



# Maintenance Orders (Reciprocal Enforcement) Act 1972

## 1972 CHAPTER 18

### PART II

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

##### *Transfer, enforcement, variation and revocation of registered orders*

#### **32 Transfer of orders.**

- (1) 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, then, unless he is of opinion that the payer has ceased to reside in the United Kingdom, he shall, subject to subsection (2) below, send a certified copy of the order and the related documents to the Secretary of State, and if he is of opinion that the payer has ceased to reside in the United Kingdom he shall send a notice to that effect to the Secretary of State.
- (2) Where the clerk 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 a certified copy of the order and the related documents to the clerk of that other court and, subject to subsection (4) below, that clerk shall register the order in the prescribed manner in that court.
- (3) Where a 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 copy of the order and the related documents to the prescribed officer of the appropriate court and, subject to subsection (4) below, that officer shall register the order in the prescribed manner in that court.

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- (4) Before registering an order in pursuance of subsection (2) or (3) above 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 and the related documents to the officer of the court or the Secretary of State, as the case may be, from whom he received them, together with a statement giving such information as he possesses as to the whereabouts of the payer.
- (5) Where a 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 has ceased to reside in the United Kingdom he shall return the copy of the order and the related documents to the registering court.
- (6) An officer of a court on registering an order in the court in pursuance of subsection (2) or (3) above shall give notice of the registration in the prescribed manner to the prescribed officer of the court in which immediately before its registration under this section the order was registered.
- (7) The officer to whom notice is given under subsection (6) above shall on receiving the notice cancel the registration of the order in that court.
- [<sup>F1</sup>(7A) The Secretary of State on receiving notice under subsection (6) above shall send a copy of the registered order and of the related documents to the Secretary of the Law Society of Scotland who shall send the copy of the order and of the related documents to a solicitor practising in the registering court or to such other solicitor practising in Scotland as appears to the Secretary to be appropriate for the purpose of enabling the solicitor to take, on behalf of the person entitled to the payments for which the order provides, such steps as appear to the solicitor appropriate to enforce the order.
- (7B) Where an order is registered in the sheriff court by virtue of subsection (3) above, any provision of the order by virtue of which the payments for which the order provides are required to be made through or to any officer or person on behalf of the person entitled thereto shall be of no effect so long as the order is so registered.]
- (8) In this section—
- “the appropriate court”, in relation to a person residing in England and Wales or in Northern Ireland, means a magistrates’ court within the jurisdiction of which that person is residing;
- “certificate of arrears” and “certified copy” have the same meanings respectively as in Part I of this Act;
- “payer”, in relation to a registered order, means the person liable to make payments under the order; and
- “related documents” means—
- (a) the application on which the order was made;
  - (b) a certificate of arrears signed by the prescribed officer of the registering court;
  - (c) a statement giving such information as he possesses as to the whereabouts of the payer; and
  - (d) any relevant documents in his possession relating to the case.
- (9) In the application of this section to Scotland—
- (a) in subsection (1), for the words “within the jurisdiction of that court” there shall be substituted the words “in Scotland”;
  - (b) subsection (2) shall be omitted;

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- (c) in subsection (4), for the words “the officer of the court or the Secretary of State, as the case may be, from whom he received them” there shall be substituted the words “the Secretary of State”;
- (d) at the end of subsection (6) there shall be inserted the words “and to the Secretary of State”;
- [<sup>F2</sup>(e) after subsection (7) there shall be inserted the following subsections:—
  - “(7A) The Secretary of State on receiving notice under subsection (6) above shall send a copy of the registered order and of the related documents to the secretary of the committee mentioned in section 31(1) of this Act, and the secretary shall thereupon send the copy of the order and of the related documents to a solicitor practising in the registering court, with a view to the solicitor’s taking on behalf of the person entitled to the payments for which the order provides such steps as appear to the solicitor appropriate to enforce the order.
  - (7B) Where an order is registered in the sheriff court by virtue of subsection (3) above, any provision of the order by virtue of which the payments for which the order provides are required to be made through or to any officer or person on behalf of the person entitled thereto shall be of no effect so long as the order is so registered”;
- (f) “appropriate court”, in relation to a person residing in Scotland, means the sheriff court within the jurisdiction of which that person is residing.

