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STATUTORY INSTRUMENTS

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**1991 No. 1247**

**The Family Proceedings Rules 1991**

**PART VII**

**ENFORCEMENT OF ORDERS**

*Proceedings under Act of 1972*

**Interpretation of rules 7.31 to 7.39**

**7.30** Expressions used in rules 7.31 to 7.38 which are used in the Act of 1972 have the same meanings as in that Act.

**Application for transmission of maintenance order to reciprocating country**

**7.31** An application for a maintenance order to be sent to a reciprocating country under section 2 of the Act of 1972(1) shall be made by lodging with the court—

- (a) an affidavit by the applicant stating—
  - (i) the applicant's reason 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 fails due;
- (b) a certified copy of the maintenance order;
- (c) a statement giving such information as the applicant possesses as to the whereabouts of the payer;
- (d) 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
- (e) if available to the applicant, a photograph of the payer.

**Certification of evidence given on provisional order**

**7.32** Where the court makes a provisional order under section 5 of the Act of 1972(2), 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 district judge.

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(1) Section 2 was amended by the Civil Jurisdiction and Judgments Act 1982 (c. 27), Schedule 11, paragraphs 8 and 9.  
(2) Section 5 was amended by section 54 of the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22).

### **Confirmation of provisional order**

**7.33.**—(1) On receipt of a certified copy of a provisional order made in a reciprocating country, together with the document mentioned in section 5(5) of the Act of 1972, the proper officer shall fix a date, 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 date, time and place so fixed together with a copy of the provisional order and that document.

(2) The proper officer shall send to the court which made the provisional order a certified copy of any order confirming or refusing to confirm that order.

### **Taking of evidence for court in reciprocating country**

**7.34.**—(1) The High Court shall be the prescribed court for the purposes of taking evidence pursuant to a request by a court in a reciprocating country under section 14 of the Act of 1972(3) where—

- (a) the request for evidence relates to a maintenance order made by a superior court in the United Kingdom, and
- (b) the witness resides in England and Wales.

(2) The evidence may be taken before a judge or officer of the High Court as the court thinks fit, and the provisions of RSC Order 39 shall apply with the necessary modifications as if the evidence were required to be taken pursuant to an order made under rule I of that Order.

(3) The county court shall be the prescribed court for the purposes of taking evidence pursuant to a request by a court in a reciprocating country pursuant to section 14 of the Act of 1972 where the request for evidence relates to a maintenance order made by a county court which has not been registered in a magistrates' court under the Act of 1958.

(4) Paragraph (2) shall apply to the taking of such evidence as though references therein to the High Court and RSC Order 39 were to the county court and CCR Order 20, rule 13 respectively.

### **Notification of variation or revocation**

**7.35** Where the 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 of the Act of 1972, the proper officer shall send a certified copy of the order to the court in the reciprocating country.

### **Transmission of documents**

**7.36** Any document required to be sent to a court in a reciprocating country under section 5(4) or section 14(1) of the Act of 1972 or by rule 7.33(2) or 7.36 shall be sent to the Secretary of State for transmission to that court unless the district judge is satisfied that, in accordance with the law of that country, the document may properly be sent by him direct to that court.

### **Application of rules 7.30 to 7.36 to Republic of Ireland**

**7.37.**—(1) In relation to the Republic of Ireland rules 7.30 to 7.36 shall have effect subject to the provisions of this rule.

(2) The following paragraphs shall be added to rule 7.31—

- “(f) 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

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(3) Section 14 was amended by the Magistrates' Courts Act 1980 (c. 43), Schedule 7, paragraph 105.

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;

- (g) a document which establishes that notice of the order was sent to the payer; and
- (h) if the payer 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 rule 7.32 there shall be substituted the following rule—

**“Certification of evidence given on application for variation or revocation**

**7.32.**—(1) Where an application is made to the court for the variation or revocation of an order to which section 5 of the Act of 1972 applies, the certified copy of the application and the documents required by subsection (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 district judge.”.

(4) Rule 7.33 shall not apply.

(5) For rule 7.35 there shall be substituted the following rule—

**“Notification of variation or revocation**

**7.35** Where the High Court makes an order varying or revoking a maintenance order to which section 5 of the Act of 1972 applies, the proper officer shall send a certified copy of the order and a statement as to the service on the payer of the documents mentioned in subsection (2) of that section to the court in the Republic of Ireland by which the maintenance order is being enforced.”.

(6) Rule 7.36 shall not apply.

**Application of rules 7.30 to 7.36 to the Hague Convention countries**

**7.38.**—(1) In relation to the Hague Convention countries, rules 7.30, 7.31, 7.34, 7.35 and 7.36 shall have effect subject to the provisions of this rule, but rules 7.32 and 7.33 shall not apply.

(2) A reference in rules 7.31 and 7.34 to a reciprocating country shall be construed as a reference to a Hague Convention country.

(3) The following words shall be inserted after paragraph (a)(ii) of rule 7.31—

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

(4) The following paragraphs shall be inserted after paragraph (e) of rule 7.31—

“(f) 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;

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

(h) 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 of the Act of 1972 and, if he did, a copy certified by the applicant or his solicitor to be a true copy of the legal aid certificate.”.

(5) In relation to the Hague Convention countries the following rules shall apply in place of rules 7.35 and 7.36—

**“Notification of variation or revocation**

**7.35.**—(1) Where the court makes an order varying or revoking a maintenance order to which section 5 of the Act of 1972, as modified, applies, and the time for appealing has expired without an appeal having been entered, the proper officer shall send to the Secretary of State such documents as are required by subsection (7) of that section, as it applies to Hague Convention countries, including a certificate signed by the district judge that the order of variation or revocation is enforceable and that it is no longer subject to the ordinary forms of review.

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

**Transmission of documents**

**7.36** 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 the court.”.