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STATUTORY INSTRUMENTS

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**1991 No. 1247**

**The Family Proceedings Rules 1991**

**PART VII**

**ENFORCEMENT OF ORDERS**

*Chapter 1.*

*General*

**Enforcement of order for payment of money, etc**

**7.1.**—(1) Before any process is issued for the enforcement of an order made in family proceedings for the payment of money to any person, an affidavit shall be filed verifying the amount due under the order and showing how that amount is arrived at.

In a case to which CCR Order 25 rule 11 (which deals with the enforcement of a High Court judgement in the county court) applies, the information required to be given in an affidavit under this paragraph may be given in the affidavit filed pursuant to that rule.

(2) Except with the leave of the district judge, no writ of fieri facias or warrant of execution shall be issued to enforce payment of any sum due under an order for ancillary relief or an order made under the provisions of section 27 of the Act of 1973(1) where an application for a variation order is pending.

(3) Where a warrant of execution has been issued to enforce an order made in family proceedings pending in the principal registry which are treated as pending in a divorce county court, the goods and chattels against which the warrant has been issued shall, wherever they are situate, be treated for the purposes of section 103 of the County Courts Act 1984(2) as being out of the jurisdiction of the principal registry.

(4) The Attachment of Earnings Act 1971(3) and CCR Order 27 (which deals with attachment of earnings) shall apply to the enforcement of an order made in family proceedings in the principal registry which are treated as pending in a divorce county court as if the order were an order made by such a court.

(5) Where an application under CCR Order 25, rule 3 (which deals with the oral examination of a judgement debtor) relates to an order made by a divorce county court—

(a) the application shall be made to such divorce county court as in the opinion of the applicant is nearest to the place where the debtor resides or carries on business, and

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(1) Section 27 was amended by the Domicile and Matrimonial Proceedings Act 1973 (c. 45), section 6(1), the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), sections 63 and 89(2) and Schedule 3, the Matrimonial and Family Proceedings Act 1984 (c. 42), sections 41 and 46(1) and Schedule 1, paragraph 12 and the Family Law Reform Act 1987 (c. 42), Schedule 2, paragraph 52.

(2) 1984 c. 28.

(3) 1971 c. 32.

(b) there shall be filed with the application the affidavit required by paragraph (1) of this rule and, except where the application is made to the court in which the order sought to be enforced was made, a copy of the order shall be exhibited to the affidavit;  
and accordingly paragraph (2) of the said rule 3 shall not apply.

### **Committal and injunction**

**7.2.**—(1) Subject to RSC Order 52, rule 6 (which, except in certain cases, requires an application for an order of committal to be heard in open court) an application for an order of committal in family proceedings pending in the High Court shall be made by summons.

(2) Where no judge is conveniently available to hear the application, then, without prejudice to CCR Order 29, rule 3(2) (which in certain circumstances gives jurisdiction to a district judge) an application for—

- (a) the discharge of any person committed, or
- (b) the discharge by consent of an injunction granted by a judge,

may be made to the district judge who may, if satisfied of the urgency of the matter and that it is expedient to do so, make any order on the application which a judge could have made.

(3) Where an order or warrant for the committal of any person to prison has been made or issued in family proceedings pending in the principal registry which are treated as pending in a divorce county court, that person shall, wherever he may be, be treated for the purposes of section 122 of the County Courts Act 1984<sup>(4)</sup> as being out of the jurisdiction of the principal registry; but if the committal is a failure to comply with the terms of an injunction, the order or warrant may, if a judge so directs, be executed by the tipstaff within any county court district.

(4) For the purposes of section 118 of the County Courts Act 1984<sup>(5)</sup> in its application to the hearing of family proceedings at the Royal Courts of Justice, the tipstaff shall be deemed to be an officer of the court.

### **Transfer of county court order to High Court**

**7.3.**—(1) Any person who desire the transfer to the High Court of any order made by a divorce county court in family proceedings except an order for periodical payments or for the recovery of arrears of periodical payments shall apply to the court ex parte by affidavit stating the amount which remains due under the order, and on the filing of the application the transfer shall have effect.

(2) Where an order is so transferred, it shall have the same force and effect and the same proceedings may be taken on it as if it were an order of the High Court.

