

SCHEDULE 1

Regulation 5

RECOGNITION AND ENFORCEMENT OF NON-EU MAINTENANCE DECISIONS, AND ESTABLISHMENT AND MODIFICATION OF MAINTENANCE OBLIGATIONS UNDER THE CONVENTION

Interpretation

1.—(1) In this Schedule—

“Contracting State” means a State bound by the Convention other than an EU Member State; “court”, in relation to a maintenance decision given in a Contracting State, includes a tribunal, and any administrative authority (within the meaning of Article 19(3)) with competence to make a decision in respect of a maintenance obligation;

“maintenance decision” means a decision, or part of a decision, made by a court in a Contracting State, to which Chapter V of the Convention applies by virtue of Article 19(1).

(2) In this Schedule, any reference to a numbered Article is a reference to the Article so numbered in the Convention and any reference to a sub-division of a numbered Article shall be construed accordingly.

(3) Anything authorised or required by the Convention or by this Schedule to be done by, to or before a particular magistrates’ court may be done by, to or before any magistrates’ court acting for the same local justice area as that court.

Recognition and enforcement of maintenance decisions made by courts in Contracting States

2.—(1) Subject to sub-paragraph (2), the court in England and Wales to which an application for registration of a maintenance decision under the Convention is to be made is a magistrates’ court.

(2) An application for registration is to be transmitted by the Lord Chancellor to the magistrates’ court designated for these purposes by rules of court (“the registering court”).

(3) Jurisdiction in relation to applications for registration of maintenance decisions lies with the courts of England and Wales if—

- (a) the person against whom enforcement is sought is resident in England and Wales, or
- (b) assets belonging to that person and which are susceptible to enforcement are situated or held in England and Wales.

(4) An application for registration shall be determined in the first instance by the prescribed officer of the registering court.

In this sub-paragraph and in sub-paragraph (5), “prescribed” means prescribed by rules of court.

(5) The decision of the prescribed officer may be appealed to the registering court in accordance with rules of court.

(6) For the purposes of the enforcement of a maintenance decision registered under the Convention in the registering court—

- (a) the decision shall be of the same force and effect,
- (b) the registering court shall have in relation to its enforcement the same powers, and
- (c) proceedings for or with respect to its enforcement may be taken,

as if the decision had originally been made by the registering court.

(7) Sub-paragraph (6) is subject to sub-paragraph (8).

(8) A maintenance decision which is so registered shall be enforceable in a magistrates’ court in England and Wales in the same manner as a maintenance order made by that court, save that sections

Status: This is the original version (as it was originally made).

76 and 93 of the Magistrates' Courts Act 1980 have effect as modified by section 5(5B) and (5C) of the Civil Jurisdiction and Judgments Act 1982(1).

In this sub-paragraph "maintenance order" has the meaning given by section 150(1) of the Magistrates' Courts Act 1980(2).

(9) Sub-paragraph (6) is also subject to—

- (a) paragraph 3;
- (b) any provision made by rules of court as to the procedure for the enforcement of maintenance decisions registered in accordance with this paragraph.

(10) The debtor under a maintenance decision registered in accordance with this paragraph in a magistrates' court in England and Wales must give notice of any change of address to the designated officer for that court.

In this sub-paragraph, "debtor" has the meaning given by Article 3.

(11) A person who without reasonable excuse fails to comply with sub-paragraph (10) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Interest on judgments

3.—(1) Subject to sub-paragraphs (2) and (3) and rules of court as to the payment of interest under this paragraph, where a person applying for registration of a maintenance decision shows that—

- (a) the decision provides for the payment of money, and
- (b) in accordance with the law of the Contracting State in which the maintenance decision was given and the terms of the decision, interest on that sum is recoverable at a particular rate and from a particular date or time,

the debt resulting from registration of the decision is to carry interest at that rate and from that date or time.

(2) Interest is not recoverable under sub-paragraph (1) unless the rate of interest and the date or time referred to in sub-paragraph (1)(b) are registered with the decision.

(3) Interest on arrears of sums payable under a maintenance decision registered under the Convention in a magistrates' court in England and Wales shall not be recoverable in that court.

But this sub-paragraph does not affect the operation in relation to any such maintenance decision of section 2A of the Maintenance Orders Act 1958(3) (which enables interest to be recovered if the decision is registered for enforcement in the High Court).

(4) Except as mentioned in sub-paragraph (3), debts under maintenance decisions registered in England and Wales under the Convention shall carry interest only as provided by this paragraph.

Currency of payments under a maintenance decision

4.—(1) Sums payable under a maintenance decision registered in England and Wales under the Convention, including any arrears so payable, shall be paid in sterling.

(1) 1982 c.27. Section 5(5B) and (5C) were inserted by section 10 of and paragraph 21 of Schedule 1 to the Maintenance Enforcement Act 1991 (c.17). Substituted subsection (5) of section 5(5B) was amended by section 109(1) and paragraph 268 of Schedule 8 to the Courts Act 2003 (c.39).

(2) 1980 c.43. The definition of "maintenance order" in section 150 was amended by regulation 9, and paragraph 9(1) and (6) of Schedule 7 to S.I. 2011/1484.

(3) 1958 c.39. Section 2A was inserted by section 37 and Part II of Schedule 11 to the Civil Jurisdiction and Judgments Act 1982 (c.27).

