



# Maintenance Orders (Reciprocal Enforcement) Act 1972

## 1972 CHAPTER 18

### PART II

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

##### **Modifications etc. (not altering text)**

- C1** Pt. II extended with modification by [S.I. 1979/1314, art. 3, Sch.](#)
- C2** Pt. II (ss. 25-39) applied (with modifications) (5.4.1993) by [The Recovery of Maintenance \(United States of America\) Order 1993 \(S.I. 1993/591\), art.3\(1\)](#)

#### *Convention countries*

#### **25 Convention countries.**

- (1) Her Majesty may by Order in Council declare that any country or territory specified in the Order, being a country or territory outside the United Kingdom to which the Maintenance Convention extends, is a convention country for the purposes of this Part of this Act.
- (2) In this section “the Maintenance Convention” means the United Nations Convention on the Recovery Abroad of Maintenance done at New York on 20th June 1956.

*Status: Point in time view as at 01/04/2005.*

*Changes to legislation: There are currently no known outstanding effects for the Maintenance Orders (Reciprocal Enforcement) Act 1972, Part II. (See end of Document for details)*

*Application by person in the United Kingdom for recovery, etc. of maintenance in convention country*

**26 Application by person in United Kingdom for recovery, etc. of maintenance in convention country.**

- (1) Where a person in the United Kingdom (“the applicant”) claims to be entitled to recover in a convention country maintenance from another person, and that other person is for the time being subject to the jurisdiction of that country, the applicant may apply to the Secretary of State, in accordance with the provisions of this section, to have his claim for the recovery of maintenance from that other person transmitted to that country.
- (2) Where the applicant seeks to vary any provision made in a convention country for the payment by any other person of maintenance to the applicant, and that other person is for the time being subject to the jurisdiction of that country, the applicant may apply to the Secretary of State, in accordance with the provisions of this section, to have his application for the variation of that provision transmitted to that country.
- (3) An application to the Secretary of State under subsection (1) or (2) above shall be made through the appropriate officer, and that officer shall assist the applicant in completing an application which will comply with the requirements of the law applied by the convention country and shall send the application to the Secretary of State, together with such other documents, if any, as are required by that law.
- <sup>F1</sup>[(3A) An application under subsection (1) or (2) above, for the purpose of recovering maintenance from a person in a specified State within the meaning of the Recovery of Maintenance (United States of America) Order 1993, and a certificate signed by a justice of the peace or, where the applicant is residing in Scotland, the sheriff, to the effect that the application sets forth facts from which it may be determined that the respondent owes a duty to maintain the applicant and any other person named in the application and that a court in the specified State may obtain jurisdiction of the respondent or his property, shall be registered in the court in the prescribed manner by the appropriate officer or, in Scotland, by the sheriff clerk in the Maintenance Orders (Reciprocal Enforcement) Act 1972 register.]
- (4) On receiving an application from the appropriate officer the Secretary of State shall transmit it, together with any accompanying documents, to the appropriate authority in the convention country, unless he is satisfied that the application is not made in good faith or that it does not comply with the requirements of the law applied by that country.
- (5) The Secretary of State may request the appropriate officer to obtain from the court of which he is an officer such information relating to the application as may be specified in the request, and it shall be the duty of the court to furnish the Secretary of State with the information he requires.
- <sup>F2</sup>[(6) The appropriate officer for the purposes of this section is—
  - (a) where the applicant is residing in England and Wales, the <sup>F3</sup>designated officer for the local justice area in which the applicant is residing];
  - (b) where the applicant is residing in Northern Ireland, the clerk of the court for the petty sessions district <sup>F4</sup>in which the applicant is residing]; and

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- (c) where the applicant is residing in Scotland, the sheriff clerk or sheriff clerk depute of the sheriff court within the jurisdiction of which the applicant is residing.]

**Textual Amendments**

- F1** S. 26(3A) inserted (5.4.1993) by virtue of S.I. 1993/591, **arts. 3(2)**, 4(a)  
**F2** S. 26(6) substituted for s. 26(6)(7) (1.4.2001) by 1999 c. 22, s. 90, **Sch 13 para. 76** (Sch. 14 para 7(2)); S.I. 2001/916, **art. 2(a)(ii)**  
**F3** Words in s. 26(6)(a) substituted (1.4.2005) by Courts Act 2003 (c. 39), s. 110(1), **Sch. 8 para. 158(a)**; S.I. 2005/910, **art. 3(y)**  
**F4** Words in s. 26(6)(b) inserted (1.4.2005) by Courts Act 2003 (c. 39), s. 110(1), **Sch. 8 para. 158(b)**; S.I. 2005/910, **art. 3(y)**

*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 [F5 made at the time when the application was received by the Secretary of State or the Lord Chancellor] and references in this section and in [F6 sections 28, 28A, 29, 29A] 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 [F7 [F8 appointed for the commission area (within the meaning of [F9 the Justices of the M1 Peace Act 1979]) or] acting for the . . . F10 petty sessions district, as the case may be [F7 acting for the petty session district], in which the defendant is residing shall have jurisdiction to hear the complaint.
- (3) . . . . . F11
- (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 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-

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- 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, [F12]section 59 of the Magistrates' Courts Act 1980], [F13]section 5(5) of the M2Affiliation Proceedings Act 1957], [F14]section 32(2) of the M3Domestic Proceedings and Magistrates' Courts Act 1978] . . . F15[F16]paragraphs (1) to (7) of Article 85 of the Magistrates' Courts (Northern Ireland) Order 1981]]F17 and Article 36(i) of the Domestic Proceedings (Northern Ireland) Order 1980], shall apply in relation to a registered order.
- (10) Without prejudice to the generality of the power to make rules under [F18]section 144 of the M4Magistrates' Courts Act 1980] (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 [F19]section 144 of the Magistrates' Courts Act 1980] there shall be substituted a reference to [F20]Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981].

#### Textual Amendments

- F5** Words inserted by [Civil Jurisdiction and Judgments Act 1982 \(c. 27, SIF 45:3\)](#), **ss. 37(2)**, 52
- F6** Words substituted by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22\)](#), s. 89, **Sch. 2 para. 34(a)**
- F7** Words commencing “acting for” substituted (E.W.) for words commencing “appointed for the” by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), s. 33(1), **Sch. 2 para. 46(a)**
- F8** Words inserted by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22\)](#), **ss. 56**, 89
- F9** Words substituted by [Justices of the Peace Act 1979 \(c. 55\)](#), **Sch. 2 para. 18**
- F10** Words repealed by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22\)](#), **ss. 56**, 89
- F11** S. 27(3) repealed by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22\)](#), s. 89, **Sch. 3**
- F12** Words substituted by [Magistrates' Courts Act 1980 \(c. 43\)](#), s. 154, **Sch. 7 para. 108(a)**
- F13** Words repealed (E.W.) by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), s. 33(1)(4), Sch. 2 para. 46(b), **Sch. 4**
- F14** Words substituted by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22\)](#), s. 89, **Sch. 2 para. 34(b)**
- F15** Word repealed by [S.I. 1980/564](#), **Sch.**
- F16** Words substituted by [S.I. 1981/1675 \(N.I. 26\)](#), **Sch. 6 Pt. I para. 24(a)**
- F17** Words inserted by [S.I. 1980/564](#), **art. 4(2)**
- F18** Words substituted by [Magistrates' Courts Act 1980 \(c. 43\)](#), s. 154, **Sch. 7 para. 108(b)**

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- F19** Words substituted by virtue of Magistrates' Courts Act 1980 (c. 43), s. 154, **Sch. 7 para. 108(b)**  
**F20** Words substituted by S.I. 1981/1675 (N.I. 26), **Sch. 6 Pt. I para. 24(b)**

#### Marginal Citations

- M1** 1979 c. 55.  
**M2** 1957 c. 55.  
**M3** 1978 c. 22.  
**M4** 1980 c. 43.

