

2007 No. 354

MAINTENANCE OF DEPENDANTS

The Reciprocal Enforcement of Maintenance Orders (United States of America) (Scotland) Order 2007

Made - - - - - *25th July 2007*

Laid before the Scottish Parliament *1st August 2007*

Coming into force - - - *1st October 2007*

At the Court at Buckingham Palace, the 25th day of July 2007

Present,

The Queen's Most Excellent Majesty in Council

This Order is made in exercise of the powers conferred by sections 40 and 45(1) of the Maintenance Orders (Reciprocal Enforcement) Act 1972(a).

Her Majesty is satisfied that arrangements have been made in the United States of America to ensure that maintenance orders made by courts in the United Kingdom can be enforced in the United States of America.

Her Majesty is also satisfied that in the interests of reciprocity it is desirable to ensure that maintenance orders made by courts in the United States of America can be enforced in the United Kingdom.

Accordingly, Her Majesty is pleased, by and with the advice of Her Privy Council, to order as follows.

Citation, commencement and extent

1.—(1) This Order may be cited as the Reciprocal Enforcement of Maintenance Orders (United States of America) (Scotland) Order 2007 and shall come into force on 1st October 2007.

(2) It extends to Scotland only.

(a) 1972 c.18 ("the 1972 Act"); section 40 was amended by the Civil Jurisdiction and Judgments Act 1982 (c.27), Schedules 11 and 14. Section 118(4) of the Scotland Act 1998 (c.46) requires Orders in Council within devolved competence to be laid before the Scottish Parliament.

Interpretation

2. In this Order–

“the Act” means the Maintenance Orders (Reciprocal Enforcement) Act 1972(a);

“child” has the meaning it bears in the Child Support Act 1991(b);

“maintenance order” is construed in accordance with Part I of the Act as modified by paragraph 18(2)(b) of Schedule 1 to this Order; and

“the United States of America” means the fifty States, the District of Columbia, Guam, Puerto Rico, the United States Virgin Islands, and any other jurisdiction of the United States participating in Title IV-D of the Social Security Act (Title 42, United States Code, Chapter 7, subchapter IV, Part D).

Scope – devolved competence

3. This Order applies in respect of a maintenance order unless the Secretary of State would have had jurisdiction(c) to make a maintenance calculation (within the meaning of the Child Support Act 1991) as regards that maintenance with respect to a child–

- (a) who is a payee under the maintenance order; or
- (b) where a payee under the maintenance order is another person in relation to whom the Secretary of State has arranged for the collection of payments for that child’s benefit.

Application and modification of Part I of the Act in relation to the United States of America

4.—(1) The provisions of Part I of the Act apply in relation to the United States of America as a reciprocating country(d), subject to the exceptions, adaptations and modifications set out in Schedule 1.

(2) Part I of the Act, amended in accordance with paragraph (1) and Schedule 1, in relation to–

- (a) maintenance orders made by courts in Scotland; and
- (b) maintenance orders made by the courts in the United States of America,

is set out in Schedule 2.

Saving and transitional provision

5.—(1) This Order applies to–

- (a) any application made on or after 1st October 2007 to the prescribed officer of a court in Scotland under section 2(3) of the Act for a maintenance order made by a court in Scotland to be sent to the United States of America for enforcement;
- (b) any certified copy of a maintenance order made by a court in the United States of America which is received by the Scottish Ministers on or after 1st October 2007 under section 6(2) of the Act; and
- (c) any application made under Part I of the Act in respect of–
 - (i) an application falling within paragraph (a); or
 - (ii) a certified copy maintenance order falling within paragraph (b).

(a) The 1972 Act is relevantly amended by the Magistrates' Courts Act 1980 (c. 43), Schedule 7; S.I. 1981/1675 (N.I.26); the Criminal Justice Act 1982 (c.48), section 46; the Civil Jurisdiction and Judgements Act 1982, Schedules 11 and 12; the Family Law Reform Act 1987 (c.42), Schedules 2 and 4; the Maintenance Enforcement Act 1991 (c.17), Schedule 1; S.I. 1992/709; the Maintenance Orders (Reciprocal Enforcement) Act 1992 (c.56), Schedule 1; the Children (Scotland) Act 1995 (c.36), Schedule 5; S.I. 1995/755; and the Access to Justice Act 1999 (c.22), Schedule 13.

(b) 1991 c.48. Section 55 of that Act contains a definition of “child” for the purposes of that Act.

(c) See section 44 of the Child Support Act 1991 (c.48). The Reciprocal Enforcement of Maintenance Orders (United States of America) Order 2007 (S.I. 2007/2005) (“the UK Order”), which applies throughout the United Kingdom, includes provision in relation to the Scottish courts equivalent to this Order for maintenance orders outwith the scope of this Order.

(d) Article 3 of the UK Order designates the United States of America (as defined in article 2 of this Order) as a reciprocating country.

