
STATUTORY INSTRUMENTS

1981 No. 1687

The County Court Rules 1981

ORDER 36

**ENFORCEMENT OF MAINTENANCE ORDERS
IN COURTS OTHER THAN COUNTY COURTS**

PART I

MAINTENANCE ORDERS ACT 1950

Interpretation of Part I

1. In this Part of this Order a section referred to by number means the section so numbered in the Maintenance Orders Act 1950 and “maintenance order” means an order to which section 16 of that Act applies, being an order made by a county court.

Prescribed officer

2. The prescribed officer of a county court for the purposes of sections 17, 22, 23 and 24 of the Act of 1950 shall be the registrar.

Application for registration in Scotland or Northern Ireland

3.—(1) An application under Part II of the said Act of 1950 for the registration of a maintenance order in a sheriff court in Scotland or court of summary jurisdiction in Northern Ireland shall be made to the registrar of the county court by which the maintenance order was made by lodging in the office of that court an affidavit by the applicant (together with a copy thereof) stating—

- (a) the date of the order, the name of the person liable to make payments thereunder and the amount of the weekly or other periodical payments ordered to be made;
- (b) the address in Scotland or Northern Ireland of the person liable to make payments under the order;
- (c) the reason why it is convenient that the order should be enforceable in Scotland or Northern Ireland, as the case may be;
- (d) the amount of any arrears due to the applicant under the order; and
- (e) that the order is not already registered under the Act.

(2) If it appears to the registrar that the person liable to make payments under the maintenance order resides in Scotland or Northern Ireland and that it is convenient that the maintenance order should be enforceable there, he shall cause a certified copy of the order and the applicant's affidavit to be sent to the sheriff-clerk of the sheriff court in Scotland or, as the case may be, to the clerk of the court of summary jurisdiction in Northern Ireland, having jurisdiction in the place in which the person liable to make payments under the order appears to be.

Variation or discharge of order by court which made it

4. Where a maintenance order registered in a court in Scotland or Northern Ireland is varied or discharged by the court which made it, the registrar shall cause a certified copy of the order varying or discharging the order to be sent to the sheriff-clerk or, as the case may be, the clerk of the court in which the order is registered.

Recording of registration, variation or cancellation by court of registration

5. On being notified of—

- (a) the registration of a maintenance order in the court to which a certified copy has been sent pursuant to rule 3(2), or
- (b) the variation of a registered maintenance order, or the cancellation of the registration of such an order, by the court in which it is registered,

the registrar shall cause a note of the registration, variation or cancellation to be made in the records of the court relating to the order.

Application to adduce evidence

6. An application to a county court under section 22(5) to adduce evidence in connection with a maintenance order of that court which has been registered in Scotland or Northern Ireland shall be made on notice in accordance with Order 13, rule 1.

PART II

MAINTENANCE ORDERS ACT 1958

7. In this Part of this Order a section referred to by number means the section so numbered in the Maintenance Orders Act 1958 and, unless the context otherwise requires, expressions used in this Part of this Order which are used in the Act of 1958 have the same meaning as in that Act.

Application for registration in magistrates' court

8.—(1) An application under Part I of the said Act of 1958 for the registration of a county court order in a magistrates' court may be made—

- (a) on the making of the maintenance order or an order varying the maintenance order, or
- (b) at any other time by lodging in the office of the court in which the order was made an affidavit by the applicant (together with a copy thereof) stating—
 - (i) the date of the order and the amount of the weekly or other periodical payments ordered to be made;
 - (ii) the address of the person liable to make payments under the order;
 - (iii) the reason why registration of the order in a magistrates' court is desired;
 - (iv) the amount of any arrears due to the applicant under the order, the date to which those arrears have been calculated and the date on which the next payment under the order falls due;
 - (v) the date of birth of each child named in the order;
 - (vi) that the order is not already registered under the said Act of 1958, and
 - (vii) whether any proceedings are pending, or any warrant or other process is in force, for the enforcement of the order.