## *Chapter 2.*

### *Judgement summonses*

### **General provisions**

**7.4.**—(1) In this chapter, unless the context otherwise requires—

- “order” means an order made in family proceedings for the payment of money;
- “judgement creditor” means a person entitled to enforce an order under section 5 of the Debtors Act 1869<sup>(6)</sup>;

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<sup>(4)</sup> 1984 c. 28.

<sup>(5)</sup> Section 118(1)(i) was repealed in part by the Statute Law (Repeals) Act 1986 (c. 12), Schedule 1, Part I.

<sup>(6)</sup> 1869 c. 62. Section 5(b) was repealed by the Bankruptcy Act 1883 (c. 52), Schedule 5. Section 5 was extended by section 40 of the Administration of Justice Act 1956 (c. 46) but restricted by section 11 of the Administration of Justice Act 1970 (c. 31).

“debtor” means a person liable under an order;

“judgement summons” means a summons under the said section 5 requiring a debtor to appear and be examined on oath as to his means.

(2) An application for the issue of a judgement summons may be made—

(a) in the case of an order of the High Court, to the principal registry, a district registry or a divorce county court, whichever in the opinion of the judgement creditor is most convenient,

(b) in the case of an order of a divorce county court, to whichever divorce county court is in the opinion of the judgement creditor most convenient,

having regard (in either case) to the place where the debtor resides or carries on business and irrespective of the court or registry in which the order was made.

(3) The application shall be made by filing a request in Form M 16 together with the affidavit required by rule 7.1(1) and, except where the application is made to the registry or divorce county court in which the order was made, a copy of the order shall be exhibited to the affidavit.

(4) A judgement summons shall not be issued without the leave of a judge if the debtor is in default under an order of commitment made on a previous judgement summons in respect of the same order.

(5) Every judgement summons shall be in Form M 17 and shall be served on the debtor personally not less than 10 days before the hearing and at the time of service there shall be paid or tendered to the debtor a sum reasonably sufficient to cover his expenses in travelling to and from the court at which he is summoned to appear.

(6) CCR Order 28, rule 3 (which deals among other things with the issue of successive judgement summonses) shall apply to a judgement summons, whether issued in the High Court or a divorce county court, but as if the said rule 3 did not apply CCR Order 7, rule 19(2).

(7) Successive judgement summonses may be issued notwithstanding that the judgement debtor has ceased to reside or carry on business at the address stated in Form M 16 since the issue of the original judgement summons.

(8) Where an applicant has obtained one or more orders in the same application but for the benefit of different persons—

(a) he shall be entitled to issue a judgement summons in respect of those orders on behalf of any judgement creditor without (where the judgement creditor is a child) seeking leave to act as his next friend; and

(b) only one judgement summons need be issued in respect of those orders.

(9) On the hearing of the judgement summons the judge may—

(a) where the order is for lump sum provision or costs, or

(b) where the order is for maintenance pending suit or other periodical payments and it appears to him that the order would have been varied or suspended if the debtor had made an application for that purpose,

make a new order for payment of the amount due under the original order, together with the costs of the judgement summons, either at a specified time or by instalments.

(10) If the judge makes an order or committal, he may direct its execution to be suspended on terms that the debtor pays to the judgement creditor the amount due, together with the costs of the judgement summons, either at a suspended time or by instalments, in addition to any sums accruing due under the original order.

(11) All payments under a new order or an order of committal shall be made to the judgement creditor unless the judge otherwise directs.

(12) Where an order of committal is suspended on such terms as are mentioned in paragraph (10)

- (a) all payments thereafter made under the said order shall be deemed to be made, first, in or towards the discharge of any sums from time to time accruing due under the original order and, secondly, in or towards the discharge of a debt in respect of which the judgement summons was issued and the costs of the summons;
- (b) CCR Order 28, rule 7(4) and (5) (which deal with an application for a further suspension) shall apply to the said order, whether it was made in the High Court or a divorce county court; and
- (c) the said order shall not be issued until the judgement creditor has filed an affidavit of default on the part of the debtor.

### **Special provisions as to judgement summonses in the High Court**

**7.5.**—(1) RSC Order 38, rule 2(3) (which enables evidence to be given by affidavit in certain cases) shall apply to a judgement summons issued in the High Court as if it were an originating summons.

