

PRACTICE DIRECTION 34A

RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS

This Practice Direction supplements FPR Part 34

Noting Record of Means of Payment

- 1.1** Where a magistrates' court orders payments under a maintenance order to which Part 34 applies to be made in a particular way, the court must record that on a copy of the order.
- 1.2** If the court orders payment to be made to the court officer of a magistrates' court by a method referred to in section 59(6) of the Magistrates' Courts Act 1980, the court may vary the method of payment on the application of an interested party and where it does so the court must record the variation on a copy of the order.

(Section 59(6) refers to payment by standing order or other methods which require transfer between accounts of a specific amount on a specific date during the period for which the authority to make the payment is in force.)

Notification by court officer

- 2.1** The court officer must, as soon as practicable, notify in writing the person liable to make the payments of the method by which they must be made.
- 2.2** If the court orders payment to be made to the court officer of a magistrates' court by a method referred to in section 59(6) of the Magistrates' Courts Act 1980 the court officer must inform the person liable to make the payments of the number and location of the account to which the payments must be made.
- 2.3** If the court varies the method of payment on the application of an interested party the court officer must, as soon as practicable, notify all interested parties in writing of the result of an application (including a decision to refer it to the court).

Applications under section 2 of the 1920 Act

- 3.1** This paragraph refers to an application for the transmission of a maintenance order to a reciprocating country under section 2 of the 1920 Act in accordance with rule 34.10.
- 3.2** The applicant's written evidence must include such information as may be required by the law of the reciprocating country for the purpose of enforcement of the order.
- 3.3** If, in accordance with section 2 of the 1920 Act, the court sends a maintenance order to the Lord Chancellor for transmission to a reciprocating country, it shall record the fact in the court records.

Applications under section 2 of the 1972 Act (rule 34.14)

Introduction

- 4.1** An application for a maintenance order to be sent to a reciprocating country under section 2 of the 1972 Act is made by lodging specified documents with the court. The documents to be lodged vary according to which country it is intended that the maintenance order is to be sent and the requirements are set out in this paragraph.

General provision

- 4.2** The general requirement is that the following documents should be lodged with the court –
- (a)** an affidavit by the applicant stating –
 - (i)** the reason that the applicant has for believing that the payer under the maintenance order is residing in the reciprocating country; and
 - (ii)** the amount of any arrears due to the applicant under the order, the date to which those arrears have been calculated and the date on which the next payment under the order falls due;
 - (b)** a certified copy of the maintenance order;
 - (c)** a statement giving such information as the applicant has as to the whereabouts of the payer;
 - (d)** a statement giving such information as the applicant has for facilitating the identification of the payer, (including, if known to the applicant, the name and address of any employer of the payer, his occupation and the date and place of issue of any passport of the payer); and
 - (e)** if available to the applicant, a photograph of the payer.

Republic of Ireland

- 4.3** If the country to which it is intended to send the maintenance order is the Republic of Ireland, then the following changes to the general requirements apply.
- 4.4** The applicant must lodge the following documents with the court in addition to those set out in paragraph 4.2 –
- (a)** a statement as to whether or not the payer appeared in the proceedings in which the maintenance order was made;
 - (b)** if the payer did not so appear –
 - (i)** the original of a document which establishes that notice of the institution of proceedings was served on the payer; or
 - (ii)** a copy of such a document certified by the applicant or the applicant's solicitor to be a true copy;
 - (c)** a document which establishes that notice of the order was sent to the payer; and
 - (d)** if the payee received legal aid in the proceedings in which the order was made, a copy certified by the applicant or the applicant's solicitor to be a true copy of the legal aid certificate.

Hague Convention Country

- 4.5** If the country to which it is intended to send the maintenance order is a Hague Convention country, then the following changes to the general requirements apply.