(2) The application may be heard and determined by the registrar.

Procedure on grant of application

9.—(1) Where the application is granted, the applicant shall, if the application is granted on the making of the maintenance order or an order varying the maintenance order, lodge in the court office a statement signed by the applicant or his solicitor, and a copy thereof, giving the address of the person entitled to receive payments under the maintenance order and the particulars mentioned in rule 8(1)(b)(ii), (iv) and (v).

(2) The period required to be prescribed by rules of court for the purpose of section 2(2) shall be 14 days.

(3) The certified copy of an order required by section 2(2) to be sent to the clerk of a magistrates' court shall be accompanied by the copy of the applicant's affidavit or statement lodged under rule 8(1)(b) or paragraph (1), as the case may be.

Variation or discharge of order by county court

10.—(1) An order of a county court varying or discharging a maintenance order registered in a magistrates' court shall be served on the clerk of the magistrates' court as well as on the person liable to make payments under the maintenance order.

(2) Where a county court, on varying or discharging a maintenance order registered in a magistrates' court, decides to give notice under section 5(2), the notice shall be indorsed on the order required by the last foregoing paragraph to be served on the clerk of the magistrates' court.

Recording of registration, variation or cancellation by magistrates' court

11. On being notified of—

- (a) the registration in a magistrates' court of a maintenance order made by a county court, or
- (b) the variation of a registered maintenance order, or the cancellation of the registration of such an order, by the magistrates' court in which it is registered,

the registrar shall cause a note of the registration, variation or cancellation to be made in the records of the court relating to the order.

PART III

MAINTENANCE ORDERS (RECIPROCAL ENFORCEMENT) ACT 1972

Interpretation of Part III

12.—(1) In this Part of this Order a section referred to by number means the section so numbered in the Maintenance Orders (Reciprocal Enforcement) Act 1972 except that, in relation to a country or territory with respect to which an Order in Council has been made under section 40, any reference to a provision of that Act is a reference to that provision as applied by the Order in Council.

(2) Unless the context otherwise requires, expressions used in this Part of this Order which are used in the said Act of 1972 have the same meaning as in that Act.

Prescribed officer

13. For the purpose of sections 2(3), 5(4) and 14 the prescribed officer in relation to a county court shall be the registrar.

Application for transmission of order to reciprocating country

14. An application for a maintenance order made by a county court to be sent to a reciprocating country under section 2 shall be made to the registrar by lodging in the court office:—

- (a) an affidavit by the applicant stating—
 - (i) the applicant's reasons for believing that the payer under the maintenance order is residing in that country, and
 - (ii) the amount of any arrears due to the applicant under the order, the date to which those arrears have been calculated, and the date on which the next payment under the order falls due;
- (b) a statement giving such information as the applicant possesses as to the whereabouts of the payer;
- (c) a statement giving such information as the applicant possesses for facilitating the identification of the payer (including, if known to the applicant, the name and address of any employer of the payer, his occupation and the date and place of issue of any passport of the payer), and
- (d) if available to the applicant, a photograph of the payer.

Provisional order

15.—(1) Where a county court makes a provisional order under section 5, the document required by subsection (4) of that section to set out or summarise the evidence given in the proceedings shall be authenticated by a certificate signed by the registrar.

(2) On receipt by a county court of a certified copy of a provisional order made in a reciprocating country, together with the document mentioned in section 5(5), the proper officer shall fix a time and place for the court to consider whether or not the provisional order should be confirmed, and shall send to the payee under the maintenance order notice of the time and place so fixed, together with a copy of the provisional order and of that document.

(3) The registrar shall cause a certified copy of any order confirming or refusing to confirm a provisional order to be sent to the court which made that order.

Taking of evidence for court in reciprocating country

16.—(1) A county court shall be the prescribed court for the purpose of taking the evidence of a person residing within its district pursuant to a request by a court in a reciprocating country under section 14 where the request for evidence relates to a maintenance order made by a county court which is not for the time being registered in a magistrates' court under the Maintenance Orders Act 1958.