(2) Witnesses may be summoned to prove the means of the debtor in the same manner as witnesses are summoned to give evidence on the hearing of a cause, and writs of subpoena may for that purpose be issued out of the registry in which the judgement summons is issued.

(3) Where the debtor appears at the hearing, the travelling expenses paid to him, if the judge so directs, be allowed as expenses of a witness, but if the debtor appears at the hearing and no order of committal is made, the judge may allow to the debtor, by way of set-off otherwise, his proper costs, including compensation for loss of time, as upon an attendance by a defendant at a trial in court.

(4) Where a new order or an order of committal is made, the proper officer of the registry in which the judgement summons was issued shall send notice of the order to the debtor and, if the original order was made in another registry, to the proper officer of that registry.

(5) An order of commitment shall be directed to the tipstaff, for execution by him, or to the proper officer of the county court within the district of which the debtor is to be found, for execution by a deputy tipstaff.

(6) Unless the judge otherwise directs, the judgement creditor's costs of and incidental to the judgement summons shall be fixed and allowed without taxation in accordance with RSC Order 62, rule 7(4).

(7) Where the judge directs that the judgement creditor's costs of and incidental to a judgement summons are to be taxed, RSC Order 62 shall have effect in relation to those costs with such modifications as may be necessary.

### **Special provisions as to judgement summonses in divorce county courts**

**7.6.**—(1) CCR Order 25, rules 3, 4 and 11 (which deal with the oral examination of debtors and the execution of High Court orders in county courts) and Order 28, rules 1, 2, 3(2), 7(3) and 9(2) (which deal with the issue of a judgement summons in a county court and the subsequent procedure) shall not apply to a judgement summons issued in a divorce county court.

(2) CCR Order 28, rule 9(1) (which relates to a judgement summons heard in a county court on a judgement or order of the High Court) shall apply to such a summons as if for the words "the High Court" there were substituted the words "any other court" where they first appear and "that other court" where they next appear.

(3) CCR Order 28, rule 7(1) and (2) (which relates to the suspension of a committal order) shall apply to such a summons subject to rule 7.4(10) and (11) of these Rules.

### Chapter 3.

#### Registration and Enforcement of Custody Orders

##### Registration under Family Law Act 1986(7)

7.7.—(1) In this Chapter, unless the context otherwise requires—

“the appropriate court”, means in relation to Scotland, the Court of Session and, in relation to Northern Ireland, the High Court in Northern Ireland;

“the Deputy Principal Clerk” means the Deputy Principal Clerk of Session;

“Part I order” means an order under Part I of the Act of 1986;

“the Master” means the Master (Care and Protection) of the High Court in Northern Ireland;

“registration” means registration under Part I of the Act of 1986, and “register” and “registerd” shall be construed accordingly.

(2) The prescribed officer for the purposes of sections 27(4) and 28(1) of the Act shall be the chief clerk of the family proceedings department of the principal registry and the functions of the court under section 27(3) and 28(1) of the Act of 1986 shall be performed by the proper officer.

##### Application to register English Part I order

7.8.—(1) An application under section 27 of the Act of 1986 for the registration of a Part I order made by the High Court shall be made by lodging in the principal registry or the district registry, as the case may be, a certified copy of the order, together with a copy of any order which has varied any of the terms of the original order and an affidavit by the applicant in support of his application, with a copy thereof.

(2) An application under section 27 of the Act of 1986 for the registration of a Part I order made by a county court shall be made by filing in that court a certified copy of the order, together with a certified copy of any order which has varied any of the terms of the original order and an affidavit in support of the application, with a copy thereof.

(3) The affidavit in support under paragraphs (1) and (2) above shall state—

- (a) the name and address of the applicant and his interest under the order;
- (b) the name and date of birth of the child in respect of whom the order was made, his whereabouts or suspected whereabouts and the name of any person with whom he is alleged to be;
- (c) the name and address of any other person who has an interest under the order and whether it has been served on him;
- (d) whether the order is to be registered in Scotland or Northern Ireland or in both jurisdictions;
- (e) that, to the best of the applicant’s information and belief, the order is in force;
- (f) whether, and if so where, the order is already registered; and
- (g) details of any order known to the applicant which affects the child and is in force in the jurisdiction in which the Part I order is to be registered;

and there shall be exhibited to the affidavit any document relevant to the application.

