
STATUTORY INSTRUMENTS

1986 No. 1962 (L.15)

MAGISTRATES' COURTS

PROCEDURE

**The Magistrates' Courts (Civil Jurisdiction and Judgments Act
1982) Rules 1986**

Made - - - - - 17th November 1986
Laid before Parliament 8th December 1986
Coming into Operation 1st January 1987

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The Lord Chancellor, in exercise of the powers conferred on him by section 144 of the Magistrates' Courts Act 1980(a), as extended by section 145 of that Act, section 2A(1) of the Maintenance Orders Act 1958(b), sections 2(3), 8(5) and 33(4) of the Maintenance Orders (Reciprocal Enforcement) Act 1972(c) and sections 12 and 48 of the Civil Jurisdiction and Judgments Act 1982(d), after consultation with the Rule Committee under the said section 144, hereby makes the following Rules:—

PART I

CITATION, COMMENCEMENT AND INTERPRETATION

Citation and Commencement

1. These Rules may be cited as the Magistrates' Courts (Civil Jurisdiction and Judgments Act 1982) Rules 1986 and shall come into operation on 1st January 1987.

Interpretation

2. In these Rules—

“the 1982 Act” means the Civil Jurisdiction and Judgments Act 1982;

“his register”, in relation to a justices' clerk, means the register kept by that clerk in pursuance of Rule 66 of the Magistrates' Courts Rules 1981.

PART II

REGISTRATION OF MAINTENANCE ORDERS

The prescribed officer

3. The prescribed officer of a magistrates' court for the purposes of the 1982 Act shall be the justices' clerk.

(a) 1980 c.43.

(b) 1958 c.39; section 2A was inserted by Schedule 11 to the Civil Jurisdiction and Judgments Act 1982 (c.27).

(c) 1972 c.18; section 8(5) was amended by Schedule 11 to the Civil Jurisdiction and Judgments Act 1982.

(d) 1982 c.27.

Registration of maintenance orders

4.— (1) Where a justices' clerk receives an application under Article 31 of the 1968 Convention for enforcement of a maintenance order made in a Contracting State other than the United Kingdom he shall, subject to Articles 27 and 28 of that Convention and to paragraph (3) and (4) of this Rule, cause the order to be registered in his court by means of a minute or memorandum entered and signed by him in his register.

(2) Before registering an order under paragraph (1) of this Rule the justices' clerk shall take such steps as he thinks fit for the purpose of ascertaining whether the payer under the order to which the application relates is residing within the jurisdiction of the court, and shall consider any information he possesses (whether provided by the applicant or otherwise) as to the nature and location of the payer's assets.

(3) If, after taking such steps and considering such information as are mentioned in paragraph (2) above, the justices' clerk is satisfied that the payer under the order is not residing within the jurisdiction of the court he shall, subject to paragraph (4) of this Rule, refuse the application and return the documents relating thereto to the Secretary of State with a statement giving such information as he possesses as to the whereabouts of the payer and the nature and location of his assets.

(4) If, after taking such steps and considering such information as are mentioned in paragraph (2) above, the justices' clerk is satisfied that the payer is not residing within the jurisdiction of the court but that there are assets against which, after registration in the High Court under Part I of the Maintenance Orders Act 1958(a), the order could be enforced, he shall cause the order to be registered in accordance with paragraph (1) of this Rule.

Provided that where the justices' clerk is of the opinion that the payer is residing within the jurisdiction of another magistrates court in England and Wales he may, if he thinks fit, and notwithstanding the provisions of this paragraph, refuse the application and return the documents relating thereto to the Secretary of State in accordance with paragraph (3) above.

(5) If the justices' clerk refuses an application made under Article 31 of the 1968 Convention, he shall cause notice of his decision to be sent to the applicant, at the address provided by the applicant.

(6) Where an order has been registered under paragraph (1) of this Rule the justices' clerk who was responsible for its registration shall cause a written notice stating that it has been duly registered in his court to be sent to:

- (a) the Secretary of State;
- (b) the payer under the order to which the registration relates;
- (c) the applicant, at the address provided by the applicant.