### [<sup>F21</sup>27A Applications for recovery of maintenance in England and Wales.

- (1) This section applies to any application which—
  - (a) is received by the Lord Chancellor from the appropriate authority in a convention country, and
  - (b) is 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.
- (2) Subject to sections 27B to 28B of this Act, an application to which this section applies shall be treated for the purposes of any enactment as if it were an application for a maintenance order under the relevant Act, made at the time when the application was received by the Lord Chancellor.
- (3) In the case of an application for maintenance for a child (or children) alone, the relevant Act is the Children Act 1989.
- (4) In any other case, the relevant Act is the Domestic Proceedings and Magistrates' Courts Act 1978.
- (5) In subsection (3) above, "child" means the same as in Schedule 1 to the Children Act 1989.]

#### Textual Amendments

- F21** Ss. 27A-28C substituted (5.4.1993) for ss. 27, 28, 28A by Maintenance Orders (Reciprocal Enforcement) Act 1992 (c. 56), s. 1, **Sch. 1 Pt. II para.13**; S.I. 1993/618, **art.2**

### <sup>F22</sup>27B Sending application to the appropriate magistrates' court.

- (1) On receipt of an application to which section 27A of this Act applies, the Lord Chancellor shall send it, together with any accompanying documents, to the [<sup>F23</sup>designated officer for a magistrates' court which is acting in the local justice] area in which the respondent is residing.
- (2) Subject to subsection (4) below, if notice of the hearing of the application by a magistrates' court having jurisdiction to hear it cannot be duly served on the respondent, the [<sup>F24</sup>designated officer for] the court shall return the application and the accompanying documents to the Lord Chancellor with a statement giving such information as he possesses as to the whereabouts of the respondent.
- (3) If the application is returned to the Lord Chancellor under subsection (2) above, then, unless he is satisfied that the respondent is not residing in the United Kingdom, he shall deal with it in accordance with subsection (1) above or section [<sup>F25</sup>28D(1)] of this

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Act or send it to the Secretary of State to be dealt with in accordance with section 31 of this Act (as the circumstances of the case require).

[<sup>F26</sup>(4) If the designated officer for a court to whom the application is sent under this section is satisfied that the respondent is residing within another local justice area, he shall send the application and accompanying documents to the designated officer for a magistrates' court acting in that other area and shall inform the Lord Chancellor that he has done so.]

(5) If the application is sent to the [<sup>F27</sup>designated officer for] a court under subsection (4) above, he shall proceed as if it had been sent to him under subsection (1) above.

#### Textual Amendments

- F22** Ss. 27A-28C substituted (5.4.1993) for ss. 27, 28, 28A by [Maintenance Orders \(Reciprocal Enforcement\) Act 1992 \(c. 56\), s. 1, Sch. 1 Pt. II para. 13](#); S.I. 1993/618, [art. 2](#)
- F23** Words in s. 27B(1) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\), s. 110\(1\), Sch. 8 para. 159\(2\)](#); S.I. 2005/910, [art. 3\(y\)](#)
- F24** Words in s. 27B(2) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\), s. 110\(1\), Sch. 8 para. 159\(3\)](#); S.I. 2005/910, [art. 3\(y\)](#)
- F25** Word in s. 27B(3) substituted (4.11.1996) by S.I. 1995/756, [art. 8](#); S.R. 1996/297, [art. 3](#)
- F26** S. 27B(4) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\), s. 110\(1\), Sch. 8 para. 159\(4\)](#); S.I. 2005/910, [art. 3\(y\)](#)
- F27** Words in s. 27B(5) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\), s. 110\(1\), Sch. 8 para. 159\(5\)](#); S.I. 2005/910, [art. 3\(y\)](#)

#### <sup>F28</sup>**27C Applications to which section 27A applies: general.**

- (1) This section applies where a magistrates' court makes an order on an application to which section 27A of this Act applies.
- (2) Section 59 of the Magistrates' Courts Act 1980 (orders for periodical payment: means of payment) shall not apply.
- (3) The court shall, at the same time that it makes the order, exercise one of its powers under subsection (4) below.
- (4) Those powers are—
  - (a) the power to order that payments under the order be made directly to [<sup>F29</sup>the designated officer for the court or for any other magistrates' court in England and Wales];
  - (b) the power to order that payments under the order be made to [<sup>F29</sup>the designated officer for the court or for any other magistrates' court in England and Wales], 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 Attachment of Earnings Act 1971 to secure payments under the order.
- (5) In deciding which of the powers under subsection (4) above it is to exercise, the court shall have regard to any representations made by the person liable to make payments under the order.
- (6) Subsection (4) of section 59 of the Magistrates' Courts Act 1980 (power of court to require debtor to open account) shall apply for the purposes of subsection (4) above

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as it applies for the purposes of that section, but as if for paragraph (a) there were substituted—

(”) the court proposes to exercise its power under paragraph (b) of section 27C(4) of the Maintenance Orders (Reciprocal Enforcement) Act 1972, and”.

(7) The [<sup>F30</sup>designated officer for] the court shall register the order in the prescribed manner in the court.

#### Textual Amendments

- F28** Ss. 27A-28C substituted (5.4.1993) for ss. 27, 28, 28A by [Maintenance Orders \(Reciprocal Enforcement\) Act 1992 \(c. 56\), s. 1, Sch. 1 Pt. II para. 13](#); S.I. 1993/618, [art. 2](#)
- F29** Words in s. 27C(4) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\), s. 110\(1\), Sch. 8 para. 160\(2\)](#); S.I. 2005/910, [art. 3\(y\)](#)
- F30** Words in s. 27C(7) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\), s. 110\(1\), Sch. 8 para. 160\(3\)](#); S.I. 2005/910, [art. 3\(y\)](#)

#### <sup>F31</sup>**28 Applications by spouses under the Domestic Proceedings and Magistrates' Courts Act 1978.**

- (1) The magistrates' court hearing an application which by virtue of section 27A of this Act is to be treated as if it were an application for a maintenance order under the Domestic Proceedings and Magistrates' Courts Act 1978 may make any order on the application which it has power to make under section 2 or 19(1) of that Act.
- (2) Part I of that Act shall apply in relation to such an application, and to any order made on such an application, with the following modifications—
- (a) sections 6 to 8, 16 to 18, 20ZA, 25 to 27 and 28(2) shall be omitted,
  - (b) in section 30(1), for the words “either the applicant or the respondent ordinarily resides” there shall be substituted “the respondent resides”, and
  - (c) section 32(2) shall be omitted.
- (3) Subsections (1) and (2) above do not apply where section 28A of this Act applies.

