

1974 No. 939 (S. 79)

**COURT OF SESSION, SCOTLAND
SHERIFF COURT, SCOTLAND**

**Act of Sederunt (Maintenance Orders (Reciprocal Enforcement)
Act 1972 Rules) 1974.**

*Made - - - - - 29th May 1974
Coming into Operation 1st July 1974*

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 16 of the Administration of Justice (Scotland) Act 1933(a) and section 32 of the Sheriff Courts (Scotland) Act 1971(b) as read with section 19 of the Maintenance Orders (Reciprocal Enforcement) Act 1972(c) and of all other powers competent to them in that behalf do hereby enact and declare as follows:—

PART I
GENERAL

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Maintenance Orders (Reciprocal Enforcement) Act 1972 Rules) 1974, and shall come into operation on the first day of July 1974.

(2) In this Act of Sederunt the following expression shall, unless the context otherwise requires, have the meanings hereby respectively assigned to them—
“the Act” means the Maintenance Orders (Reciprocal Enforcement) Act 1972;
“Deputy Principal Clerk” means the Deputy Principal Clerk in charge of the Petition Department of the Court of Session; “Sheriff Clerk” includes Sheriff Clerk Depute.

(3) Other expressions used in this Act of Sederunt to which meanings have been assigned by the Act shall, unless the context otherwise requires, have the same meanings in this Act of Sederunt as in the Act.

(4) The Interpretation Act 1889(d) shall apply for the interpretation of this Act of Sederunt as it applies for the interpretation of an Act of Parliament.

2. The provisions of Part II of this Act of Sederunt shall apply for the purposes of the Act to orders made by the Court of Session, and the provisions of Part III of this Act of Sederunt shall apply for the purposes of the Act to orders made by or registered in any Sheriff Court.

3.—(1) For the purpose of this Act of Sederunt and of Part I of the Act the Deputy Principal Clerk shall be the “prescribed officer” for the Court of Session and the Sheriff Clerk shall be the “prescribed officer” for the Sheriff Court.

(2) All communications which the prescribed officer is required by the Act to send in a prescribed manner to:

- (a) an addressee in the United Kingdom shall be sent by recorded delivery post and
- (b) an addressee outwith the United Kingdom shall be sent by Air Mail post.

(a) 1933 c. 41.
(c) 1972 c. 18.

(b) 1971 c. 58.
(d) 1889 c. 63.

PART II
COURT OF SESSION

Provisions in relation to transmission of Maintenance Orders made by the
Court of Session for enforcement in a reciprocating country

4.—(1) All applications to the Court of Session for the transmission of any maintenance order for enforcement in a reciprocating country shall be made by letter addressed to the Deputy Principal Clerk, and the following documents shall be lodged with the application—

- (a) a certified copy of the relevant order;
- (b) a statement signed by the applicant or his solicitor of any arrears outstanding in respect of the order;
- (c) a statement signed by the applicant or his solicitor giving such information as to the whereabouts of the payer as he possesses.
- (d) a statement signed by the applicant or his solicitor giving such information as the applicant possesses for facilitating the identification of the payer;
- (e) where available, a photograph of the payer.

(2) On receipt of such application and documents the Deputy Principal Clerk shall send to the Secretary of State the documents specified in section 2(4) of the Act.

5.—(1) If a Maintenance Order such as is referred to in the preceding paragraph is varied or revoked by a subsequent order of the Court of Session it shall be the duty of the applicant to inform the Deputy Principal Clerk of any such variation or revocation and to provide the Deputy Principal Clerk with a certified copy of the new order, together with a copy of the extended Notes of Evidence certified by the Lord Ordinary before whom the evidence was given, if such order was varied after proof, or a copy of the Judgment containing the reasons for any such variation in all other cases.

(2) On receipt of such information and documents, the Deputy Principal Clerk shall send the certified copy of the said order and said Notes of Evidence or extended Notes to the relevant Court in the reciprocating country.

Provisions in relation to orders made by Courts in reciprocating countries.

6. On receipt of a certified copy of a provisional order in terms of Section 5(5) of the Act the Deputy Principal Clerk shall write by recorded delivery letter to the payee or payer under the order as the case may be enclosing a copy of said provisional order, advising him that said provisional order has been received and that said order will be confirmed by the Court of Session unless the payee or payer within fourteen days of posting of said letter takes the following steps—viz. in respect of a provisional order to which Section 5(5) of the Act applies the payee shall lodge with the Deputy Principal Clerk an application narrating the reasons why the provisional order should be refused or the maintenance order should not be varied as the case may be, and shall serve a copy of said application on the payer on an *induciae* of fourteen days.

7. After the payee has lodged the application referred to in Rule 6 hereof, Answers may be lodged by the payer within fourteen days of service. In the event of said period expiring without Answers or after Answers have been received, the cause shall be placed before a Lord Ordinary for determination by him of whether said provisional order should be confirmed, refused or altered in terms of Section 5(5) of the Act as may be appropriate.

8. Any decree pronounced under this part of these Rules shall be extractable and any extract of such decree shall, for the purpose of diligence or otherwise have the same force and effect as an extract decree of the Court of Session.

9. Where any request is made to the Court of Session by or on behalf of a Court in a reciprocating country for the evidence of a person to be taken in terms of Section 14 of the Act, such evidence shall be taken before the Sheriff of the Sheriffdom in which the witness resides. The prescribed officer shall on receipt of such request forward to the Sheriff Clerk of the Sheriffdom in which the witness resides.

PART III—SHERIFF COURT

Provisions in relation to transmission of maintenance orders made by the Sheriff Court for enforcement in a reciprocating country.