(7) Where an order has been registered under paragraph (1) of this Rule and the justices' clerk who was responsible for its registration is of the opinion that the order, or a part thereof, is one which would be appropriate for enforcement

(a) 1958 c.39.

in the High Court he shall notify the applicant accordingly and shall notify the applicant also of the possibility of an application by the applicant for registration of the whole or part of the order in the High Court under Part I of the Maintenance Orders Act 1958.

Appeals from decision as to registration

5. An appeal under Article 36 or under Article 40 of the 1968 Convention shall be by way of complaint to the magistrates' court in which the order is registered, or in which the application for its registration has been refused, as the case may be.

Payment of sums due under a registered order

6.— (1) Payment of sums due under a registered order shall, while the order is so registered in a magistrates' court, be made to the clerk of the registering court during such hours and at such place as that clerk may direct; and the justices' clerk to whom payments are made under this paragraph shall send those payments by post to the court which made the order or to such other person or authority as that court or the Secretary of State may from time to time direct.

(2) Where it appears to a justices' clerk to whom payments by way of periodical payments under any maintenance order are made by virtue of paragraph (1) above that any sums payable under the order are in arrear he may and, if such sums are in arrear to an amount equal to four times the sum payable weekly, he shall, whether the person for whose benefit the payment should have been made requests him to do so or not, proceed in his own name for the recovery of those sums, unless it appears to him that it is unreasonable in the circumstances to do so.

(3) Without prejudice to the foregoing provisions of this Rule, the justices' clerk of the registering court shall take reasonable steps to notify the person to whom payments are due under a registered order of the means of enforcement available in respect of it, including, in an appropriate case, the possibility of registration of the whole or part of the order in the High Court under Part I of the Maintenance Orders Act 1958.

Variation and revocation of registered orders

7. Where a maintenance order which has been registered for enforcement in a magistrates' court has been varied or revoked by an order made by a competent court in a Contracting State the justices' clerk for the court in which the order is registered shall, on receiving notice of the variation or revocation, register the order of variation or revocation by means of a minute or memorandum entered and signed by him in his register, and shall cause notice of the same to be given in writing by post to the payee and to the payer under the order to which the variation or revocation relates.

Transfer of registered orders

8.— (1) Where the justices' clerk for the court where an order is registered is of the opinion that the payer under the registered order is residing within the jurisdiction of another magistrates' court in England and Wales he shall

transfer the order to that other court by sending the information and documents relating to the registration of the order (that is, the information and documents required under Articles 46 and 47 of the Convention) to the justices' clerk for that other court, and shall cause notice of the same to be given to the payee under the order to which the transfer relates, and to the Secretary of State.

Provided that where an application is pending in the registering court for the registration of the whole or part of the order in the High Court under Part I of the Maintenance Orders Act 1958, the justices' clerk shall not transfer the order, or such part of it to which the application relates, under this paragraph.

(2) On the transfer of an order under paragraph (1) above the justices' clerk for the court to which it is transferred shall register the order in the like manner as if an application for registration had been received under Rule 4 of these Rules.

(3) The justices' clerk who is required by the foregoing provisions of this Rule to send to the justices' clerk for another court information and documents relating to the registration of an order shall send with that information and those documents:—

- (a) a certificate of arrears, if applicable, signed by him;
- (b) a statement giving such information as he possesses as to the whereabouts of the payer and the nature and location of his assets; and
- (c) any other relevant documents in his possession relating to the case.

Cancellation of registered orders

9. Subject to Rule 8 of these Rules, where the justices' clerk for the court where an order is registered is of the opinion that the payer under the registered order is not residing within the jurisdiction of that court and has no assets against which, after registration in the High Court under Part I of the Maintenance Orders Act 1958, the order could be enforced he shall cancel the registration of the order and shall cause notice of the same to be given to the payee under the order to which the cancellation relates and shall send the information and documents relating to the registration of the order (that is, the information and documents required under Articles 46 and 47 of the Convention) to the Secretary of State, together with such information and documents as are referred to in Rule 8(3)(a), (b) and (c) of these Rules.

