

SCHEDULE 1

Article 4(1)

MODIFICATIONS TO PART 1 OF THE ACT

1.—(1) Amend section 2 as follows.

(2) For subsection (1) substitute—

“(1) Subject to subsection (2) below, where the payer under a maintenance order made, whether before, on or after 1st October 2007, by a court in the United Kingdom is residing or has assets in the United States of America, the payee under the Order may apply for the order to be sent to the United States of America for enforcement.”

(3) In subsection (2), omit the words “a provisional order or to”.

(4) For subsection (4) substitute—

“(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 or has assets in the United States of America, the following documents, that is to say—

- (a) three certified copies 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 or, in Scotland, signed by the applicant or his solicitor;
- (d) a sworn statement signed by the payee giving the following information—
 - (i) the address of the payee;
 - (ii) such information as is known to the payee as to the whereabouts of the payer; and
 - (iii) a description, so far as is known to the payee, of the nature and location of any assets of the payer available for execution;
- (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, 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 Scottish Ministers, with a view to their being transmitted by him to the responsible authority in the United States of America if he is (or they are) satisfied that the statement relating to the whereabouts of the payer and the nature and location of his assets gives sufficient information to justify that being done.”

(5) In subsection (5), after the word “and” insert the words “, subject to section 5 below,”

2. Omit sections 3 and 4.

3. For section 5 substitute—

“5.—(1) This section applies to a maintenance order certified copies of which have been sent in pursuance of section 2 to the United States of America for enforcement.

(2) The jurisdiction of a court in the United Kingdom to revoke, revive or vary a maintenance order shall be exercisable notwithstanding that the proceedings for the revocation, revival or variation, as the case may be, of the order are brought by or against a person residing in the United States of America.

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(3A) Where subsection (1) of section 60 of the Magistrates' Courts Act 1980(1) (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 or complaint" there were substituted "on an application being made, by order"

(3B) Where paragraph (1) of Article 86 of the Magistrates' Courts (Northern Ireland) Order 1981 applies in relation to a maintenance order to which this section applies, that paragraph shall have effect as if for the words "by order on complaint" there were substituted "on an application being made, by order".

(4) Where an application is made by the payee to a court in the United Kingdom for the variation or revocation of an order to which this section applies and the payer is residing in the United States of America, the prescribed officer of the court shall—

- (a) in the case of a court in England and Wales or Northern Ireland, send to the Lord Chancellor, or in the case of a court in Scotland, send to the Scottish Ministers notice of the institution of proceedings, including notice of the substance of the application, with a view to its being transmitted by him (or by them) to the responsible authority in the United States of America for service on the payer; and
- (b) give the payer notice on writing of the date fixed for the hearing by sending the notice by post addressed to his last known or usual place of abode.

(5) Where such an application is made—

- (a) the order shall be varied or revoked unless the document mentioned in subsection (4) (a) above has been served on the payer in accordance with the law for the service of such a document in the United States of America;
- (b) the court, in considering whether or not to vary or revoke the order, shall take into account any representations made and any evidence adduced by or on behalf of the payer: and
- (c) a copy of any such representations or evidence shall be served on the payee in the prescribed manner before the hearing.

(6) Where an application is made by the payer to a court in the United Kingdom for the variation or revocation of an order to which this section applies, the prescribed officer of the court shall arrange for the service of notice of institution of the proceedings, including notice of the substance of the application, on the payee.

(7) Where an order to which this section applies is varied or revoked by a court in the United Kingdom the prescribed officer of the court shall send the following documents, that is to say—

- (a) three certified copies of the order of variation or revocation; and
- (b) a written statement, signed by that officer, as to whether both the payer and the payee under the order appeared in the proceedings, and, if only the applicant appeared, the original or a certified copy of a document which establishes that notice of the institution of the proceedings had been served on the other party,

in the case of a court in England and Wales and Northern Ireland, to the Lord Chancellor, or in the case of a court in Scotland, to the Scottish Ministers, with a view to their being transmitted by him (or by them) to the responsible authority in the United States of America for registration and enforcement of the order of variation or revocation.

(1) 1980 c.43; section 60 was amended by the Maintenance Enforcement Act 1991 (c.17), section 4; and by the Courts Act 2003 (c.39), Schedule 8.

(8) 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 took effect, have effect as varied by that order.

(9) 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 took effect, be deemed to have ceased to have effect.

(10) Where an order has been varied or revoked in accordance with subsections (8) or (9) above, unless specifically provided for in the order, any arrears shall continue to be recoverable as if the order for variation or revocation had not been made.”

