
STATUTORY INSTRUMENTS

2010 No. 2955

The Family Procedure Rules 2010

PART 34

RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS

CHAPTER 2

ENFORCEMENT OF MAINTENANCE ORDERS UNDER PART 1 OF THE 1972 ACT

Interpretation

34.12.—(1) In this Chapter—

- (a) “reciprocating country” means a country to which Part 1 of the 1972 Act extends; and
- (b) ‘relevant court in the reciprocating country’ means, as the case may be—
 - (i) the court which made the order which has been sent to England and Wales for confirmation;
 - (ii) the court which made the order which has been registered in a court in England and Wales;
 - (iii) the court to which an order made in England and Wales has been sent for registration; or
 - (iv) the court to which a provisional order made in England and Wales has been sent for confirmation.

(2) In this Chapter, an expression defined in the 1972 Act has the meaning given to it in that Act.

(3) In this Chapter, “Hague Convention Countries” means the countries listed in Schedule 1 to the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1973.

Scope

34.13.—(1) Section 1 of this Chapter contains rules relating to the reciprocal enforcement of maintenance orders under Part 1 of the 1972 Act.

(2) Section 2 of this Chapter modifies the rules contained in Section 1 of this Chapter in their application to—

- (a) the Republic of Ireland;
- (b) the Hague Convention Countries; and
- (c) the United States of America.

(Practice Direction 34A sets out in full the rules for the Republic of Ireland, the Hague Convention Countries and the United States of America as modified by Section 2 of this Chapter.)

SECTION 1

Reciprocal enforcement of maintenance orders under Part 1 of the 1972 Act

Application for transmission of maintenance order to reciprocating country

34.14. An application for a maintenance order to be sent to a reciprocating country under section 2 of the 1972 Act must be made in accordance with Practice Direction 34A.

Certification of evidence given on provisional orders

34.15. A document setting out or summarising evidence is authenticated by a court in England and Wales by a certificate signed, as the case may be, by—

- (a) one of the justices; or
- (b) the District Judge (Magistrates' Courts),

before whom that evidence was given.

(Section 3(5)(b), 5(4) and 9(5) of the 1972 Act require a document to be authenticated by the court.)

Confirmation of a provisional order made in a reciprocating country

34.16.—(1) This rule applies to proceedings for the confirmation of a provisional order made in a reciprocating country.

(2) Paragraph (3) applies on receipt by the court of—

- (a) a certified copy of the order; and
- (b) the documents required by the 1972 Act to accompany the order.

(3) On receipt of the documents referred to in paragraph (2)—

- (a) the court must fix the date, time and place for a hearing or a directions appointment; and
- (b) the court officer must send to the payer notice of the date, time and place fixed together with a copy of the order and accompanying documents.

(4) The date fixed for the hearing must be not less than 21 days beginning with the date on which the court officer sent the documents to the payer in accordance with paragraph (2).

(5) The court officer will send to the relevant court in the reciprocating country a certified copy of any order confirming or refusing to confirm the provisional order.

(6) This rule does not apply to the confirmation of a provisional order made in a reciprocating country varying a maintenance order to which sections 5(5) or 9(6) of the 1972 Act applies.

(Section 5(5) and 7 of the 1972 Act provide for proceedings for the confirmation of a provisional order.)

(Provision in respect of confirmation of a provisional order varying a maintenance order under the 1972 Act is in rules made under section 144 of the Magistrates' Courts Act 1980).

(Rule 34.22 provides for the transmission of documents to a court in a reciprocating country.)

Consideration of revocation of a provisional order made by a magistrates' court

34.17.—(1) This rule applies where—

- (a) a magistrates' court has made a provisional order by virtue of section 3 of the 1972 Act;

- (b) before the order is confirmed, evidence is taken by the court or received by it as set out in section 5(9) of the 1972 Act; and
- (c) on consideration of the evidence the court considers that the order ought not to have been made.

(Section 5(9) of the 1972 Act provides that a magistrates' court may revoke a provisional order made by it, before the order has been confirmed in a reciprocating country, if it receives new evidence.)

(2) The court officer must serve on the person who applied for the provisional order ("the applicant") a notice which must—

- (a) set out the evidence taken or received by the court;
 - (b) inform the applicant that the court considers that the order ought not to have been made; and
 - (c) inform the applicant that the applicant may—
 - (i) make representations in relation to that evidence either orally or in writing; and
 - (ii) adduce further evidence.
- (3) If an applicant wishes to adduce further evidence—
- (a) the applicant must notify the court officer at the court which made the order;
 - (b) the court will fix a date for the hearing of the evidence; and
 - (c) the court officer will notify the applicant in writing of the date fixed.

