



# Maintenance Orders (Reciprocal Enforcement) Act 1972

## 1972 CHAPTER 18

### PART II

#### RECIPROCAL ENFORCEMENT OF CLAIMS FOR THE RECOVERY OF MAINTENANCE

*Application by person in convention country for recovery of maintenance in England, Wales or Northern Ireland*

#### **27 General provisions relating to application for recovery of maintenance in England, etc.**

- (1) Where the Secretary of State receives from the appropriate authority in a convention country an application by a person in that country for the recovery of maintenance from another person who is for the time being residing in England and Wales or in Northern Ireland, he shall send the application, together with any accompanying documents, to the clerk of a magistrates' court acting for the petty sessions area or petty sessions district, as the case may be, in which that other person is residing; and the application shall be treated for the purposes of any enactment as if it were a complaint and references in this section and in sections 28, 29 and 30 of this Act to the complaint, the complainant and the defendant shall be construed accordingly.
- (2) Where the complaint is for an affiliation order, a magistrates' court acting for the petty sessions area or petty sessions district, as the case may be, in which the defendant is residing shall have jurisdiction to hear the complaint.
- (3) Section 15(2)(a) of the Guardianship of Minors Act 1971 (which restricts the power of a magistrates' court to entertain an application under that Act relating to a minor who has attained the age of sixteen) shall not apply to the complaint.
- (4) If a summons to appear before a magistrates' court having jurisdiction to hear the complaint cannot be duly served on the defendant, the clerk of the court shall, subject to subsection (5) below, return the complaint and the accompanying documents to the

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Secretary of State with a statement giving such information as he possesses as to the whereabouts of the defendant, and unless the Secretary of State is satisfied that the defendant is not residing in the United Kingdom he shall deal with the complaint in accordance with subsection (1) above or section 31 of this Act, as the circumstances of the case require.

- (5) If the clerk of a magistrates' court to whom the complaint is sent in pursuance of a provision of this section is satisfied that the defendant is residing within the jurisdiction of another magistrates' court in that part of the United Kingdom in which the first-mentioned court is he shall send the complaint and accompanying documents to the clerk of that other court and shall inform the Secretary of State that he has done so.
- (6) The clerk of a court to whom the complaint is sent under subsection (5) above shall proceed as if it had been sent to him under subsection (1) above.
- (7) When hearing the complaint a magistrates' court shall proceed as if the complainant were before the court.
- (8) If a magistrates' court makes an order on the complaint, the clerk of the court shall register the order in the prescribed manner in that court.
- (9) Payment of sums due under a registered order shall, while the order is registered in a magistrates' court, be made in such manner and to such person as may be prescribed, and none of the following enactments relating to the power of a magistrates' court to direct payments to be made to or through the collecting officer of the court or some other person, that is to say, section 52 of the Magistrates' Court Act 1952, section 5(5) of the Affiliation Proceedings Act 1957, section 13(2) of the Matrimonial Proceedings (Magistrates' Courts) Act 1960 and subsections (1) to (8) of section 95 of the Magistrates' Courts Act (Northern Ireland) 1964, shall apply in relation to a registered order.
- (10) Without prejudice to the generality of the power to make rules under section 15 of the Justices of the Peace Act 1949 (magistrates' courts rules), the said power shall include power to prescribe the orders made or other things done by a magistrates' court, or an officer of such a court, under this Part of this Act, notice of which is to be given to such persons as the rules may provide and the manner in which such notice shall be given.
- (11) In the application of this section to Northern Ireland, in subsection (10), for the reference to section 15 of the Justices of the Peace Act 1949 there shall be substituted a reference to section 23 of the Magistrates' Courts Act (Northern Ireland) 1964.

## **28 Complaint by spouse in convention country for recovery in England and Wales of maintenance from other spouse**

- (1) Where the complaint is a complaint under section 1 of the Matrimonial Proceedings (Magistrates' Courts) Act 1960, the provisions of this section shall have effect.
- (2) Where the complainant is the wife of the defendant, the only provisions which the court hearing the complaint may include in an order under section 2(1) of the said Act of 1960, or in an interim order under section 6 thereof, are either or both of the following provisions, namely—
  - (a) a provision such as is mentioned in paragraph (b) of the said section 2(1); and
  - (b) a provision for the making by the defendant for the maintenance of any child of the family of weekly payments, being—