PART III

APPLICATIONS FOR MAINTENANCE UNDER ARTICLE 5(2) OF THE 1968 CONVENTION

Complaint against a person residing outside the United Kingdom

10.— (1) This Rule applies where a complaint is made to a magistrates' court by a person who is domiciled or habitually resident in England and Wales against a person residing in a Contracting State other than the United Kingdom, and the complaint is one in respect of which the court has jurisdiction to make a maintenance order by virtue of Article 5(2) of the 1968 Convention.

(2) On the making of a complaint to which paragraph (1) of this Rule applies, the following documents, that is to say:—

- (a) notice of the institution of the proceedings, including a statement of the grounds of the complaint;
- (b) a statement signed by the justices' clerk, giving such information as he possesses as to the whereabouts of the defendant;
- (c) a statement giving such information as the clerk possesses for facilitating the identification of the defendant; and
- (d) where available, a photograph of the defendant;

shall be sent by that clerk to the Secretary of State.

(3) The justices' clerk shall give the defendant notice in writing of the date fixed for the hearing by sending the notice by post addressed to his last known or usual place of abode.

(4) Where the defendant makes any written representations or adduces any documentary evidence in advance of the hearing, a copy of the representations or evidence shall be served on the complainant by the justices' clerk before the hearing.

(5) In considering whether or not to make a maintenance order pursuant to a complaint to which paragraph (1) of this Rule applies, where the defendant does not appear and is not represented at the hearing the court shall take into account any representations made and any evidence adduced by him or on his behalf under paragraph (4) above and, where the defendant does appear or is represented at the hearing, the court may take any such representations or evidence into account in addition to any oral representations made or evidence adduced at the hearing.

(6) Where a maintenance order has been made under this Rule, the justices' clerk shall cause notice thereof to be given to the defendant by sending a copy of the order by post addressed to his last known or usual place of abode and, on application by the complainant, shall give to the complainant the following documents, that is to say:—

- (a) a certified copy of the order;
- (b) a written statement signed by the justices' clerk as to whether or not the defendant appeared in the proceedings in which the order was made, and, if he did not appear, the original or a certified copy of a document which establishes that the document mentioned in paragraph (2)(a) of this Rule had been served on the defendant;
- (c) a document which establishes that notice of the order was sent to the defendant; and
- (d) a written statement signed by the justices' clerk as to whether or not the complainant received legal aid in the proceedings;

with a view to an application being made by the complainant for registration and enforcement under Articles 31 and 32 of the 1968 Convention.

Complaint for variation and revocation of a maintenance order

11.— (1) This Rule applies where an application is made to a magistrates' court for the variation or revocation of a maintenance order where the payer under the order is residing in a Contracting State other than the United Kingdom.

(2) Where an application to which this Rule applies is made by the payee, the following documents, that is to say:—

- (a) Notice of the institution of the proceedings, including a statement of the grounds of the application;
- (b) a statement signed by the justices' clerk, giving such information as he possesses as to the whereabouts of the defendant;
- (c) a statement giving such information as the clerk possesses for facilitating the identification of the defendant; and
- (d) where available, a photograph of the defendant;

shall be sent by that clerk to the Secretary of State.

(3) Where an application to which this Rule applies is made by the payee:—

- (a) The justices' clerk shall give the defendant notice in writing of the date fixed for the hearing by sending the notice by post addressed to his last known or usual place of abode;
- (b) where the defendant makes any written representations or adduces any documentary evidence in advance of the hearing, a copy of the representations or evidence shall be served on the complainant by the justices' clerk before the hearing;
- (c) the court, in considering whether to vary or revoke the order, shall, where the payer does not appear and is not represented at the hearing, take into account any representations made and any evidence adduced by or on his behalf under sub-paragraph (b) above and, where the payer does appear or is represented at the hearing, the court may take any such representations or evidence into account, in addition to any oral representations or evidence adduced at the hearing.