10.—(1) All applications to the Sheriff Court for the transmission of any maintenance orders for enforcement in a reciprocating country shall be made by letter addressed to the Sheriff Clerk and the following documents shall be lodged with the application—

- (a) a certified copy of the relevant order;
- (b) a statement signed by the applicant or his solicitor of any arrears outstanding in respect of the order;
- (c) a statement signed by the applicant or his solicitor giving such information as to the whereabouts of the payer as he possesses;
- (d) a statement signed by the applicant or his solicitor giving such information as the applicant possesses for facilitating the identification of the payer;
- (e) where available, a photograph of the payer.

(2) On receipt of such application and documents the Sheriff Clerk shall send to the Secretary of State the documents specified in section 2(4) of the Act.

Provision in relation to transmission of provisional—maintenance orders made by Sheriff Court for enforcement in a reciprocating country.

11. A certificate signed by the Sheriff Clerk in terms of Section 3(5)(c) of the Act as read with Section 4(6) thereof shall also be signed by the Sheriff

Provision in relation to revocation of provisional maintenance order made by Sheriff.

12. Where before a provisional order is confirmed the Sheriff Court which made that order has considered evidence under Section 5(9) of the Act and if, having done so, it appears to it that the order ought not to have been made, the Sheriff Clerk shall write by recorded delivery letter to the person on whose application the order was made, advising him that he may consider that evidence, make representations with respect to it and adduce further evidence. If he wishes to make representations he shall lodge within fourteen days of the date of posting of the letter from the Sheriff Clerk a minute narrating the representations and the further evidence which he intends to adduce. On the expiry of the said period of fourteen days the cause shall be enrolled before the Sheriff.

Provision in relation to registration of orders.

13.—(1) The Sheriff Clerk shall keep a register called “The Maintenance Orders (Reciprocal Enforcement) Act 1972 Register” for the purpose of registering such orders as the Act directs the prescribed officer to register. Every entry registering an order shall specify the section of the Act under which the order in

question is registered. When a registered order is varied, revoked or cancelled, the Sheriff Clerk shall make an appropriate entry against the entry registering the order.

(2) Any person who satisfies the Sheriff Clerk that he is entitled to or liable to make payments under any order which has been registered or any solicitor acting on behalf of such person or any other person with leave of the Sheriff Clerk may inspect the Maintenance Orders (Reciprocal Enforcement) Act 1972 Register.

Provisions in relation to entering appearance

14.—(1) Where the Act provides that on intimation to a payer or payee of the receipt by the Court of an order or a provisional order the payer or payee is to enter appearance within a prescribed period, the said period shall be a period of fourteen days from the date of the posting of the said intimation.

(2) To enter appearance in terms of section 5(6) of the Act, as substituted for Scotland by section 5(10)(b) thereof in respect of a provisional order received by the Court in terms of section 5(5) thereof the payee shall lodge an application in such a form as to enable the Court to proceed as if an application under section 5 thereof for the variation or revocation of the maintenance order in question had been made to it.

(3) To enter appearance in terms of section 7(4) of the Act, as substituted for Scotland by section 7(7)(a) thereof in respect of a provisional order received by the Court in terms of section 7(2) thereof, the payer shall lodge an application in such a form as to enable the Court to proceed as if an application for a maintenance order against the payer under the provisional order had been made to it in accordance with the procedure and practice in civil proceedings in the Sheriff Court.

(4) To enter appearance in terms of section 9(7) of the Act, as substituted for Scotland by section 9(11)(b) thereof in respect of a provisional order received by the Court in terms of section 9(6) thereof, the payer shall lodge an application in such a form as to enable the Court to proceed as if an application under section 9 thereof for the variation of the registered order had been made to it.

Provision in relation to revocation of registered order

15. Where a registered order is revoked in the circumstances set out in section 10(1) of the Act the payee or his Solicitor shall provide the Sheriff Clerk so far as is possible with the certificate and statements referred to in section 10(7) of the Act.

Authentication of Documents

16. Where the Act provides that a document is to be authenticated in a prescribed manner it shall be authenticated by a certificate signed by the Sheriff Clerk declaring that the document is authentic.

Evidence

17.—(1) Where any request is made by or on behalf of the Court in a reciprocating country in terms of section 14 of the Act such evidence shall be taken before the Sheriff of the Sheriffdom in which the witness resides and shall be taken down by the Sheriff or by the Sheriff Clerk or shorthand writer nominated by the Sheriff to whom the oath *de fidei administratione* shall be administered, and evidence may be recorded in narrative form or by question and answer

as the Sheriff shall direct, and the extended notes of evidence certified by such Sheriff Clerk or shorthand writer shall be the notes of the oral evidence taken.

(2) In the event of a provisional order being made under sections 4, 5 or 9 of the Act the applicant or his solicitor shall provide the Sheriff Clerk with a copy of the extended notes of evidence where evidence has been taken by a shorthand writer.

Application under sections 4, 5, 9 and 20 of the Act

18. Subject to the provisions of the Act—

- (a) an application for a provisional order under section 4 of the Act and an application under sections 5 and 9 of the Act for variation or revocation of the maintenance order referred to in section 5(1) thereof shall be made by bringing a new action in accordance with the procedure and practice in civil proceedings in the Sheriff Court.
- (b) an application under section 20 of the Act for leave to enforce the payment of any arrears due under a maintenance order registered in Scotland shall be made by lodging a Minute in the process.

And the Lords Appoint this Act of Sederunt to be inserted in the Books of Sederunt.

Edinburgh.

29th May 1974.

G. C. Emslie,
I.P.D.

EXPLANATORY NOTE

(This Note is not part of the Act of Sederunt.)

This Act of Sederunt makes provisions for rules in the Court of Session and Sheriff Court consequent upon the coming into operation of the Maintenance Orders (Reciprocal Enforcement) Act 1972.

SI 1974/939
ISBN 0-11-040939-6



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