#### Textual Amendments

- F31** Ss. 27A-28C substituted (5.4.1993) for ss. 27, 28, 28A by [Maintenance Orders \(Reciprocal Enforcement\) Act 1992 \(c. 56\), s.1, Sch. 1 Pt. II para.13](#), S.I. 1993/618, [art.2](#)

#### **28A** <sup>F32</sup>**Applications by former spouses under the Domestic Proceedings and Magistrates' Courts Act 1978.**

- (1) This section applies where in the case of any application which by virtue of section 27A of this Act is to be treated as if it were an application for a maintenance order under the Domestic Proceedings and Magistrates' Courts Act 1978 (“the 1978 Act”)—
- (a) the applicant and respondent were formerly married,
  - (b) their marriage was dissolved or annulled in a country or territory outside the United Kingdom by a divorce or annulment which is recognised as valid by the law of England and Wales,

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- (c) an order for the payment of maintenance for the benefit of the applicant or a child of the family has, by reason of the divorce or annulment, been made by a court in a convention country, and
  - (d) where the order for the payment of maintenance was made by a court of a different country from that in which the divorce or annulment was obtained, either the applicant or the respondent was resident in the convention country whose court made that order at the time that order was applied for.
- (2) Any magistrates' court that would have jurisdiction to hear the application under section 30 of the 1978 Act (as modified in accordance with subsection (6) below) if the applicant and the respondent were still married shall have jurisdiction to hear it notwithstanding the dissolution or annulment of the marriage.
- (3) If the magistrates' court hearing the application is satisfied that the respondent has failed to comply with the provisions of any order such as is mentioned in subsection (1) (c) above, it may (subject to subsections (4) and (5) below) make any order which it has power to make under section 2 or 19(1) of the 1978 Act.
- (4) The court shall not make an order for the making of periodical payments for the benefit of the applicant or any child of the family unless the order made in the convention country provides for the making of periodical payments for the benefit of the applicant or, as the case may be, that child.
- (5) The court shall not make an order for the payment of a lump sum for the benefit of the applicant or any child of the family unless the order made in the convention country provides for the payment of a lump sum to the applicant or, as the case may be, to that child.
- (6) Part I of the 1978 Act shall apply in relation to the application, and to any order made on the application, with the following modifications—
  - (a) section 1 shall be omitted,
  - (b) for the reference in section 2(1) to any ground mentioned in section 1 of that Act there shall be substituted a reference to non-compliance with any such order as is mentioned in subsection (1)(c) of this section,
  - (c) for the references in section 3(2) and (3) to the occurrence of the conduct which is alleged as the ground of the application there shall be substituted references to the breakdown of the marriage,
  - (d) the reference in section 4(2) to the subsequent dissolution or annulment of the marriage of the parties affected by the order shall be omitted,
  - (e) sections 6 to 8, 16 to 18, 20ZA and 25 to 28 shall be omitted,
  - (f) in section 30(1), for the words “either the applicant or the respondent ordinarily resides” there shall be substituted “the respondent resides”, and
  - (g) section 32(2) shall be omitted.
- (7) A divorce or annulment obtained in a country or territory outside the United Kingdom shall be presumed for the purposes of this section to be one the validity of which is recognised by the law of England and Wales, unless the contrary is proved by the respondent.
- (8) In this section, “child of the family” has the meaning given in section 88 of the 1978 Act.



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#### Textual Amendments

**F32** Ss. 27A-28C substituted (5.4.1993) for ss. 27, 28, 28A by [Maintenance Orders \(Reciprocal Enforcement\) Act 1992 \(c. 56\), s. 1, Sch. 1 Pt. II para.13](#); S.I. 1993/618, [art.2](#)

#### <sup>F33</sup>**28B Applications under the Children Act 1989.**

No provision of an order made under Schedule 11 to the Children Act 1989 requiring or enabling a court to transfer proceedings from a magistrates' court to a county court or the High Court shall apply in relation to an application which by virtue of section 27A of this Act is to be treated as if it were an application for a maintenance order under that Act.

#### Textual Amendments

**F33** Ss. 27A-28C substituted (5.4.1993) for ss. 27, 28, 28A by [Maintenance Orders \(Reciprocal Enforcement\) Act 1992 \(c. 56\), s. 1, Sch. 1 Pt. II para.13](#); S.I. 1993/618, [art.2](#)

#### [<sup>F34</sup>**28C Applications for recovery of maintenance in Northern Ireland.**

- (1) This section applies to any application which—
  - (a) is received by the Lord Chancellor from the appropriate authority in a convention country, and
  - (b) is an application by a person in that country for the recovery of maintenance from another person who is for the time being residing in Northern Ireland.
- (2) Subject to sections 28D to 29B of this Act, an application to which this section applies shall be treated for the purposes of any enactment as if it were an application for a maintenance order under the relevant Order, made at the time when the application was received by the Lord Chancellor.
- (3) In the case of an application for maintenance for a child (or children) alone, the relevant Order is the Children (Northern Ireland) Order 1995.
- (4) In any other case, the relevant Order is the Domestic Proceedings (Northern Ireland) Order 1980.
- (5) In subsection (3) above, “child” means the same as in Schedule 1 to the Children (Northern Ireland) Order 1995.]

#### Textual Amendments

**F34** Ss. 28C, 28D, 28E, 29, 29A, 29B substituted for ss. 28C, 29, 29A (N.I.) (4.11.1996) by [S.I. 1995/755 \(N.I. 2\), art. 185\(1\), Sch. 9 para. 72](#) (with [Sch. 8 para. 1\(1\)](#)); S.R. 1996/297, [art. 2\(2\)](#)

#### [<sup>F35</sup>**28D Sending application to the appropriate magistrates' court.**

- (1) On receipt of an application to which section 28C of this Act applies, the Lord Chancellor shall send it, together with any accompanying documents, to the clerk of

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a magistrates' court acting for the petty sessions district in which the respondent is residing.

- (2) Subject to subsection (4) below, if notice of the hearing of the application by a magistrates' court having jurisdiction to hear it cannot be duly served on the respondent, the clerk of the court shall return the application and the accompanying documents to the Lord Chancellor with a statement giving such information as he possesses as to the whereabouts of the respondent.
- (3) If the application is returned to the Lord Chancellor under subsection (2) above, then, unless he is satisfied that the respondent is not residing in the United Kingdom, he shall deal with it in accordance with subsection (1) above or section 27B of this Act or send it to the Secretary of State to be dealt with in accordance with section 31 of this Act (as the circumstances of the case require).
- (4) If the clerk of a court to whom the application is sent under this section is satisfied that the respondent is residing within the petty sessions district for which another magistrates' court acts, he shall send the application and accompanying documents to the clerk of that other court and shall inform the Lord Chancellor that he has done so.
- (5) If the application is sent to the clerk of a court under subsection (4) above, he shall proceed as if it had been sent to him under subsection (1) above.]

#### Textual Amendments

**F35** Ss. 28C, 28D, 28E, 29, 29A, 29B substituted for ss. 28C, 29, 29A (N.I.) (4.11.1996) by [S.I. 1995/755](#) (N.I. 2), art. 185(1), [Sch. 9 para. 72](#) (with [Sch. 8 para. 1\(1\)](#)); [S.R. 1996/297](#), [art. 2\(2\)](#)

#### [<sup>F36</sup>28E Applications to which section 28C applies: general.

- (1) This section applies where a magistrates' court makes an order on an application to which section 28C of this Act applies.
- (2) Article 85 of the Magistrates' Courts (Northern Ireland) Order 1981 ("the 1981 Order") (orders for periodical payment: means of payment) shall not apply.
- (3) The court shall, at the same time that it makes the order, exercise one of its powers under subsection (4) below.
- (4) Those powers 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 1981 Order (standing order, etc.) as may be specified;
  - (c) the power to make an attachment of earnings order under Part IX of the 1981 Order to secure payments under the order;
 and in this subsection "collecting officer" means the officer mentioned in Article 85(4) of the 1981 Order.
- (5) In deciding which of the powers under subsection (4) above it is to exercise, the court shall have regard to any representations made by the person liable to make payments under the order.