(4) Where the documents referred to in paragraphs (1) and (3), or (2) and (3), as the case may be are to be sent to the appropriate court, the proper officer shall—

- (a) retain the original affidavit and send the other documents to the Deputy Principal Clerk or to the Master, as the case may be;

- (b) record the fact of transmission in the records of the court; and
- (c) file a copy of the documents.

(5) On receipt of notice of the registration of a Part I order in the appropriate court the proper officer shall record the fact of registration in the records of the court.

(6) If it appears to the proper officer that the Part I order is no longer in force or that the child has attained the age of 16, he shall refuse to send the documents to the appropriate court and shall within 14 days of such refusal give notice of it, and there reason for it, to the applicant.

(7) If the proper officer refuses to send the documents to the appropriate court, the applicant may apply to the judge in chambers for an order that the documents (or any of them) be sent to the appropriate court.

### **Registration of Scottish and Northern Ireland orders**

**7.9** On receipt of a certified copy of an order made in Scotland or Northern Ireland for registration, the prescribed officer shall—

- (a) record the order in the register by entering particulars of—
  - (i) the name and address of the applicant and his interest under the order;
  - (ii) the name and whereabouts or suspected whereabouts of the child, his date of birth, and the date on which he will attain the age of 16; and
  - (iii) the terms of the order, its date and the court which made it;
- (b) file the certified copy and accompanying documents; and
- (c) give notice to the court which sent the certified copy and to the applicant for registration that the order has been registered.

### **Revocation and variation of English order**

**7.10.**—(1) Where a Part I order which is registered in the appropriate court is revoked or varied, the proper officer of the court making the subsequent order shall—

- (a) send a certified copy of that order to the Deputy Principal Clerk or to the Master, as the case may be, and to the court which made the Part I order, if that court is different from the court making the subsequent order, for filing by that court;
- (b) record the fact of transmission in the records of the court; and
- (c) file a copy of the order.

(2) On receipt of notice from the appropriate court of the amendment of its register, the proper officers of the court which made the Part I order and of the court which made the subsequent order shall each record the fact of amendment.

### **Registration of revoked, recalled or varied Scottish or Northern Ireland order**

**7.11.**—(1) On receipt of a certified copy of an order made in Scotland or Northern Ireland which revokes, recalls or varies a registered Part I order, the proper officer shall enter particulars of the revocation, recall or variation, as the case may be, in the register, and give notice of the entry to—

- (a) the court which sent the certified copy,
- (b) if different, the court which made the Part I order,
- (c) the applicant for registration, and
- (d) if different, the applicant for the revocation, recall or variation of the order.

(2) An application under section 28(2) of the Act of 1986 shall be made by summons and may be heard and determined by a district judge.

(3) If the applicant for the Part I order is not the applicant under section 28(2) of the Act of 1986 he shall be made a defendant to the application.

(4) Where the court cancels a registration of its own motion or on an application under paragraph (2), the proper officer shall amend the register accordingly and shall give notice of the amendment to the court which made the Part I order.

### **Interim directions**

**7.12.**—(1) An application for interim directions under section 29 of the Act of 1986 may be heard and determined by a district judge.

(2) The parties to the proceedings for enforcement and, if he is not a party thereto, the applicant for the Part I order, shall be made parties to the application.

### **Staying and dismissal of enforcement proceedings**

**7.13.**—(1) An application under section 30(1) or 31(1) of the Act of 1986 may be heard and determined by a district judge.

(2) The parties to the proceedings for enforcement which are sought to be stayed and, if he is not a party thereto, the applicant for the Part I order shall be made parties to an application under either of the said sections.

(3) Where the court makes an order under section 30(2) or (3) or section 31(3) of the Act of 1986, the proper officer shall amend the register accordingly and shall give notice of the amendment to the court which made the Part I order and to the applicants for registration, for enforcement and for the stay or dismissal of the proceedings for enforcement.

### **Particulars of other proceedings**

**7.14** A party to proceedings for or relating to a Part I order who knows of other proceedings (including proceedings out of the jurisdiction and concluded proceedings) which relate to the child concerned shall file an affidavit stating—

- (a) in which jurisdiction and court the other proceedings were instituted;
- (b) the nature and current state of such proceedings and the relief claimed or granted;
- (c) the names of the parties to such proceedings and their relationship to the child; and
- (d) if applicable, and if known, the reasons why the relief claimed in the proceedings for or relating to the Part I order was not claimed in the other proceedings.

