

SCHEDULE 1

Article 2(1)

MODIFICATIONS TO PART I OF THE ACT

1. Section 1 shall not apply.
- 2.—(1) Section 2 shall be amended as follows.
 - (2) In subsection (1)—
 - (a) for the words “before or after the commencement of this Part of this Act” there shall be substituted the words “before, on or after 5th April 1993”; and
 - (b) the words “or has assets” shall be omitted.
 - (3) In subsection (4)—
 - (a) the words “or has assets” shall be omitted;
 - (b) the words “and the nature and location of his assets in that country”, in both places where they occur, shall be omitted;
 - (c) in paragraph (e), the word “and” shall be omitted and after paragraph (f) there shall be inserted the following paragraphs:
 - “(g) if the payer did not appear in the proceedings in which the maintenance order was made, the original or a certified copy of a document which establishes that notice of the institution of the proceedings was served on the payer;
 - (h) a document which establishes that notice of the order was sent to the payer; and
 - (i) if the payee received legal aid in the proceedings, a written statement to that effect signed by that officer,”;
 - (d) after the words “that officer”, where they last occur, there shall be inserted the words “, in the case of a court in England and Wales or Northern Ireland, to the Lord Chancellor, or in the case of a court in Scotland,”; and
 - (e) after the words “transmitted by” there shall be inserted the words “the Lord Chancellor, or, as the case may be,”.
- 3.—(1) Section 3 shall be amended as follows.
 - (2) In subsection (5)—
 - (a) after paragraph (c) there shall be inserted—
 - “(ca) a notice addressed to the payer stating that a provisional order has been made, that it has no effect unless and until confirmed with or without alteration by the court making the order, and that in considering whether or not to confirm the provisional order the court will take into account any representations made or any evidence adduced by or on behalf of the payer within three weeks from the date of service of the notice,”; and
 - (b) for the words “Secretary of State” in both places where they occur, there shall be substituted the words “Lord Chancellor”.
 - (3) For subsection (6) there shall be substituted—
 - “(6) The court which made a provisional order by virtue of this section shall not earlier than three weeks after the date of service of the notice referred to in paragraph (ca) of subsection (5) above consider whether or not to confirm the order and with or without alteration and shall take into account any representations made and any evidence adduced by or on behalf of the payer.

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(6A) Where the payer makes any representations or adduces any evidence a copy of the representations or evidence shall be served on the person on whose application the provisional order was made before the date of the hearing at which confirmation of the provisional order will be considered and that person shall be notified in the prescribed manner of the date fixed for the hearing.

(6B) The court shall not confirm such an order unless the documents mentioned in paragraphs (a), (b), (c) and (ca) of subsection (5) above have been served on the payer in accordance with the law for the service of such documents in the Republic of Ireland and in sufficient time to enable him to arrange for his defence.

(6C) Where an order has been confirmed under this section, the prescribed officer of the court shall—

- (a) send to the payer by registered post notice of the confirmation of the order; and
- (b) send the following documents, that is to say—
 - (i) a certified copy of the maintenance order as confirmed;
 - (ii) a certificate signed by that officer certifying that the order is enforceable in the United Kingdom;
 - (iii) if the payer did not appear in the proceedings in which the order was confirmed, the original or a certified copy of a document which establishes that the documents mentioned in paragraphs (a), (b), (c) and (ca) of subsection (5) above have been served on the payer;
 - (iv) a document which establishes that notice of the confirmation of the order has been sent to the payer by registered post;
 - (v) if the payee received legal aid in the proceedings, a written statement to that effect signed by that officer,

to the Lord Chancellor with a view to their being transmitted by him to the responsible authority in the Republic of Ireland.

(6D) Where the court decides not to confirm a provisional order, it shall revoke the order.”.

4.—(1) Section 4 shall be amended as follows.

(2) For subsection (1) there shall be substituted the following subsections—

“(1) The sheriff shall have jurisdiction in any action to which this section applies if—

- (a) the pursuer resides within the jurisdiction of the sheriff;
- (b) the sheriff is satisfied that, to the best of the information or belief of the pursuer, the defender is residing in the Republic of Ireland; and
- (c) the sheriff would not, apart from this subsection, have jurisdiction in that action.

(2) This section applies to any action for the payment, variation or revocation of aliment which is competent in the sheriff court, and includes an action of affiliation and aliment, but does not include an action of separation and aliment or adherence and aliment, or any action containing a crave for the custody of a child.”.

(3) In subsection (3), for the words “referred to in” there shall be substituted “in which the sheriff has jurisdiction by virtue of”.

