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STATUTORY INSTRUMENTS

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**1980 No. 1895 (L.27)**

**MAGISTRATES' COURTS**

**The Magistrates' Courts (Maintenance Orders Act 1950) (Amendment) Rules 1980**

<i>Made</i>	- - - -	<i>19th November 1980</i>
<i>Laid before Parliament</i>		<i>10th December 1980</i>
<i>Coming into Operation</i>		<i>1st January 1981</i>

The Lord Chancellor, in exercise of the power conferred on him by section 15 of the Justices of the Peace Act 1949(1), after consultation with the Rule Committee appointed under the said section 15, hereby makes the following rules:—

1. These rules may be cited as the Magistrates' Courts (Maintenance Orders Act 1950) (Amendment) Rules 1980 and shall come into operation on 1st January 1981.

2. In these rules “the rules” means the Maintenance Orders Act 1950 (Summary Jurisdiction) Rules 1950.

3.—(1) In rule 2(4) of the rules the words “kept pursuant to section 22 of the Act of 1879” and “kept pursuant to the said section 22” shall be omitted.

(2) Rules 4(1), 6, 7 and 10(2) of the rules shall be amended by omitting, in each place where they occur, the words “kept pursuant to section 22 of the Act of 1879”.

4. After rule 9 of the rules there shall be inserted the following rule:—

“9A.—(1) An application to a magistrates' court under section 21(2) of the Act to adduce evidence in connection with a maintenance order made by the Court of Session and registered in the magistrates' court under Part I of the Act of 1958 by virtue of section 1(2) of the Act of 1958 may be made orally by or on behalf of the applicant and the proceedings may be ex parte.

(2) The court in which application is made under paragraph (1) above shall cause a transcript or summary of any evidence taken therein to be sent to the Deputy Principal Clerk of Session.”.

5. Rule 10 of the rules shall be amended by—

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(1) section 15 was extended by section 25 of the Maintenance Orders Act 1950 (c. 37) and section 122 of the Magistrates' Courts Act 1952 (c. 55)

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(a) substituting in paragraph (1) for the words “give notice of the variation” to the end the following words:—

“(a) give notice of the variation to the clerk of the court in Scotland or Northern Ireland by which the order was made; and

(b) if the order is registered in the High Court under Part I of the Act of 1958 by virtue of section 1(2) of the Act of 1958, give notice of the variation to the appropriate officer of the High Court,

by sending to the clerk of the court and, where necessary, the appropriate officer of the High Court, a certified copy of the order of variation.”

; and

(b) substituting in paragraph (2) for the words “subsection (2) of section 23” the words “section 23(1)”.

**6.** Rule 11(2) of the rules shall be amended by inserting at the end the words “and, where the order is registered in the High Court under Part I of the Act of 1958 by virtue of section 1(2) of the Act of 1958, to the appropriate officer of the High Court”.

**7.** Rule 12 of the rules shall be amended by inserting at the end the words “and, where the order is registered in the High Court under Part I of the Act of 1958 by virtue of section 1(2) of the Act of 1958, to the appropriate officer of the High Court”.

**8.** After rule 12 of the rules there shall be inserted the following rule:—

“**12A.** Where the clerk of a magistrates' court in which a maintenance order is registered under Part I of the Act of 1958 receives a notice of cancellation under section 24(3) of the Act from the appropriate officer of the High Court, he shall—

(a) cause the particulars of such notice to be entered in the register; and

(b) cancel the registration under the said Part I; and

(c) give notice of the cancellation to the appropriate officer of the court in Scotland or Northern Ireland, as the case may be, which made the order, that is to say either—

(i) the Deputy Principal Clerk of Session, in the case of the Court of Session; or

(ii) the Chief Registrar of the Queen's Bench Division (Matrimonial), in the case of the High Court of Justice in Northern Ireland.”

**9.** Rule 13 of the rules shall be amended by substituting, in paragraph (1), for the words “have, on its registration under Part II of the Act in a court of summary jurisdiction in England,” the words “made by a sheriff court in Scotland or a court of summary jurisdiction in Northern Ireland have”.

**10.** In rule 16(1) of the rules for the definition of “the Act of 1879” there shall be substituted the following definitions:—

““the Act of 1958” means the Maintenance Orders Act 1958(2);

“appropriate officer of the High Court” means the Senior Registrar of the Principal Registry of the Family Division of the High Court or the district registrar of the relevant district registry;

“register” means the register kept in accordance with rule 54 of the Magistrates' Courts Rules 1968(3).”..

**11.** The Schedule to the rules shall be amended by substituting for the form numbered 4 therein the form numbered 4 in the Schedule to these rules.

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(2) 1958 c.39.

(3) S.I. 1968/1920; relevant amending instruments are S.I. 1978/147, 758, 1980/510”.

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Dated 19th November 1980

*Hailsham of St. Marylebone, C*

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## SCHEDULE

Rule 11

### FORM TO BE SUBSTITUTED IN THE SCHEDULE TO THE MAINTENANCE ORDERS ACT 1950 (SUMMARY JURISDICTION) RULES 1950

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#### EXPLANATORY NOTE

These rules amend the Maintenance Orders Act 1950 (Summary Jurisdiction) Rules 1950 (“the rules of 1950”) in consequence of the amendments made to the Maintenance Orders Act 1950 (“the Act of 1950”) and the Maintenance Orders Act 1958 (“the Act of 1958”) by section 3 of, and Schedule 3 to, the Administration of Justice Act 1977 (c.38). The broad effect of those amendments is to enable a maintenance order made by a superior court in Scotland or Northern Ireland to be registered in a magistrates' court and a maintenance order made by an inferior court in Scotland or Northern Ireland to be registered in the High Court.

In particular, rule 4 inserts new rule 9A into the rules of 1950 which makes provision in relation to an application to a magistrates' court to adduce evidence in connection with a maintenance order made by the Court of Session and registered in the magistrates' court. Rule 5 amends rule 10 of the rules of 1950 and makes fresh provision for the giving of a notice of variation by the clerk of the court where a maintenance order has been varied under section 22 of the Act of 1950. Rule 8 inserts new rule 12A into the rules of 1950 which makes provision in relation to the cancellation of a maintenance order registered in a magistrates' court under Part I of the Act of 1958. Rule 11 and the Schedule to these rules substitute a new Form 4 (notice of cancellation of registration of maintenance order in magistrates' court) in the Schedule to the rules of 1950.