(2) The evidence may be taken before the judge or before the registrar or other officer of the county court as the court thinks fit, and the provisions of Order 20, rule 13, shall apply with the necessary modifications as if the evidence were required to be taken pursuant to an order made by the court for the examination of the witness on oath.

Notification of variation or revocation

17. Where a county court makes an order (other than a provisional order) varying or revoking a maintenance order a copy of which has been sent to a reciprocating country in pursuance of section 2, the registrar shall cause a certified copy of the order to be sent to the court in the reciprocating country.

Transmission of documents

18. Any document required to be sent to a court in a reciprocating country under section 5(4) or section 14(1), or rule 15(3) or 17, shall be sent to the Secretary of State for transmission to that

court unless the registrar is satisfied that, in accordance with the law of that country, the document may be sent direct to that court.

Application of Part III to the Republic of Ireland

19.—(1) In relation to the Republic of Ireland this Part of this Order shall have effect subject to the provisions of this rule.

(2) The following paragraphs shall be added to rule 14:—

“(e) a statement that the payer appeared in the proceedings in which the maintenance order was made or, if he did not, the original or a copy certified by the applicant or his solicitor to be a true copy of a document which establishes that notice of the institution of the proceedings was served on the payer; and

(f) if the payee received legal aid in the proceedings in which the order was made, a copy certified by the applicant or his solicitor to be a true copy of the legal aid certificate.”

(3) For paragraph (1) of rule 15 there shall be substituted the following paragraph:—

“(1) Where an application is made to a county court for the variation or revocation of an order to which section 5 applies, the certified copy of the application and the documents required by sub-section (2) of that section to set out or summarise the evidence in support of the application shall be authenticated by a certificate signed by the registrar.”

(4) Paragraphs (2) and (3) of rule 15 shall not apply.

(5) For rule 17 there shall be substituted the following rule:—

“17. Where a county court makes an order varying or revoking a maintenance order to which section 5 applies, the registrar shall cause a certified copy of the order and a statement as to the service on the payer of the documents mentioned in sub-section (2) of that section to be sent to the court in the Republic of Ireland by which the maintenance order is being enforced.”

(6) Rule 18 shall not apply.

Application of Part III to Hague Convention countries

20.—(1) In relation to the Hague Convention countries this Part of this Order shall have effect subject to the provisions of this rule.

(2) The following paragraph shall be added to rule 14(a):—

“and (iii) whether the time for appealing against the order has expired and whether an appeal is pending.”

(3) The following paragraphs shall be added to rule 14 after paragraph (d):—

“(e) a statement as to whether or not the payer appeared in the proceedings in which the maintenance order was made and, if he did not, the original or a copy certified by the applicant or his solicitor to be a true copy of a document which establishes that notice of the institution of proceedings, including notice of the substance of the claim, was served on the payer;

(f) a document which establishes that notice of the order was sent to the payer;

(g) a written statement as to whether or not the payee received legal aid in the proceedings in which the order was made, or in connection with the application under section 2, and, if he did, a copy certified by the applicant or his solicitor to be a true copy of the legal aid certificate.”

(4) Rule 15 shall not apply.

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(5) For rules 17 and 18 there shall be substituted the following rules:—

“**17.**—(1) Where a county court makes an order varying or revoking a maintenance order to which section 5 applies and the time for appealing has expired without an appeal having been entered, the registrar shall cause the documents required by subsection (7) of that section (including a certificate that the order of variation or revocation is enforceable and that it is no longer subject to ordinary forms of review) to be sent to the Secretary of State.

(2) Where either party enters an appeal against the order or revocation, he shall, at the same time, inform the proper officer thereof by notice in writing.

18. Any document required to be sent to a court in a Hague Convention country shall be sent to the Secretary of State for transmission to that court.”

(6) In this rule “Hague Convention country” has the same meaning as in the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1979.