(4) For subsection (4) there shall be substituted—

“(4) In any action referred to in subsection (1) above, no decree shall be granted in favour of the pursuer unless—

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- (a) a copy of the initial writ or summons together with a copy of the warrant for citation has been sent to the responsible authority in the Republic of Ireland for service on the defender; and
 - (b) a copy of the initial writ or summons has been served on the defender in accordance with the law for the service of such documents in the Republic of Ireland and in sufficient time to enable him to arrange for his defence; and
 - (c) the grounds of action have been substantiated by sufficient evidence, and section 36(3) of the Sheriff Courts (Scotland) Act 1971(1) shall not apply in relation to any such action which is a summary cause.”.
- (5) Subsections (5) and (6) shall be omitted.
5. For section 5 there shall be substituted—

(1) This section applies to a maintenance order a certified copy of which has been sent to the Republic of Ireland in pursuance of section 2 of this Act and to a provisional order made in pursuance of section 3 of this Act which has been confirmed by a court in England and Wales or Northern Ireland under that section.

(2) Where subsection (1) of section 60 of the Magistrates' Courts Act 1980(2) (revocation, variation etc. of orders for periodical payment) applies in relation to a maintenance order to which this section applies, that subsection shall have effect as if for the words “by order on complaint,” there were substituted “on an application being made, by order”.

(3) Where an application is made to a court in England and Wales or Northern Ireland by the payee for the variation or revocation of an order to which this section applies, and the payer is residing in the Republic of Ireland, the prescribed officer of the court shall send to the Lord Chancellor a certified copy of the application together with a document, authenticated in the prescribed manner, setting out or summarising the evidence in support of the application, with a view to their being transmitted by him to the responsible authority in the Republic of Ireland for service on the payer.

(4) A court in England and Wales or Northern Ireland shall not vary or revoke such an order before the expiry of three weeks from the date of service of the documents mentioned in subsection (3) above and before varying or revoking the order shall take into account any representations made and any evidence adduced by or on behalf of the payer.

(5) Where such an order is varied or revoked by a court in England and Wales or Northern Ireland, a certified copy of the order of the court and a statement as to the service of the documents mentioned in subsection (3) above on the payer shall be sent to the court in the Republic of Ireland by which the order is being enforced.

(6) Where a maintenance order to which this section applies has been varied by an order made by a court in the United Kingdom, the maintenance order shall, as from the date on which the order of variation was made, have effect as varied by that order.

(7) Where a maintenance order to which this section applies has been revoked by an order made by a court in the United Kingdom, the maintenance order shall, as from the date on which the order of revocation was made, be deemed to have ceased to have effect except as respects any arrears due under the maintenance order at that date.”.

6.—(1) Section 6 shall be amended as follows.

(2) For subsection (1) there shall be substituted—

(1) 1971 c. 58.

(2) 1980 c. 43; section 60(1) was substituted by section 4 of the Maintenance Enforcement Act 1991 (c. 17).

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“(1) This section applies to a maintenance order made whether before, on or after 5th April 1993 by a court in the Republic of Ireland.”.

(3) In subsection (2)—

- (a) after the words “received by” there shall be inserted the words “the Lord Chancellor or”;
- (b) for the words “the Secretary of State” in the second place where they occur, there shall be substituted the word “him”;
- (c) the words “or has assets” shall be omitted; and
- (d) after the words “copy of the order” there shall be inserted the words “and the accompanying documents”.

(4) In subsection (3)—

- (a) after the words “receives from” there shall be inserted the words “the Lord Chancellor or”; and
- (b) for the words “subsection (4)” there shall be substituted the words “the following subsections”.

(5) In subsection (4)—

- (a) the words “has no assets” shall be omitted;
- (b) for the words “residing and has no assets within the jurisdiction of the court” there shall be substituted the words “so residing”;
- (c) the words “and the nature and location of his assets” shall be omitted; and
- (d) after the words “copy of the order” there shall be inserted the words “and the accompanying documents to the Lord Chancellor or, as the case may be,”.

(6) After subsection (4) there shall be added—

“(5) The order shall not be registered—

- (a) if such registration is contrary to public policy;
- (b) if the payer did not appear in the proceedings in the Republic of Ireland and he was not served in accordance with the law of the place where he was residing with the summons or other notice of the institution of the proceedings in sufficient time to enable him to arrange for his defence;
- (c) if the order is irreconcilable with a judgment given in the United Kingdom in proceedings between the same parties.

(6) If the order is registered under this section, the prescribed officer of the appropriate court shall serve notice in a prescribed form on the payer and give notice to the payee that the order has been registered.

(7) The payer may within one calendar month from the date of service of the said notice appeal to the court in which the order is registered to set aside the registration of the order on one of the grounds set out in subsection (5) above.