(2) Subject to paragraph (1), the Reciprocal Enforcement of Maintenance Orders (United States of America) Order 1995^(a) continues in full force and effect.

Judith Simpson
Clerk of the Privy Council

^(a) S.I. 1995/2709, amended by S.I. 2001/410, 2003/776 and 2005/617.

**MODIFICATIONS TO PART I OF THE ACT
AS APPLIED TO THE USA**

- 1.—(1) Amend section 2 in accordance with this paragraph.
- (2) In the heading to that section, for “the United Kingdom” substitute “Scotland”.
- (3) For subsection (1) substitute—
- “(1) Subject to subsection (2) below, where the payer under a maintenance order made, whether before, on or after 1st October 2007, by a court in Scotland is residing or has assets in the United States of America, the payee under the Order may apply for the order to be sent to the United States of America for enforcement.”.
- (4) In subsection (2), omit “a provisional order or to”.
- (5) For subsection (4) substitute—
- “(4) If, on an application duly made under this section to the prescribed officer of a court in Scotland, that officer is satisfied that the payer under the maintenance order to which the application relates is residing or has assets in the United States of America—
- (a) three certified copies of the maintenance order;
 - (b) a certificate signed by that officer certifying that the order is enforceable in Scotland;
 - (c) a certificate of arrears so signed or signed by the applicant or the applicant’s solicitor;
 - (d) a sworn statement signed by the payee giving—
 - (i) the address of the payee;
 - (ii) such information as is known to the payee as to the whereabouts of the payer; and
 - (iii) a description, so far as is known to the payee, of the nature and location of any assets of the payer available for execution;
 - (e) a statement giving such information as the officer possesses for facilitating the identification of the payer; and
 - (f) where available, a photograph of the payer,
- must be sent by that officer to the Scottish Ministers, with a view to those being transmitted by them to the responsible authority in the United States of America if they are satisfied that the statement relating to the whereabouts of the payer and the nature and location of the assets gives sufficient information to justify that being done.”.
- (6) In subsection (5), after “and” insert “, subject to section 5 below,”.
2. Omit sections 3 and 4.
3. For section 5 substitute—

“Variation and revocation of maintenance order made in Scotland

5.—(1) This section applies to a maintenance order certified copies of which have been sent in pursuance of section 2 to the United States of America for enforcement.

(2) The jurisdiction of a court in Scotland to revoke, revive or vary a maintenance order shall be exercisable notwithstanding that the proceedings for the revocation, revival or variation, as the case may be, of the order are brought by or against a person residing in the United States of America.

(4) Where an application is made by the payee to a court in Scotland for the variation or revocation of an order to which this section applies, and the payer is residing in the United States of America, the prescribed officer of the court must—

- (a) send to the Scottish Ministers notice of the institution of the proceedings, including notice of the substance of the application, with a view to its being transmitted by them to the responsible authority in the United States of America for service on the payer; and
- (b) give the payer notice in writing of the date fixed for the hearing by sending the notice by post addressed to the payer's last known or usual place of abode.

(5) Where such an application is made—

- (a) the order shall not be varied or revoked unless the document mentioned in subsection (4)(a) above has been served on the payer in accordance with the law for the service of such a document in the United States of America;
- (b) the court, in considering whether or not to vary or revoke the order, shall take into account any representations made and any evidence adduced by or on behalf of the payer; and
- (c) a copy of any such representations or evidence shall be served on the payee in the prescribed manner before the hearing.

(6) Where an application is made by the payer to a court in Scotland for the variation or revocation of an order to which this section applies, the prescribed officer of the court shall arrange for the service of notice of institution of the proceedings, including notice of the substance of the application, on the payee.

(7) Where an order to which this section applies is varied or revoked by a court in Scotland the prescribed officer of the court shall send—

- (a) three certified copies of the order of variation or revocation; and
- (b) a written statement, signed by that officer, as to whether both the payer and the payee under the order appeared in the proceedings and, if only the applicant appeared, the original or a certified copy of a document which establishes that notice of the institution of the proceedings had been served on the other party,

to the Scottish Ministers, with a view to those documents being transmitted by them to the responsible authority in the United States of America for registration and enforcement of the order of variation or revocation.

(8) Where a maintenance order to which this section applies has been varied by an order made by a court in the United Kingdom, the maintenance order shall, as from the date on which the order of variation took effect, have effect as varied by that order.

(9) Where a maintenance order to which this section applies has been revoked by an order made by a court in the United Kingdom, the maintenance order shall, as from the date on which the order of revocation took effect, be deemed to have ceased to have effect except in respect of any arrears due under the maintenance order at that date.

(10) Where an order has been varied or revoked in accordance with subsection (8) or (9) above, unless specifically provided for in the order, any arrears shall continue to be recoverable as if the order for variation or revocation had not been made.”.