#### Textual Amendments

- F1** S. 32(7A)(7B) inserted (S.) by [Legal Aid \(Scotland\) Act 1986 \(c. 47, SIF 77:2\)](#), ss. 45, 46(4), [Sch. 3 para. 1\(2\)\(a\)](#)
- F2** S. 32(9)(e) repealed (S.) by [Legal Aid \(Scotland\) Act 1986 \(c. 47, SIF 77:2\)](#), ss. 45, 46(4), [Sch. 3 para. 1\(2\)\(b\)](#), Sch. 5

### 33 Enforcement of orders. **E+W**

- (1) Subject to subsection (2) below, a registered order which is registered in a court other than the court by which the order was made may be enforced 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 in accordance with this subsection but not otherwise.
- (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 <sup>M1</sup>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 <sup>M2</sup>Maintenance and Affiliation Orders Act (Northern Ireland) 1966.
- [<sup>F3</sup>(3) An order which by virtue of subsection (1) above is enforceable by a magistrates’ court [<sup>F4</sup>shall, subject to the modifications of sections 76 and 93 of the Magistrates’ Courts Act 1980 (enforcement of sums adjudged to be paid and complaint for arrears) specified in subsections (4A) and (4B) of section 8 of this Act, be enforceable] as if it were a magistrates’ court maintenance order made by that court.

In this subsection “magistrates’ court maintenance order” has the same meaning as in section 150(1) of the Magistrates’ Courts Act <sup>M3</sup>1980.]

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- [<sup>F5</sup>(3A) Where, by virtue of being registered in the magistrates' court in which it was made, a registered order is enforceable as a magistrates' court maintenance order, sections 76 and 93 of the Magistrates' Courts Act 1980 shall have effect subject to the modifications specified in subsections (4A) and (4B) of section 8 of this Act.]
- (4) A magistrates' court in which an order is registered under this Part of this Act, and the officers thereof, shall take all such steps for enforcing the order as may be prescribed.
- (5) 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 under section 32 of this Act to the prescribed officer of the court shall be evidence of the facts stated therein.
- (6) Part II of the <sup>M4</sup>Maintenance Orders Act 1950 (enforcement of certain orders throughout the United Kingdom) shall not apply to a registered order.
- (7) In the application of this section to Scotland—
- (a) subsections (2) to (4) shall be omitted; and
  - (b) in subsection (5), for the word "evidence" there shall be substituted the words "sufficient evidence".

#### Extent Information

- E1** [S. 33](#): This version of this provision extends to England and Wales only; a separate version has been created for Scotland and Northern Ireland only.

#### Textual Amendments

- F3** [S. 33\(3\)](#) substituted (E.W.) by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), s. 33(1), [Sch. 2 para. 50](#)
- F4** Words in [s. 33\(3\)](#) substituted (E.W.)(1.4.1992) by [Maintenance Enforcement Act 1991 \(c. 17, SIF 49:3\)](#), s. 10, [Sch. 1 para. 18\(1\)](#), S.I. 1992/455, art.2
- F5** [S. 33\(3A\)](#) inserted (E.W.)(1.4.1992) by [Maintenance Enforcement Act 1991 \(c. 17, SIF 49:3\)](#), s. 10, [Sch. 1 para. 18\(2\)](#), S.I. 1992/455, art.2

#### Marginal Citations

- M1** 1958 c. 39.
- M2** 1966 c. 35(N.I.)
- M3** 1980 c.43(82).
- M4** 1950 c. 37.

### 33 Enforcement of orders. **S+N.I.**

- (1) Subject to subsection (2) below, a registered order which is registered in a court other than the court by which the order was made may be enforced 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 in accordance with this subsection but not otherwise.
- (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 <sup>M11</sup>Maintenance Orders Act 1958 or to an order which is for the time being registered in the High Court of Justice in Northern Ireland

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under Part II of the <sup>M12</sup>Maintenance and Affiliation Orders Act (Northern Ireland) 1966.

- (3) An order which by virtue of subsection (1) above 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.

- (4) A magistrates' court in which an order is registered under this Part of this Act, and the officers thereof, shall take all such steps for enforcing the order as may be prescribed.
- (5) 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 under section 32 of this Act to the prescribed officer of the court shall be evidence of the facts stated therein.
- (6) Part II of the <sup>M13</sup>Maintenance Orders Act 1950 (enforcement of certain orders throughout the United Kingdom) shall not apply to a registered order.
- (7) In the application of this section to Scotland—
- (a) subsections (2) to (4) shall be omitted; and
  - (b) in subsection (5), for the word “evidence” there shall be substituted the words “sufficient evidence”.

#### Extent Information

**E2** **S. 33:** This version of this provision extends to Scotland and Northern Ireland only; a separate version has been created for England and Wales only.