- 4.6** In addition to the matters stated in that paragraph, the affidavit referred to in paragraph 4.2(a) must also state whether the time for appealing against the maintenance order has expired and whether an appeal is pending.
- 4.7** The applicant must lodge the following documents with the court in addition to those set out in paragraph 4.2 –
- (a) a statement as to whether or not the payer appeared in the proceedings in which the maintenance order was made;
 - (b) if the payer did not so appear –
 - (i) the original of a document which establishes that notice of the institution of proceedings, including notice of the substance of the claim, was served on the payer; or
 - (ii) a copy of such a document certified by the applicant or the applicant's solicitor to be a true copy;
 - (c) a document which establishes that notice of the order was sent to the payer;
 - (d) a written statement as to whether or not the payee received legal aid in the proceedings in which the order was made, or in connection with the application under section 2 of the 1972 Act; and
 - (e) if the payee did receive legal aid, a copy certified by the applicant or the applicant's solicitor to be a true copy of the legal aid certificate.

United States of America

- 4.8** If the country to which it is intended to send the maintenance order is a specified State of the United States of America, then the following changes to the general requirements apply.
- 4.9** There is no requirement to lodge a statement giving information as to the whereabouts of the payer since this information must be contained in the affidavit as mentioned in paragraph 4.10.
- 4.10** In addition to the matters stated in that paragraph, the affidavit referred to in paragraph 4.2(a) must also state –
- (a) the address of the payee;
 - (b) such information as is known as to the whereabouts of the payer; and
 - (c) a description, so far as is known, of the nature and location of any assets of the payer available for execution.
- 4.11** The applicant must lodge three certified copies of the maintenance order.

Notification to the Lord Chancellor

- 5.1** Where, in accordance with Part 1 of the 1972 Act, a magistrates' court registers a maintenance order sent to it from a Hague Convention Country, the court officer must send written notice of the registration to the Lord Chancellor.

Notification of means of enforcement

- 6.1** The court officer of a magistrates' court must take reasonable steps to notify the person to whom payments are due under a registered order of the means of enforcement available in respect of it.
- 6.2** Notification of the means of enforcement includes, where appropriate, notification of the possibility of registration of the order in the High Court under Part I of the Maintenance Orders Act 1958.

Certified copies of orders issued under rule 34.39

- 7.1** In an application under rule 34.39 by a person wishing to enforce abroad a maintenance order obtained in a magistrates' court, the certified copy of the order will be a sealed copy and will be accompanied by a certificate signed by the court officer.
- 7.2** In an application under the 1982 Act, the certificate signed by the court officer must state that it is a true copy of the order concerned and must give particulars of the proceedings in which it was made.
- 7.3** In an application under the Judgments Regulation, the certificate will be in the form of Annex V to the Regulation.
- 7.4** In an application under the Lugano Convention, the certificate will be in the form of Annex V to the Convention.

Countries and Territories in which Sums are Payable through Crown Agents for Overseas Governments and Territories (rule 34.23)

- 8.1** Gibraltar, Barbados, Bermuda, Ghana, Kenya, Fiji, Hong Kong, Singapore, Turks and Caicos Islands, United Republic of Tanzania (except Zanzibar), Anguilla, Falkland Islands and Dependencies, St Helena.

Part 1 of the 1972 Act – Modified Rules

- 9.1** The annexes to this Practice Direction set out rules 34.14 to 34.25 as they are modified –
 - (a)** in relation to the Republic of Ireland, by rule 34.26 (Annex 1);
 - (b)** in relation to the Hague Convention Countries, by rule 34.27 (Annex 2); and
 - (c)** in relation to Specified States of the United States of America, by rule 34.28 (Annex 3).
- 9.2** The statutory references in the annexes are construed in accordance with rule 34.26(2), 34.27(2) or 34.28(2) as the case may be.

Annex 1

Application of Section 1 of Chapter 2 of Part 34 to the Republic of Ireland

Application for transmission of maintenance order to the Republic of Ireland

- 34.14** An application for a maintenance order to be sent to the Republic of Ireland under section 2 of the 1972 Act must be made in accordance with Practice Direction 34A.