4. For section 6 substitute—

“Registration in Scottish court of maintenance order made in the United States of America

6.—(1) This section applies to a maintenance order made, whether before, on or after 1st October 2007, by a court in the United States of America.

(2) Where a certified copy of an order to which this section applies is received by the Scottish Ministers from the responsible authority in the United States of America, and it

appears to them that the payer under the order is residing or has assets in the United Kingdom, they 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 Scottish Ministers a certified copy of an order to which this section applies, the officer 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 the officer thinks fit for the purpose of ascertaining whether the payer under the order is residing or has assets within the jurisdiction of the court, and, after taking those steps, if satisfied that the payer is not residing and has no assets within the jurisdiction of the court, the officer shall return the certified copy of the order to the Scottish Ministers with a statement giving such information as the officer possesses as to the whereabouts of the payer and the nature and location of the assets.”.

5. Omit section 7.

6.—(1) Amend section 8 in accordance with this paragraph.

(2) In subsection (1)–

- (a) omit “Subject to subsection (2) below,”; and
- (b) for “the United Kingdom” substitute “Scotland”.

(3) For subsection (7) substitute–

“(7) 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.”.

(4) Omit subsections (8) and (10).

7. For section 9 substitute–

“Variation and revocation of maintenance order registered in United Kingdom court

9.—(1) Where a registered order has been varied by a court in the United States of America, the registered order shall, as from the date on which the order of variation took effect or 1st October 2007, whichever is the later, have effect as varied by that order.

(2) Where a registered order has been revoked by a court in the United States of America, the registered order shall, as from the date on which the order of revocation took effect or 1st October 2007, whichever is the later, be deemed to have ceased to have effect.

(3) Where an order has been varied or revoked in accordance with subsections (1) and (2) above, unless provided for in the order, any arrears due shall continue to be recoverable as if the order for variation or revocation had not been made.

(4) The prescribed officer of the registering court shall register in the prescribed manner any order varying a registered order.”.

8.—(1) Amend section 10 in accordance with this paragraph.

(2) For subsection (1) substitute–

“(1) Where a registered order is revoked by an order made by a court in the United States of America 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 on which the order of revocation took effect shall continue to be recoverable as if the registration had not been cancelled”.

(3) In subsection (2)–

- (a) for “within the jurisdiction of the court” substitute “in Scotland”; and
- (b) omit “, subject to subsection (3) below,”.

(4) In subsections (2), (5), (6) and (7), for “Secretary of State” in each place where it occurs substitute “the Scottish Ministers”.

- (5) In subsections (2), (6) and (7), for “he”, each time it occurs, substitute “the officer”.
 - (6) Omit subsections (3), (4) and (8).
 - (7) In subsection (5), for “him” substitute “them”; and for “he” substitute “they”.
 - (8) In subsection (6), omit “(4) or”.
 - (9) In subsection (7)–
 - (a) in paragraph (a), at the end add “or by the applicant or the applicant’s solicitor”; and
 - (b) in paragraph (b), for “such information as he possesses” substitute “any information possessed”; and for “his assets” substitute “the assets”; and
 - (c) in paragraph (c), for “in his possession” substitute “possessed”.
- 9.—(1) For section 11 substitute–

“Steps to be taken by the Scottish Ministers where payer under certain orders is not residing in the United Kingdom

11.—(1) If at any time it appears to the Scottish Ministers that the payer under a maintenance order, a certified copy of which has been received by them from the United States of America, is not residing and has no assets in the United Kingdom, they shall send to the responsible authority in the United States of America or, if having regard to all the circumstances they think it proper to do so, to the appropriate authority in another reciprocating country–

- (a) the certified copy of the order in question and a certified copy of any order varying that order;
- (b) if the order has at any time been a registered order, a certificate of arrears signed by the prescribed officer or by the applicant or the applicant’s solicitor;
- (c) a statement giving such information as the Scottish Ministers possess as to the whereabouts of the payer and the nature and location of the payer’s assets; and
- (d) any other relevant documents in their possession relating to the case.

(2) Where the documents mentioned in subsection (1) are sent to the responsible authority in a reciprocating country other than that in which the order in question was made, the Scottish Ministers shall inform the responsible authority in the reciprocating country in which that order was made of what they have done.”.

10. Omit section 12.

11.—(1) Amend section 13 in accordance with this paragraph.

(2) In subsection (1)–

- (a) in paragraph (a), for “a reciprocating country” substitute “the United States of America”;
- (b) in paragraphs (b) and (c), for “such a country” substitute “the United States of America”; and
- (c) in the full-out, for “the United Kingdom” substitute “Scotland”.

(3) In subsection (3), for “officer of the court in question” substitute “other person before whom the evidence was given”.

12.—(1) Amend section 14 in accordance with this paragraph.

(2) In subsections (1), (2) and (5), for “the United Kingdom” in each place where it occurs substitute “Scotland”.