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- (6) Paragraph (5) of Article 85 of the 1981 Order (power of court to require debtor to open account) shall apply for the purposes of subsection (4) above as it applies for the purposes of that Article, but as if for sub-paragraph (a) there were substituted—
- (a) the court proposes to exercise its power under paragraph (b) of section 28E(4) of the Maintenance Orders (Reciprocal Enforcement) Act 1972, and.
- (7) The clerk of the court shall register the order in the prescribed manner in the court.]

#### Textual Amendments

**F36** Ss. 28C, 28D, 28E, 29, 29A, 29B substituted for ss. 28C, 29, 29A (N.I.) (4.11.1996) by [S.I. 1995/755](#) (N.I. 2), [art. 185\(1\)](#), [Sch. 9 para. 72](#) (with [Sch. 8 para. 1\(1\)](#)); [S.R. 1996/297](#), [art. 2\(2\)](#)

### [<sup>F37</sup>29 Applications by spouses under the Domestic Proceedings (Northern Ireland) Order 1980.

- (1) The magistrates' court hearing an application which by virtue of section 28C of this Act is to be treated as if it were an application for a maintenance order under the Domestic Proceedings (Northern Ireland) Order 1980 may make any order on the application which it has power to make under Article 4 or 20(1) of that Order.
- (2) That Order shall apply in relation to such an application, and to any order made on such an application, with the following omissions—
- (a) Articles 8 to 10, 18, 19, 21, 22A, 25(1), 27 to 29 and 30(1A),
- (b) in Article 32(1) the words “either the applicant or”, and
- (c) Article 36(1).
- (3) Subsections (1) and (2) above do not apply where section 29A of this Act applies.]

#### Textual Amendments

**F37** Ss. 28C, 28D, 28E, 29, 29A, 29B substituted for ss. 28C, 29, 29A (N.I.) (4.11.1996) by [S.I. 1995/755](#) (N.I. 2), [art. 185\(1\)](#), [Sch. 9 para. 72](#) (with [Sch. 8 para. 1\(1\)](#)); [S.R. 1996/297](#), [art. 2\(2\)](#)

### [<sup>F38</sup>29A Applications by former spouses under the Domestic Proceedings (Northern Ireland) Order 1980.

- (1) This section applies where in the case of any application which by virtue of section 28C of this Act is to be treated as if it were an application for a maintenance order under the Domestic Proceedings (Northern Ireland) Order 1980 (“the 1980 Order”)—
- (a) the applicant and respondent were formerly married,
- (b) their marriage was dissolved or annulled in a country or territory outside the United Kingdom by a divorce or annulment which is recognised as valid by the law of Northern Ireland;
- (c) an order for the payment of maintenance for the benefit of the applicant or a child of the family has, by reason of the divorce or annulment, been made by a court in a convention country, and
- (d) where the order for the payment of maintenance was made by a court of a different country from that in which the divorce or annulment was obtained,

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either the applicant or the respondent was resident in the convention country whose court made that order at the time that order was applied for.

- (2) Any magistrates' court that would have jurisdiction to hear the application under Article 32 of the 1980 Order (as modified in accordance with subsection (6) below) if the applicant and the respondent were still married shall have jurisdiction to hear it notwithstanding the dissolution or annulment of the marriage.
- (3) If the magistrates' court hearing the application is satisfied that the respondent has failed to comply with the provisions of any order such as is mentioned in subsection (1) (c) above, it may (subject to subsections (4) and (5) below) make any order which it has power to make under Article 4 or 20(1) of the 1980 Order.
- (4) The court shall not make an order for the making of periodical payments for the benefit of the applicant or any child of the family unless the order made in the convention country provides for the making of periodical payments for the benefit of the applicant or, as the case may be, that child.
- (5) The court shall not make an order for the payment of a lump sum for the benefit of the applicant or any child of the family unless the order made in the convention country provides for the payment of a lump sum to the applicant or, as the case may be, to that child.
- (6) The 1980 Order shall apply in relation to the application, and to any order made on the application, with the following modifications—
  - (a) Article 3 shall be omitted,
  - (b) for the reference in Article 4(1) to any ground mentioned in Article 3 there shall be substituted a reference to non-compliance with any such order as is mentioned in subsection (1)(c) of this section,
  - (c) for the references in Article 5(2) and (3) to the occurrence of the conduct which is alleged as the ground of the application there shall be substituted references to the breakdown of the marriage,
  - (d) the reference in Article 6(2) to the subsequent dissolution or annulment of the marriage of the parties affected by the order shall be omitted,
  - (e) Articles 8 to 10, 18, 19, 21, 22A, 25(1) and 27 to 30 shall be omitted,
  - (f) in Article 32(1), the words “either the applicant or” shall be omitted, and
  - (g) Article 36(1) shall be omitted.
- (7) A divorce or annulment obtained in a country or territory outside the United Kingdom shall be presumed for the purposes of this section to be one the validity of which is recognised by the law of Northern Ireland, unless the contrary is proved by the respondent.
- (8) In this section “child of the family” has the meaning given in Article 2(2) of the 1980 Order.]

#### **Textual Amendments**

**F38** Ss. 28C, 28D, 28E, 29, 29A, 29B substituted for ss. 28C, 29, 29A (N.I.) (4.11.1996) by [S.I. 1995/755](#) (N.I. 2), art. 185(1), [Sch. 9 para. 72](#) (with [Sch. 8 para. 1\(1\)](#)); [S.R. 1996/297](#), [art. 2\(2\)](#)

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### [<sup>F39</sup>29B Applications under the Children (Northern Ireland) Order 1995.

No provision of an order made under Schedule 7 to the Children (Northern Ireland) Order 1995 requiring or enabling a court to transfer proceedings from a magistrates' court to a county court or the High Court shall apply in relation to an application which by virtue of section 28C of this Act is to be treated as if it were an application for a maintenance order under that Order.]

#### Textual Amendments

**F39** Ss. 28C, 28D, 28E, 29, 29A, 29B substituted for ss. 28C, 29, 29A (N.I.) (4.11.1996) by [S.I. 1995/755](#) (N.I. 2), art. 185(1), [Sch. 9 para. 72](#) (with [Sch. 8 para. 1\(1\)](#)); [S.R. 1996/297](#), [art. 2\(2\)](#)

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

<sup>F40</sup>(1) . . . . .

<sup>F41</sup>(2) . . . . .

[<sup>F42</sup>(3) Where the complaint is for an affiliation order under [<sup>F43</sup>the <sup>M5</sup>Affiliation Proceedings Act 1957 or]] the <sup>M6</sup>Illegitimate Children (Affiliation Orders) Act (Northern Ireland) 1924—

(a) it shall be sufficient for the purposes of [<sup>F43</sup>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 [<sup>F43</sup>(provision to the like effect), as the case may be], to prove that the defendant has within the [<sup>F44</sup>[<sup>F43</sup>three years (or] twelve months, [<sup>F43</sup>in the case of a complaint under the said Act of 1924)]] 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; <sup>F45</sup> . . .

<sup>F45</sup>(b) . . . . .

[<sup>F42</sup>(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.]

[<sup>F42</sup>(5) Without prejudice to any other enactment empowering a magistrates' court to vary an affiliation order made by it, an affiliation order made under [<sup>F46</sup>the said Act of 1957 or]] the said Act of 1924, [<sup>F46</sup>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) . . . . .

