
STATUTORY INSTRUMENTS

1997 No. 291

Act of Sederunt (Child Care and Maintenance Rules) 1997

CHAPTER 5

MAINTENANCE ORDERS

PART V

INCOMING ORDERS UNDER THE 1972 ACT

Provisions in relation to intimation and entering appearance

5.29.—(1) Where the 1972 Act provides that on intimation to a payer of the receipt by the court of a provisional order the payer 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 payer is resident in Europe; and
- (b) 42 days from the date of posting where the payer is resident outside Europe.

(2) To enter appearance in terms of section 7(4) or 9(7) of the 1972 Act, the payer 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 appropriate pleas-in-law.

(3) Where the payer enters appearance in terms of section 7(4) 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 an application for a maintenance order against the payer had been made to it.

(4) Where the payer enters appearance in terms of section 9(7) 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 an application for the variation of the maintenance order had been made to it.

Authentication of documents

5.30 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 sections 9 and 20 of the 1972 Act

5.31.—(1) An application under section 9 of the 1972 Act (variation and revocation of maintenance orders)(1) for variation or revocation of a maintenance order shall be brought as an ordinary cause.

(2) An application under section 20 of the 1972 Act (restriction on enforcement of arrears) for leave to enforce the payment of any arrears due under a maintenance order registered in Scotland shall be made by lodging a minute in the process.

Information to be provided where payer has ceased to reside in Scotland

5.32.—(1) Where the registration of an order is cancelled in the circumstances set out in section 10(2) of the 1972 Act, the payee or his solicitor shall provide the sheriff clerk so far as is possible with information to enable the sheriff clerk to prepare the certificate and statement referred to in section 10(7) of the 1972 Act(2).

(2) Where the sheriff clerk is required in terms of section 32(1) of the 1972 Act (transfer of orders) to send to the Secretary of State the related documents specified in section 32(8) of that Act, the payee or his solicitor shall provide the sheriff clerk so far as possible with information to enable the sheriff clerk to prepare the certificate and statement to be included among those documents.

Evidence

5.33 Where a provisional order is made under section 9 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.

Intimation of registration of, or of decision not to register, an order made in the Republic of Ireland

5.34.—(1) Intimation of the registration of an order in terms of section 6 of the 1972 Act as applied to an order made in the Republic of Ireland shall be given by the sheriff clerk –

- (a) to the payer, by sending an intimation in Form 69; and
- (b) to the payee, by sending a notice in Form 70.

(2) Notice of a decision not to register an order on any of the grounds set out in section 6(5) of the 1972 Act as applied to an order made in the Republic of Ireland shall be given by the sheriff clerk to the payee, by sending a notice in Form 71.

Application to set aside registration of, or to set aside decision not to register, an order made in the Republic of Ireland

5.35.—(1) Application to the court under section 6(7) or (11) of the 1972 Act as applied to an order made in the Republic of Ireland(3) shall be made by summary application setting out the grounds of the application.

(2) An application under section 6(11) of the 1972 Act as applied to an order made in the Republic of Ireland shall be made within one month from the date of service of the notice in terms of rule 5.34(2).

(1) Section 9 was amended by the Civil Jurisdiction and Judgments Act 1982, Schedule 11, paragraphs 4 and 12.

(2) Section 10(7) was amended by the Civil Jurisdiction and Judgments Act 1982, Schedule 11, paragraph 13.

(3) Section 6(7) provides a time limit of one month from the date of service of notice of registration.

Intimation of registration of, or refusal to register, an order made in a Hague Convention Country

5.36.—(1) Intimation of the registration of a maintenance order in terms of section 6 of the 1972 Act as applied to an order made in a Hague Convention Country shall be given by the sheriff clerk—

- (a) to the payer, by sending an intimation in Form 72; and
- (b) to the payee, by sending a notice in Form 70.

(2) Notice of a refusal to register a maintenance order on any of the grounds set out in section 6(5), (6) or (7) of the 1972 Act as applied to an order made in a Hague Convention Country shall be given by the sheriff clerk to the payee, by sending a notice in Form 71.

Application to set aside registration of, or to set aside decision not to register, an order made in a Hague Convention Country

5.37 Application to the court under section 6(9) or (12) of the 1972 Act as applied to an order made in a Hague Convention Country⁽⁴⁾ shall be made by summary application setting out the grounds of the application.

(4) Sections 6(9) and 6(12) provide a time limit of one month from service of notice of registration or decision not to register.