(3) In subsection (1)–

- (a) for “a reciprocating country” substitute “the United States of America”; and
- (b) for the words from “in the prescribed manner” to the end substitute “by the prescribed officer of the court to the Scottish Ministers for transmission to the responsible authority in the United States of America.”.

- (4) In subsection (2)–
 - (a) omit paragraphs (a) and (b); and
 - (b) for “his” substitute “that”.
- (5) Omit subsection (3).
- (6) In subsection (4), for “a reciprocating country” substitute “the United States of America”.
- (7) For subsection (5) substitute–
 - “(5) A court in Scotland may, for the purpose of any proceedings in that court under this Part of this Act relating to a maintenance order to which this Part of this Act applies, send to the Scottish Ministers for transmission to the responsible authority in the United States of America a request for a court in the United States of America to take or provide evidence relating to such matters as may be specified in the request.”.

13.—(1) Amend section 15 in accordance with this paragraph.

- (2) In paragraph (a), omit “in his capacity”.
- (3) In paragraphs (a) and (c), for “a reciprocating country” substitute “the United States of America”.
- (4) For “he signed it”, substitute “it was signed”.
- (5) Omit “, magistrate” in each place where it occurs.

14.—(1) Amend section 16 in accordance with this paragraph.

- (2) Omit subsections (1) and (6).
- (3) In subsections (3) and (5)(a), for “a reciprocating country” substitute “the United States of America”.
- (4) In subsection (4), for “evidence” substitute “sufficient evidence”.
- (5) In subsection (5)–
 - (a) in paragraph (a), omit “or (if earlier) the date on which it is confirmed by a court in the United Kingdom”; and
 - (b) in paragraph (b), for “a court in the United Kingdom or (if earlier) the date on which the last order is confirmed by such a court” substitute “the registering court”.

15. Omit sections 17 and 18.

16. In section 19–

- (a) in paragraph (a), for “cases and manner in which courts in” substitute “decrees granted, or other things done”;
- (b) in paragraphs (a), (b), (c) and (e), for “a reciprocating country” substitute “the United States of America”; and
- (c) omit paragraph (d).

17. Omit section 20.

18.—(1) Amend section 21 in accordance with this paragraph.

- (2) In subsection (1)–
 - (a) in the definition of “certificate of arrears”–
 - (i) after “officer” insert “or, in Scotland, the applicant or the applicant’s solicitor”; and
 - (ii) for “his” substitute “that person’s”;
 - (b) in the definition of “maintenance order”–
 - (i) omit “and” where it first occurs; and
 - (ii) at the end of paragraph (b) insert “; and

- (c) an order within the foregoing provisions of this definition made against a payer on the application of a public body which claims reimbursement of sums of money payable under the order with respect to the payee if reimbursement can be obtained by the public body under the law to which it is subject”;
 - (c) omit the definition of “provisional order”;
 - (d) at the end of the definition of “registered order”, add “and ‘registered’ and ‘registration’ shall be construed accordingly”;
 - (e) in the definition of “the responsible authority”, for “the Secretary of State” substitute “the Scottish Ministers”; and
 - (f) at the end, add–
 - ““the United States of America” means the fifty States, the District of Columbia, Guam, Puerto Rico, the United States Virgin Islands, and any other jurisdiction of the United States participating in Title IV-D of the Social Security Act (Title 42, United States Code, Chapter 7, subchapter IV, Part D).”.
- (3) Omit subsection (2).
- (4) At the end, add–
 - “(4) Except in section 1, any reference in this Part of this Act to this Part shall be construed as including a reference to this Part as applied and modified by, or by any Order in Council under, Part III of this Act in respect of the United States of America.”.
- 19.** Omit sections 22, 23 and 24.

PART I OF THE ACT AS MODIFIED BY SCHEDULE 1

“PART I

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

Designation of reciprocating countries

Orders in Council designating reciprocating countries

1.—(1) Her Majesty, if satisfied that, in the event of the benefits conferred by this Part of this Act being applied to, or to particular classes of, maintenance orders made by the courts of any country or territory outside the United Kingdom, similar benefits will in that country or territory be applied to, or to those classes of, maintenance orders made by the courts of the United Kingdom, may by Order in Council designate that country or territory as a reciprocating country for the purposes of this Part of this Act^(a); and, subject to subsection (2) below, in this Part of this Act “reciprocating country” means a country or territory that is for the time being so designated.

(2) A country or territory may be designated under subsection (1) above as a reciprocating country either as regards maintenance orders generally, or as regards maintenance orders other than those of any specified class, or as regards maintenance orders of one or more specified classes only; and a country or territory which is for the time being so designated otherwise than as regards maintenance orders generally shall for the purposes of this Part of this Act be taken to be a reciprocating country only as regards maintenance orders of the class to which the designation extends.