### **Inspection of register**

**7.15** The following persons, namely—

- (a) the applicant for registration of a registered Part I order,
- (b) any person who satisfies a district judge that he has an interest under the Part I order, and
- (c) any person who obtains the leave of a district judge,

may inspect any entry in the register relating to the order and may bespeak copies of the order and of any document relating thereto.

## Chapter 4.

### *Enforcement of maintenance orders*

#### **Interpretation**

**7.16** In this chapter—

“the Act of 1920” means the Maintenance Orders (Facilities for Enforcement) Act 1920**(8)**;

“the Act of 1950” means the Maintenance Orders Act 1950**(9)**;

“the Act of 1958” means the Maintenance Orders Act 1958**(10)**;

“the Act of 1965” means the Matrimonial Causes Act 1965**(11)**;

“the Act of 1971” means the Attachment of Earnings Act 1971**(12)**;

“the Act of 1972” means the Maintenance Orders (Reciprocal Enforcement) Act 1972**(13)**;

“English maintenance order” means a maintenance order made in the High Court.

#### **Registration etc. of orders under Act of 1920**

**7.17.**—(1) The prescribed officer for the purposes of section 1(1) of the Act of 1920 shall be the senior district judge, and on receiving from the Secretary of State a copy of a maintenance order made by a court in any part of Her Majesty’s dominions outside the United Kingdom to which the Act of 1920 extends he shall cause the order to be registered in the register kept for the purpose of that Act (in this rule referred to as “the register”).

The copy of the order received from the Secretary of State shall be filed in the principal registry.

(2) An application for the transmission of an English maintenance order under section 2 of the Act of 1920 shall be made to the district judge by lodging in the principal registry a certified copy of the order and an affidavit stating the applicant’s reasons for believing that the person liable to make payments under the order is resident in some part of Her Majesty’s dominions outside the United Kingdom to which the Act of 1920 extends, together with full particulars, so far as known to the applicant, of that person’s address and occupation and any other information which may be required by the law of that part of Her Majesty’s dominions for the purpose of the enforcement of the order.

(3) If it appears to the district judge mentioned in paragraph (2) that the person liable to make payments under the English maintenance order is resident in some part of Her Majesty’s dominions outside the United Kingdom to which the Act of 1920 extends, he shall send the certified copy of the order to the Secretary of State for transmission to the Governor of that part of Her Majesty’s dominions.

Particulars of any English maintenance order sent to the Secretary of State under the said section 2 shall be entered in the register and the fact that this has been done shall be noted in the records of the court.

(4) Where an English maintenance order has been made in a cause or matter proceeding in a district registry, an application for the transmission of the order under the said section 2 may be made to the district judge of that registry and paragraphs (2) and (3) of this rule shall have effect as if for reference to the principal registry there were substituted references to the district registry.

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**(8)** 1920 c. 33.

**(9)** 1950 c. 37.

**(10)** 1958 c. 39.

**(11)** 1965 c. 72.

**(12)** 1971 c. 32.

**(13)** 1972 c. 18.



The proper officer shall send to the principal registry for entry in the register particulars of any order sent by him to the Secretary of State.

(5) Any person who satisfies a district judge that he is entitled to or liable to make payments under an English maintenance order or a maintenance order made by a court in any part of Her Majesty's dominions outside the United Kingdom to which the Act of 1920 extends or a solicitor acting on behalf of any such person or, with the leave of a district judge, any other person may inspect the register and bespeak copies of any order which has been registered and of any document filed therewith.

### *Proceedings under Part II of Act of 1950*

#### **Interpretation of rules 7.18 to 7.21**

**7.18** In this rule and rules 7.19 to 7.21

“the clerk of the Court of Session” means the deputy principal clerk in charge of the petition department of the Court of Session;

“maintenance order” means a maintenance order to which section 16 of the Act of 1950(14) applies; “Northern Irish order” means a maintenance order made by the Supreme Court of Northern Ireland;

“register” means the register kept for the purposes of the Act of 1950;

“the registrar in Northern Ireland” means the chief registrar of the Queen’s Bench Division (Matrimonial) of the High Court of Justice in Northern Ireland;

“registration” means registration under Part 11 of the Act of 1950 and “registered” shall be construed accordingly;

“Scottish order” means a maintenance order made by the Court of Session.

