

2007 No. 2006

MAINTENANCE OF DEPENDANTS

**The Recovery of Maintenance (United States of America) Order
2007**

Made - - - - - *25th July 2007*

Laid before Parliament *1st August 2007*

Coming into force - - - *1st October 2007*

At the Court at Buckingham Palace, the 25th day of July 2007

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty is satisfied that arrangements have been made in the United States of America to ensure that applications by persons in the United Kingdom for the recovery of maintenance from persons in the United States of America can be entertained by courts in the United States of America.

Her Majesty is also satisfied that in the interest of reciprocity it is desirable to ensure that applications by persons in the United States of America for the recovery of maintenance from persons in the United Kingdom can be entertained by courts in the United Kingdom.

Therefore, Her Majesty, in exercise of the powers conferred by sections 40 and 45(1) of the Maintenance Orders (Reciprocal Enforcement) Act 1972(a), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

Citation and commencement

1.—(1) This Order may be cited as the Recovery of Maintenance (United States of America) Order 2007.

(2) This Order shall come into force on 1st October 2007.

Interpretation

2. In this Order –

“the Act” means the Maintenance Orders (Reciprocal Enforcement) Act 1972(b);

(a) 1972 c.18; section 40 was amended by the Civil Jurisdiction and Judgments Act 1982 (c.27), Schedules 11 and 14.

(b) As amended by the Affiliation Proceedings (Amendment) Act 1972 (c.49), sections 1 and 2; by the Northern Ireland Constitution Act 1973 (c.36), Schedule 6; by S.I. 1973/2163; by the Domestic Proceedings and Magistrates' Courts Act 1978

“the applicant” means the applicant under section 26 of the Act;

“child” has the meaning it bears in the Child Support Act 1991(a);

“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).

Application and modification of Part II of the Act in relation to the United States of America

3.—(1) The provisions of Part II of the Act shall apply to the United States of America as they apply in relation to a convention country, subject to the modification set out in paragraph (2) below.

(2) After section 26(3) of the Act there shall be inserted:—

“(3A) An application under subsection (1) or (2) above, for the purpose of recovering maintenance from a person in the United States of America within the meaning of the Recovery of Maintenance (United States of America) Order 2007, and a certificate signed by a justice of the peace or, where the applicant is residing in Northern Ireland, a resident magistrate or, where the applicant is residing in Scotland, by the sheriff, to the effect that the application sets forth facts from which it may be determined that the respondent owes a duty to maintain the applicant and any other person named in the application and that a court in the United States of America may obtain jurisdiction of the respondent or his property, shall be registered in the court in the prescribed manner by the appropriate officer or, in Scotland, by the sheriff clerk in the Maintenance Orders (Reciprocal Enforcement) Act 1972 Register.”.

Application to Scotland

4. This Order applies to Scotland only in respect of a claim for the recovery of maintenance where the Secretary of State would have had jurisdiction to make a maintenance calculation (within the meaning of the Child Support Act 1991) as regards that maintenance with respect to a child—

- (a) who is the applicant claiming the maintenance; or
- (b) where the applicant claiming the maintenance is another person in relation to whom the Secretary of State has arranged for the collection of payments for that child’s benefit.

Transitional provisions

5.—(1) This Order applies to—

- (a) any application made on or after 1st October 2007 to the Lord Chancellor or to the Scottish Ministers under section 26(1) of the Act for a claim for the recovery of maintenance from a person in the United States of America to be transmitted to the United States of America;
- (b) any application made on or after 1st October 2007 to the Lord Chancellor or to the Scottish Ministers under section 26(2) of the Act for the variation of provision made in the United States of America for the payment by another person of maintenance to the applicant, and for the application to be transmitted to the United States of America;

(c.22), sections 56 to 61; by the Magistrates’ Courts Act 1980 (c.43), Schedule 7; by S.I. 1980/564 and 1981/1675 (NI26); by the Civil Jurisdiction and Judgments Act 1982 (c.27), Schedule 11; by the Matrimonial and Family Proceedings Act 1984 (c.42), sections 31, 45 and Schedule 1; by the Family Law (Scotland) Act 1985 (c.37), section 29 and Schedules 1 and 2; by the Legal Aid (Scotland) Act 1986 (c.47), Schedules 3 and 5; by the Family Law Reform Act 1987 (c.42), Schedules 2 and 4; by S.I. 1989/677 (NI4); by the Courts and Legal Services Act 1990 (c.41), Schedules 16 and 20; by the Maintenance Enforcement Act 1991 (c.17), Schedule 1; by S.I. 1992/709; by the Maintenance Orders (Reciprocal Enforcement) Act 1992 (c.56), Schedule 1; by S.I. 1993/1576 (NI6) and S.I. 1995/755 (NI2); by the Access to Justice Act 1999 (c.22), Schedule 13; and by the Courts Act 2003 (c.39), Schedule 8. There are further amendments to the Act which are not relevant to this Order.

(a) 1991 c.48. Section 55 of that Act contains a definition of “child”.

- (c) any application received on or after 1st October 2007 from the appropriate authority in the United States of America by the Lord Chancellor under section 27A(1) of the Act for the recovery of maintenance from a person who is for the time being residing in England and Wales, or under section 28C of the Act for the recovery of maintenance from a person who is for the time being resident in Northern Ireland, or by the Scottish Ministers under section 31(1) of the Act for the recovery of maintenance from a person who is for the time being resident in Scotland; or
 - (d) any application made under Part II of the Act in respect of an application falling within paragraph (a), (b) or (c).
- (2) Subject to paragraph (1), the Recovery of Maintenance (United States of America) Order 1993(a) shall continue in full force and effect.

Judith Simpson
Clerk of the Privy Council

(a) S.I. 1993/591.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, by article 4, applies the provisions of Part II of the Maintenance Orders (Reciprocal Enforcement) Act 1972 to the United States of America (as defined in article 2 of the Order) with the modification set out in article 3(2).

Under article 3, this Order applies to Scotland only in respect of the claims for the recovery of maintenance specified in that article.

By virtue of article 5, the arrangements under S.I. 1993/591 between the United Kingdom and specified States of the United States of America as individual reciprocating territories continue in full force and effect for Part II matters commenced before 1st October 2007.

The Order comes into force on 1st October 2007.

The Recovery of Maintenance (United States of America) (Scotland) Order 2007, S.S.I. 2007/355, provides for reciprocal enforcement between Scotland and the United States of America of claims for the recovery of maintenance other than those specified in article 3 of this Order.

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