Orders made by courts in the United Kingdom

Transmission of maintenance order made in Scotland for enforcement in the United States of America

2.—(1) Subject to subsection (2) below, where the payer under a maintenance order made, whether before, on or after 1st October 2007, by a court in Scotland is residing or has assets in the United States of America, the payee under the order may apply for the order to be sent to the United States of America for enforcement.

(2) Subsection (1) above shall not have effect in relation to an order made by virtue of a provision of Part II of this Act.

(3) Every application under this section shall be made in the prescribed manner to the prescribed officer of the court which made the maintenance order to which the application relates.

(4) If, on an application duly made under this section to the prescribed officer of a court in Scotland, that officer is satisfied that the payer under the maintenance order to which the application relates is residing or has assets in the United States of America—

- (a) three certified copies of the maintenance order;
- (b) a certificate signed by that officer certifying that the order is enforceable in Scotland;
- (c) a certificate of arrears so signed or signed by the applicant or the applicant’s solicitor;
- (d) a sworn statement signed by the payee giving—
 - (i) the address of the payee;
 - (ii) such information as is known to the payee as to the whereabouts of the payer; and

(a) The United States of America is so designated by Order in Council in article 3 of S.I. 2007/2005.

- (iii) a description, so far as is known to the payee, of the nature and location of any assets of the payer available for execution;
- (e) a statement giving such information as the officer possesses for facilitating the identification of the payer; and
- (f) where available, a photograph of the payer,

must be sent by that officer to the Scottish Ministers, with a view to those being transmitted by them to the responsible authority in the United States of America if they are satisfied that the statement relating to the whereabouts of the payer and the nature and location of the assets gives sufficient information to justify that being done.

(5) Nothing in this section shall be taken as affecting any jurisdiction of a court in the United Kingdom with respect to a maintenance order to which this section applies, and, subject to section 5 below, any such order may be enforced, varied or revoked accordingly.

Variation and revocation of maintenance order made in Scotland

5.—(1) This section applies to a maintenance order certified copies of which have been sent in pursuance of section 2 to the United States of America for enforcement.

(2) The jurisdiction of a court in Scotland to revoke, revive or vary a maintenance order shall be exercisable notwithstanding that the proceedings for the revocation, revival or variation, as the case may be, of the order are brought by or against a person residing in the United States of America.

(4) Where an application is made by the payee to a court in Scotland for the variation or revocation of an order to which this section applies, and the payer is residing in the United States of America, the prescribed officer of the court must—

- (a) send to the Scottish Ministers notice of the institution of the proceedings, including notice of the substance of the application, with a view to its being transmitted by them to the responsible authority in the United States of America for service on the payer; and
- (b) give the payer notice in writing of the date fixed for the hearing by sending the notice by post addressed to the payer's last known or usual place of abode.

(5) Where such an application is made—

- (c) the order shall not be varied or revoked unless the document mentioned in subsection (4)(a) above has been served on the payer in accordance with the law for the service of such a document in the United States of America;
- (d) the court, in considering whether or not to vary or revoke the order, shall take into account any representations made and any evidence adduced by or on behalf of the payer; and
- (e) a copy of any such representations or evidence shall be served on the payee in the prescribed manner before the hearing.

(6) Where an application is made by the payer to a court in Scotland for the variation or revocation of an order to which this section applies, the prescribed officer of the court shall arrange for the service of notice of institution of the proceedings, including notice of the substance of the application, on the payee.

(7) Where an order to which this section applies is varied or revoked by a court in Scotland the prescribed officer of the court shall send—

- (a) three certified copies of the order of variation or revocation; and
- (b) a written statement, signed by that officer, as to whether both the payer and the payee under the order appeared in the proceedings and, if only the applicant appeared, the original or a certified copy of a document which establishes that notice of the institution of the proceedings had been served on the other party;

to the Scottish Ministers, with a view to those documents being transmitted by them to the responsible authority in the United States of America for registration and enforcement of the order of variation or revocation.

(8) Where a maintenance order to which this section applies has been varied by an order made by a court in the United Kingdom, the maintenance order shall, as from the date on which the order of variation took effect, have effect as varied by that order.

(9) Where a maintenance order to which this section applies has been revoked by an order made by a court in the United Kingdom, the maintenance order shall, as from the date on which the order of revocation took effect, be deemed to have ceased to have effect except in respect of any arrears due under the maintenance order at that date.

(10) Where an order has been varied or revoked in accordance with subsection (8) or (9) above, unless specifically provided for in the order, any arrears shall continue to be recoverable as if the order for variation or revocation had not been made.

Orders made by courts in the United States of America

Registration in Scottish court of maintenance order made in the United States of America

6.—(1) This section applies to a maintenance order made, whether before, on or after 1st October 2007, by a court in the United States of America.