4. For section 6 substitute—

“6.—(1) This section applies to a maintenance order made, whether before, on or after 1st October 2007, by a court in the United States of America.

(2) Where a certified copy of an order to which this section applies is received by the Lord Chancellor or the Scottish Ministers from the responsible authority in the United States of America, and it appears to him (or to them) that the payer under the order is residing or has assets in the United Kingdom, he (or they) shall send the copy of the order to the prescribed officer of the appropriate court.

(3) Where the prescribed officer of the appropriate court receives from the Lord Chancellor or the Scottish Ministers a certified copy of an order to which this section applies, the officer shall, subject to subsection (4) below, register the order in the prescribed manner in that court.

(4) Before registering an order under this section an officer of a court shall take such steps as the officer thinks fit for the purpose of ascertaining whether the payer under the order is residing or has assets within the jurisdiction of the court, and if after taking those steps the officer is satisfied that the payer is not residing and has no assets within the jurisdiction of the court, the officer shall return the certified copy of the order to the Lord Chancellor or the Scottish Ministers, as the case may be, with a statement giving such information as the officer possesses as to the whereabouts of the payer and the nature and location of his assets.”

5. Omit section 7.

6.—(1) Amend section 8 as follows.

(2) For sub-section (3A), substitute—

“(3A) In subsection (3) above “appropriate officer” means—

- (a) in relation to a magistrates’ court in England and Wales, the designated officer for the court; and
- (b) in relation to a magistrates’ court in Northern Ireland, the collecting officer of the court, being the officer mentioned in Article 85(4) of the Magistrates’ Courts (Northern Ireland) Order 1981; and
- (c) in relation to a court elsewhere, the clerk of the court.”

(3) For subsection (7) substitute—

“(7) Sums of money payable under a registered order shall be payable in accordance with the order as from the date on which the order was made.”.

(4) Omit subsection (8).

7. For section 9 substitute—

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“**9.**—(1) Where a registered order has been varied by a court in the United States of America, the registered order shall, as from the date on which the order of variation took effect or 1st October 2007, whichever is the later, have effect as varied by that order.

(2) Where a registered order has been revoked by a court in the United States of America, the registered order shall, as from the date on which the order of revocation took effect or 1st October 2007, whichever is the later, be deemed to have ceased to have effect.

(3) Where an order has been varied or revoked in accordance with subsections (1) and (2), above, unless provided for in the order, any arrears due shall continue to be recoverable as if the order for variation or revocation had not been made.

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

8.—(1) Amend section 10 as follows.

(2) For subsection (1) substitute—

“(1) Where a registered order is revoked by an order made by a court in the United States of America 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, shall continue to be recoverable as if the registration had not been cancelled”.

(3) In paragraph (a) of subsection (7), at the end add the words “or, in Scotland, by the applicant or his solicitor”.

(4) In subsection (8), in paragraph (a), omit the word “and” and after paragraph (b) insert—
“; and

(c) for the words “Lord Chancellor”, in each place where they occur, substitute the words “Scottish Ministers”; and, for “him” and “he”, “them” and “they”.”

9.—(1) For section 11 substitute—

“**11.**—(1) If at any time it appears to the Lord Chancellor or the Scottish Ministers that the payer under a maintenance order, a certified copy of which has been received by him from the United States of America, is not residing and has no assets in the United Kingdom, he (or they) shall send to the responsible authority in the United States of America or, if having regard to all the circumstances he thinks (or they think) it proper to do so, to the responsible authority in another reciprocating country—

(a) the certified copy of the order in question and a certified copy of any order varying that order;

(b) if the order has at any time been a registered order, a certificate of arrears signed by the prescribed officer or, in Scotland, by the applicant or his solicitor;

(c) a statement giving such information as the Lord Chancellor possesses, or the Scottish Ministers possess, as to the whereabouts of the payer and the nature and location of his assets; and

(d) any other relevant documents in his (or their) possession relating to the case.

(2) Where the documents mentioned in subsection (1) are sent to the responsible authority in a reciprocating country other than that in which the order in question was made, the Lord Chancellor or the Scottish Ministers shall inform the responsible authority in the reciprocating country in which that order was made of what he has (or they have) done.”

10. Omit section 12.

- 11.**—(1) Amend section 13 as follows.
- (2) In subsection (1)—
- (a) in paragraph (a), for the words “a reciprocating country” substitute the words “the United States of America”; and
 - (b) in paragraphs (b) and (c), for the words “such a country” substitute the words “the United States of America”.
- (3) In subsection (3), for the words “officer of the court in question” substitute the words “other person before whom the evidence was given”.