(8) If the payer appeals to the appropriate court to set aside the registration of the order, the prescribed officer of the court shall give notice to the payee of the appeal and of the date of the hearing of the appeal.

(9) If the payer appeals to the appropriate court to set aside the registration of the order, the court may, on the application of the payer, stay, or in Scotland sist, the proceedings if either—

- (a) enforcement of the maintenance order has been suspended in the Republic of Ireland pending the determination of any form of appeal; or

- (b) the time for an appeal has not yet expired and enforcement has been suspended pending the making of an appeal,

and in the latter case the court may lay down the time within which the proceedings will be stayed or sisted.

(10) If the order is not registered by virtue of subsection (5) above, the prescribed officer shall give notice to the payee in a prescribed form that the order has not been registered.

(11) A payee to whom notice has been given by the officer of any court under subsection (10) above may within one calendar month of the date of the notice appeal to that court to set aside the decision not to register the order.

(12) In the application of this section to Scotland—

- (a) in subsection (6), for the words “serve notice on” there shall be substituted the words “intimate to”;
- (b) in subsection (7), for the words “service of the said notice” there shall be substituted the words “the said intimation”; and
- (c) in subsections (7) to (11), for any reference to an appeal there shall be substituted a reference to an application and cognate expressions shall be construed accordingly.”.

7. Section 7 shall not apply.

8.—(1) Section 8 shall be amended as follows.

(2) In subsection (1), for the words “subsection (2)” there shall be substituted the words “subsections (1A), (2), (2A) and (2B)”.

(3) After subsection (1) there shall be inserted—

“(1A) During the period within which an appeal to set aside the registration of a registered order may be made under section 6(7) and until any such appeal has been determined, no measures of enforcement may be taken against the property of the payer other than those designed to protect the interests of the payee:

Provided that nothing in this subsection shall be construed as preventing a registered order from being registered as mentioned in subsection (2) below.”.

(4) After subsection (2) there shall be inserted—

“(2A) Where in a maintenance order made in the Republic of Ireland there are provisions which are not enforceable, this section shall apply only to the remaining provisions of the order.

(2B) The payee under a registered order may request the partial enforcement of that order.”.

(5) In subsection (4), after the words “magistrates' court” where they first occur, there shall be inserted the words “in England and Wales”.

(6) In subsection (5), the words “or facilitating the enforcement of” shall be omitted.

(7) For subsections (7), (8) and (9) there shall be substituted—

“(7) Subject to subsection (8) below, sums of money payable under a registered order shall be payable in accordance with the order, or such part thereof as the payee may have requested should be enforced, as from the date on which the order took effect.

(8) No sums of money accruing before 1st April 1975 under a registered order shall be payable in accordance with the order.

(9) In the application of this section to Scotland—

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- (a) in subsection (1A), for any reference to an appeal there shall be substituted a reference to an application;
- (b) subsections (2) to (5) shall be omitted; and
- (c) in subsection (6), for the word “evidence” there shall be substituted the words “sufficient evidence”.

9. For section 9 there shall be substituted—

(1) Where a registered order has been varied by a court in the Republic of Ireland, the registered order shall, as from the date on which the order of variation took effect or 1st April 1975, whichever is the later, have effect as varied by that order.

(2) Where a registered order has been revoked by a court in the Republic of Ireland, the registered order shall, as from the date on which the order of revocation took effect or 1st April 1975, whichever is the later, be deemed to have ceased to have effect except as respects any arrears due under the registered order at that date.

(3) The prescribed officer of the registering court shall register in the prescribed manner any order varying a registered order.”.

10.—(1) Section 10 shall be amended as follows.

(2) For subsection (1) there shall be substituted—

“(1) Where a registered order is revoked by an order made by a court in the Republic of Ireland and notice of the revocation is received by the registering court, the prescribed officer of the registering court shall cancel the registration; but any arrears due under the registered order at the date on which the order of revocation took effect or 1st April 1975, whichever is the later, shall continue to be recoverable as if the registration had not been cancelled.”.

(3) In subsection (2)—

- (a) in relation to England and Wales and Northern Ireland, for the words “is not residing within the jurisdiction of that court and has no assets within that jurisdiction against which the order can be effectively enforced” there shall be substituted the words “has ceased to reside within the jurisdiction of that court”; and
- (b) in relation to Scotland, for those words there shall be substituted the words “is not residing in Scotland”.

(4) In subsection (3), the words “or has assets” shall be omitted.

(5) In subsection (5)—

- (a) for the words “Secretary of State” there shall be substituted the words “Lord Chancellor”; and
- (b) for the words “residing or has assets” there shall be substituted the words “still residing”.