#### Textual Amendments

**F40** S. 30(1)(2)(6) repealed (14.10.1991) by [Courts and Legal Services Act 1990](#) (c. 41, SIF 76:1), ss. 116, 125(7), [Sch. 16 para. 39\(3\)](#), [Sch. 20](#); [S.I. 1991/1883](#), art. 3, [Sch.](#)

**F41** S. 30(2) repealed (14.10.1991) by [Courts and Legal Services Act 1990](#) (c. 41, SIF 76:1), ss. 116, 125(7), [Sch. 16 para. 39\(3\)](#), [Sch. 20](#); [S.I. 1991/1883](#), art. 3, [Schedule](#)

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- F42** S. 30(3)(4)(5) repealed (N.I.) (4.11.1996) by S.I. 1995/755 (N.I. 2), art. 185(2), **Sch. 10** (with Sch. 8 paras. 1(1), 23(4)); S.R. 1996/297, **art. 2(2)**
- F43** Words repealed (E.W.) by Family Law Reform Act 1987 (c. 42, SIF 49:7), s. 33(1)(4), Sch. 2 para. 49(4), **Sch. 4**
- F44** Words substituted by Affiliation Proceedings (Amendment) Act 1972 (c. 49), **s. 2(2)**
- F45** Word and s. 30(3)(b) repealed by Affiliation Proceedings (Amendment) Act 1972 (c. 49), **s. 1(4)(c)**
- F46** Words repealed (E.W.) by Family Law Reform Act 1987 (c. 42, SIF 49:7), s. 33(1)(4), Sch. 2 para. 49(5), **Sch. 4**

#### Marginal Citations

- M5** 1957 c. 55.  
**M6** 1924 c. 27(N.I.)

### *Application by person in convention country for recovery of maintenance in Scotland*

## **31 Application by person in convention country for recovery of maintenance in Scotland.**

- (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 Scotland, he shall send the application, together with any accompanying documents, to the [<sup>F47</sup>Secretary of the Law Society of Scotland who shall send the application and any accompanying documents to a solicitor practising in the sheriff court within the jurisdiction of which that other person resides or to such other solicitor practising in Scotland as appears to the Secretary to be appropriate, for the purposes of enabling the solicitor to take] on behalf of the applicant such steps as appear to the solicitor appropriate in respect of the application.
- [<sup>F48</sup>(1A) Proceedings arising out of an application under subsection (1) above shall be treated as an action for aliment within the meaning of the Family Law (Scotland) Act 1985 and, subject to subsections (1B) to (1D) below, the provisions of that Act relating to aliment shall apply in relation to claims for maintenance in such proceedings and decrees therein.
- (1B) Without prejudice to subsection (2) below, any proceedings mentioned in subsection (1A) above shall be brought in the sheriff court.
- (1C) In its application to proceedings mentioned in subsection (1A) above, section 5 of the said Act of 1985 (power to vary or recall decree of aliment) shall be subject to section 34(1) of this Act.
- (1D) Where an application under subsection (1) above is for the recovery of maintenance from a person who is a former spouse of the applicant—
- (a) then, for the purposes of the said Act of 1985, there shall be assumed to be an obligation of aliment within the meaning of that Act owed by the former spouse to the applicant;
  - (b) section 2(7) and (8) of that Act shall not apply; and
  - (c) an order for payment of maintenance in proceedings arising out of the application—

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- (i) shall, if subsisting at the death of the party making the payment, continue to operate against that party's estate, but without prejudice to the power of the court to vary or recall the order; and
    - (ii) shall cease to have effect on the remarriage or death of the party receiving payment, except in relation to any arrears due under it]
  - (2) Where in any proceedings arising out of such an application as aforesaid the sheriff [<sup>F49</sup>, or (on appeal or remit) the Court of Session,] makes an order containing a provision requiring the payment of maintenance, [<sup>F50</sup>the order shall be registered forthwith in the prescribed manner in the appropriate sheriff court by the sheriff clerk or sheriff clerk depute of that sheriff court; and where an order of the Court of Session varies or revokes a registered order of the sheriff, the said sheriff clerk or sheriff clerk depute shall amend the register accordingly.]

[<sup>F51</sup>(2A)In subsection (2) above “the appropriate sheriff court” means the sheriff court making the order or (where the order is an order of the Court of Session) from which the remit or appeal has come.]
  - (3) Without prejudice to the generality of the powers conferred on the Court of Session by section 32 of the <sup>M7</sup>Sheriff Courts (Scotland) Act 1971 to regulate by act of sederunt the procedure of the sheriff court, the said powers shall include power 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, 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.
  - [<sup>F52</sup>(4) Where an application under subsection (1) above is for the recovery of maintenance from a person who is a former spouse of the applicant an order containing a provision requiring the payment of such maintenance for the benefit of the applicant shall not be made in respect of that application unless—
    - (i) the marriage between the applicant and the said former spouse has been dissolved by a divorce which has been [<sup>F53</sup>granted in a convention country][<sup>F53</sup>obtained in a convention country or territory outside the United Kingdom] and which is recognised as valid by the law of Scotland;
    - [<sup>F54</sup>(ii) an order for the payment of maintenance for the benefit of the applicant has, in or by reason of the divorce proceedings in the convention country, been made by the court which granted the divorce or by any other court in that country; and]
    - [<sup>F54</sup>(ii) an order for the payment of maintenance for the benefit of the applicant as a divorced person has, in or by reason of, or subsequent to, the divorce proceedings, been made by a court in a convention country;
    - (iia) in a case where the order mentioned in paragraph (ii) above was made by a court of a different country from that in which the divorce was obtained, either the applicant or the said former spouse was resident in that different country at the time the application for the order so mentioned was made; and]
    - (iii) the court making the order under this section is satisfied that the former spouse of the applicant has failed to comply with the order mentioned in paragraph (ii) above.
- [ In subsection (4)(i) above the reference to the dissolution of a marriage by divorce <sup>F55</sup>(4A) shall be construed as including a reference to the annulment of a purported marriage and any reference to a marriage, a divorce, a divorced person, a former spouse or divorce proceedings shall be construed accordingly.]

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(5) ..... <sup>F56</sup>

(6) Section 8 of the <sup>M8</sup>Law Reform (Miscellaneous Provisions) (Scotland) Act 1966 (which relates to the variation and recall by the sheriff of certain orders made by the Court of Session) shall not apply to an order of the Court of Session registered under subsection (2) above.]

#### Textual Amendments

- F47** Words substituted by [Legal Aid \(Scotland\) Act 1986 \(c. 47, SIF 77:2\)](#), ss. 45, 46(4), **Sch. 3 para. 1(1)**
- F48** S. 31(1A)–(1D) substituted for subsection (1A) by [Family Law \(Scotland\) Act 1985 \(c. 37, SIF 49:3\)](#), ss. 28(1), 29(4), **Sch. 1 para. 6**
- F49** Words inserted by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22\)](#), ss. **60(1)(b)(i)**, 89
- F50** Words substituted by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22\)](#), ss. **60(1)(b)(ii)**, 89
- F51** S. 31(2A) inserted by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c.22\)](#), ss. **60(1)(c)**, 89
- F52** S. 31(4)-(6) inserted by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22\)](#), ss. **60(1)(d)**, 89
- F53** Words commencing “obtained in a” substituted (S.) for words commencing “granted in a” by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), ss. **31(2)**, 48(2)
- F54** S. 31(4)(ii)(ia) substituted (S.) for para. (ii) by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), s. **31(3)**
- F55** S. 31(4A) inserted by [Family Law \(Scotland\) Act 1985 \(c. 37, SIF 49:3\)](#), ss. 28(1), 29(4), **Sch. 1 para. 6(b)**
- F56** S. 31(5) repealed by [Family Law \(Scotland\) Act 1985 \(c. 37, SIF 49:3\)](#), ss. 28(1)(2), 29(4), **Sch. 1 para. 6(c)**, Sch. 2

#### Marginal Citations

- M7** 1971 c. 58.  
**M8** 1966 c. 19.

