



# Maintenance Orders (Reciprocal Enforcement) Act 1972

## 1972 CHAPTER 18

### PART I

#### RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS MADE IN UNITED KINGDOM OR RECIPROCATING COUNTRY

##### *Orders made by courts in reciprocating countries*

#### **6 Registration in United Kingdom court of maintenance order made in reciprocating country**

- (1) This section applies to a maintenance order made, whether before or after the commencement of this Part of this Act, by a court in a reciprocating country, including such an order made by such a court which has been confirmed by a court in another reciprocating country but excluding a provisional order which has not been confirmed.
- (2) Where a certified copy of an order to which this section applies is received by the Secretary of State from the responsible authority in a reciprocating country, and it appears to the Secretary of State that the payer under the order is residing in the United Kingdom, he 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 Secretary of State a certified copy of an order to which this section applies, he 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 he thinks fit for the purpose of ascertaining whether the payer under the order is residing within the jurisdiction of the court, and if after taking those steps he is satisfied that the payer is not so residing he shall return the certified copy of the order to the Secretary of State with a statement giving such information as he possesses as to the whereabouts of the payer.

## **7 Confirmation by United Kingdom court of provisional maintenance order made in reciprocating country**

(1) This section applies to a maintenance order made, whether before or after the commencement of this Part of this Act, by a court in a reciprocating country being a provisional order.

(2) Where a certified copy of an order to which this section applies together with—

- (a) a document, duly authenticated, setting out or summarising the evidence given in the proceedings in which the order was made ; and
- (b) a statement of the grounds on which the making of the order might have been opposed by the payer under the order,

is received by the Secretary of State from the responsible authority in a reciprocating country, and it appears to the Secretary of State that the payer under the order is residing in the United Kingdom, he shall send the copy of the order and documents which accompanied it to the prescribed officer of the appropriate court, and that court shall—

- (i) if the payer under the order establishes any such defence as he might have raised in the proceedings in which the order was made, refuse to confirm the order; and
- (ii) in any other case, confirm the order either without alteration or with such alterations as it thinks reasonable.

(3) In any proceedings for the confirmation under this section of a provisional order, the statement received from the court which made the order of the grounds on which the making of the order might have been opposed by the payer under the order shall be conclusive evidence that the payer might have raised a defence on any of those grounds in the proceedings in which the order was made.

(4) For the purpose of determining whether a provisional order should be confirmed under this section the court shall proceed as if an application for a maintenance order against the payer under the provisional order had been made to it.

(5) The prescribed officer of a court having power under this section to confirm a provisional order shall, if the court confirms the order, register the order in the prescribed manner in that court, and shall, if the court refuses to confirm the order, return the certified copy of the order and the documents which accompanied it to the Secretary of State.

(6) If a summons to appear in the proceedings for the confirmation of the provisional order cannot be duly served on the payer under that order the officer by whom the certified copy of the order was received shall return that copy and the documents which accompanied it to the Secretary of State with a statement giving such information as he possesses as to the whereabouts of the payer.

(7) This section shall apply to Scotland subject to the following modifications:—

(a) for subsection (4) there shall be substituted the following subsection:—

“(4) On receiving a certified copy of a provisional order sent to him in pursuance of subsection (2) above the prescribed officer of the appropriate court shall intimate to the payer under the order, in the prescribed manner, that the order has been received as aforesaid and that, unless the payer enters appearance within the prescribed period, the court will confirm the order under this section.”;

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*Status: This is the original version (as it was originally enacted).*

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- (b) in subsection (6), for the words from the beginning to " that order" there shall be substituted the words " If such intimation as is mentioned in subsection (4) above cannot be given to the payer under a provisional order in pursuance of that subsection "; and
- (c) in any proceedings for the confirmation under this section of a provisional order made by a court in a reciprocating country, the sheriff shall apply the law in force in that country with respect to the sufficiency of evidence.