Notification of variation or revocation of a maintenance order by the High Court or a county court

34.18.—(1) This rule applies where—

- (a) a maintenance order has been sent to a reciprocating country in pursuance of section 2 of the 1972 Act; and
- (b) the court makes an order, not being a provisional order, varying or revoking that order.

(2) The court officer must send a certified copy of the order of variation or revocation to the relevant court in the reciprocating country.

(Rule 34.22 provides for the transmission of documents to a court in a reciprocating country.)

Notification of confirmation or revocation of a maintenance order by a magistrates' court

34.19.—(1) This rule applies where a magistrates' court makes an order—

- (a) not being a provisional order, revoking a maintenance order to which section 5 of the 1972 Act(1) applies;
- (b) under section 9 of the 1972 Act, revoking a registered order; or
- (c) under section 7(2) of the 1972 Act(2), confirming an order to which section 7 of that Act applies.

(2) The court officer must send written notice of the making, revocation or confirmation of the order, as appropriate, to the relevant court in the reciprocating country.

(1) Section 5 was amended by section 1 (2) of and paragraph 7 of Schedule 1 to the Maintenance Orders (Reciprocal Enforcement) Act 1992 and article 185(1) of and paragraph 67 of Schedule 9 to the Children (Northern Ireland) Order 1995 (S.I. 1995/755) and section 54(a) and (b) of the Domestic Proceedings and Magistrates' Courts Act 1978.

(2) Section 7(2) was amended by section 1(2) of and paragraphs 8(2) to (5) of Schedule 1 to the Maintenance Orders (Reciprocal Enforcement) Act 1992.

(3) This rule does not apply to a provisional order varying a maintenance order to which sections 5 or 9 of the 1972 Act apply.

(Section 5 of the 1972 Act applies to a provisional order made by a magistrates' court in accordance with section 3 of that Act which has been confirmed by a court in a reciprocating country.)

(Provision in respect of notification of variation of a maintenance order by a magistrates' court under the 1972 Act is made in rules made under section 144 of the Magistrates' Courts Act 1980.)

(Rule 34.22 provides for the transmission of documents to a court in a reciprocating country.)

Taking of evidence for court in reciprocating country

34.20.—(1) This rule applies where a request is made by or on behalf of a court in a reciprocating country for the taking of evidence for the purpose of proceedings relating to a maintenance order to which Part 1 of the 1972 Act applies.

(Section 14 of the 1972(3) Act makes provision for the taking of evidence needed for the purpose of certain proceedings.)

- (2) The High Court has power to take the evidence where—
 - (a) the request for evidence relates to a maintenance order made by a superior court in the United Kingdom; and
 - (b) the witness resides in England and Wales.
- (3) The county court has power to take the evidence where—
 - (a) the request for evidence relates to a maintenance order made by a county court; and
 - (b) the maintenance order has not been registered in a magistrates' court under the 1958 Act.
- (4) The following magistrates' courts have power to take the evidence, that is—
 - (a) where the proceedings in the reciprocating country relate to a maintenance order made by a magistrates' court, the court which made the order;
 - (b) where the proceedings relate to an order which is registered in a magistrates' court, the court in which the order is registered; and
 - (c) a magistrates' court to which the Secretary of State sends the request to take evidence.
- (5) A magistrates' court not mentioned in paragraph (4) has power to take the evidence if the magistrates' court which would otherwise have that power consents because the evidence could be taken more conveniently.
- (6) The evidence is to be taken in accordance with Part 22.

Request for the taking of evidence by a court in a reciprocating country

34.21.—(1) This rule applies where a request is made by a magistrates' court for the taking of evidence in a reciprocating country in accordance with section 14(5) of the 1972 Act.

- (2) The request must be made in writing to the court in the reciprocating country.

(Rule 34.22 provides for the transmission of documents to a court in a reciprocating country.)

(3) Section 14 was amended by article 14(1) of and paragraph 22 of Schedule 5 to the Northern Ireland (Modification of Enactments—No 1) Order 1973 (S.I. 1973/2163) and section 154 of and paragraph 105 of Schedule 7 to the Magistrates' Courts Act 1980 and article 170(2) of and paragraph 21 of Schedule 6 to the Magistrates' Courts (Northern Ireland) Order 1981.

Transmission of documents

34.22.—(1) This rule applies to any document, including a notice or request, which is required to be sent to a court in a reciprocating country by—

- (a) Part 1 of the 1972 Act; or
- (b) Section 1 of Chapter 2 of this Part of these rules.

(2) The document must be sent to the Lord Chancellor for transmission to the court in the reciprocating country.