#### **Registration etc of English order**

**7.19.**—(1) An application for the registration of an English maintenance order may be made by lodging with the proper officer a certified copy of the order, together with an affidavit by the applicant (and a copy thereof) stating—

- (a) the address in the United Kingdom, and the occupation, of the person liable to make payments under the order;
- (b) the date of service of the order on the person liable to make payments thereunder or, if the order has not been served, the reason why service has not been effected;
- (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.

(2) If it appears to the district judge that the person liable to make payments under the order resides in Scotland or Northern Ireland and that it is convenient that the order should be enforceable there, the proper officer shall (subject to paragraph (6) below) send a certified copy of the order and the applicant’s affidavit to the clerk of the Court of Session or to the registrar in Northern Ireland, as the case may be.

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(14) Section 16 was amended by the Matrimonial Causes Act 1973 (c. 18), Schedule 2, paragraph 3(1)(a), the Domestic Proceedings and Magistrates’ Courts Act 1978 (c. 22), Schedule 13, paragraph 13, the Child Care Act 1980 (c. 5), Schedule 5, paragraph 3, the Matrimonial and Family Proceedings Act 1984 (c. 42), Schedule 1, paragraph 1(a) and the Family Law Reform Act 1987 (c. 42), Schedule 2, paragraph 12(b), Schedule 3, paragraph 1 and Schedule 4. Subsection 2(a)(iii) and (v) have been prospectively amended by paragraph 35 of Schedule 16 to the Courts and Legal Services Act 1990 (c. 41), Schedule 16, paragraph 35.

(3) On receipt of notice of the registration of an English maintenance order in the Court of Session or the Supreme Court of Northern Ireland, the proper officer shall—

- (a) cause particulars of the notice to be entered in the register;
- (b) note the fact of registration in the records of the court; and
- (c) send particulars of the notice to the principal registry.

(4) Where an English order registered in the Court of Session or the Supreme Court of Northern Ireland is discharged or varied the proper officer of the court ordering the discharge or variation shall give notice thereof to the clerk of the Court of Session or to the registrar in Northern Ireland, as the case may be, by sending him a certified copy of the order discharging or varying the maintenance order.

(5) Where the registration of an English maintenance order registered in the Court of Session or the Supreme Court of Northern Ireland is cancelled under section 24(1) of the Act of 1950<sup>(15)</sup>, notice of the cancellation shall be sent (as required by section 24(3)(a) of that Act) to the proper officer; and on receipt of such notice he shall cause particulars of it to be entered in Part I of the register.

(6) Where the order sought to be registered was made in a county court, this rule shall apply as though references to the Court of Session, the clerk of the Court of Session, the Supreme Court of Northern Ireland and the registrar of Northern Ireland were references to the sheriff court, the sheriff-clerk of the sheriff court, the court of summary jurisdiction and the clerk of the court of summary jurisdiction respectively.

### **Registration etc of Scottish and Northern Irish orders**

**7.20.**—(1) In relation to a Scottish or Northern Irish order the prescribed officer for the purposes of section 17(2) of the Act of 1950 shall be the proper officer of the principal registry.

(2) On receipt of a certified copy of a Scottish or Northern Irish order for registration, the proper officer shall—

- (a) cause the order to be registered in Part II of the register and notify the clerk of the Court of Session or the registrar in Northern Ireland, as the case may be, that this has been done; and
- (b) file the certified copy and any statutory declaration or affidavit as to the amount of any arrears due under the order.

(3) An application under section 2(2) of the Act of 1950 by a person liable to make payments under a Scottish order registered in the High Court to adduce before that court such evidence as is mentioned in that section shall be made by lodging a request for an appointment before a district judge of the principal registry; and notice of the date, time and place fixed for the hearing shall be sent by post to the applicant and to the person entitled to payments under the order.

(4) The prescribed officer to whom notice of the discharge or variation of a Scottish or Northern Irish order registered in the High Court is to be given under section 23(1)(a) of the Act of 1950<sup>(16)</sup> shall be the proper officer, and on receipt of the notice he shall cause particulars of it to be registered in Part II of the register.