#### Marginal Citations

**M11** 1958 c. 39.

**M12** 1966 c. 35(N.I.)

**M13** 1950 c. 37.

## 34 Variation and revocation of orders.

- (1) [<sup>F6</sup>Subject to section 34A of this Act] where a registered order is registered in a court other than the court by which the order was made, the registering court shall have the like power 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 no court other than the registering court shall have power to vary or revoke a registered order.
- (2) Where the registering court revokes a registered order it shall cancel the registration.
- (3) Where the Secretary of State receives from the appropriate authority in a convention country an application by a person in that country for the variation of a registered order, he shall, if the registering court is a magistrates' court, send the application together with any documents accompanying it to the clerk of that court.

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- (4) Where a court in a part of the United Kingdom makes, or refuses to make, an order varying or revoking a registered order made by a court in another part thereof, any person shall have the like right of appeal (if any) against the order or refusal as he would have if the registered order had been made by the first-mentioned court.
- (5) In the application of this section to Scotland
- [<sup>F7</sup>(a) the words “and no court other than the registering court shall have power to vary or revoke a registered order” in subsection (1) above are subject to any power of the Court of Session on appeal; and]
- [<sup>F8</sup>(b) for subsection (3) there shall be substituted the following subsection—
- “(3) Where the Secretary of State receives from the appropriate authority in a convention country an application by a person in that country for the variation of a registered order, he shall, if the registering court is a sheriff court, send the application, together with any documents accompanying it, to the Secretary of the Law Society of Scotland who shall send the application and any accompanying documents to a solicitor practising in the registering court or to such other solicitor practising in Scotland as appears to the Secretary to be appropriate, for the purpose of enabling the solicitor to take on behalf of the applicant such steps as appear to the solicitor appropriate in respect of the application.”]

#### Textual Amendments

- F6** Words in s. 34(1) inserted (E.W.) (1.4.1992) by [Maintenance Enforcement Act 1991 \(c. 17\)](#), s. 10, [Sch. 1 para. 19\(1\)](#), S.I. 1992/455, art. 2
- F7** Words inserted by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22\)](#), ss. 60(2), 89
- F8** S. 34(5)(b) substituted (S.) by [Legal Aid \(Scotland\) Act 1986 \(c. 47, SIF 77:2\)](#), ss. 45, 46(4), [Sch. 3 para. 1\(3\)](#)

#### [<sup>F9</sup>34A Variation of orders by magistrates' courts in England and Wales.

- (1) The provisions of this section shall have effect in relation to a registered order which is registered in a magistrates' court in England and Wales (whether or not the court made the order) in place of the following enactments, that is to say—
- (a) subsections (3) to (11) of section 60 of the <sup>M5</sup>Magistrates' Courts Act 1980;
- (b) section 20ZA of the <sup>M6</sup>Domestic Proceedings and Magistrates' Courts Act 1978; and
- (c) paragraph 6A of Schedule 1 to the <sup>M7</sup>Children Act 1989.
- (2) The power of a magistrates' court in England and Wales to vary a registered order shall include power, if the court is satisfied that payment has not been made in accordance with the order, to exercise one of its powers under subsection (3) below.
- (3) The powers of the court are—
- (a) the power to order that payments under the order be made directly to the clerk of the court or the clerk of any other magistrates' court in England and Wales;
- (b) the power to order that payments under the order be made to the clerk of the court, or to the clerk of any other magistrates' court in England and Wales,

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- by such method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (standing order, etc.) as may be specified;
- (c) the power to make an attachment of earnings order under the <sup>M8</sup>Attachment of Earnings Act 1971 to secure payments under the order.
- (4) In any case where—
- (a) a registered order is registered in a magistrates' court in England and Wales, and
- (b) payments under the order are required to be made to the clerk of the court, or to the clerk of any other magistrates' court in England and Wales, by any method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (standing order, etc.),
- an interested party may apply in writing to the clerk of the court in which the order is registered for the order to be varied as mentioned in subsection (5) below.
- (5) Subject to subsection (8) below, where an application has been made under subsection (4) above, the clerk, after giving written notice (by post or otherwise) of the application to any other interested party and allowing that party, within the period of 14 days beginning with the date of the giving of that notice, an opportunity to make written representations, may vary the order to provide that payments under the order shall be made in accordance with paragraph (a) of subsection (3) above.
- (6) The clerk may proceed with an application under subsection (4) above notwithstanding that any such interested party as is referred to in subsection (5) above has not received written notice of the application.
- (7) In subsections (4) to (6) above “interested party”, in relation to an order, means the debtor or the creditor.
- (8) Where an application has been made under subsection (4) above, the clerk may, if he considers it inappropriate to exercise his power under subsection (5) above, refer the matter to the court which may vary the order by exercising one of its powers under subsection (3) above.
- (9) In deciding, for the purposes of subsections (2) and (8) above, which of the powers under subsection (3) above it is to exercise, the court shall have regard to any representations made by the debtor.
- (10) Subsection (4) of section 59 of the <sup>M9</sup>Magistrates' Courts Act 1980 (power of court to require debtor to open account) shall apply for the purposes of subsection (3) above as it applies for the purposes of that section but as if for paragraph (a) there were substituted—
- (a) the court proposes to exercise its power under paragraph (b) of section 34A(3) of the <sup>M10</sup>Maintenance Orders (Reciprocal Enforcement) Act 1972, and
- (11) In this section “creditor” and “debtor” have the same meaning as they have in section 59 of the Magistrates' Courts Act 1980.]