Method of payment under registered orders

34.23.—(1) Where an order is registered in a magistrates' court in accordance with section 6(3) of the 1972 Act, the court must order that the payment of sums due under the order be made—

- (a) to the court officer for the registering court; and
- (b) at such time and place as the court officer directs.

(Section 6(3) of the 1972 Act makes provision for the registration of maintenance orders made in a reciprocating country.)

(2) Where the court orders payments to be made to the court officer, whether in accordance with paragraph (1) or otherwise, the court officer must send the payments—

- (a) by post to either—
 - (i) the court which made the order; or
 - (ii) such other person or authority as that court, or the Lord Chancellor, directs; or
- (b) if the court which made the order is a country or territory specified in the Practice Direction 34A—
 - (i) to the Crown Agents for Overseas Governments and Administrations for transmission to the person to whom they are due; or
 - (ii) as the Lord Chancellor directs.

(Practice Direction 34A contains further provisions relating to the payment of sums due under registered orders.)

Enforcement of payments under registered orders

34.24.—(1) This rule applies where a court has ordered periodical payments under a registered maintenance order to be made to the court officer.

(2) The court officer must take reasonable steps to notify the payee of the means of enforcement available.

(3) Paragraph (4) applies where periodical payments due under a registered order are in arrears.

(4) The court officer, on that officer's own initiative—

- (a) may; or
- (b) if the sums due are more than 4 weeks in arrears, must,

proceed in that officer's own name for the recovery of the sums due unless of the view that it is unreasonable to do so.

Notification of registration and cancellation

34.25.—(1) The court officer must send written notice to the Lord Chancellor of the due registration of orders registered in accordance with section 6(3), 7(5), or 10(4) of the 1972 Act.

(2) The court officer must, when registering an order in accordance with section 6(3), 7(5), 9(10), 10(4) or (5) or 23(3) of the 1972 Act⁽⁴⁾, send written notice to the payer stating—

- (a) that the order has been registered;
- (b) that payments under the order should be made to the court officer; and
- (c) the hours during which and the place at which the payments should be made.

(3) The court officer must, when cancelling the registration of an order in accordance with section 10(1) of the 1972 Act, send written notice of the cancellation to the payer.

SECTION 2

Modification of rules in Section 1 of this Chapter

SUB-SECTION 1 Republic of Ireland

Application of Section 1 of this Chapter to the Republic of Ireland

34.26.—(1) In relation to the Republic of Ireland, Section 1 of this Chapter has effect as modified by this rule.

(2) A reference in this rule and in any rule which has effect in relation to the Republic of Ireland by virtue of this rule to—

- (a) the 1972 Act is a reference to the 1972 Act as modified by Schedule 2 to the Reciprocal Enforcement of Maintenance Orders (Republic of Ireland) Order 1993⁽⁵⁾; and
- (b) a section under the 1972 Act is a reference to the section so numbered in the 1972 Act as so modified.

(3) A reference to a reciprocating country in rule 34.12(1) and Section 1 of this Chapter is a reference to the Republic of Ireland.

(4) In the words in brackets at the end of rule 34.15 (certification of evidence given on provisional orders), for the sections mentioned substitute “section 3(5)(b) or 5(3)”.

(5) Rules 34.16 (confirmation of provisional orders) and 34.21 (request for the taking of evidence by a court in a reciprocating country) do not apply.

(6) For rule 34.17 (consideration of revocation of a provisional order made by a magistrates’ court) substitute—

“Consideration of confirmation of a provisional order made by a magistrates’ court

34.17.—(1) This rule applies where—

- (a) a magistrates’ court has made a provisional order by virtue of section 3 of the 1972 Act;
- (b) the payer has made representations or adduced evidence to the court; and
- (c) the court has fixed a date for the hearing at which it will consider confirmation of the order.

(2) The court officer must serve on the applicant for the provisional order—

- (a) a copy of the representations or evidence; and
- (b) written notice of the date fixed for the hearing.”.

(7) For rules 34.18 and 34.19 (notification of variation or revocation) substitute—

⁽⁴⁾ Section 23(3) was amended by section 90(1) of and paragraphs 71 and 75(1) and (2) of Schedule 13 to the Access to Justice Act 1999.

⁽⁵⁾ S.I. 1993/594.

“Notification of variation or revocation of a maintenance order by the High Court

34.18. Where the High Court makes an order varying or revoking an order to which section 5 of the 1972 Act applies the court officer must send—

- (a) a certified copy of the order of variation or revocation; and
- (b) a statement as to the service on the payer of the documents mentioned in section 5(3) of the 1972 Act,

to the court in the Republic of Ireland.