(5) An application under section 24(1) of the Act of 1950 for the cancellation of the registration of a Scottish or Northern Irish order shall be made ex parte by affidavit to district judge of the principal registry who, if he cancels the registration, shall note the cancellation in Part II of the register, whereupon the proper officer shall send notice of the cancellation to the clerk of the Court of Session

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<sup>(15)</sup> Section 24(1) was amended by the Administration of Justice Act 1977 (c. 38), Schedule 3, paragraph 9 and the Civil Jurisdiction and Judgments Act 1982 (c. 27), Schedule 12, Part III, paragraph 1(1)(4).

<sup>(16)</sup> Section 23(1)(a) was substituted by the Administration of Justice Act 1977 (c. 38), Schedule 3, paragraph 8.

or the registrar in Northern Ireland, as the case may be, and also to the clerk of any magistrates' court in which the order has been registered in accordance with section 2(5) of the Act of 1958(17).

(6) A person entitled to payments under a Scottish or Northern Irish order registered in the High Court who wishes to take proceedings for or with respect to the enforcement of the order in a district registry may apply by letter to the senior district judge of the principal registry who may, if satisfied that the order ought to be enforceable in the district registry, make an order accordingly on such terms, if any, as may be just.

### **Inspection of register**

**7.21** Any person who satisfies a district judge of the principal registry that he is entitled to or liable to make payments under a maintenance order of a superior court or a solicitor acting on behalf of any such person or, with the leave of the district judge, any other person may inspect the register and bespeak copies of any such order which is registered in the High Court under Part 11 of the Act of 1950 and of any statutory declaration or affidavit filed therewith.

#### *Registration etc of certain orders under the Act of 1958*

### **Application and interpretation of rules 7.22 to 7.29**

**7.22** Section 21 of the Act of 1958(18) shall apply to the interpretation of this rule and rules 7.23 to 7.29 as it applies to the interpretation of that Act; and in those rules—

“cause book” includes cause card; and

“the register” means any register kept for the purposes of the Act of 1958.

### **Application for registration**

**7.23.—(1)** An application under section 2(1) of the Act of 1958 for the registration in a magistrates' court of a maintenance order shall be made by lodging with the proper officer—

(i) a certified copy of the maintenance order, and

(ii) two copies of the application in Form No. 115 in Appendix A to the Rules of the Supreme Court 1965(19).

(2) The period required to be prescribed by rules of court for the purpose of section 2(2) of the Act of 1958 shall be 14 days.

(3) The proper officer shall cause the certified copy of an order required by the said section 2(2) to be sent to the clerk of a magistrates' court to be endorsed with a note that the application for registration of the order has been granted and to be accompanied by a copy of the application lodged under paragraph (1).

(4) On receipt of notice that a maintenance order has been registered in a magistrates' court in accordance with section 2(5) of the Act of 1958, the proper officer shall enter particulars of the registration in the records of the court.

### **Registration in a magistrates' court of an order registered in the High Court**

**7.24** On receipt of notice that a maintenance order registered in the High Court in accordance with section 17(4) of the Act of 1950 has been registered in a magistrates' court in accordance with

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(17) Section 2(5) was amended by the Administration of Justice Act 1970 (c. 31), section 54(3) and Schedule 11, the Guardianship of Minors Act 1971 (c. 3), section 18(1) and Schedule 1, the Magistrates' Courts Act 1980 (c. 43), Schedule 7, paragraph 24 and the Family Law Reform Act 1987 (c. 42), section 33(4) and Schedule 4.

(18) S.I.1965/1776.

(19) Section 4(7) was amended by the Administration of Justice Act 1970 (c. 31), section 32 and Schedule 5, Part IV.

section 2(5) of the Act of 1958, the proper officer shall cause particulars of the registration to be entered in Part II of the register.

### **Registration of magistrates' court order**

**7.25** On receipt of a certified copy of a magistrates' court order sent to him pursuant to section 2(4)(c) of the Act of 1958, the proper officer shall cause the order to be registered in the High Court by filing the copy and making an entry in the register or, where the copy order is received in a district registry, in the cause book and shall send notice to the clerk of the magistrates' court that the order has been duly registered.

### **Registration in the High Court of an order registered in a magistrates' court**

**7.26.**—(1) This rule applies where a sheriff court in Scotland or a magistrates' court in Northern Ireland has made an order for the registration in the High Court of an order previously registered in a magistrates' court in England and Wales in accordance with section 17(4) of the Act of 1950, and has sent a certified copy of the maintenance order to the proper officer of the High Court, pursuant to section 2(4)(c) of the Act of 1958.