### *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 [<sup>F57</sup>the appropriate officer] of the registering court, being a magistrates’ court, is of opinion that the payer is residing within the jurisdiction of another magistrates’ court in that part of the United Kingdom in which the registering court is, he shall transfer the order to that other court by sending a certified copy of the order and the related documents to [<sup>F57</sup>the appropriate officer] of that other court and, subject to subsection (4) below, [<sup>F57</sup>the appropriate officer] shall register the order in the prescribed manner in that court.

[<sup>F58</sup>(2A) In subsection (2) above the “appropriate officer” means—



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- (a) in relation to a court in England and Wales, the [<sup>F59</sup>designated officer] for the court; and
  - (b) in relation to a court in Northern Ireland, the clerk of the 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.
- (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>F60</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—

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- (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;
  - (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>F61</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

- F57** Words in s. 32(2) substituted (1.4.2001) by 1999 c. 22, s. 90, **Sch. 13 para. 79** (with s. 107, Sch. 14 para. 7(2)); S.I. 2001/916, **art. 2(a)(ii)**
- F58** S. 32(2A) inserted (1.4.2001) by 1999 c. 22, s. 90, **Sch. 13 para. 79** (with Sch. 14 para. 7(2)); S.I. 2001/916, **art. 2(a)(ii)**
- F59** Words in s. 32(2A) substituted (1.4.2005) by Courts Act 2003 (c. 39), s. 110(1), **Sch. 8 para. 161**; S.I. 2005/910, **art. 3(y)**
- F60** 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)**
- F61** 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

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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>M9</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>M10</sup>Maintenance and Affiliation Orders Act (Northern Ireland) 1966.

- [<sup>F62</sup>(3) An order which by virtue of subsection (1) above is enforceable by a magistrates' court [<sup>F63</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>M11</sup>1980.

- [ Where, by virtue of being registered in the magistrates' court in which it was made, <sup>F64</sup>(3A) 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>M12</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—
- subsections (2) to (4) shall be omitted; and
  - 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

- F62** [S. 33\(3\)](#) substituted (E.W.) by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), s. 33(1), [Sch. 2 para. 50](#)
- F63** 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
- F64** [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

- M9** [1958 c. 39](#).

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**M10** 1966 c. 35 (N.I.)

**M11** 1980 c.43(82).

**M12** 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>M21</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>M22</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 [<sup>F100</sup>shall, subject to the modifications of Article 98 of the Magistrates' Courts (Northern Ireland) Order 1981 (enforcement of sums adjudged to be paid and complaint for arrears) specified in subsection (4C) of section 8 of this Act, be enforceable] as [<sup>F101</sup>an order made by that court to which that Article applies].
- [<sup>F102</sup>(3B) Where, by virtue of being registered in the court of summary jurisdiction in which it was made, a registered order is enforceable as a maintenance order made by a court of summary jurisdiction, Article 98 of the Magistrates' Courts (Northern Ireland) Order 1981 shall have effect subject to the modifications specified in subsection (4C) 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>M23</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.

#### Textual Amendments

**F100** Words in s. 33(3) substituted (N.I.) (4.11.1996) by S.I. 1993/1576 (N.I. 6), art. 11, **Sch. 1 para. 13(a)**; S.R. 1996/454, **art. 3**

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*Changes to legislation: There are currently no known outstanding effects for the Maintenance Orders (Reciprocal Enforcement) Act 1972, Part II. (See end of Document for details)*

**F101** Words in s. 33(3) substituted (N.I.) (4.11.1996) by S.I. 1995/755 (N.I. 2), art. 185(1), **Sch. 9 para. 73** (with **Sch. 8 para. 1(1)**); S.R. 1996/297, **art. 2(2)**

**F102** S. 33(3B) inserted (N.I.) (4.11.1996) by S.I. 1993/1576 (N.I. 6), art. 11, **Sch. 1 para. 13(b)**; S.R. 1996/454, **art. 3**

#### Marginal Citations

**M21** 1958 c. 39.

**M22** 1966 c. 35(N.I.)

**M23** 1950 c. 37.

### 34 Variation and revocation of orders.

(1) [<sup>F65</sup>Subject to [<sup>F66</sup>subsection (3B) below and] section 34B of this Act][<sup>F67</sup>Subject to [<sup>F68</sup>subsection (3A) below and] 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 [<sup>F69</sup>—

- (a) the [<sup>F70</sup>designated officer] for the court, if the court is in England and Wales; or
- (b) the clerk of the court, if the court is in Northern Ireland.]

[<sup>F71</sup>(3A) Where subsection (1) of section 60 of the Magistrates' Courts Act 1980 (revocation, variation etc. of orders for periodical payment) applies in relation to a registered order, that subsection shall have effect as if for the words "by order on complaint," there were substituted "on an application being made, by order". ]

[<sup>F72</sup>(3B) Where paragraph (1) of Article 86 of the Magistrates' Courts (Northern Ireland) Order 1981 (revocation, variation etc. of orders for periodical payment) applies in relation to a registered order, that paragraph shall have effect as if for the words "by order on complaint," there were substituted "on an application being made, by order". ]

(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>F73</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>F74</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

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*Changes to legislation: There are currently no known outstanding effects for the Maintenance Orders (Reciprocal Enforcement) Act 1972, Part II. (See end of Document for details)*

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

- F65** Words in s. 34(1) inserted (N.I.) (4.11.1996) by S.I. 1993/1576 (N.I. 6), art. 11, **Sch. 1 para. 14(a)**; S.R. 1996/454, **art. 3**
- F66** Words in s. 34(1) inserted (N.I.) (4.11.1996) by S.I. 1995/755 (N.I. 2), art. 185(1), **Sch. 9 para. 74(1)** (with **Sch. 8 para. 1(1)**); S.R. 1996/297, **art. 2(2)**
- F67** 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
- F68** Words in s. 34(1) inserted (5.4.1993) by Maintenance Orders (Reciprocal Enforcement) Act 1992 (c. 56), s. 1, **Sch. 1 Pt. II para. 15(2)**; S.I. 1993/618, **art. 2**
- F69** S. 34(3)(a)(b) and “-” immediately preceding them in s. 34(3) substituted for words in s. 34(3) (1.4.2001) by 1999 c. 22, s. 90, **Sch. 13 para. 80** (with **Sch. 14 para. 7(2)**); S.I. 2001/916, **art. 2(a)(ii)**
- F70** Words in s. 34(3)(a) substituted (1.4.2005) by Courts Act 2003 (c. 39), s. 110(1), **Sch. 8 para. 162**; S.I. 2005/910, art. 3(y)
- F71** S. 34(3A) inserted (5.4.1993) by Maintenance Orders (Reciprocal Enforcement) Act 1992 (c. 56), s. 1, **Sch. 1 Pt. II para. 15(3)**; S.I. 1993/618, **art. 2**
- F72** S. 34(3B) inserted (N.I.) (4.11.1996) by S.I. 1995/755 (N.I. 2), art. 185(1), **Sch. 9 para. 74(2)** (with **Sch. 8 para. 1(1)**); S.R. 1996/297, **art. 2(2)**
- F73** Words inserted by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), **ss. 60(2)**, 89
- F74** 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>F75</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>M13</sup> Magistrates' Courts Act 1980;
  - (b) section 20ZA of the <sup>M14</sup> Domestic Proceedings and Magistrates' Courts Act 1978; and
  - (c) paragraph 6A of Schedule 1 to the <sup>M15</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 [<sup>F76</sup>the designated officer for the court or for any other magistrates' court in England and Wales];
  - (b) the power to order that payments under the order be made to [<sup>F76</sup>the designated officer for the court or for any other magistrates' court in England and Wales], by such method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (standing order, etc.) as may be specified;