(6) In subsection (6)—

- (a) the words “or has assets” shall be omitted;
- (b) for the words “residing and has no assets within the jurisdiction of the court” there shall be substituted the words “so residing”; and
- (c) for the words “Secretary of State” there shall be substituted the words “Lord Chancellor”.

(7) In subsection (7)—

- (a) for the words “Secretary of State” there shall be substituted the words “Lord Chancellor”; and
- (b) the words “and the nature and location of his assets” shall be omitted.

(8) In subsection (8), in paragraph (a), the word “and” shall be omitted and after paragraph (b) there shall be inserted—

“; and

(c) for the words “Lord Chancellor”, in each place where they occur, there shall be substituted the words “Secretary of State”.

11.—(1) Section 11 shall be amended as follows.

(2) In subsection (1)—

(a) the words “at any time” shall be omitted;

(b) after the words “appears to” there shall be inserted the words “the Lord Chancellor or”;

(c) the words “and has no assets”, the words “or, if having regard to all the circumstances he thinks it proper to do so, to the responsible authority in another reciprocating country”, the words “and a certified copy of any order varying that order” and the words “and the nature and location of his assets” shall be omitted; and

(d) in paragraph (c), after the words “information as” there shall be inserted the words “the Lord Chancellor or”.

(3) Subsection (2) shall be omitted.

12. For section 12 there shall be substituted—

(1) No appeal shall lie from a provisional order made in pursuance of section 3 of this Act by a court in England and Wales or Northern Ireland.

(2) Where in pursuance of that section any such court confirms or refuses to confirm such a provisional order, the payer or payee under the order shall have the like right of appeal (if any) from the confirmation of, or refusal to confirm, the provisional order as he would have if that order were not a provisional order and the court had made or, as the case may be, refused to make the order on the occasion on which it confirmed or, as the case may be, refused to confirm the order.

(3) Nothing in subsection (2) shall be construed as affecting any right of appeal conferred by any other enactment.”.

13.—(1) Section 13 shall be amended as follows.

(2) In subsection (1), after paragraph (c) there shall be added—

“(d) a document purporting to be signed by a judge or officer of a court in the Republic of Ireland which establishes that certain documents were served on a person,”.

(3) In subsections (2) and (3), the word “magistrate” in each place where it occurs shall be omitted.

14.—(1) Section 14 shall be amended as follows.

(2) In subsection (1), for the words from “in the prescribed manner” to the end there shall be substituted the following words—

“by the prescribed officer of the court—

(a) in England and Wales or Northern Ireland, to the Lord Chancellor, or

(b) in Scotland, to the Secretary of State,

for transmission to the responsible authority in the Republic of Ireland.”.

(3) For subsection (5) there shall be substituted—

“(5) A court in—

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- (a) England and Wales or Northern Ireland may for the purpose of any proceedings in that court under this Part of this Act relating to a maintenance order to which this Part of this Act applies, send to the Lord Chancellor, or
- (b) Scotland may for the purpose of such proceedings in that court relating to such an action, send to the Secretary of State,

for transmission to the responsible authority in the Republic of Ireland a request for a court in the Republic of Ireland to take or provide evidence relating to such matters as may be specified in the request.”.

15. In section 15, the word “magistrate” in each place where it occurs shall be omitted.

16. In section 16, subsections (2) to (6) shall be omitted.

17.—(1) Section 17 shall be amended as follows.

(2) In subsection (6), in paragraph (a) the word “or”, and paragraph (b), shall be omitted.

(3) In subsection (7), paragraph (b) shall be omitted.

18. Section 20 shall not apply.

19.—(1) Section 21(1) shall be amended as follows.

(2) In subsection (1)—

(a) in the definition of “the appropriate court” the words “or having assets”, in both places where they occur, and the words “or has assets” shall be omitted and for the words “a sheriff court” there shall be substituted the words “the sheriff court”;

(b) in the definition of “certificate of arrears” after the words “date of the certificate” there shall be inserted the words “except any arrears due under the order in respect of a period ending before 1st April 1975” and for the words “that date” there shall be substituted the words “the date of the certificate”;

(c) in the definition of “maintenance order” for the words “payment of a lump sum or the making of periodical payments” there shall be substituted the words “periodical payment of sums of money”;

(d) for the definition of “provisional order” there shall be substituted the following definition—

““provisional order” means an order made by a court in England and Wales or Northern Ireland which is provisional only and has no effect unless and until confirmed, with or without alteration, by that court;”;

(e) the definition of “reciprocating country” shall be omitted; and

(f) in the definition of “responsible authority”, after the words “similar to those of” there shall be inserted the words “the Lord Chancellor or”.

(3) In subsection (2), for the words “payment of a lump sum or the making of periodical payments” there shall be substituted the words “periodical payment of sums of money”.

20. Sections 22, 23 and 24 shall not apply.