Certification of evidence given on provisional orders

- 34.15** A document setting out or summarising evidence is authenticated by a court in England and Wales by a certificate signed, as appropriate, by –

- (a) one of the justices; or
- (b) the District Judge (Magistrates' Courts),
before whom that evidence was given.

(Section 3(5)(b) or 5(3) of the 1972 Act require a document to be authenticated by the court.)

Confirmation of a provisional order_..

- 34.16** [This rule does not apply to the Republic of Ireland]

Consideration of confirmation of a provisional order made by a magistrates' court

34.17

- (1) This rule applies where –
 - (a) a magistrates' court has made a provisional order by virtue of section 3 of the 1972 Act;
 - (b) the payer has made representations or adduced evidence to the court; and
 - (c) the court has fixed a date for the hearing at which it will consider confirmation of the order.
- (2) The court officer must serve on the applicant for the provisional order –
 - (a) a copy of the representations or evidence; and
 - (b) written notice of the date fixed for the hearing.

Notification of variation or revocation of a maintenance order by the High Court

- 34.18** Where the High Court makes an order varying or revoking an order to which section 5 of the 1972 Act applies the court officer must send –

- (a) a certified copy of the order of variation or revocation; and
- (b) a statement as to the service on the payer of the documents mentioned in section 5(3) of the 1972 Act;
to the court in the Republic of Ireland.

(Rule 34.22 provides for the transmission of documents to a court in a reciprocating country.)

Notification of variation or revocation of a maintenance order by the High Court

- 34.19** Where a magistrates' court makes an order revoking an order to which section 5 of the 1972 Act applies, the court officer must send written notice of the making of the order to the Lord Chancellor.

(Section 5 of the 1972 Act applies to a maintenance order sent to the Republic of Ireland in accordance with section 2 of that Act and a provisional order made by a magistrates' court in accordance with section 3 of that Act which has been confirmed by such a court.)

(Provision in respect of notification of variation of a maintenance order by a magistrates' court under the 1972 Act is made in Rules made under section 144 of the Magistrates' Courts Act 1980.)

Taking of evidence for court in the Republic of Ireland

34.20

- (1) This rule applies where a request is made by or on behalf of a court in the Republic of Ireland for the taking of evidence for the purpose of proceedings relating to a maintenance order to which Part 1 of the 1972 Act applies.

(Section 14 of the 1972 Act makes provision for the taking of evidence needed for the purpose of certain proceedings.)

- (2) The High Court has power to take the evidence where –
- (a) the request for evidence relates to a maintenance order made by a superior court in the United Kingdom; and
 - (b) the witness resides in England and Wales.
- (3) The county court has power to take the evidence where –
- (a) the request for evidence relates to a maintenance order made by a county court; and
 - (b) the maintenance order has not been registered in a magistrates' court under the 1958 Act.
- (4) The following magistrates' courts have power to take the evidence, that is –
- (a) where the proceedings in the Republic of Ireland relate to a maintenance order made by a magistrates' court, the court which made the order;
 - (b) where the proceedings relate to an order which is registered in a magistrates' court, the court in which the order is registered; and
 - (c) a magistrates' court to which the Secretary of State sends the request to take evidence.
- (5) A magistrates' court not mentioned in paragraph (4) has power to take the evidence if the magistrates' court which would otherwise have that power consents because the evidence could be taken more conveniently.
- (6) The evidence is to be taken in accordance with Part 22.

Request for the taking of evidence by a court ...

- 34.21** [This rule does not apply to the Republic of Ireland]

Transmission of documents

34.22

- (1) This rule applies to any document, including a notice or request, which is required to be sent to a court in the Republic of Ireland by –
 - (a) Part 1 of the 1972 Act; or
 - (b) Section 1 of Chapter 2 of this Part of these Rules.
- (2) The document must be sent to the Lord Chancellor for transmission to the court in the Republic of Ireland.

