
STATUTORY INSTRUMENTS

1997 No. 291

Act of Sederunt (Child Care and Maintenance Rules) 1997

CHAPTER 5

MAINTENANCE ORDERS

PART III

OUTGOING ORDERS UNDER THE 1972 ACT

Application for transmission of order for enforcement in a reciprocating country

5.14.—(1) An application for the transmission of a maintenance order for enforcement in a reciprocating country shall be made by letter addressed to the sheriff clerk.

(2) There shall be lodged with any such application—

- (a) a certified copy of the relevant order;
- (b) a statement signed by the applicant or his solicitor of any arrears outstanding in respect of the order;
- (c) a statement signed by the applicant or his solicitor giving such information as to the whereabouts of the payer as he possesses;
- (d) a statement signed by the applicant or his solicitor giving such information as the applicant possesses for facilitating the identification of the payer;
- (e) where available, a photograph of the payer.

Application for transmission of order for enforcement in the Republic of Ireland

5.15.—(1) An application for the transmission of a maintenance order for enforcement in the Republic of Ireland⁽¹⁾ shall be made by letter addressed to the sheriff clerk.

(2) There shall be lodged with any such application—

- (a) a certified copy of the relevant order;
- (b) a statement signed by the applicant or his solicitor of any arrears outstanding in respect of the order;
- (c) a statement signed by the applicant or his solicitor giving such information as to the whereabouts of the payer as he possesses;
- (d) a statement signed by the applicant or his solicitor giving such information as the applicant possesses for facilitating the identification of the payer;
- (e) where available, a photograph of the payer;
- (f) a statement signed by the applicant or his solicitor which establishes that notice of the order was sent to the payer;

(1) The 1972 Act is applied to the Republic of Ireland by [S.I. 1993/594](#).

- (g) if the payee received legal aid in the proceedings, a statement to that effect; and
- (h) if the payer did not appear in the proceedings in which the maintenance order was made, the original or a certified true copy of a document which establishes that notice of the institution of the proceedings was served on the payer.

(3) On receipt of such an application and documents, the sheriff clerk shall send to the Secretary of State the documents specified in section 2(4) of the 1972 Act as applied to the Republic of Ireland.

Application for transmission of order to Hague Convention Country

5.16.—(1) An application for the transmission of a maintenance order to a Court in a Hague Convention Country for registration and enforcement shall be made by letter addressed to the sheriff clerk.

- (2) There shall be lodged with any such application—
 - (a) a certified copy of the relevant order;
 - (b) a statement signed by the applicant or his solicitor of any arrears outstanding in respect of that order;
 - (c) a statement signed by the applicant or his solicitor giving such information as to the whereabouts of the payer as he possesses;
 - (d) a statement signed by the applicant or his solicitor giving such information as the applicant possesses for facilitating the identification of the payer;
 - (e) where available, a photograph of the payer;
 - (f) a statement signed by the applicant or his solicitor which establishes that notice of the order was sent to the payer;
 - (g) if the payee received legal aid in the proceedings, a statement to that effect; and
 - (h) if the payer did not appear in the proceedings in which the maintenance order was made, the original or a certified true copy of a document which establishes that notice of the institution of the proceedings was served on the payer.

Service on defender in Hague Convention Country

5.17 For the purposes of section 4(4) of the 1972 Act as applied in respect of a defender in a Hague Convention Country(2), service on such a defender shall be effected in accordance with the Ordinary Cause Rules.

Provisional order made with a view to transmission to a reciprocating country

5.18 A certificate signed by the sheriff clerk in terms of section 3(5)(c) of the 1972 Act (certificate of grounds), as read with section 4(6) thereof, shall also be signed by the sheriff.

Evidence adduced prior to confirmation of provisional order

5.19.—(1) Where under section 5(9) of the 1972 Act it appears to the sheriff that a provisional order ought not to have been made, the sheriff clerk shall send by first class recorded delivery a notice on Form 66 to the person on whose application the order was made.

(2) Where such a person wishes to make representations, he shall lodge with the sheriff clerk within 21 days of the date of posting of the notice a minute narrating the representations and the further evidence which he intends to adduce.

(2) See S.I. 1993/593.

(3) On the expiry of the period of 21 days, the cause shall be enrolled before the sheriff who shall appoint a diet for the hearing of further evidence or make such other order as may be appropriate.

Provisions in relation to intimation and entering appearance

5.20.—(1) Where the 1972 Act provides that on intimation to a payee of the receipt by the Court of a provisional order the payee is to enter appearance within a prescribed period, intimation shall be given in Form 67 and the period shall be—

- (a) 21 days from the date of posting where the payee is resident in Europe; and
- (b) 42 days from the date of posting where the payee is resident outside Europe.

(2) To enter appearance in terms of section 5(6) of the 1972 Act, the payee shall lodge an application—

- (a) stating that he opposes confirmation of the order; and
- (b) setting forth averments in answer to the case upon which the provisional order was made, supported by the appropriate pleas-in-law.

(3) Where the payee enters appearance in terms of section 5(6) of the 1972 Act, the sheriff shall appoint a diet for the hearing of evidence or make such other order as may be appropriate to enable the court to proceed in accordance with the procedure and practice in ordinary civil proceedings in the sheriff court as if the application for the variation or revocation of the maintenance order had been made to it.

Authentication of documents

5.21 Where the 1972 Act provides that a document is to be authenticated in a prescribed manner, it shall be authenticated by a certificate signed by the sheriff clerk declaring that the document is authentic.

Application under section 4 or 5 of the 1972 Act

5.22 An application for a provisional order under section 4 of the 1972 Act⁽³⁾ or an application under section 5 of that Act for variation or revocation of a maintenance order shall be brought as an ordinary cause.

Evidence

5.23.—(1) Where any request to take evidence is made by or on behalf of a court in terms of section 14 of the 1972 Act, or the Act as amended by any Order in Council made under Part III of that Act, or by the Secretary of State in terms of section 38 thereof, such evidence shall be taken before a sheriff of the sheriffdom in which the witness resides and shall be taken down by a shorthand writer, or where the sheriff so directs, by the sheriff, and the extended notes of evidence certified by the sheriff shall be the notes of the evidence taken.

(2) Where a provisional order is made under section 4 or 5 of the 1972 Act and evidence has been taken by a shorthand writer, the applicant or his solicitor shall provide the sheriff clerk with a copy of the extended notes of evidence.

(3) Section 4 was amended by the Civil Jurisdiction and Judgments Act 1982 (c. 27), Schedule 12, Part II, paragraph 3 and the Children (Scotland) Act 1995, Schedule 5.