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- (c) the power to make an attachment of earnings order under the <sup>M16</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 [<sup>F77</sup>the designated officer for the court or for 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 <sup>F78</sup>... 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, [<sup>F79</sup>a justices' 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>M17</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>M18</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

- F75** S. 34A inserted (1.4.1992) by [Maintenance Enforcement Act 1991 \(c. 17\), s. 10, Sch. 1 para. 19\(2\); S.I. 1992/455, art. 2](#)
- F76** Words in s. 34A(3) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\), s. 110\(1\), Sch. 8 para. 163\(2\); S.I. 2005/910, art. 3\(y\)](#)

*Status: Point in time view as at 01/04/2005.*

*Changes to legislation: There are currently no known outstanding effects for the Maintenance Orders (Reciprocal Enforcement) Act 1972, Part II. (See end of Document for details)*

- F77** Words in s. 34A(4) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\)](#), s. 110(1), **Sch. 8 para. 163(3)(a)**; [S.I. 2005/910](#), art. 3(y)
- F78** Words in s. 34A(4) repealed (1.4.2005) by [Courts Act 2003 \(c. 39\)](#), s. 110(1), **Sch. 8 para. 163(3)(b), 10**; [S.I. 2005/910](#), art. 3(y)
- F79** Words in s. 34A(5) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\)](#), s. 110(1), **Sch. 8 para. 163(4)**; [S.I. 2005/910](#), art. 3(y)

#### Marginal Citations

- M13** 1980 c. 43.  
**M14** 1978 c. 22.  
**M15** 1989 c. 41.  
**M16** 1971 c. 32.  
**M17** 1980 c. 43.  
**M18** 1972 c. 18.

### <sup>F80</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



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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.

- (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

**F80** 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](#)

### [<sup>F81</sup>35 Further provisions with respect to variation etc. of orders by magistrates’ courts in England and Wales.

- (1) Notwithstanding anything in section 28(2) or 28A(6)(e) of this Act, a magistrates’ court in England and Wales shall have jurisdiction to hear an application—
  - (a) for the variation or revocation of a registered order registered in that court, and
  - (b) made by the person against whom or on whose application the order was made,notwithstanding that the person by or against whom the application is made is residing outside England and Wales [<sup>F82</sup>but none of the powers of the court, or of the clerk, conferred by section 34B of this Act shall be exercisable in relation to such an application].
- (2) None of the powers of the court, or of the clerk of the court, under section 34A of this Act shall be exercisable in relation to such an application.
- (3) Where the respondent to an application for the variation or revocation of a registered order which is registered in a magistrates’ court in England and Wales does not appear at the time and place appointed for the hearing of the application, but the court is satisfied—

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*Changes to legislation: There are currently no known outstanding effects for the Maintenance Orders (Reciprocal Enforcement) Act 1972, Part II. (See end of Document for details)*

- (a) that the respondent is residing outside England and Wales, and
- (b) that the prescribed notice of the making of the application and of the time and place appointed for the hearing has been given to the respondent in the prescribed manner,

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

#### Textual Amendments

- F81** Ss. 35, 35A substituted (5.4.1993) for s. 35 by [Maintenance Orders \(Reciprocal Enforcement\) Act 1992 \(c. 56\)](#), ss. 1, 3, [Sch. 1 Pt. II](#), para. 16; S.I. 1993/618, [art. 2](#)
- F82** Words in s. 35(1) inserted (N.I.) (4.11.1996) by S.I. 1993/1576 (N.I. 6), art. 11, [Sch. 1 para.15](#); S.R. 1996/454, [art. 3](#)

### [<sup>F83</sup> 35A Further provisions with respect to variation etc. of orders by magistrates' courts in Northern Ireland.

- (1) Notwithstanding anything in section 29(2) or 29A(6)(e) of this Act, a magistrates' court in Northern Ireland shall have jurisdiction to hear an application—
  - (a) for the variation or revocation of a registered order registered in that court, and
  - (b) made by the person against whom or on whose application the order was made,
 notwithstanding that the person by or against whom the application is made is residing outside Northern Ireland.
- (2) None of the powers of the court, or of the clerk, under section 34B of this Act shall be exercisable in relation to such an application.
- (3) Where the respondent to an application 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 application, but the court is satisfied—
  - (a) that the respondent is residing outside Northern Ireland, and
  - (b) that the prescribed notice of the making of the application and of the time and place appointed for the hearing has been given to the respondent in the prescribed manner,

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

#### Textual Amendments

- F83** S. 35A substituted (N.I.) (4.11.1996) by S.I. 1995/755 (N.I. 2), art. 185(1), [Sch. 9 para. 75](#) (with [Sch. 8 para. 1\(1\)](#)); S.R. 1996/297, [art. 2\(2\)](#)

*Status: Point in time view as at 01/04/2005.*

*Changes to legislation: There are currently no known outstanding effects for the Maintenance Orders (Reciprocal Enforcement) Act 1972, Part II. (See end of Document for details)*

### *Supplemental*

#### **36 Admissibility of evidence given in convention country.**

- (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 a convention country; or
  - (b) a document, duly authenticated, which purports to set out or summarise evidence taken in such a country 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 on behalf of 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 such a country, or to be a copy of a document so received,

shall, in any proceedings in a magistrates' court or [<sup>F84</sup>in, or remitted from, a] sheriff court arising out of an application [<sup>F85</sup>to which section 27A(1) of this Act applies, an application [<sup>F86</sup>to which section 28C(1) of this Act applies], an application received by the Secretary of State as mentioned in section 31(1) of this Act or] an application made by any person for the variation or revocation of a registered order or in proceedings on appeal from any such proceedings, 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 officer of the court in question 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.

#### **Textual Amendments**

- F84** Words inserted by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22\), ss. 60\(3\), 89](#)
- F85** Words substituted (5.4.1993) by [Maintenance Orders \(Reciprocal Enforcement\) Act 1992 \(c. 56\), s. 1, Sch. 1 Pt. II para. 17](#); S.I. 1993/618, [art. 2](#)
- F86** Words substituted (N.I.) (4.11.1996) by S.I. 1995/755 (N.I. 2), [art. 185\(1\), Sch. 9 para. 76](#) (with [Sch. 8 para. 1\(1\)](#)); S.R. 1996/297, [art. 2\(2\)](#)

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*Changes to legislation: There are currently no known outstanding effects for the Maintenance Orders (Reciprocal Enforcement) Act 1972, Part II. (See end of Document for details)*

### **37 Obtaining of evidence for purpose of proceedings in United Kingdom court.**

- (1) A court in the United Kingdom may for the purpose of any proceedings in that court under this Part of this Act arising out of an application received by the Secretary of State from a convention country request the Secretary of State to make to the appropriate authority or court in the convention country a request for the taking in that country of the evidence of a person residing therein relating to matters connected with the application.
- (2) A request made by a court under this section shall—
  - (a) give details of the application in question;
  - (b) state the name and address of the person whose evidence is to be taken; and
  - (c) specify the matters relating to which the evidence of that person is required.
- (3) If the Secretary of State is satisfied that a request made to him under this section contains sufficient information to enable the evidence of the person named in the request relating to the matters specified therein to be taken by a court or person in the convention country, he shall transmit the request to the appropriate authority or court in that country.

