
 STATUTORY INSTRUMENTS

1980 No. 291 (S. 27)

COURT OF SESSION, SCOTLAND
SHERIFF COURT, SCOTLAND

Act of Sederunt (Reciprocal Enforcement of Maintenance
Orders) (Hague Convention Countries) 1980

Made - - - - 29th February 1980
Coming into Operation 24th March 1980

The Lords of Council and Session, under and by virtue of the powers conferred upon 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) as amended by the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1979(d) and of all other powers enabling them in that behalf do hereby enact and declare—

PART I

GENERAL

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Reciprocal Enforcement of Maintenance Orders) (Hague Convention Countries) 1980 and shall come into operation on 24th March 1980.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

Interpretation

2.—(1) In this Act of Sederunt, unless the context otherwise requires—

“Act” means the Maintenance Orders (Reciprocal Enforcement) Act 1972 as amended by the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1979;

“Court in a Hague Convention Country” includes any judicial or administrative authority in a Hague Convention Country;

“Deputy Principal Clerk” means the Deputy Principal Clerk of the Court of Session;

“Hague Convention” means the convention on the Recognition and Enforcement of Decisions relating to maintenance obligations concluded at the Hague on 2nd October 1973;

“Hague Convention Country” means the country or territory specified in Schedule 1 to the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1979 being a country or territory (other than the United Kingdom) in which the Hague Convention is in force;

“Register” means the Register referred to in rule 13(1) of the Act of Sederunt (Maintenance Orders (Reciprocal Enforcement) Act 1972 Rules) 1974(e);

“Sheriff Clerk” includes Sheriff Clerk Depute.

(2) This Act of Sederunt and the Act shall be read as one.

(a) 1933 c. 41.
(d) S.I. 1979/1317.

(b) 1971 c. 58.
(e) S.I. 1974/939.

(c) 1972 c. 18.

Application

3.—(1) 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.

(2) 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 the Sheriff Court.

Prescribed officer

4.—(1) For the purposes of Part I of the Act, the prescribed Officer shall be—

- (a) in relation to the Court of Session, the Deputy Principal Clerk;
- (b) in relation to the Sheriff Court, the Sheriff Clerk.

(2) For the purposes of the Act, the prescribed manner of communication by the Deputy Principal Clerk and the Sheriff Clerk shall be—

- (a) to an address within the United Kingdom, by recorded delivery letter;
- (b) to any other address, by air mail letter.

PART II

COURT OF SESSION

Transmission of order to convention country

5.—(1) All applications to the Court of Session for the transmission of a maintenance order to which this Part applies to a Court in a Hague Convention Country for registration and enforcement shall be made by letter to that effect addressed to the Deputy Principal Clerk.

(2) There shall be sent together with any such application—

- (a) a certified copy of the maintenance order;
- (b) a statement signed by the applicant or his solicitor—
 - (i) giving such information as to the whereabouts of the payer as he possesses;
 - (ii) giving such information as the applicant possesses for facilitating the identification of the payer including a photograph, if available;
 - (iii) of any arrears outstanding under the order;
- (c) a document signed by the applicant or his solicitor which establishes that notice of the order was sent to the payer;
- (d) if the payee received legal aid in the proceedings relating to the maintenance order, a document to that effect;
- (e) if the payee did not appear in those proceedings, the original or a certified true copy of a document establishing that notice of these proceedings was served on the payer.

(3) The Deputy Principal Clerk, on receiving the application and documents specified in paragraph (2), shall send the documents specified in section 2(4) of the Act to the Secretary of State.

Transmission of order varying or revoking maintenance order

6.—(1) Where a maintenance order transmitted under rule 5 is varied or revoked by a subsequent order of the Court of Session, the applicant in respect of the order so transmitted shall inform the Deputy Principal Clerk that such an order of variation or revocation has been made and send him—

- (a) a certified copy of that order;
- (b) a statement signed by the applicant or his solicitor—
 - (i) as to whether or not the defender appeared in the proceedings for the variation or revocation of the order;
 - (ii) as to whether or not the payer or payee received legal aid in these proceedings;
- (c) where the defender did not appear in the proceedings, the original or a certified copy of a document which establishes that notice of the institution of the proceedings has been served on the defender;
- (d) a document which establishes that notice of the order of variation or revocation was sent to the defender.

(2) The Deputy Principal Clerk, on being informed of the order of variation or revocation and receiving the documents referred to in paragraph (1), shall send the documents specified in section 5(4) of the Act to the Secretary of State.

Request to take evidence

7. Where any request is made to the Court of Session by or on behalf of a Court in a Hague Convention Country for the evidence of a person to be taken under section 14 of the Act, such evidence shall be taken by the Sheriff of the Sheriffdom in which that person resides, and the Deputy Principal Clerk shall accordingly send any such request to the Sheriff Clerk of the Sheriff Court district in which that person resides and such request shall be treated for the purposes of taking that person's evidence as a request to the Sheriff by or on behalf of that Court.

PART III

SHERIFF COURT

Service on defender in convention country

8. Rule 15B of the First Schedule to the Sheriff Courts (Scotland) Act 1907 shall apply to service of a copy of an initial writ on a defender residing in a Hague Convention Country in an action in which the Sheriff has jurisdiction by virtue of section 4(1) of the Act, as it applies to service of an initial writ on a defender in an action to which that rule applies.

Transmission of order to convention country

9.—(1) All applications to the Sheriff Court for the transmission of a maintenance order to which this Part applies to a Court in a Hague Convention Country for registration and enforcement shall be made by letter to that effect addressed to the Sheriff Clerk.

(2) Paragraphs (2) and (3) of rule 5 shall apply to an application made under this rule as they apply to an application made under that rule with the substitution in paragraph (3) of the words "Sheriff Clerk" for the words "Deputy Principal Clerk".

*Registration of incoming orders***10.**—(1) The Sheriff Clerk—

- (a) on receiving a maintenance order made in a Court of a Hague Convention Country for registration in the Sheriff Court under the Act;
- (b) on receiving a subsequent order so made varying or revoking or cancelling that order,

shall enter the details relating to that order in the Register.

(2) An application to the Sheriff under sub-sections (9) or (12) of section 6 of the Act shall be made by way of minute setting out the grounds on which the application is made, and on any such minute being lodged it shall be brought before him.

Request to take evidence

11. Where any request is made to a Sheriff by or on behalf of a Court in a Hague Convention Country for the evidence of a person residing within his sheriffdom to be taken under section 14 of the Act, that evidence shall be taken in such manner as the Sheriff may direct.

Edinburgh.
29th February 1980.

Emslie,
Lord President
I.P.D.

EXPLANATORY NOTE

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

This Act of Sederunt makes provision for the procedure to be followed in relation to the transmission of maintenance orders made by the Court of Session and Sheriff Court to and the registration in the Sheriff Court of maintenance orders made by Courts in countries in which the Convention on the Recognition and Enforcement of Decisions relating to maintenance obligations concluded at the Hague on 2nd October 1973 is in force. Effect was given to this Convention in the United Kingdom by the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1979 made under the Maintenance Orders (Reciprocal Enforcement) Act 1972.