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- (i) if and for so long as the child is under the age of sixteen years, payments to the complainant;
  - (ii) if it appears to the court that the child is, or will be, or if such payments were made would be, a dependant though over the age of sixteen years, and that it is expedient that such payments should be made in respect of that child while such a dependant, payments to such person (who may be the child or the complainant) as may be specified in the order, for such period during which the child is over that age but under the age of twenty-one years as may be so specified.
- (3) Where the complainant is the husband of the defendant, the only provisions which the court hearing the complaint may include in an order under the said section 2(1), or in an interim order under the said section 6, are either or both of the following provisions, namely—
  - (a) where, by reason of the impairment of the husband's earning capacity through age, illness or disability of mind or body, it appears to the court reasonable in all the circumstances so to do, a provision such as is mentioned in paragraph (c) of the said section 2(1); and
  - (b) a provision such as is mentioned in subsection (2)(b) above.
- (4) Where the court has begun to hear the complaint, being a complaint for maintenance for the complainant and for a child of the family, then, whether or not the court makes an order containing a provision such as is mentioned in paragraph (b) or (c) of the said section 2(1), it may, subject to section 2(5) of the said Act of 1960 (order for payments by a party in respect of child who is not a child of that party), make a matrimonial order containing a provision such as is mentioned in subsection (2)(b) above; and the court shall not dismiss or make its final order on the complaint until it has decided whether or not, and if so how, the power conferred on it by this subsection should be exercised.
- (5) For the avoidance of doubt it is hereby declared that the power of a magistrates' court under section 53 of the Magistrates' Courts Act 1952 to vary an order for the periodical payment of money includes power to vary an order made under the said Act of 1960 on the complaint by adding to that order any provision authorised by this section to be included in such an order.
- (6) Subject to subsections (2) and (3) above, the said Act of 1960 shall, in its application to the complaint and to a matrimonial order or interim order made on the complaint, have effect subject to the following modifications, that is to say—
  - (a) in sections 2(5), 6(2)(a), 7(3) and 8(2), for references to section 2(1)(h) of that Act there shall be substituted references to subsection (2)(b) above ;
  - (b) in sections 6(3) and (4), 7(2) and 11(2), and in the definitions of those orders in section 16, references to section 8 of that Act shall be construed as including references to section 53 of the Magistrates' Courts Act 1952;
  - (c) in section 13(4), the reference to that Act shall be construed as including a reference to this Part of this Act; and
  - (d) sections 3, 4, 5, 8(1), 9, 10 and 13(2) shall be omitted.

## **29 Complaint by woman in convention country for recovery in Northern Ireland of maintenance from her husband**

- (1) Where the complaint is a complaint under section 1 of the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945, the provisions of this section shall have effect.

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- (2) The only provisions which the court hearing the complaint may include in an order under section 3(1) of the said Act of 1945, or in an interim order under section 4 thereof, are either or both of the following provisions, namely—
  - (a) a provision such as is mentioned in paragraph (c) of the said section 3(1); and
  - (b) a provision such as is mentioned in paragraph (d) of that subsection;but in determining whether to include in any such order a provision such as is mentioned in the said paragraph (d) as respects a child the legal custody of whom has not been committed to any person, the court shall proceed as if it had made an order under the said section 3(1) committing the child to the custody of the wife.
- (3) Section 5(2) of the said Act of 1945 (power to make new order where order made on application of a married woman is discharged) shall have effect where an order made on the complaint is discharged as if the words " that the legal custody of the children of the marriage shall continue to be committed to such married woman and " were omitted.
- (4) Section 8 of the said Act of 1945 (power to refuse order in case more suitable for High Court) shall not apply in relation to the complaint.

### **30 Further provisions relating to recovery in England, Wales and Northern Ireland of maintenance for children**

- (1) Where the complaint is for an order under section 9(2) of the Guardianship of Minors Act 1971, and the court hearing the complaint is satisfied that, if it made an order under subsection (1) of that section giving the custody of the minor to whom the complaint relates to the complainant, it would have power to make an order under subsection (2) of that section for the payment of sums towards the maintenance of the minor, it shall in determining whether to make an order on the complaint proceed as if it had made an order under subsection (1) of that section giving the custody of the minor to the complainant.
- (2) Section 16(4) of the said Act of 1971 (refusal of order in case more suitable for the High Court) shall not apply in relation to a complaint to which subsection (1) above applies or in relation to an application for the variation or revocation of an order made on such a complaint.
- (3) Where the complaint is for an affiliation order under the Affiliation Proceedings Act 1957 or the Illegitimate Children (Affiliation Orders) Act (Northern Ireland) 1924—
  - (a) it shall be sufficient for the purposes of paragraph (b) of section 2(1) of the said Act of 1957 (time for making complaint) or paragraph (c) of section 2(3) of the said Act of 1924 (provision to the like effect), as the case may be, to prove that the defendant has within the twelve months next after the birth of the child to whom the complaint relates paid money for its maintenance in pursuance of a requirement of the law applied by a court outside the United Kingdom; and
  - (b) any evidence of the complainant in support of the complaint given in a convention country a record or summary of which is received by the court hearing the complaint, or the court hearing an appeal against an affiliation order made on the complaint or against the refusal to make such an order, shall be treated by the court hearing the complaint or the court hearing such an appeal, as the case may be, as if it had been given by the complainant in person before that court.

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- (4) Where the complaint is for an affiliation order under the said Act of 1924, a summons may be issued on the complaint notwithstanding that the complainant has not made the information mentioned in section 2(4) of that Act.
- (5) Without prejudice to any other enactment empowering a magistrates' court to vary an affiliation order made by it, an affiliation order made under the said Act of 1957 or the said Act of 1924, as the case may be, on the complaint may be varied by such a court so as to entitle any person, other than the complainant, who for the time being has the custody of the child to whom the order relates to any payments to be made under the order.
- (6) Section 41 of this Act shall not apply in relation to an order under section 9(2) of the said Act of 1971, or an affiliation order under the said Act of 1957, made on the complaint.