(Rule 34.22 provides for the transmission of documents to a court in a reciprocating country.)

Notification of revocation of a maintenance order by a magistrates’ court

34.19. Where a magistrates’ court makes an order revoking an order to which section 5 of the 1972 Act applies, the court officer must send written notice of the making of the order to the Lord Chancellor.

(Section 5 of the 1972 Act applies to a maintenance order sent to the Republic of Ireland in accordance with section 2 of that Act and a provisional order made by a magistrates’ court in accordance with section 3 of that Act which has been confirmed by such a court.)

(Provision in respect of notification of variation of a maintenance order by magistrates’ court under the 1972 Act is made in rules made under section 144 of the Magistrates’ Courts Act 1980.)”.

(8) For rule 34.23(2) (method of payment under registered orders), substitute—

“(2) Where the court orders payment to be made to the court officer, the court officer must send the payments by post—

- (a) to the payee under the order; or
- (b) where a public authority has been authorised by the payee to receive the payments, to that public authority.”.

(9) For rule 34.24 (enforcement of payments under registered orders), substitute—

“Enforcement of payments under registered orders

34.24.—(1) This rule applies where periodical payments under a registered order are in arrears.

(2) The court officer must, on the written request of the payee, proceed in that officer’s own name for the recovery of the sums due unless of the view that it is unreasonable to do so.

(3) If the sums due are more than 4 weeks in arrears the court officer must give the payee notice in writing of that fact stating the particulars of the arrears.”.

(10) For rule 34.25 (notification of registration and cancellation) substitute—

“Notification of registration and cancellation

34.25. The court officer must send written notice to—

- (a) the Lord Chancellor, on the due registration of an order under section 6(3) or 10(4) of the 1972 Act; and
- (b) to the payer under the order, on—
 - (i) the registration of an order under section 10(4) of the 1972 Act; or
 - (ii) the cancellation of the registration of an order under section 10(1) of that Act.”.

(11) After rule 34.25 insert—

“Other notices under section 6 of the 1972 Act(6)

34.25A.—(1) A notice required under section 6(6) or (10) of the 1972 Act must be in the form referred to in a practice direction.

(2) Where a magistrates’ court sets aside the registration of an order following an appeal under section 6(7) of the 1972 Act, the court officer must send written notice of the court’s decision to the payee.

(Section 6(6) of the 1972 Act provides for notice of registration in a United Kingdom court of a maintenance order made in the Republic of Ireland, and section 6(10) of that Act for notice that a maintenance order made in the Republic of Ireland has not been registered in a United Kingdom court.)”

SUB-SECTION 2Hague Convention Countries

Application of Section 1 of this Chapter to the Hague Convention Countries

34.27.—(1) In relation to the Hague Convention Countries, Section 1 of this Chapter has effect as modified by this rule.

(2) A reference in this rule, and in any rule which has effect in relation to the Hague Convention Countries by virtue of this rule to—

- (a) the 1972 Act is a reference to the 1972 Act as modified by Schedule 2 to the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1993(7); and
- (b) a section under the 1972 Act is a reference to the section so numbered in the 1972 Act as so modified.

(3) A reference to a reciprocating country in rule 34.12(1) and Section 1 of this Chapter is a reference to a Hague Convention Country.

(4) Rules 34.15 (certification of evidence given on provisional orders), 34.16 (confirmation of provisional orders), 34.19 (notification of confirmation or revocation of a maintenance order by a magistrates’ court) and 34.21 (request for the taking of evidence by a court in a reciprocating country) do not apply.

(5) For rule 34.17 (consideration of revocation of a provisional order made by a magistrates’ court) substitute—

“Consideration of revocation of a maintenance order made by a magistrates’ court

34.17.—(1) This rule applies where—

- (a) an application has been made to a magistrates’ court by a payee for the revocation of an order to which section 5 of the 1972 Act applies; and
- (b) the payer resides in a Hague Convention Country.

(2) The court officer must serve on the payee, by post, a copy of any representations or evidence adduced by or on behalf of the payer.

(Provision relating to consideration of variation of a maintenance order made by a magistrates’ court to which section 5 of the 1972 Act applies is made in rules made under section 144 of the Magistrates’ Courts Act 1980.)”

(6) Section 6 was amended by section 37 of and Schedule 11 to the Civil Jurisdiction and Judgments Act 1982 (c.27).

(7) S.I. 1993/593.

(6) For rule 34.18 (notification of variation or revocation of a maintenance order by the High Court or county court) substitute—

“Notification of variation or revocation of a maintenance order by the High Court or a county court

34.18.—(1) This rule applies if the High Court or a county court makes an order varying or revoking a maintenance order to which section 5 of the 1972 Act applies.