(4) Where an application to which this Rule applies is made by the payer, the justices' clerk shall arrange for the service of the document mentioned in paragraph (2)(a) of this Rule on the payee.

(5) Where upon an application to which this Rule applies the court varies or revokes the order, the justices' clerk shall cause notice thereof to be given to the defendant by sending a copy of the order of variation or revocation by post addressed to his last known or usual place of abode and, on application by the complainant, shall give to the complainant the following documents, that is to say:—

- (a) a certified copy of the order of variation or revocation;
- (b) a written statement, signed by the justices' clerk as to whether or not the defendant appeared in the proceedings for the variation or revocation of the order and if he did not appear the original or a certified copy of a document which establishes that the notice of the institution of the proceedings had been served on the defendant;
- (c) a document which establishes that notice of the order of variation or revocation was sent to the defendant; and
- (d) a written statement signed by the justices' clerk as to whether or not the complainant or the defendant received legal aid in the proceedings;

with a view to an application being made by the complainant for registration and enforcement of the order of variation or revocation under Articles 31 and 32 of the 1968 Convention.

Copies of, and certificates in connection with, maintenance orders

12.— (1) Without prejudice to the provisions of Rule 10(6) and Rule 11(5) of these Rules, a person wishing to obtain for the purposes of an application for recognition or enforcement in a Contracting State a copy of a maintenance order made by a magistrates' court in England and Wales, and a certificate giving particulars relating to the order and the proceedings in which it was made may apply in writing to the justices' clerk for that court.

(2) An application under paragraph (1) above shall specify:—

- (a) the names of the parties to the proceedings in the magistrates' court;
- (b) the date or approximate date of the proceedings in which the maintenance order was made, and the nature of those proceedings;
- (c) the Contracting State in which the application for recognition or enforcement has been made or is to be made;
- (d) the postal address of the applicant.

(3) A justices' clerk who receives an application under paragraph (1) of this Rule shall send by post to the applicant at the address indicated in the application for the purposes an authenticated copy of the order concerned.

(4) For the purposes of paragraph (3) of this Rule a copy of an order shall be deemed to be authenticated if it is accompanied by a statement signed by the justices' clerk that it is a true copy of the order concerned and giving particulars of the proceedings in which it was made.

(5) A person wishing to obtain for the purposes of an application made or to be made in another Contracting State or in another part of the United Kingdom in connection with a maintenance order which is registered in a magistrates' court in England and Wales a certificate giving particulars of any payments made and any arrears which have accrued under the order while so registered may apply in writing to the justices' clerk for the registering court, and a justices' clerk who receives such an application shall send by post to the applicant at the address indicated in the application for the purposes a certificate giving the information so requested.

PART IV

EVIDENCE IN MAINTENANCE PROCEEDINGS

Admissibility of documents

13.— (1) Subject to paragraph (2) of this Rule, a statement contained in—

- (a) a document which purports to set out or summarise evidence given in proceedings in a court in another part of the United Kingdom or another Contracting State;
- (b) a document which purports to have been received in evidence in proceedings in a court in another part of the United Kingdom or another Contracting State;
- (c) a document which purports to set out or summarise evidence taken in another part of the United Kingdom or in another Contracting State for the purpose of proceedings in a court in England and Wales under the 1982 Act, whether in response to a request made by such a court or otherwise; or

(d) a document which purports to record information relating to the payments made under an order of a court in another part of the United Kingdom or another Contracting State

shall, in any proceedings in a magistrates' court in England and Wales relating to a maintenance order to which the 1982 Act applies, be admissible as evidence of any fact stated therein to the same extent as oral evidence of that fact is admissible in those proceedings.

(2) Paragraph (1) of this Rule shall not apply unless the document concerned has been made or authenticated by the court in the other part of the United Kingdom or the other Contracting State, as the case may be, or by a judge or official of that court, in accordance with paragraph (3), (4) or (5) of this Rule.