### **38 Taking of evidence at request of court in convention country.**

- (1) Where a request is made to the Secretary of State by or on behalf of a court in a convention country to obtain the evidence of a person residing in the United Kingdom relating to matters connected with an application to which section 26 of this Act applies, the Secretary of State shall request such court, or such officer of a court, as he may determine to take the evidence of that person relating to such matters connected with that application as may be specified in the request.
- (2) The court by which or officer by whom a request under subsection (1) above is received from the Secretary of State shall have power to take the 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 or he thinks fit, shall take the evidence of the person named in the request relating to the matters specified therein in such manner as may be prescribed; and the evidence so taken shall be sent in the prescribed manner by the prescribed officer to the court in the convention country by or on behalf of which the request referred to in subsection (1) above was made.
- (3) Where any person, not being the person by whom the application mentioned in subsection (1) above was made, is required by virtue of this section to give evidence before a court in the United Kingdom, the court may order that there shall be paid—
  - (a) if the court is a court in England, Wales or Scotland, out of moneys provided by Parliament; and
  - (b) if the court is a court in Northern Ireland, out of moneys provided by <sup>[F87]</sup>Parliament],
 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 his attendance.
- <sup>[F88]</sup>(4) Section 97(1), (3) and (4) of the <sup>M19</sup>Magistrates' Courts Act 1980] (which provide for compelling the attendance of witnesses, etc.) shall apply in relation to a magistrates' court to which a request under subsection (1) above is made as if the application to which the request relates were a complaint to be heard by that court.

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*Changes to legislation: There are currently no known outstanding effects for the Maintenance Orders (Reciprocal Enforcement) Act 1972, Part II. (See end of Document for details)*

- (5) Paragraphs 71 and 73 of Schedule 1 to the <sup>M20</sup>Sheriff Courts (Scotland) Act 1907 (which provide for the citation of witnesses, etc.) shall apply in relation to a sheriff court to which a request under subsection (1) above is made as if the application to which the request relates were proceedings in that court.
- (6) In the application of this section to Northern Ireland, in subsection (4), for the reference to [<sup>F88</sup>section 97(1), (3) and (4) of the Magistrates' Courts Act 1980] there shall be substituted a reference to [<sup>F89</sup>Articles 118(1), (3) and (4), 119 and 120 of the Magistrates' Courts (Northern Ireland) Order 1981].

#### Textual Amendments

- F87** Word substituted by [S.I. 1973/2163, Sch. 5 para. 22](#).
- F88** Words substituted by [Magistrates' Courts Act 1980 \(c. 43\), s. 154, Sch. 7 para. 109](#)
- F89** Words substituted by [S.I. 1981/1675 \(N.I. 26\), Sch. 6 Pt. I para. 25](#)

#### Marginal Citations

- M19** [1980 c. 43](#).
- M20** [1907 c. 51](#).

### [<sup>F90</sup>38A [<sup>F91</sup>Rules of court]

- (1) [<sup>F92</sup>Rules of court] may make provision with respect to the orders made or other things done by a magistrates' court, or an officer of such a court, by virtue of 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.
- (2) For the purpose of giving effect to this Part of this Act, [<sup>F93</sup>rules of court] may make, in relation to any proceedings brought under or by virtue of this Part of this Act, any provision not covered by subsection (1) above which—
- (a) falls within subsection (2) of section 93 of the Children Act 1989, and
  - (b) may be made in relation to relevant proceedings under that section.

<sup>F94</sup>(3) .....

- <sup>F95</sup>[ For the purpose of giving effect to this Part of this Act, rules made under Article 13 (4) of the Magistrates' Courts (Northern Ireland) Order 1981 may make, in relation to any proceedings brought under or by virtue of this Part of this Act, any provision not covered by subsection (1) above which—
- (a) falls within paragraph (2) of Article 165 of the Children (Northern Ireland Order) 1995, and
  - (b) may be made in relation to relevant proceedings under that Article.]]

#### Textual Amendments

- F90** S. 38A inserted (5.4.1993) by [Maintenance Orders \(Reciprocal Enforcement\) Act 1992 \(c. 56\), s. 1, Sch. 1 Pt. II para. 18; S.I. 1993/618, art. 2](#)
- F91** Words in s. 38A heading substituted (1.9.2004) by [Courts Act 2003 \(Consequential Amendments\) Order 2004 \(S.I. 2004/2035\), art. 2\(1\), Sch. para. 2\(5\) \(with art. 2\(2\)\)](#)
- F92** Words in s. 38A(1) substituted (1.9.2004) by [Courts Act 2003 \(Consequential Amendments\) Order 2004 \(S.I. 2004/2035\), art. 2\(1\), Sch. para. 2\(2\) \(with art. 2\(2\)\)](#)

*Status: Point in time view as at 01/04/2005.*

*Changes to legislation: There are currently no known outstanding effects for the Maintenance Orders (Reciprocal Enforcement) Act 1972, Part II. (See end of Document for details)*

- F93** Words in s. 38A(2) substituted (1.9.2004) by Courts Act 2003 (Consequential Amendments) Order 2004 (S.I. 2004/2035), art. 2(1), **Sch. para. 2(3)** (with art. 2(2))
- F94** S. 38A(3) omitted (1.9.2004) by virtue of Courts Act 2003 (Consequential Amendments) Order 2004 (S.I. 2004/2035), art. 2(1), **Sch. para. 2(4)** (with art. 2(2))
- F95** S. 38A(4) inserted (N.I.) (4.11.1996) by S.I. 1995/755 (N.I. 2), art. 185(1), **Sch. 9 para. 78(1)** (with Sch. 8 para. 1(1)); S.R. 1996/297, **art. 2(2)**

### 39 Interpretation of Part II.

In this Part of this Act—

“maintenance”, as respects Scotland, [<sup>F96</sup>includes aliment and any sums which are payable, following divorce, [<sup>F97</sup>by one former spouse for the support of the other]]; [<sup>F98</sup>“maintenance order” has the same meaning as in Part I of this Act;]

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

“prescribed” has the same meaning as in Part I of this Act;

“registered order” means an order which is for the time being registered in a court in the United Kingdom under this Part of this Act;

“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.

[<sup>F99</sup>“revoke” and “revocation” include discharge.]

#### Textual Amendments

- F96** Words substituted by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22). ss. 60(4), 89
- F97** Words substituted by Family Law (Scotland) Act 1985 (c. 37, SIF 49:3), ss. 28(1), 29(4), **Sch. 1 para. 7**
- F98** Definition in s. 39 inserted (5.4.1993) by Maintenance Orders (Reciprocal Enforcement) Act 1992 (c. 56), s. 1, **Sch. 1 Pt. II para.19**; S.I. 1993/618, **art.2**
- F99** Definition in s. 39 added (5.4.1993) by Maintenance Orders (Reciprocal Enforcement) Act 1992 (c. 56), s. 1, **Sch. 1 Pt. II para.19**; S.I. 1993/618, **art.2**

**Status:**

Point in time view as at 01/04/2005.

**Changes to legislation:**

There are currently no known outstanding effects for the Maintenance Orders (Reciprocal Enforcement) Act 1972, Part II.