsection (4) above it is to exercise, the court shall have regard to any representations made by the person liable to make payments under the order.
- (6) Subsection (4) of section 59 of the Magistrates' Courts Act 1980 (power of court to require debtor to open account) shall apply for the purposes of subsection (4) 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 27C(4) of the Maintenance Orders (Reciprocal Enforcement) Act 1972, and”.
- (7) The clerk of the court shall register the order in the prescribed manner in the court.

28 Applications by spouses under the Domestic Proceedings and Magistrates' Courts Act 1978

- (1) The magistrates' court hearing an application which by virtue of section 27A of this Act is to be treated as if it were an application for a maintenance order under the Domestic Proceedings and Magistrates' Courts Act 1978 may make any order on the application which it has power to make under section 2 or 19(1) of that Act.
- (2) Part I of that Act shall apply in relation to such an application, and to any order made on such an application, with the following modifications—
 - (a) sections 6 to 8, 16 to 18, 20ZA, 25 to 27 and 28(2) shall be omitted,
 - (b) in section 30(1), for the words “either the applicant or the respondent ordinarily resides” there shall be substituted “the respondent resides”, and
 - (c) section 32(2) shall be omitted.
- (3) Subsections (1) and (2) above do not apply where section 28A of this Act applies.

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28A Applications by former spouses under the Domestic Proceedings and Magistrates' Courts Act 1978

- (1) This section applies where in the case of any application which by virtue of section 27A of this Act is to be treated as if it were an application for a maintenance order under the Domestic Proceedings and Magistrates' Courts Act 1978 (“the 1978 Act”)—
 - (a) the applicant and respondent were formerly married,
 - (b) their marriage was dissolved or annulled in a country or territory outside the United Kingdom by a divorce or annulment which is recognised as valid by the law of England and Wales,
 - (c) an order for the payment of maintenance for the benefit of the applicant or a child of the family has, by reason of the divorce or annulment, been made by a court in a convention country, and
 - (d) where the order for the payment of maintenance was made by a court of a different country from that in which the divorce or annulment was obtained, either the applicant or the respondent was resident in the convention country whose court made that order at the time that order was applied for.
- (2) Any magistrates' court that would have jurisdiction to hear the application under section 30 of the 1978 Act (as modified in accordance with subsection (6) below) if the applicant and the respondent were still married shall have jurisdiction to hear it notwithstanding the dissolution or annulment of the marriage.
- (3) If the magistrates' court hearing the application is satisfied that the respondent has failed to comply with the provisions of any order such as is mentioned in subsection (1)(c) above, it may (subject to subsections (4) and (5) below) make any order which it has power to make under section 2 or 19(1) of the 1978 Act.
- (4) The court shall not make an order for the making of periodical payments for the benefit of the applicant or any child of the family unless the order made in the convention country provides for the making of periodical payments for the benefit of the applicant or, as the case may be, that child.
- (5) The court shall not make an order for the payment of a lump sum for the benefit of the applicant or any child of the family unless the order made in the convention country provides for the payment of a lump sum to the applicant or, as the case may be, to that child.
- (6) Part I of the 1978 Act shall apply in relation to the application, and to any order made on the application, with the following modifications—
 - (a) section 1 shall be omitted,
 - (b) for the reference in section 2(1) to any ground mentioned in section 1 of that Act there shall be substituted a reference to non-compliance with any such order as is mentioned in subsection (1)(c) of this section,
 - (c) for the references in section 3(2) and (3) to the occurrence of the conduct which is alleged as the ground of the application there shall be substituted references to the breakdown of the marriage,

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- (d) the reference in section 4(2) to the subsequent dissolution or annulment of the marriage of the parties affected by the order shall be omitted,
 - (e) sections 6 to 8, 16 to 18, 20ZA and 25 to 28 shall be omitted,
 - (f) in section 30(1), for the words “either the applicant or the respondent ordinarily resides” there shall be substituted “the respondent resides”, and
 - (g) section 32(2) shall be omitted.
- (7) A divorce or annulment obtained in a country or territory outside the United Kingdom shall be presumed for the purposes of this section to be one the validity of which is recognised by the law of England and Wales, unless the contrary is proved by the respondent.
- (8) In this section, “child of the family” has the meaning given in section 88 of the 1978 Act.