(3) A document purporting to set out or summarise evidence given as mentioned in paragraph (1)(a) above, or taken as mentioned in paragraph (1)(c) above, shall be deemed to be authenticated for the purposes of that paragraph if the document purports to be certified by the judge or official before whom the evidence was given or by whom it was taken, or to be the original document containing or recording or, as the case may be, summarising, the evidence or a true copy of that document.

(4) A document purporting to have been received in evidence as mentioned in paragraph (1)(b) above, or to be a copy of a document so received, shall be deemed to be authenticated for the purposes of that paragraph if the document purports to be certified by a judge or official of the court in question to be, or to be a true copy of, a document which has been so received.

(5) A document purporting to record information as mentioned in paragraph (1)(d) above shall be deemed to be authenticated for the purposes of that paragraph if the document purports to be certified by a judge or official of the court in question to be a true record of the payments made under the order concerned.

(6) It shall not be necessary in any proceedings in which evidence is to be received under this Rule to prove the signature or official position of the person appearing to have given such a certificate.

(7) Nothing in this Rule shall prejudice the admission in evidence of any document which is admissible in evidence apart from this Rule.

(8) Any request by a magistrates' court in England and Wales for the taking or providing of evidence by a court in another part of the United Kingdom or another Contracting State for the purpose of proceedings under the 1982 Act shall be communicated in writing to the court in question.

Evidence for the purposes of proceedings outside England and Wales

14.— (1) Subject to paragraph (2) below, where for the purposes of any proceedings in a court in another part of the United Kingdom or in a Contracting State other than the United Kingdom relating to a maintenance order a request is made by or on behalf of that court for the taking in England and Wales of evidence of a person residing therein relating to matters specified in the request, the following magistrates' courts shall have power to take that evidence, that is to say:—

(a) where the maintenance order to which the proceedings in the court in the other part of the United Kingdom or Contracting State relate was made by a magistrates' court, the court which made the order;

- (b) where the maintenance order to which those proceedings relate is registered in a magistrates' court, the court in which the order is registered;
- (c) a magistrates' court which has received such a request from the Secretary of State.

(2) The power conferred by paragraph (1) above may, with the agreement of a court having that power, be exercised by any other magistrates' court which, because the person whose evidence is to be taken resides within its jurisdiction or for any other reason, the first mentioned court considers could more conveniently take the evidence; but nothing in this paragraph shall derogate from the power of any court specified in paragraph (1) above.

(3) Before taking the evidence of a person under paragraph (1) or (2) above, a magistrates' court shall give notice of the time and place at which the evidence is to be taken to such persons and in such manner as it thinks fit.

(4) Subject to paragraph (5) below, where the evidence of a person is to be taken by a magistrates' court under the foregoing provisions of this Rule—

- (a) the evidence shall be taken in the same manner as if that person were a witness in proceedings on a complaint;
- (b) any oral evidence so taken shall be put into writing and read to the person who gave it, who shall be required to sign the document; and
- (c) the justices by whom the evidence of any person is so taken shall certify at the foot of any document setting out the evidence of, or produced in evidence by, that person that such evidence was taken, or a document received in evidence, as the case may be, by them.

(5) Where such a request as is mentioned in paragraph (1) above includes a request that the evidence be taken in a particular manner, the magistrates' court by which the evidence was taken shall, so far as circumstances permit, comply with that request.

(6) Any document such as is mentioned in paragraph (4)(c) above shall be sent to the court in the Contracting State by or on behalf of which the request was made.

PART V

Amendments

15. The enactments and instruments mentioned in the Schedule to this Order shall have effect with the amendments there specified.

Hailsham of St Marylebone, C.

Dated 17th November 1986.

AMENDMENTS

PART I

Rules

The Magistrates' Courts (Maintenance Orders Act 1958)
Rules 1959(a)

1. For Rule 2 of the Magistrates' Courts (Maintenance Orders Act 1958) Rules 1959 there shall be substituted the following Rule—

“Manner in which magistrates' court is to be satisfied as to various matters

2.— (1) An applicant wishing to show, in accordance with section 2A(1) of the Act, that the order to which the application relates, though deemed to have been made by a magistrates' court in England, was in fact made in another part of the United Kingdom or a country or territory outside the United Kingdom and that by the law of that part or of that country or territory interest is recoverable under the order may do so by producing the original court order or an authenticated copy thereof showing the date or time from which and the rate at which interest is so recoverable.