#### Textual Amendments

- F9** S. 34A inserted (E.W.) (1.4.1992) by Maintenance Enforcement Act 1991 (c. 17), s. 10, Sch. 1 para. 19(2), S.I. 1992/455, art.2

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### **Marginal Citations**

- M5** 1980 c. 43.
- M6** 1978 c. 22.
- M7** 1989 c. 41.
- M8** 1971 c. 32.
- M9** 1980 c. 43.
- M10** 1972 c. 18.

VALID FROM 04/11/1996

### **[<sup>F10</sup>34B Variation of orders by courts of summary jurisdiction in Northern Ireland.**

- (1) The provisions of this section shall have effect in relation to a registered order which is registered in a court of summary jurisdiction in Northern Ireland (whether or not the court made the order) in place of the following enactments, that is to say—
  - (a) paragraphs (3) to (11) of Article 86 of the Magistrates’ Courts (Northern Ireland) Order 1981; and
  - (b) Article 22A of the Domestic Proceedings (Northern Ireland) Order 1980.
- (2) The power of a court of summary jurisdiction in Northern Ireland to vary a registered order shall include power, if the court is satisfied that payment has not been made in accordance with the order, to exercise one of its powers under subsection (3) below.
- (3) The powers of the court are—
  - (a) the power to order that payments under the order be made directly to the collecting officer;
  - (b) the power to order that payments under the order be made to the collecting officer by such method of payment falling within Article 85(7) of the Magistrates’ Courts (Northern Ireland) Order 1981 (standing order, etc.) as may be specified;
  - (c) the power to make an attachment of earnings order under Part IX of the Order of 1981 to secure payments under the order;

and in this subsection “collecting officer” means the officer mentioned in Article 85(4) of the Order of 1981.
- (4) In any case where—
  - (a) a registered order is registered in a court of summary jurisdiction in Northern Ireland, and
  - (b) payments under the order are required to be made to the collecting officer in Northern Ireland, by any method of payment falling within Article 85(7) of the Magistrates’ Courts (Northern Ireland) Order 1981 (standing order, etc.),

an interested party may apply in writing to the clerk of petty sessions in which the order is registered for the order to be varied as mentioned in subsection (5) below.
- (5) Subject to subsection (8) below, where an application has been made under subsection (4) above, the clerk, after giving written notice (by post or otherwise) of the application to any other interested party and allowing that party, within the period of 14 days beginning with the date of the giving of that notice, and opportunity to make written representations, may vary the order to provide that payments under the order shall be made in accordance with paragraph (a) of subsection (3) above.



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- (6) The clerk may proceed with an application under subsection (4) above notwithstanding that any such interested party as is referred to in subsection (5) above has not received written notice of the application.
- (7) In subsections (4) to (6) above “interested party”, in relation to an order, means the debtor or the creditor.
- (8) Where an application has been made under subsection (4) above, the clerk may, if he considers it inappropriate to exercise his power under subsection (5) above, refer the matter to the court which may vary the order by exercising one of its powers under subsection (3) above.
- (9) In deciding, for the purposes of subsections (2) and (8) above, which of the powers under subsection (3) above it is to exercise, the court shall have regard to any representations made by the debtor.
- (10) Paragraph (5) of Article 85 of the Magistrates’ Courts (Northern Ireland) Order 1981 (power of court to require debtor to open account) shall apply for the purposes of subsection (3) above as it applies for the purposes of that Article but as if for subparagraph (a) there were substituted—
  - “(a) the court proposes to exercise its power under paragraph (b) of section 34B(3) of the Maintenance Orders (Reciprocal Enforcement) Act 1972, and”]