- 12.**—(1) Amend section 14 as follows.
- (2) In subsection (1)—
- (a) for the words “a reciprocating country” substitute the words “the United States of America”;
 - (b) for the words from “in the prescribed manner” to the end substitute the following—
“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 Scottish Ministers,for transmission to the responsible authority in the United States of America.”
- (3) In subsection (2), for paragraphs (a) and (b) substitute the words “out of moneys provided by Parliament”.
- (4) In subsections (3) and (4), for the words “a reciprocating country” substitute the words “the United States of America”.
- (5) For subsection (5) substitute—
“(5) A court in—
 - (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 order, send to the Scottish Ministers,for transmission to the responsible authority in the United States of America a request for a court in the United States of America to take or provide evidence relating to such matters as may be specified in the request.”.

- 13.**—(1) Amend section 15 as follows.
- (2) In paragraphs (a) and (c), for the words “a reciprocating country” substitute the words “the United States of America”.
- (3) Omit the word “magistrate” in each place where it occurs.

- 14.**—(1) Amend section 16 as follows.
- (2) In subsections (3) and (5) (a), for the words “in a reciprocating country” substitute the words “the United States of America”.
- (3) In subsection (5)—
- (a) in paragraph (a), omit the words “or (if earlier) the date on which it is confirmed by a court in the United Kingdom”; and

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- (b) in paragraph (b), for the words “a court in the United Kingdom or (if earlier) the date on which the last order is confirmed by such a court” substitute the words “the registering court”.

15.—(1) Amend section 17 as follows.

(2) For subsections (5A), (6) and (7) substitute—

“(5A) Where the respondent to an application for the variation or revocation of a maintenance order made by a magistrates’ court in England and Wales, being an order to which section 5 of this Act applies, is residing in the United States of America, a magistrates’ court in England and Wales shall have jurisdiction to hear the application (where it would not have such jurisdiction apart from this subsection) if it would have had jurisdiction to hear it had the respondent been residing in England and Wales.

(6) Where the respondent to an application for the variation or revocation of a maintenance order made by a magistrates’ court in Northern Ireland, being an order to which section 5 of this Act applies, is residing in the United States of America, a magistrates’ court in Northern Ireland shall have jurisdiction to hear the application (where it would not have such jurisdiction apart from this subsection) if it would have had jurisdiction to hear it had the respondent been residing in Northern Ireland.

(7) Where the respondent to an application for the variation or revocation of a maintenance order made by a magistrates’ court, and to which section 5 of this Act applies, does not appear at the time and place appointed for the hearing of the application, but the court is satisfied that the respondent is residing in the United States of America and that the requirements of section 5(4) or (6) or section 9(2) and (4), as the case may be, have been complied with, the court may proceed to hear and determine the application at the time and place appointed for the hearing or for an adjourned hearing as if the respondent had appeared at that time and place.”.

16.—(1) Amend section 18 as follows.

(2) In subsection (1) —

- (a) in paragraphs (b) and (d), for the words “a reciprocating country” substitute the words “the United States of America”;
- (b) in paragraphs (c) and (f), for the words “reciprocating countries” substitute the words “the United States of America”; and
- (c) omit paragraph (e).

17.—(1) In section 19—

- (a) in paragraphs (a), (b), (c) and (e), for the words “a reciprocating country” substitute the words “the United States of America”;
- (b) in paragraph (a), for the words “cases and manner in which courts in”, substitute the words “decrees granted or other things done”; and
- (c) omit paragraph (d).

18. Omit section 20.

19.—(1) Amend section 21 as follows.

(2) In subsection (1)—

- (a) in the definition of “certificate of arrears”, after the word “officer” insert the words “or , in Scotland, the applicant or his solicitor”;
- (b) in the definition of “maintenance order”—

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- (i) omit the word “and” where it first occurs; and
 - (ii) after paragraph (b) insert—
 - “(c) an order within the foregoing provisions of this definition made against a payer on the application of a public body which claims reimbursement of sums of money payable under the order with respect to the payee if reimbursement can be obtained by the public body under the law to which it is subject,”;
 - (c) omit the definition of “provisional order”;
 - (d) in the definition of “registered order”, insert at the end the words “and ‘registered’ and ‘registration’ shall be construed accordingly”; and
 - (e) at the end, insert—
 - ““the United States of America” means the fifty States, the District of Columbia, Guam, Puerto Rico, the United States Virgin Islands, and any other jurisdiction of the United States participating in Title IV-D of the Social Security Act (Title 42, United States Code, Chapter 7, subchapter IV, Part D)”
- (3) Omit subsection (2).
- 20.** Omit sections 22, 23 and 24.