(2) For the purposes of paragraph (1) of this Rule, a copy shall be deemed to be authenticated if it purports to be certified by a judge or official of the court which made the original order to be a true copy of the original order, but it shall not be necessary to prove the signature or official position of the person appearing to have given such a certificate.

(3) Where an application for the registration in the High Court of a magistrates' court order is granted, the court shall be satisfied in the manner provided by paragraph (5) of this Rule that no process for the enforcement of the order issued before the grant of the application remains in force.

(4) Where the court receives notice given under section 5 of the Act (which relates to the cancellation of registration), the court shall be satisfied in the manner provided by paragraph (5) of this Rule that no process for the enforcement of the order issued before the giving of the notice remains in force and that no proceedings for the variation of the order are pending in a magistrates' court.

(5) For the purpose of satisfying the court as to the matters referred to in paragraphs (3) and (4) of this Rule—

(a) if the person through or to whom payments are ordered to be made is the clerk of a magistrates' court, there shall be produced a certificate in that behalf purporting to be signed by the clerk in the form numbered 1, 2 or 3, as the case may be, in the Schedule to these Rules;

(b) in any other case, there shall be produced a document purporting to

(a) S.I. 1959/3, amended by S.I. 1977/1890, 1980/1896.

be a statutory declaration in that behalf in the form numbered 5 or 6, as the case may be, in the Schedule to these Rules.”.

2. In Rule 3 of the said Rules of 1959 after the words “the appropriate officer of the High Court” there shall be added the following paragraph:

“(2) Where the court is satisfied in accordance with Rule 1A above that interest is recoverable under the order in respect of which the application has been granted the court shall, in accordance with section 2A(1) of the Act, cause the clerk to send, together with the certified copy of the order mentioned in paragraph (1) of this rule, a certificate in respect of the interest so recoverable in the form numbered 4 in the Schedule to these Rules to the appropriate officer of the High Court.”.

3. In the Schedule to the said Rules of 1959, for Forms 4, 5 and 6 there shall be substituted the forms numbered in the like manner in Part II of this Schedule.

The Magistrates’ Courts (Reciprocal Enforcement of Maintenance Orders)
Rules 1974(a)

4. In Rule 4(2)(b) of the Magistrates’ Courts (Reciprocal Enforcement of Maintenance Orders) Rules 1974, after “the whereabouts of the payer” there shall be inserted “and the nature and location of his assets”.

5. In Rule 9(2) of the said Rules of 1974, after “to whom payments” there shall be inserted “by way of periodical payments”.

6. After Rule 9 of the said Rules of 1974 there shall be inserted the following Rule—

“9A. Without prejudice to Rule 9 above, the justices’ clerk of the registering court shall take reasonable steps to notify the person to whom payments are due under a registered order of the means of enforcement available in respect of it, including, in an appropriate case, the possibility of registration of the whole or a part of the order in the High Court under Part I of the Maintenance Orders Act 1958.”.

The Magistrates’ Courts (Reciprocal Enforcement of Maintenance Orders)
(Hague Convention Countries) Rules 1980(b)

7. In Rule 4(2)(b) of the Magistrates’ Courts (Reciprocal Enforcement of Maintenance Orders) (Hague Convention Countries) Rules 1980, after “the whereabouts of the payer” there shall be inserted “and the nature and location of his assets”.

8. In Rule 8(2) of the said Rules of 1980, after “to whom payments” there shall be inserted “by way of periodical payments”.

(a) S.I. 1974/668, amended by S.I. 1975/2236, 1979/170.
(b) S.I. 1980/108.

9. After Rule 8 of the said Rules of 1980 there shall be inserted the following Rule—

“8A. Without prejudice to Rule 8 above, the justices’ clerk of the registering court shall take reasonable steps to notify the person to whom payments are due under a registered order of the means of enforcement available in respect of it, including, in an appropriate case, the possibility of registration of the whole or part of the order in the High Court under Part I of the Maintenance Orders Act 1958.”.