## **8 Enforcement of maintenance order registered in United Kingdom court**

- (1) Subject to subsection (2) below, a registered order may be enforced in the United Kingdom as if it had been made by the registering court and as if that court had had jurisdiction to make it; and proceedings for or with respect to the enforcement of any such order may be taken accordingly.
- (2) Subsection (1) above does not apply to an order which is for the time being registered in the High Court under Part I of the Maintenance Orders Act 1958 or to an order which is for the time being registered in the High Court of Justice in Northern Ireland under Part II of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966.
- (3) Any person for the time being under an obligation to make payments in pursuance of a registered order shall give notice of any change of address to the clerk of the registering court, and any person failing without reasonable excuse to give such a notice shall be liable on summary conviction to a fine not exceeding £10.
- (4) An order which by virtue of this section is enforceable by a magistrates' court shall be enforceable as if it were an affiliation order made by that court; and the provisions of any enactment with respect to the enforcement of affiliation orders (including enactments relating to the accrual of arrears and the remission of sums due) shall apply accordingly. In this subsection "enactment" includes any order, rule or regulation made in pursuance of any Act.
- (5) The magistrates' court by which an order is enforceable by virtue of this section, and the officers thereof, shall take all such steps for enforcing the order as may be prescribed.
- (6) In any proceedings for or with respect to the enforcement of an order which is for the time being registered in any court under this Part of this Act a certificate of arrears sent to the prescribed officer of the court shall be evidence of the facts stated therein.
- (7) Subject to subsection (8) below, 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.
- (8) The court having power under section 7 of this Act to confirm a provisional order may, if it decides to confirm the order, direct that the sums of money payable under it shall be deemed to have been payable in accordance with the order as from such date, being a date later than the date on which the order was made, as it may specify; and subject to any such direction, a maintenance order registered under the said section 7 shall be treated as if it had been made in the form in which it was confirmed and as if it had never been a provisional order.
- (9) In the application of this section to Scotland—
  - (a) subsections (2) to (5) shall be omitted; and
  - (b) in subsection (6), for the word " evidence " there shall be substituted the words " sufficient evidence ".

- (10) For the purposes of the application of this section to Northern Ireland, in section 110(9) of the Magistrates' Courts Act (Northern Ireland) 1964 (orders for periodical payment of money), after paragraph (a) there shall be inserted the following paragraph:—
- “(aa) maintenance orders made outside the United Kingdom and registered in a court of summary jurisdiction in Northern Ireland under Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972 ;”.

## **9 Variation and revocation of maintenance order registered in United Kingdom court**

- (1) Subject to the provisions of this section, the registering court—
- (a) shall have the like power, on an application made by the payer or payee under a registered order, to vary or revoke the order as if it had been made by the registering court and as if that court had had jurisdiction to make it; and
  - (b) shall have power to vary or revoke a registered order by a provisional order.
- (2) The registering court shall not vary a registered order otherwise than by a provisional order unless—
- (a) both the payer and the payee under the registered order are for the time being residing in the United Kingdom ; or
  - (b) the application is made by the payee under the registered order; or
  - (c) the variation consists of a reduction in the rate of the payments under the registered order and is made solely on the ground that there has been a change in the financial circumstances of the payer since the registered order was made or, in the case of an order registered under section 7 of this Act, since the registered order was confirmed, and the courts in the reciprocating country in which the maintenance order in question was made do not have power, according to the law in force in that country, to confirm provisional orders varying maintenance orders.
- (3) The registering court shall not revoke a registered order otherwise than by a provisional order unless both the payer and the payee under the registered order are for the time being residing in the United Kingdom.
- (4) On an application for the revocation of a registered order the registering court shall, unless both the payer and the payee under the registered order are for the time being residing in the United Kingdom, apply the law applied by the reciprocating country in which the registered order was made; but where by virtue of this subsection the registering court is required to apply that law, that court may make a provisional order if it has reason to believe that the ground on which the application is made is a ground on which the order could be revoked according to the law applied by the reciprocating country, notwithstanding that it has not been established that it is such a ground.
- (5) Where the registering court makes a provisional order varying or revoking a registered order the prescribed officer of the court shall send in the prescribed manner to the court in the reciprocating country which made the registered order a certified copy of the provisional order together with a document, authenticated in the prescribed manner, setting out or summarising the evidence given in the proceedings.
- (6) Where a certified copy of a provisional order made by a court in a reciprocating country, being an order varying a registered order, together with a document, duly authenticated, setting out or summarising the evidence given in the proceedings, in which the provisional order was made, is received by the registering court, that court

may confirm the order either without alteration or with such alterations as it thinks reasonable or refuse to confirm the order.