(2) If the time for appealing has expired without an appeal having been entered, the court officer will send to the Lord Chancellor—

- (a) the documents required by section 5(8) of the 1972 Act; and
- (b) a certificate signed by the district judge stating that the order of variation or revocation is enforceable and no longer subject to the ordinary forms of review.

(3) A party who enters an appeal against the order of variation or revocation must, at the same time, give written notice to the court officer.”.

(7) For rule 34.23(2) (method of payment under registered orders) substitute—

“(2) Where the court orders payment to be made to the court officer, the court officer must send the payments by post to the payee under the order.”.

(8) For rule 34.25 (notification of registration and cancellation) substitute—

“Notification of registration and cancellation

34.25. The court officer must send written notice to—

- (a) the Lord Chancellor, on the due registration of an order under section 10(4) of the 1972 Act; and
- (b) the payer under the order, on—
 - (i) the registration of an order under section 10(4) of the 1972 Act; or
 - (ii) the cancellation of the registration of an order under section 10(1) of the 1972 Act.”.

(9) After rule 34.25 insert—

“General provisions as to notices

34.25A.—(1) A notice to a payer of the registration of an order in a magistrates’ court in accordance with section 6(3) of the 1972 Act must be in the form referred to in a practice direction.

(Section 6(8) of the 1972 Act requires notice of registration to be given to the payer.)

(2) If the court sets aside the registration of a maintenance order following an appeal under section 6(9) of the 1972 Act, the court officer must send written notice of the decision to the Lord Chancellor.

(3) A notice to a payee that the court officer has refused to register an order must be in the form referred to in a practice direction.

(Section 6(11) of the 1972 Act requires notice of refusal of registration to be given to the payee.)

(4) Where, under any provision of Part 1 of the 1972 Act, a court officer serves a notice on a payer who resides in a Hague Convention Country, the court officer must send to the Lord Chancellor a certificate of service.”.

SUB-SECTION 3United States of America

Application of Section 1 of this Chapter to the United States of America

34.28.—(1) In relation to the United States of America, Section 1 of this Chapter has effect as modified by this rule.

(2) A reference in this rule and in any rule which has effect in relation to the United States of America by virtue of this rule to—

(a) the 1972 Act is a reference to the 1972 Act as modified by Schedule 1 to the Reciprocal Enforcement of Maintenance Orders (United States of America) Order 2007⁽⁸⁾; and

(b) a section under the 1972 Act is a reference to the section so numbered in the 1972 Act as so modified.

(3) A reference to a reciprocating country in rule 34.12(1) and Section 1 of this Chapter is a reference to the United States of America.

(4) Rules 34.15 (certification of evidence given on provisional orders), 34.16 (confirmation of provisional orders), 34.19 (notification of confirmation or revocation of a maintenance order made by a magistrates' court) and 34.21 (request for the taking of evidence in a reciprocating country) do not apply.

(5) For rule 34.17 (consideration of revocation of a provisional order made by a magistrates' court) substitute—

“Consideration of revocation of a maintenance order made by a magistrates' court

34.17.—(1) This rule applies where—

(a) an application has been made to a magistrates' court by a payee for the revocation of an order to which section 5 of the 1972 Act applies; and

(b) the payer resides in the United States of America.

(2) The court officer must serve on the payee by post a copy of any representations or evidence adduced by or on behalf of the payer.

(Provision relating to consideration of variation of a maintenance order made by a magistrates' court to which section 5 of the 1972 Act applies is made in rules made under section 144 of the Magistrates' Courts Act 1980.)”

(6) For rule 34.18 (notification of variation or revocation), substitute—

“Notification of variation or revocation

34.18. If the High Court or a county court makes an order varying or revoking a maintenance order to which section 5 of the 1972 Act applies, the court officer will send to the Lord Chancellor the documents required by section 5(7) of that Act.”

(7) For 34.23(2)(method of payment under registered orders) substitute—

“(2) Where the court orders payment to be made to the court officer, the court officer must send the payments by post to the payee under the order.”

(8) For rule 34.25 (notification of registration and cancellation) substitute—

“Notification of registration and cancellation

34.25. The court officer must send written notice to—

(a) the Lord Chancellor, on the due registration of an order under section 10(4) of the 1972 Act; or

(8) S.I. 2007/2006.

- (b) the payer under the order, on—
 - (i) the registration of an order under section 10(4) of the 1972 Act; or
 - (ii) the cancellation of the registration of an order under section 10(1) of that Act.”