(2) Where a certified copy of an order to which this section applies is received by the Scottish Ministers from the responsible authority in the United States of America, and it appears to them that the payer under the order is residing or has assets in the United Kingdom, they 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 Scottish Ministers a certified copy of an order to which this section applies, the officer 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 the officer thinks fit for the purpose of ascertaining whether the payer under the order is residing or has assets within the jurisdiction of the court, and, after taking those steps, if satisfied that the payer is not residing and has no assets within the jurisdiction of the court, the officer shall return the certified copy of the order to the Scottish Ministers with a statement giving such information as the officer possesses as to the whereabouts of the payer and the nature and location of the assets.

Enforcement of maintenance order registered in United Kingdom court

8.—(1) A registered order may be enforced in Scotland 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.

(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 sufficient evidence of the facts stated therein.

(7) 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.

Variation and revocation of maintenance order registered in United Kingdom court

9.—(1) Where a registered order has been varied by a court in the United States of America, the registered order shall, as from the date on which the order of variation took effect or 1st October 2007, whichever is the later, have effect as varied by that order.

(2) Where a registered order has been revoked by a court in the United States of America, the registered order shall, as from the date on which the order of revocation took effect or 1st October 2007, whichever is the later, be deemed to have ceased to have effect.

(3) Where an order has been varied or revoked in accordance with subsections (1) and (2) above, unless provided for in the order, any arrears due shall continue to be recoverable as if the order for variation or revocation had not been made.

(4) The prescribed officer of the registering court shall register in the prescribed manner any order varying a registered order.

Cancellation of registration and transfer of order

10.—(1) Where a registered order is revoked by an order made by a court in the United States of America 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 on which the order of revocation took effect 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 is not residing in Scotland and has no assets within that jurisdiction against which the order can be effectively enforced, the officer shall cancel the registration of the order and shall send the certified copy of the order to the Scottish Ministers.

(5) Where the certified copy of an order is received by the Scottish Ministers under this section and it appears to them that the payer under the order is residing or has assets in the United Kingdom, they 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 (5) above an officer of a court shall take such steps as the officer thinks fit for the purpose of ascertaining whether the payer is residing or has assets within the jurisdiction of the court, and if after taking those steps the officer is satisfied that the payer is not residing and has no assets within the jurisdiction of the court the officer shall send the certified copy of the order to the Scottish Ministers.

(7) The officer of a court who is required by any of the foregoing provisions of this section to send to the Scottish Ministers 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 the officer or by the applicant or the applicant's solicitor;
- (b) a statement giving any information possessed as to the whereabouts of the payer and the nature and location of the assets; and
- (c) any relevant documents possessed relating to the case.

Steps to be taken by the Scottish Ministers where payer under certain orders is not residing in the United Kingdom

11.—(1) If at any time it appears to the Scottish Ministers that the payer under a maintenance order, a certified copy of which has been received by them from the United States of America, is not residing and has no assets in the United Kingdom, they shall send to the responsible authority in the United States of America or, if having regard to all the circumstances they think 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;
- (b) if the order has at any time been a registered order, a certificate of arrears signed by the prescribed officer or by the applicant or the applicant's solicitor;

- (c) a statement giving such information as the Scottish Ministers possess as to the whereabouts of the payer and the nature and location of the payer's assets; and
- (d) any other relevant documents in their possession relating to the case.

(2) Where the documents mentioned in subsection (1) are sent to the responsible authority in a reciprocating country other than that in which the order in question was made, the Scottish Ministers shall inform the responsible authority in the reciprocating country in which that order was made of what they have done.

Evidence

Admissibility of evidence given in the United States of America

13.—(1) A statement contained in—

- (a) a document, duly authenticated, which purports to set out or summarise evidence given in proceedings in a court in the United States of America; or
- (b) a document, duly authenticated, which purports to set out or summarise evidence taken in the United States of America for the purpose of proceedings in a court in the United Kingdom under this Part of this Act, whether in response to a request made by such a court or otherwise; or
- (c) a document, duly authenticated, which purports to have been received in evidence in proceedings in a court in the United States of America or to be a copy of a document so received,

shall in any proceedings in a court in Scotland relating to a maintenance order to which this Part of this Act applies be admissible as evidence of any fact stated therein to the same extent as oral evidence of that fact is admissible in those proceedings.

(2) A document purporting to set out or summarise evidence given as mentioned in subsection (1)(a) above, or taken as mentioned in subsection (1)(b) above, shall be deemed to be duly authenticated for the purposes of that subsection if the document purports to be certified by the judge, magistrate or other person before whom the evidence was given, or, as the case may be, by whom it was taken, to be the original document containing or recording, or, as the case may be, summarising, that evidence or a true copy of that document.

(3) A document purporting to have been received in evidence as mentioned in subsection (1)(c) above, or to be a copy of a document so received, shall be deemed to be duly authenticated for the purposes of that subsection if the document purports to be certified by a judge, magistrate or other person before whom the evidence was given to have been, or to be a true copy of a document which has been, so received.

(4) It shall not be necessary in any such proceedings to prove the signature or official position of the person appearing to have given such a certificate.