PART II

FORMS

Forms 4, 5 and 6. M.C. (M.O.A. 1958) Rules 1959

4. Certificate in respect of interest recoverable under a maintenance order.

(M.O. Act 1958, s.2A(1))

I hereby certify that the rate of interest shown in accordance with sub-section (1) of section 2A of the Maintenance Orders Act 1958 to be recoverable in respect of (insert particulars of maintenance order, or, if application relates only to a part of the order relating to a lump sum, insert particulars of that part of the order)

is
and that the date from which it is so recoverable is
to

Dated the day of , 19 .

J.C.
Clerk of the Magistrates’ Court
sitting at

5. Declaration that no process for enforcement remains in force

(M.O. Act 1958, s.2(3))

I, G.H., of , do solemnly and sincerely declare that at the date of this declaration no process remains in force for the enforcement of (insert particulars of maintenance order, or if application relates only to a part of the order relating to a lump sum, insert particulars of that part of the order) made on the day of , 19 , by the Magistrates’ Court sitting at , whereunder I am entitled to receive payment[s].

And I make this solemn declaration, conscientiously believing the same to be true by virtue of the provisions of the Statutory Declarations Act 1835.

Declared at _____, the _____ day of _____, 19 ____ before me,

J.P.,
Justice of the Peace for [county] of
(Or other description)

6. Declaration that no process for enforcement remains in force and no proceedings for variation are pending

(M.O. Act 1958, s.5(4)(c))

I, G.H., of _____, do solemnly and sincerely declare that at the date of this declaration no process remains in force for the enforcement and no proceedings are pending in a Magistrates' Court for the variation of (insert particulars of maintenance order, or if application relates only to a part of the order relating to a lump sum, insert particulars of that part of the order) made on the _____ day of _____ 19 ____, by the [High Court] [_____] County Court] [Court of Session] [High Court in Northern Ireland] whereunder I am entitled to receive payment[s].

And I make this solemn declaration, conscientiously believing the same to be true by virtue of the provisions of the Statutory Declarations Act 1835.

Declared at _____, the _____ day of _____, 19 ____ before me, G.H.

J.P.
Justice of the Peace for the [county] of
(Or other description)

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules provide for the procedure to be followed in magistrates' courts in England and Wales in dealing with certain claims under the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters signed at Brussels on 27th September 1968. The United Kingdom acceded to the Convention, by the Accession Convention signed at Luxembourg on 9th October 1978. The two Conventions are made part of the law of the United Kingdom by section 2 of the Civil Jurisdiction and Judgments Act 1982, which is to come into force on 1st January 1987.

Under the 1968 Convention maintenance orders made by a court in Contracting States other than the United Kingdom are recognised and enforceable in England and Wales by means of an application transmitted through the Secretary of State to a magistrates' court. Part II of the Rules makes provision for the procedure to be followed by justices' clerks and magistrates' courts in relation to the registration, enforcement, variation and revocation of such orders.

Article 5(2) of the 1968 Convention confers jurisdiction in matters relating to maintenance on the court for the place where the maintenance creditor is domiciled or habitually resident. Part III of the Rules makes provision for the procedure to be followed in magistrates' courts in cases where the maintenance creditor is domiciled or habitually resident in England and Wales and the debtor is residing in a Contracting State outside the United Kingdom. Part IV is concerned with the taking of evidence in England and Wales for the purposes of maintenance proceedings in another Contracting State, and the admissibility in magistrates' courts in England and Wales of evidence taken in another Contracting State.

Rule 15 gives effect to the Schedule to the Rules which makes various amendments to existing magistrates' courts' rules. These amendments are made in consequence of the amendments made by Schedule 11 to the Civil Jurisdiction and Judgments Act 1982 in relation to enforcement of lump sum orders, recovery of interest on arrears and enforcement of maintenance orders against assets.

STATUTORY INSTRUMENTS

1986 No. 1962 (L.15)

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