#### Textual Amendments

- F10** S. 34B inserted (N.I.) (4.11.1996) by S.I. 1993/1576 (N.I. 6), art. 11, Sch. 1 para. 14(b); S.R. 1996/454, art. 3

### 35 Further provisions with respect to variation, etc. of orders by magistrates’ courts.

- (1) Notwithstanding anything in [<sup>F11</sup>sections 28, 28A (3)(e)] or 30(6) of this Act, a magistrates’ court shall have jurisdiction to hear an application for the variation or revocation of a registered order registered in that court, being—
  - (a) an application made by the person against whom or on whose application the order was made, or
  - (b) an application made by some other person in pursuance of section 30(5) of this Act for the variation of an affiliation order,notwithstanding that the person by or against whom the application is made is residing outside England and Wales [<sup>F12</sup>but none of the powers of the court, or of the clerk of the court, conferred by section 34A of this Act shall be exercisable in relation to such an application].
- (2) Where an application by a person in a convention country for the variation of a registered order is received from the Secretary of State by the clerk of a magistrates’ court, he shall treat the application as if it were a complaint for the variation of the order to which the application relates, and the court hearing the application shall proceed as if the application were a complaint and the applicant were before the court.
- (3) Without prejudice to subsection (2) above, an application to a magistrates’ court for the variation or revocation of a registered order shall be made by complaint.

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- (4) Where the defendant to a complaint for the variation or revocation of a registered order, being an order registered in a magistrates' court, does not appear at the time and place appointed for the hearing of the complaint, but the court is satisfied—
- (a) that the defendant is residing outside England and Wales; and
  - (b) that such notice of the making of the complaint and of the time and place aforesaid as may be prescribed has been given to the defendant in the prescribed manner,
- the court may proceed to hear and determine the complaint at the time and place appointed for the hearing or for any adjourned hearing in like manner as if the defendant had appeared at that time and place.
- (5) This section shall have effect in Northern Ireland with the substitution of references to Northern Ireland for references to England and Wales [<sup>F13</sup> and with the substitution in subsection (1) for the references to sections 28 and 28A(3)(e) of references to sections 29 and 29A(3)(e)].

#### Textual Amendments

- F11** Words substituted by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22\), s. 89, Sch. 2 para. 35](#)
- F12** Words in s. 35(1) inserted (E.W.)(1.4.1992) by [Maintenance Enforcement Act 1991 \(c. 17, SIF 49:3\), s. 10, Sch. 1 para.20, S.I. 1992/455, art.2](#)
- F13** Words inserted by [S.I. 1980/564, art. 4\(5\)](#)

VALID FROM 05/04/1993

#### <sup>F14</sup>**35A Further provisions with respect to variation etc. of orders by magistrates' courts in Northern Ireland.**

- (1) Notwithstanding anything in section 29 or 29A(3)(e) of this Act, a magistrates' court in Northern Ireland shall have jurisdiction to hear an application for the variation or revocation of a registered order registered in that court, being—
- (a) an application made by the person against whom or on whose application the order was made, or
  - (b) an application made by some other person in pursuance of section 30(5) of this Act for the variation of an affiliation order,
- notwithstanding that the person by or against whom the application is made is residing outside Northern Ireland.
- (2) Where an application by a person in a convention country for the variation of a registered order is received from the Lord Chancellor by the clerk of a magistrates' court in Northern Ireland, he shall treat the application as if it were a complaint for the variation of the order to which the application relates, and the court hearing the application shall proceed as if the application were a complaint and the applicant were before the court.
- (3) Without prejudice to subsection (2) above, an application to a magistrates' court in Northern Ireland for the variation or revocation of a registered order shall be made by complaint.

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(4) Where the defendant to a complaint for the variation or revocation of a registered order which is registered in a magistrates' court in Northern Ireland does not appear at the time and place appointed for the hearing of the complaint, but the court is satisfied—

- (a) that the defendant is residing outside Northern Ireland, and
- (b) that the prescribed notice of the making of the complaint and of the time and place appointed for the hearing has been given to the defendant in the prescribed manner,

the court may proceed to hear and determine the complaint at the time and place appointed for the hearing or for any adjourned hearing in like manner as if the defendant had appeared at that time and place.

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**Textual Amendments**

**F14** Ss. 35, 35A substituted (5.4.1993) for s. 35 by Maintenance Orders (Reciprocal Enforcement) Act 1992 (c. 56), s. 1, Sch. 1 Pt. II para.16; S.I. 1993/618, art.2

**Status:**

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**Changes to legislation:**

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