(5) Nothing in this section shall prejudice the admission in evidence of any document which is admissible in evidence apart from this section.

Obtaining of evidence needed for purpose of certain proceedings

14.—(1) Where for the purpose of any proceedings in a court in the United States of America relating to a maintenance order to which this Part of this Act applies a request is made by or on behalf of that court for the taking in Scotland of the evidence of a person residing therein relating to matters specified in the request, such court in Scotland as may be prescribed shall have power to take that evidence and, after giving notice of the time and place at which the evidence is to be taken to such persons and in such manner as it thinks fit, shall take the evidence in such manner as may be prescribed.

Evidence taken in compliance with such a request shall be sent by the prescribed officer of the court to the Scottish Ministers for transmission to the responsible authority in the United States of America.

(2) Where any person, not being the payer or the payee under the maintenance order to which the proceedings in question relate, is required by virtue of this section to give evidence before a court in Scotland, the court may order that there shall be paid such sums as appear to the court reasonably sufficient to compensate that person for the expense, trouble or loss of time properly incurred in or incidental to that attendance.

(4) Paragraphs 71 and 73 of Schedule 1 to the Sheriff Courts (Scotland) Act 1907 (which provide for the citation of witnesses, etc.) shall apply in relation to a sheriff having power under subsection (1) above to take the evidence of any person as if the proceedings in the court in the United States of America for the purpose of which a request for the taking of the evidence has been made were proceedings in the sheriff court.

(5) A court in Scotland may, for the purpose of any proceedings in that court under this Part of this Act relating to a maintenance order to which this Part of this Act applies, send to the Scottish Ministers for transmission to the responsible authority in the United States of America a request for a court in the United States of America to take or provide evidence relating to such matters as may be specified in the request.

Order etc. made in the United States of America need not be proved

15. For the purposes of this Part of this Act, unless the contrary is shown—

- (a) any order made by a court in the United States of America purporting to bear the seal of that court or to be signed by any person as a judge or officer of the court, shall be deemed without further proof to have been duly sealed or, as the case may be, to have been signed by that person;
- (b) the person by whom the order was signed shall be deemed without further proof to have been a judge or officer, as the case may be, of that court when it was signed and, in the case of an officer, to have been authorised to sign it; and
- (c) a document purporting to be a certified copy of an order made by a court in the United States of America shall be deemed without further proof to be such a copy.

Supplemental

Payment of sums due under orders made in the United States of America: conversion of money

16.—(2) Where the sums required to be paid under a registered order are expressed in a currency other than the currency of the United Kingdom, then, as from the relevant date, the order shall be treated as if it were an order requiring the payment of such sums in the currency of the United Kingdom as, on the basis of the rate of exchange prevailing at that date, are equivalent to the sums so required to be paid.

(3) Where the sum specified in any statement, being a statement of the amount of any arrears due under a maintenance order made by a court in the United States of America, is expressed in a currency other than the currency of the United Kingdom, that sum shall be deemed to be such sum in the currency of the United Kingdom as, on the basis of the rate of exchange prevailing at the relevant date, is equivalent to the sum so specified.

(4) For the purposes of this section a written certificate purporting to be signed by an officer of any bank in the United Kingdom certifying that a specified rate of exchange prevailed between currencies at a specified date and that at such rate a specified sum in the currency of the United Kingdom is equivalent to a specified sum in another specified currency shall be sufficient evidence of the rate of exchange so prevailing on that date and of the equivalent sums in terms of the respective currencies.

(5) In this section “the relevant date” means–

- (a) in relation to a registered order or to a statement of arrears due under a maintenance order made by a court in the United States of America, the date on which the order first becomes a registered order;
- (b) in relation to a registered order which has been varied, the date on which the last order varying that order is registered in the registering court.

Rules for sheriff court

19. Without prejudice to the generality of the powers conferred on the Court of Session by section 32 of the Sheriff Courts (Scotland) Act 1971 to regulate by act of sederunt the procedure of the sheriff court, the said powers shall include power–

- (a) to prescribe the decrees granted, or other things done, by the sheriff, or an officer of the sheriff court, under this Part of this Act, or by a court in the United States of America, notice of which is to be given to such persons as the act of sederunt may provide and the manner in which such notice shall be given;
- (b) to provide that evidence needed for the purpose of proceedings in a court in the United States of America relating to a maintenance order to which this Part of this Act applies may, in such cases and manner as the act of sederunt may provide, be taken by a sheriff clerk or sheriff clerk depute;
- (c) to prescribe the cases and manner in which courts in the United States of America are to be informed of decrees granted, or other things done, by the sheriff under this Part of this Act;
- (e) to prescribe the circumstances and manner in which the sheriff may for the purposes of this Part of this Act communicate with courts in the United States of America.