- (7) For the purpose of determining whether a provisional order should be confirmed under subsection (6) above the court shall proceed as if an application for the variation of the registered order had been made to it.
- (8) Where a registered order has been varied by an order (including a provisional order which has been confirmed) made by a court in the United Kingdom or by a competent court in a reciprocating country, the registered order shall, as from the date on which the order was made, have effect as varied by that order and, where that order was a provisional order, as if that order had been made in the form in which it was confirmed and as if it had never been a provisional order.
- (9) Where a registered order has been revoked by an order made by a court in the United Kingdom or by a competent court in a reciprocating country, including a provisional order made by the first-mentioned court which has been confirmed by a competent court in a reciprocating country, the registered order shall, as from the date on which the order was made, be deemed to have ceased to have effect except as respects any arrears due under the registered order at that date.
- (10) The prescribed officer of the registering court shall register in the prescribed manner any order varying a registered order other than a provisional order which is not confirmed.
- (11) In the application of this section to Scotland—
  - (a) after subsection (4) there shall be inserted the following subsection:—

“(4A) It shall not be necessary for the payer under a registered order to intimate to any person the making by him of an application for a provisional order varying or revoking the registered order.”; and
  - (b) for subsection (7) there shall be substituted the following subsection:—

“(7) Where a certified copy of a provisional order varying a registered order is received by the registering court as mentioned in subsection (6) above, the prescribed officer of that court shall intimate to the payer under the registered order, in the prescribed manner, that the provisional order has been received as aforesaid and that, unless the payer enters appearance within the prescribed period, the court will confirm the provisional order under this section.”

## **10 Cancellation of registration and transfer of order**

- (1) Where—
  - (a) a registered order is revoked by an order made by the registering court; or
  - (b) a registered order is revoked by a provisional order made by that court which has been confirmed by a court in a reciprocating country and notice of the confirmation is received by the registering court; or
  - (c) a registered order is revoked by an order made by a court in such a country 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 when its registration is cancelled by virtue of this subsection shall continue to be recoverable as if the registration had not been cancelled.

- (2) Where the prescribed officer of the registering court is of opinion that the payer under a registered order has ceased to reside within the jurisdiction of that court, he shall cancel the registration of the order and, subject to subsection (3) below, shall send the certified copy of the order to the Secretary of State.
- (3) Where the prescribed officer of the registering court, being a magistrates' court, is of opinion that the payer is residing within the jurisdiction of another magistrates' court in that part of the United Kingdom in which the registering court is, he shall transfer the order to that other court by sending the certified copy of the order to the prescribed officer of that other court.
- (4) On the transfer of an order under subsection (3) above the prescribed officer of the court to which it is transferred shall, subject to subsection (6) below, register the order in the prescribed manner in that court.
- (5) Where the certified copy of an order is received by the Secretary of State under this section and it appears to him that the payer under the order is still residing in the United Kingdom, he shall transfer the order to the appropriate court by sending the certified copy of the order together with the related documents to the prescribed officer of the appropriate court and, subject to subsection (6) below, that officer shall register the order in the prescribed manner in that court.
- (6) Before registering an order in pursuance of subsection (4) or (5) above an officer of a court shall take such steps as he thinks fit for the purpose of ascertaining whether the payer is residing within the jurisdiction of the court, and if after taking those steps he is satisfied that the payer is not so residing he shall send the certified copy of the order to the Secretary of State.
- (7) The officer of a court who is required by any of the foregoing provisions of this section to send to the Secretary of State or to the prescribed officer of another court the certified copy of an order shall send with that copy—
  - (a) a certificate of arrears signed by him ;
  - (b) a statement giving such information as he possesses as to the whereabouts of the payer; and
  - (c) any relevant documents in his possession relating to the case.
- (8) In the application of this section to Scotland—
  - (a) in subsection (2), for the words " within the jurisdiction of that court " there shall be substituted the words " in Scotland "; and
  - (b) subsections (3) and (4) shall be omitted.

## **11 Steps to be taken by Secretary of State where payer under certain orders is not residing in the United Kingdom**

- (1) If it appears to the Secretary of State that the payer under a maintenance order, a certified copy of which has been received by him from a reciprocating country, is not residing in the United Kingdom or, in the case of an order which subsequently became a registered order, has ceased to reside therein, he shall send to the responsible authority in that country or, if having regard to all the circumstances he thinks 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;

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- (b) if the order has at any time been a registered order, a certificate of arrears signed by the prescribed officer;
  - (c) a statement giving such information as the Secretary of State possesses as to the whereabouts of the payer; and
  - (d) any other relevant documents in his possession relating to the case.
- (2) Where the documents mentioned in subsection (1) above are sent to the responsible authority in a reciprocating country other than that in which the order in question was made, the Secretary of State shall inform the responsible authority in the reciprocating country in which that order was made of what he has done.