(2) Where the maintenance decision is expressed in any other currency, the amounts shall be converted on the basis of the exchange rate prevailing on the date on which the application for registration was received by the Lord Chancellor for transmission to a court.

(3) For the purposes of this paragraph, a written certificate purporting to be signed by an officer of any bank in England and Wales and stating the exchange rate prevailing on a specified date shall be evidence of the facts stated.

Proof and admissibility of certain maintenance decisions and related documents

5.—(1) For the purposes of proceedings relating to the Convention a document, duly authenticated, which purports to be a copy of a maintenance decision given by a court in a Contracting State shall without further proof be deemed to be a true copy, unless the contrary is shown.

(2) A document purporting to be a copy of a maintenance decision given by a court in a Contracting State is duly authenticated for the purposes of this paragraph if it purports—

- (a) to bear the seal of that court; or
- (b) to be certified by any person in that person's capacity as a judge or officer of that court to be a true copy of a maintenance decision given by that court.

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

Maintenance arrangements

6.—(1) References in this paragraph to maintenance arrangements are to those maintenance arrangements (as defined in Article 3(e)) which are to be recognised and enforceable in the same way as maintenance decisions by virtue of Article 30.

(2) In relation to a maintenance arrangement which is enforceable as a maintenance decision in the Contracting State of origin, this Schedule applies, subject to the modifications in sub-paragraphs (3), (4) and (5), as if that maintenance arrangement was a maintenance decision given by a court of that State.

(3) Paragraph 2 applies to maintenance arrangements as if—

- (a) in sub-paragraph (6), for “as if the decision had originally” there were substituted “as if it were a decision which had originally”;
- (b) after sub-paragraph (9)(b) there were inserted—

“(c) Article 30(6) (restriction on enforcement where there is a challenge to a maintenance arrangement in the Contracting State of origin).”.

(4) Paragraph 3 applies to maintenance arrangements as if in sub-paragraph (1)(b), for the word “given” there were substituted “concluded”.

(5) Paragraph 5 applies to maintenance arrangements as if—

- (a) in sub-paragraph (1), for “given by a court” there were substituted “formally drawn up or registered as an authentic instrument by, or authenticated by, or concluded, registered or filed with a competent authority”;
- (b) for sub-paragraph (2) there were substituted—

“(2) A document purporting to be a copy of a maintenance arrangement drawn up or registered as an authentic instrument by, or authenticated by, or concluded, registered or filed with a competent authority in a Contracting State is duly authenticated for the purposes of this paragraph if it purports to be certified to be a true copy of such an arrangement by a person duly authorised in that State to do so.”.

(6) Section 18(4) of the Civil Jurisdiction and Judgments Act 1982 does not apply to maintenance arrangements.

Applications for establishment or modification of maintenance in England and Wales

7.—(1) Upon receipt of an application submitted under Article 10 for establishment or modification of a decision, the Lord Chancellor shall send that application to the designated officer for the magistrates' court in the local justice area in which the respondent is residing.

(2) Upon receipt of the application under sub-paragraph (1), the designated officer of that court shall decide—

- (a) whether the courts of England and Wales have jurisdiction to determine the application by virtue of the Maintenance Regulation and Schedule 6 to the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011⁽⁵⁾; and
- (b) if so, whether the magistrates' court has power to make the decision or modification sought under—
 - (i) the Domestic Proceedings and Magistrates' Courts Act 1978⁽⁶⁾, or
 - (ii) section 15 of and Schedule 1 to the Children Act 1989⁽⁷⁾.

(3) Where the designated officer decides under sub-paragraph (2)(a) that the courts of England and Wales do not have jurisdiction to determine the application, the designated officer shall return the application to the Lord Chancellor with a written explanation of the reasons for that decision.

(4) Where the designated officer decides under sub-paragraph (2)(b) that the magistrates' court does not have power to make the decision or modification sought, the designated officer shall send the application to—

- (a) the High Court, or
- (b) a county court

as appears to the designated officer be appropriate.

(5) Subject to sub-paragraph (6), if the designated officer decides under sub-paragraph (2)(b) that the magistrates' court has power to make the decision or modification sought, the designated officer shall issue the application and serve it on the respondent.

(6) If the respondent does not reside in the local justice area for which the magistrates' court acts, the designated officer shall—

- (a) if satisfied that the respondent is residing within another local justice area, send the application to the designated officer of a magistrates' court acting in that other area and inform the Lord Chancellor that it has been so sent; or
- (b) if unable to establish where the respondent is residing, return the application to the Lord Chancellor.

(7) A designated officer who receives an application by virtue of sub-paragraph (6)(a) shall proceed under sub-paragraph (5) as if that designated officer had decided that the magistrates' court has power to make the decision or modification sought.

(8) Where the designated officer has determined in accordance with sub-paragraph (2)(b) that the magistrates' court has power to make the decision or modification sought, the application shall be treated for the purpose of establishment or modification of a decision under the Convention as an

(4) 1982 c.27.

(5) S.I. 2011/1484.

(6) 1978 c.22.

(7) 1989 c.41.

application under the Domestic Proceedings and Magistrates' Courts Act 1978, or under section 15 of and Schedule 1 to the Children Act 1989, as appropriate.

(9) In this paragraph—

“respondent” means the person who is alleged in an application for establishment of a decision under Article 10 to owe maintenance, or where the application is for modification of a decision, the applicant for the original decision; and

a reference to an application is a reference to an application together with any documents which accompany it.