(2) On receipt of the certified copy, the proper officer shall cause the order to be registered in the High Court by filing the copy and making an entry in the register, and shall send notice of the registration to the clerk of the original court and also to the clerk of the magistrates' court in which the order was registered in accordance with section 17(4) of the Act of 1950.

### **Variation or discharge of registered order**

**7.27.**—(1) Where the court makes an order varying or discharging an order registered in a magistrates' court under Part I of the Act of 1958, the proper officer shall send a certified copy of the first-mentioned order to the clerk of the magistrates' court.

(2) Where a certified copy of an order varying an order registered in a magistrates' court under Part I of the Act of 1958 is received from the clerk of the magistrates' court, the proper officer shall file the copy and enter particulars of the variation on the same documents or in the same records as particulars of registration are required by rule 7.23(4) to be entered.

(3) Where a certified copy of an order varying or discharging an order made by a magistrates' court and registered in the High Court under Part I of the Act of 1958 is received from the clerk of the magistrates' court, the proper officer shall—

- (a) file the copy,
- (b) enter particulars of the variation or discharge in the register or, where the copy order is received in a district registry, in the cause book, and
- (c) send notice of the variation or discharge to any proper officer of a county court—
  - (i) who has given notice to the proper officer of proceedings taken in that court for the enforcement of the registered order, or
  - (ii) to whom any payment is to be made under an attachment of earnings order made by the High Court for the enforcement of the registered order.

### **Appeal from variation etc of order by magistrates' court**

**7.28** An appeal to the High Court under section 4(7) of the Act of 1958<sup>(19)</sup> shall be heard and determined by a Divisional Court of the Family Division, and rule 8.2 shall apply as it applies in

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<sup>(19)</sup> Section 4(7) was amended by the Administration of Justice Act 1970 (c. 31), section 32 and Schedule 5, Part IV.

relation to an appeal from a magistrates' court under the Domestic Proceedings and Magistrates' Courts Act 1978(20).

### **Cancellation of registration**

**7.29.**—(1) A notice under section 5 of the Act of 1958(21) by a person entitled to receive payments under an order registered in the High Court must be given to the proper officer.

(2) Where the High Court gives notice under the said section 5, the proper officer shall endorse the notice on the certified copy mentioned in rule 7.27(1).

(3) Where notice under the said section 5 is given in respect of an order registered in the High Court, the proper officer on being satisfied by an affidavit by the person entitled to receive payments under the order that no process for the enforcement of the order issued before the giving of the notice remains in force, shall—

- (a) cancel the registration by entering particulars of the notice in the register or cause book, as the case may be, and
- (b) send notice of the cancellation to the clerk of the court by which the order was made and, where applicable, to the clerk of the magistrates' court in which the order was registered in accordance with section 17(4) of the Act of 1950 stating, if such be the case, that the cancellation is in consequence of a notice given under subsection (1) of the said section 5.

(4) On receipt of notice from the clerk of a magistrates' court that the registration in that court under the Act of 1958 of an order made by the High Court or a county court has been cancelled, the proper officer shall enter particulars of the cancellation on the same documents or in the same records as particulars of registration are required by rule 7.23(4) to be entered.

(5) On receipt of notice from the clerk of a magistrates' court that the registration in that court under the Act of 1958 of an order registered in the High Court in accordance with section 17(4) of the Act of 1950 has been cancelled, the proper officer shall note the cancellation in Part II of the register.

#### *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(22) 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;

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(20) 1978 c. 22.

(21) Section 5 was amended by the Administration of Justice Act 1977 (c. 38), Schedule 3, paragraph 4.

(22) Section 2 was amended by the Civil Jurisdiction and Judgments Act 1982 (c. 27), Schedule 11, paragraphs 8 and 9.

- (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<sup>(23)</sup>, 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.

### **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<sup>(24)</sup> 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.

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<sup>(23)</sup> Section 5 was amended by section 54 of the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22).

<sup>(24)</sup> Section 14 was amended by the Magistrates' Courts Act 1980 (c. 43), Schedule 7, paragraph 105.

### **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 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.”.