28B Applications under the Children Act 1989

No provision of an order made under Schedule 11 to the Children Act 1989 requiring or enabling a court to transfer proceedings from a magistrates' court to a county court or the High Court shall apply in relation to an application which by virtue of section 27A of this Act is to be treated as if it were an application for a maintenance order under that Act.

28C Applications for recovery of maintenance in Northern Ireland

- (1) This section applies where the Lord Chancellor receives from the appropriate authority in a convention country an application by a person in that country for the recovery of maintenance from another person who is for the time being residing in Northern Ireland.
- (2) The Lord Chancellor shall send the application, together with any accompanying documents, to the clerk of a magistrates' court acting for the petty sessions district in which that other person is residing.
- (3) The application shall be treated for the purposes of any enactment as if it were a complaint made at the time when the application was received by the Lord Chancellor, and references in this section and in sections 29, 29A and 30 of this Act to the complaint, the complainant and the defendant shall be construed accordingly.
- (4) Where the complaint is for an affiliation order, a magistrates' court acting for the petty sessions district in which the defendant is residing shall have jurisdiction to hear the complaint.
- (5) If a summons to appear before a magistrates' court having jurisdiction to hear the complaint cannot be duly served on the defendant, the clerk of the court shall (subject to subsection (7) below) return the complaint and the accompanying documents to the Lord Chancellor with a statement giving such information as he possesses as to the whereabouts of the defendant.
- (6) If the complaint is returned to the Lord Chancellor under subsection (5) above, then, unless he is satisfied that the respondent is not residing in the

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United Kingdom, he shall deal with it in accordance with subsection (2) above or section 27B of this Act or send it to the Secretary of State to be dealt with in accordance with section 31 of this Act (as the circumstances of the case require).

- (7) If the clerk of a court to whom the complaint is sent under this section is satisfied that the defendant is residing within the jurisdiction of another magistrates' court in Northern Ireland, he shall send the complaint and accompanying documents to the clerk of that other court and shall inform the Lord Chancellor that he has done so.
- (8) If the complaint is sent to the clerk of a court under subsection (7) above, he shall proceed as if it had been sent to him under subsection (2) above.
- (9) When hearing the complaint, a magistrates' court shall proceed as if the complainant were before the court.
- (10) If a magistrates' court makes an order on the complaint, the clerk of the court shall register the order in the prescribed manner in that court.
- (11) Payment of sums due under a registered order shall, while the order is registered in a magistrates' court in Northern Ireland, be made in such manner and to such person as may be prescribed, and neither Article 36(1) of the Domestic Proceedings (Northern Ireland) Order 1980 nor Article 85(1) to (7) of the Magistrates' Courts (Northern Ireland) Order 1981 (which relate to the power of a magistrates' court to direct payments to be made to or through the collecting officer of the court or some other person) shall apply in relation to a registered order."

14 In section 29A (complaint by former spouse for recovery of maintenance in Northern Ireland), in subsection (1) for "section 27(1)" there shall be substituted "section 28C(1)".

- 15 (1) Section 34 (variation and revocation of orders) shall be amended as follows.
 - (2) In subsection (1) after the words "Subject to" there shall be inserted "subsection (3A) below and".
 - (3) After subsection (3) there shall be inserted—
 - "(3A) Where subsection (1) of section 60 of the Magistrates' Courts Act 1980 (revocation, variation etc. of orders for periodical payment) applies in relation to a registered order, that subsection shall have effect as if for the words "by order on complaint," there were substituted "on an application being made, by order"."