Interpretation of Part 1

21.—(1) In this Part of this Act–

“affiliation order” means an order (however described) adjudging, finding or declaring a person to be the father of a child, whether or not it also provides for the maintenance of the child;

“the appropriate court” in relation to a person residing or having assets in Scotland means a sheriff court, and in relation to a person residing or having assets in England and Wales or in Northern Ireland means a magistrates’ court, within the jurisdiction of which that person is residing or has assets;

“certificate of arrears”, in relation to a maintenance order, means a certificate certifying that the sum specified in the certificate is to the best of the information or belief of the officer or, in Scotland, the applicant or the applicant’s solicitor giving the certificate the amount of the arrears due under the order at the date of the certificate or, as the case may be, that to the best of that person’s information or belief there are no arrears due thereunder at that date;

“certified copy”, in relation to an order of a court, means a copy of the order certified by the proper officer of the court to be a true copy;

“court” includes any tribunal or person having power to make, confirm, enforce, vary or revoke a maintenance order;

“maintenance order” means an order (however described) of any of the following descriptions, that is to say–

- (a) an order (including an affiliation order or order consequent upon an affiliation order) which provides for the payment of a lump sum or the making of periodical payments towards the maintenance of any person, being a person whom the person liable to make payments under the order is, according to the law applied in the place where the order was made, liable to maintain;

- (aa) an order which has been made in Scotland, on or after the granting of a decree of divorce, for the payment of a periodical allowance by one party to the marriage to the other party;
- (b) an affiliation order or order consequent upon an affiliation order, being an order which provides for the payment by a person adjudged, found or declared to be a child's father of expenses incidental to the child's birth or, where the child has died, of his funeral expenses;
- (c) an order within the foregoing provisions of this definition made against a payer on the application of a public body which claims reimbursement of sums of money payable under the order with respect to the payee if reimbursement can be obtained by the public body under the law to which it is subject,

and, in the case of a maintenance order which has been varied, means that order as varied;

“order” includes any interlocutor, and any decree or provision contained in an interlocutor;

“payee”, in relation to a maintenance order, means the person entitled to the payments for which the order provides;

“payer”, in relation to a maintenance order, means the person liable to make payments under the order;

“prescribed”, in relation to a magistrates' court in Northern Ireland, means prescribed by rules made in accordance with Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981, and in relation to any other court means prescribed by rules of court;

“reciprocating country” has the meaning assigned to it by section 1 of this Act;

“registered order” means a maintenance order which is for the time being registered in a court in the United Kingdom under this Part of this Act and “registered” and “registration” shall be construed accordingly;

“registering court”, in relation to a registered order, means the court in which that order is for the time being registered under this Part of this Act;

“the responsible authority”, in relation to a reciprocating country, means any person who in that country has functions similar to those of the Scottish Ministers under this Part of this Act;

“revoke” and “revocation” include discharge;

“the United States of America” means the fifty States, the District of Columbia, Guam, Puerto Rico, the United States Virgin Islands, and any other jurisdiction of the United States participating in Title IV-D of the Social Security Act (Title 42, United States Code, Chapter 7, subchapter IV, Part D).

(3) Any reference in this Part of this Act to the payment of money for the maintenance of a child shall be construed as including a reference to the payment of money for the child's education.

(4) Except in section 1, any reference in this Part of this Act to this Part shall be construed as including a reference to this Part as applied and modified by, or by any Order in Council under, Part III of this Act in respect of the United States of America.”

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for reciprocal enforcement between Scotland and the United States of America (as defined in article 2) of maintenance orders falling outwith the jurisdiction of the Secretary of State in respect of child support (article 3).

It applies, by article 4(1), Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972 in relation to the United States of America, with the modifications set out in Schedule 1. Schedule 2 sets out on a purely illustrative basis Part I as so applied and modified.

The principal modification effected by this Order is that a maintenance order made in the United States of America may not be varied or revoked in the United Kingdom and that a maintenance order made in the United Kingdom may not be varied or revoked in the United States of America (see sections 5 and 9 as set out in Schedule 2).

The Order comes into force on 1st October 2007. By virtue of article 5, the arrangements under S.I. 1995/2709 (as amended) between the United Kingdom and specified States of the United States of America as individual reciprocating territories continue in full force and effect for Part I matters commenced before 1st October 2007.

The Reciprocal Enforcement of Maintenance Orders (United States of America) Order 2007 (S.I. 2007/2005) (“the UK Order”) provides for reciprocal enforcement between the United States of America and Scotland (in relation to maintenance orders other than those to which this Order applies as specified in article 3) and for such enforcement in relation to the rest of the United Kingdom.

Article 3 of the UK Order also formally designates the United States of America (as defined in article 2) as a reciprocating country.

2007 No. 354

MAINTENANCE OF DEPENDANTS

The Reciprocal Enforcement of Maintenance Orders (United States of America) (Scotland) Order 2007

£3.50

© Crown Copyright 2007

Printed in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland