



# Maintenance Orders (Reciprocal Enforcement) Act 1972

## 1972 CHAPTER 18

### PART III

#### MISCELLANEOUS AND SUPPLEMENTAL

*Further provisions relating to enforcement of maintenance orders and to applications for recovery of maintenance*

#### **40 Power to apply Act to maintenance orders and applications for recovery of maintenance made in certain countries**

Where Her Majesty is satisfied—

- (a) that arrangements have been or will be made in a country or territory outside the United Kingdom to ensure that maintenance orders made by courts in the United Kingdom against persons in that country or territory can be enforced in that country or territory or that applications by persons in the United Kingdom for the recovery of maintenance from persons in that country or territory can be entertained by courts in that country or territory; and
- (b) that in the interest of reciprocity it is desirable to ensure that maintenance orders made by courts in that country or territory against persons in the United Kingdom can be enforced in the United Kingdom or, as the case may be, that applications by persons in that country or territory for the recovery of maintenance from persons in the United Kingdom can be entertained by courts in the United Kingdom,

Her Majesty may by Order in Council make provision for applying the provisions of this Act, with such exceptions, adaptations and modifications as may be specified in the Order, to such orders or applications as are referred to in paragraphs (a) and (b) above and to maintenance and other orders made in connection with such applications by courts in the United Kingdom or in that country or territory.

*Provisions with respect to certain orders of magistrates' courts*

**41 Complaint for variation, etc. of certain orders by or against persons outside England and Wales**

- (1) The jurisdiction to revoke, revive or vary an order for the periodical payment of money conferred on magistrates' courts by section 53 of the Magistrates' Courts Act 1952 shall, in the case of—
- (a) an affiliation order, or
  - (b) an order under section 9, 10 or 11 of the Guardianship of Minors Act 1971 for the payment of sums towards the maintenance of a minor,

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 outside England and Wales.

- (2) Subsections (2) to (5) of section 9 of the Matrimonial Proceedings (Magistrates' Courts) Act 1960 (which relates to the procedure to be followed in the case of a complaint by or against a person outside England and Wales for variation, etc., of an order made under that Act) shall, for the purposes of subsection (1) above, apply in respect of any such order as is mentioned in paragraph (a) or (b) of that subsection as they apply in respect of a matrimonial or interim order, but with the substitution of references to section 53 of the said Act of 1952 for references to section 8 of the said Act of 1960.
- (3) In section 15(1) of the Maintenance Orders Act 1950 (service of process on a person residing in Scotland or Northern Ireland), after the words " Act 1971 " there shall be inserted the words " or section 41 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 ".
- (4) Section 3(3) of the said Act of 1950 (jurisdiction in proceedings by or against a person residing in Scotland or Northern Ireland for the revocation, etc., of an affiliation order) is hereby repealed.

**42 Provisional order for maintenance of party to marriage made by magistrates' court to cease to have effect on remarriage of party**

- (1) Where a magistrates' court has, by virtue of section 3 of this Act, made a provisional maintenance order consisting of, or including, a provision such as is mentioned in section 2(1)(b) or (c) of the Matrimonial Proceedings (Magistrates' Courts) Act 1960 (payment of weekly sums by husband or wife) and the order has been confirmed by a competent court in a reciprocating country, then, if after the making of that order the marriage of the parties to the proceedings in which the order was made is dissolved or annulled but the order continues in force, that order or, as the case may be, that provision thereof shall cease to have effect on the remarriage of the party in whose favour it was made, except in relation to any arrears due under it on the date of such remarriage and shall not be capable of being revived.
- (2) For the avoidance of doubt it is hereby declared that references in this section to remarriage include references to a marriage which is by law void or voidable.
- (3) In section 30(2) of the Matrimonial Proceedings and Property Act 1970 (which makes, in relation to such an order as is referred to in subsection (1) above which was confirmed in accordance with section 3 of the Maintenance Orders (Facilities for

Enforcement) Act 1920, provision to the like effect as that subsection) the words from " but with the modification " to the end are hereby repealed.

### *Supplemental provisions*

#### **43 Extension of legal aid**

- (1) At the end of paragraph 3 of Part I of Schedule 1 to the Legal Aid and Advice Act 1949 (which specifies the proceedings in a magistrates' court or the Crown Court for which legal aid may be given under section 1 of that Act) there shall be inserted the following sub-paragraph:—
  - “(d) proceedings under Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972 relating to a maintenance order made by a court of a country outside the United Kingdom.”
- (2) At the end of paragraph 3 of Part I of Schedule 1 to the Legal Aid and Advice Act (Northern Ireland) 1965 (which specifies the proceedings in a magistrates' court in Northern Ireland for which legal aid may be given under section 1 of that Act) there shall be inserted the following sub-paragraph:—
  - “(d) proceedings under Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972 relating to a maintenance order made by a court of a country outside the United Kingdom, and any such proceedings as are referred to in sub-paragraph (a) above brought by virtue of Part II of the said Act of 1972”.
- (3) The amendment made by subsection (2) above shall have effect notwithstanding anything in paragraph (b) of section 1(6) of the said Act of 1965.

#### **44 Exclusion of certain enactments relating to evidence**

- (1) Section 20 of the Family Law Reform Act 1969 (power of court hearing certain proceedings to require use of blood tests to determine paternity) and any corresponding enactment of the Parliament of Northern Ireland shall not apply to any proceedings under this Act, but the foregoing provision is without prejudice to the power of a court to allow the report of any person who has carried out such tests to be given in evidence in those proceedings.
- (2) The Foreign Tribunals Evidence Act 1856 (which relates to the taking of evidence in the United Kingdom for the purpose of proceedings before a foreign tribunal) and the Evidence by Commission Act 1859 (which relates to the taking of evidence in the United Kingdom for the purpose of proceedings before a court in Her Majesty's dominions) shall not apply to the taking of evidence in the United Kingdom for the taking of which section 14 or section 38 of this Act provides.

#### **45 Orders in Council**

- (1) An Order in Council under section 1, section 25 or section 40 of this Act may be varied or revoked by a subsequent Order in Council thereunder, and an Order made by virtue of this section may contain such incidental, consequential and transitional provisions as Her Majesty considers expedient for the purposes of that section.
- (2) An Order in Council made under the said section 1 or the said section 40 shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **46 Financial provisions**

There shall be paid out of moneys provided by Parliament—

- (a) any sums ordered by a court under section 14(2) or 38(3) of this Act to be paid out of moneys so provided ; and
- (b) any increase attributable to the provisions of this Act in the sums payable under the Legal Aid and Advice Act 1949 or the Legal Aid (Scotland) Act 1967 out of moneys so provided.

#### **47 Interpretation: general**

(1) In this Act—

" enactment " includes an enactment of the Parliament of Northern Ireland;

" magistrates' court ", in relation to Northern Ireland, means a court of summary jurisdiction within the meaning of section 1(1) of the Magistrates' Courts Act (Northern Ireland) 1964.

(2) References in this Act to a part of the United Kingdom are references to England and Wales, to Scotland, or to Northern Ireland.

(3) Any reference in this Act to the jurisdiction of a court, where the reference is to a person residing, or having ceased to reside, within the jurisdiction of a court, shall be construed in relation to a magistrates' court in England and Wales as a reference to the petty sessions area, and in relation to a magistrates' court in Northern Ireland as a reference to the petty sessions district, for which the court acts.

(4) Any reference in this Act to any other enactment is a reference thereto as amended, and includes a reference thereto as extended or applied, by or under any other enactment.

#### **48 Special provisions relating to Northern Ireland**

(1) Nothing in this Act shall authorise any Department of the Government of Northern Ireland to incur any expenses attributable to the provisions of this Act until provision has been made by the Parliament of Northern Ireland for those expenses to be defrayed out of moneys provided by that Parliament.

(2) For the purposes of section 6 of the Government of Ireland Act 1920 (which relates to the power of the Parliament of Northern Ireland to make laws), the provisions of this Act, so far as they extend to Northern Ireland, shall be deemed to be provisions of an Act passed before the appointed day.

(3) Any reference in this Act to an enactment of the Parliament of Northern Ireland or to an enactment which that Parliament has power to amend, shall be construed, in relation to Northern Ireland, as a reference to that enactment as amended or extended by any Act of that Parliament, whether passed before or after this Act, and to any enactment of that Parliament passed after this Act and re-enacting the said enactment, with or without modifications.

(4) If the Parliament of Northern Ireland passes any enactment for purposes similar to those of any enactment in force in England and Wales which is referred to in this Act, Her Majesty may by Order in Council direct that this Act shall have effect subject to such modifications or adaptations as may be specified in the Order for the purpose of ensuring the continued operation of this Act in, or in relation to, Northern Ireland.

- (5) Section 45 of this Act shall apply in relation to an Order in Council under subsection (4) above as it applies in relation to an Order in Council under section 1 or 40 of this Act.

**49 Short title and commencement**

- (1) This Act may be cited as the Maintenance Orders (Reciprocal Enforcement) Act 1972.
- (2) This Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be so appointed for different provisions of this Act, or for different purposes.