16 For section 35 there shall be substituted—

"35 Further provisions with respect to variation etc. of orders by magistrates' courts in England and Wales

- (1) Notwithstanding anything in section 28(2) or 28A(6)(e) of this Act, a magistrates' court in England and Wales shall have jurisdiction to hear an application—
 - (a) for the variation or revocation of a registered order registered in that court, and

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- (b) made by the person against whom or on whose application the order was made,
notwithstanding that the person by or against whom the application is made is residing outside England and Wales.
- (2) None of the powers of the court, or of the clerk of the court, under section 34A of this Act shall be exercisable in relation to such an application.
- (3) Where the respondent to an application for the variation or revocation of a registered order which is registered in a magistrates' court in England and Wales does not appear at the time and place appointed for the hearing of the application, but the court is satisfied—
 - (a) that the respondent is residing outside England and Wales, and
 - (b) that the prescribed notice of the making of the application and of the time and place appointed for the hearing has been given to the respondent in the prescribed manner,the court may proceed to hear and determine the application at the time and place appointed for the hearing or for any adjourned hearing in like manner as if the respondent had appeared at that time and place.

35A Further provisions with respect to variation etc. of orders by magistrates' courts in Northern Ireland

- (1) Notwithstanding anything in section 29 or 29A(3)(e) of this Act, a magistrates' court in Northern Ireland shall have jurisdiction to hear an application for the variation or revocation of a registered order registered in that court, being—
 - (a) an application made by the person against whom or on whose application the order was made, or
 - (b) an application made by some other person in pursuance of section 30(5) of this Act for the variation of an affiliation order,notwithstanding that the person by or against whom the application is made is residing outside Northern Ireland.
- (2) Where an application by a person in a convention country for the variation of a registered order is received from the Lord Chancellor by the clerk of a magistrates' court in Northern Ireland, he shall treat the application as if it were a complaint for the variation of the order to which the application relates, and the court hearing the application shall proceed as if the application were a complaint and the applicant were before the court.
- (3) Without prejudice to subsection (2) above, an application to a magistrates' court in Northern Ireland for the variation or revocation of a registered order shall be made by complaint.
- (4) Where the defendant to a complaint for the variation or revocation of a registered order which is registered in a magistrates' court in Northern Ireland does not appear at the time and place appointed for the hearing of the complaint, but the court is satisfied—
 - (a) that the defendant is residing outside Northern Ireland, and
 - (b) that the prescribed notice of the making of the complaint and of the time and place appointed for the hearing has been given to the defendant in the prescribed manner,

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the court may proceed to hear and determine the complaint at the time and place appointed for the hearing or for any adjourned hearing in like manner as if the defendant had appeared at that time and place.”

17 In section 36 (admissibility of evidence given in convention country), in subsection (1) for the words from “received by” to “or out of” there shall be substituted “to which section 27A(1) of this Act applies, an application received by the Lord Chancellor as mentioned in section 28C(1) of this Act, an application received by the Secretary of State as mentioned in section 31(1) of this Act or”.

18 After section 38 there shall be inserted—

“38A Magistrates' courts rules

(1) Without prejudice to the generality of the power to make rules under section 144 of the Magistrates' Courts Act 1980 (magistrates' courts rules), such rules may make provision with respect to the orders made or other things done by a magistrates' court, or an officer of such a court, by virtue of this Part of this Act, 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.

(2) 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, and
- (b) may be made in relation to relevant proceedings under that section.

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

- (a) in subsection (1), for the reference to section 144 of the Magistrates' Courts Act 1980 there shall be substituted a reference to Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981, and
- (b) subsection (2) shall be omitted.”

19 In section 39 (interpretation of Part II), after the definition of “maintenance” there shall be inserted—

““maintenance order” has the same meaning as in Part I of this Act;”, and at the end there shall be added—

““revoke” and “revocation” include discharge.”