

SCHEDULE 2

PART I OF THE ACT AS MODIFIED BY SCHEDULE 1

Orders made by courts in the United Kingdom

Transmission of maintenance order made in United Kingdom for enforcement in the Republic of Ireland.

2.—(1) Subject to subsection (2) below, where the payer under a maintenance order made, whether before, on or after 5th April 1993, by a court in the United Kingdom is residing in the Republic of Ireland, the payee under the order may apply for the order to be sent to that country for enforcement.

(2) Subsection (1) above shall not have effect in relation to a provisional order or to an order made by virtue of a provision of Part II of this Act.

(3) Every application under this section shall be made in the prescribed manner to the prescribed officer of the court which made the maintenance order to which the application relates.

(4) If, on an application duly made under this section to the prescribed officer of a court in the United Kingdom, that officer is satisfied that the payer under the maintenance order to which the application relates is residing in the Republic of Ireland, the following documents, that is to say—

- (a) a certified copy of the maintenance order;
- (b) a certificate signed by that officer certifying that the order is enforceable in the United Kingdom;
- (c) a certificate of arrears so signed;
- (d) a statement giving such information as the officer possesses as to the whereabouts of the payer;
- (e) a statement giving such information as the officer possesses for facilitating the identification of the payer;
- (f) where available, a photograph of the payer;
- (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,

shall be sent by that officer, 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, to the Secretary of State, with a view to their being transmitted by the Lord Chancellor, or, as the case may be, the Secretary of State, to the responsible authority in the Republic of Ireland if he is satisfied that the statement relating to the whereabouts of the payer gives sufficient information to justify that being done.

(5) Nothing in this section shall be taken as affecting any jurisdiction of a court in the United Kingdom with respect to a maintenance order to which this section applies, and any such order may be enforced, varied or revoked accordingly.

Power of magistrates' court to make and confirm provisional maintenance order against person residing in the Republic of Ireland.

3.—(1) Where an application is made to a magistrates' court for a maintenance order against a person residing in the Republic of Ireland and the court would have jurisdiction to determine the

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application under the Domestic Proceedings and Magistrates' Courts Act 1978(1) or the Children Act 1989(2) if that person—

- (a) were residing in England and Wales, and
- (b) received reasonable notice of the date of the hearing of the application,

the court shall (subject to subsection (2) below) have jurisdiction to determine the application.

(2) A maintenance order made by virtue of this section shall be a provisional order.

(4) No enactment (or provision made under an enactment) requiring or enabling—

- (a) a court to transfer proceedings from a magistrates' court to a county court or the High Court, or
- (b) a magistrates' court to refuse to make an order on an application on the ground that any matter in question is one that would be more conveniently dealt with by the High Court,

shall apply in relation to an application to which subsection (1) above applies.

(5) Where a court makes a maintenance order which is by virtue of this section a provisional order, the following documents, that is to say—

- (a) a certified copy of the maintenance order;
- (b) a document, authenticated in the prescribed manner, setting out or summarising the evidence given in the proceedings;
- (c) a certificate signed by the prescribed officer of the court certifying that the grounds stated in the certificate are the grounds on which the making of the order might have been opposed by the payer under the order;
 - (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;
- (d) a statement giving such information as was available to the court as to the whereabouts of the payer;
- (e) a statement giving such information as the officer possesses for facilitating the identification of the payer; and
- (f) where available, a photograph of the payer,

shall be sent by that officer to the Lord Chancellor with a view to their being transmitted by the Lord Chancellor to the responsible authority in the Republic of Ireland if he is satisfied that the statement relating to the whereabouts of the payer gives sufficient information to justify that being done.

(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.

(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.

(1) 1978 c. 22.

(2) 1989 c. 41.

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(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.

(7) In the application of this section to Northern Ireland—

- (a) for subsection (1) there shall be substituted—

“(1) Where a complaint is made to a magistrates' court against a person residing in the Republic of Ireland and the complaint is one on which the court would have jurisdiction by virtue of any enactment to make a maintenance order if—

 - (a) that person were residing in Northern Ireland, and
 - (b) a summons to appear before the court to answer the complaint had been duly served on him,

the court shall have jurisdiction to hear the complaint and may (subject to subsection (2) below) make a maintenance order on the complaint.”, and

- (b) for subsection (4) there shall be substituted—

“(4) No enactment empowering a magistrates' court to refuse to make an order on a complaint on the ground that any matter in question is one which would be more conveniently dealt with by the High Court of Justice in Northern Ireland shall apply in relation to a complaint to which subsection (1) above applies.”.

Power of sheriff to make maintenance order against person residing in the Republic of Ireland.

4.—(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.

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(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) Where in any action in which the payment of aliment in respect of a child is claimed, being an action in which the sheriff has jurisdiction by virtue of subsection (1) above, the sheriff is satisfied—

- (a) that there are grounds on which a maintenance order containing a provision requiring the payment of aliment in respect of that child may be made in that action, but
- (b) that he has no power to make that order unless he also makes an order providing for the custody of the child,

then, for the purpose of enabling the sheriff to make the maintenance order, the pursuer shall be deemed to be a person to whom the custody of the child has been committed by a decree of the sheriff which is for the time being in force.

(4) In any action in which the sheriff has jurisdiction by virtue of subsection (1) above, no decree shall be granted in favour of the pursuer unless—

- (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⁽³⁾ shall not apply in relation to any such action which is a summary cause.

Variation and revocation of maintenance order made in United Kingdom.

5.—(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⁽⁴⁾ (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.

(3) 1971 c. 58.

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

(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.