Method of payment under registered orders

34.23

- (1) Where an order is registered in a magistrates' court in accordance with section 6(3) of the 1972 Act, the court must order that the payment of sums due under the order be made –
 - (a) to the court officer for the registering court; and
 - (b) at such time and place as the court officer directs.

(Section 6(3) of the 1972 Act makes provision for the registration of maintenance orders made in the Republic of Ireland.)

- (2) Where the court orders payment to be made to the court officer, the court officer must send the payments by post –
 - (a) to the payee under the order; or
 - (b) where a public authority has been authorised by the payee to receive the payments, to that public authority.

(Practice Direction 34A contains further provisions relating to the payment of sums due under registered orders.)

Enforcement of payments under registered orders

34.24

- (1) This rule applies where periodical payments under a registered order are in arrears.
- (2) The court officer must, on the written request of the payee, proceed in that officer's own name for the recovery of the sums due unless of the view that it is unreasonable to do so.
- (3) If the sums due are more than 4 weeks in arrears the court officer must give the payee notice in writing of that fact stating the particulars of the arrears.

Notification of registration and cancellation

34.25 The court officer must send written notice to –

- (a) the Lord Chancellor, on the due registration of an order under section 6(3) or 10(4) of the 1972 Act; and
- (b) to the payer under the order, on –
 - (i) the registration of an order under section 10(4) of the 1972 Act; or
 - (ii) the cancellation of the registration of an order under section 10(1) of that Act.

Other notices under section 6 of the 1972 Act

34.25A

- (1) A notice required under section 6(6) or (10) of the 1972 Act must be in the form referred to in a practice direction.
- (2) Where a magistrates' court sets aside the registration of an order following an appeal under section 6(7) of the 1972 Act, the court officer must send written notice of the court's decision to the payee.

(Section 6(6) of the 1972 Act provides for notice of registration in a United Kingdom court of a maintenance order made in the Republic of Ireland, and section 6(10) of that Act for notice that a maintenance order made in the Republic of Ireland has not been registered in a United Kingdom court.)

Annex 2

Application of Section 1 of Chapter 2 of Part 34 to the Hague Convention Countries

Application for transmission of maintenance order to a Hague Convention Country

- 34.14** An application for a maintenance order to be sent to a Hague Convention Country under section 2 of the 1972 Act must be made in accordance with Practice Direction 34A.

Certification of evidence given on provisional orders

- 34.15** [This rule does not apply to the Hague Convention Countries]

Confirmation of a provisional order made in a reciprocating country

- 34.16** [This rule does not apply to the Hague Convention Countries]

Consideration of revocation of a maintenance order made by a magistrates' court

34.17

- (1) This rule applies where –
 - (a) an application has been made to a magistrates' court by a payee for the revocation of an order to which section 5 of the 1972 Act applies; and
 - (b) the payer resides in a Hague Convention Country.
- (2) The court officer must serve on the payee, by post, a copy of any representations or evidence adduced by or on behalf of the payer.

(Provision relating to consideration of variation of a maintenance order made by a magistrates' court to which section 5 of the 1972 Act applies is made in Rules made under section 144 of the Magistrates' Courts Act 1980.)

Notification of variation or revocation of a maintenance order by the High Court or a county court

34.18

- (1) This rule applies if the High Court or a county court makes an order varying or revoking a maintenance order to which section 5 of the 1972 Act applies.
- (2) If the time for appealing has expired without an appeal having been entered, the court officer will send to the Lord Chancellor –
 - (a) the documents required by section 5(8) of the 1972 Act; and
 - (b) a certificate signed by the district judge stating that the order of variation or revocation is enforceable and no longer subject to the ordinary forms of review.
- (3) A party who enters an appeal against the order of variation or revocation must, at the same time, give written notice to the court officer.

Notification of confirmation or revocation of a maintenance order by a magistrates' court

34.19 [This rule does not apply to the Hague Convention Countries]

Taking of evidence for court in a Hague Convention Country

34.20

- (1) This rule applies where a request is made by or on behalf of a court in a Hague Convention Country for the taking of evidence for the purpose of proceedings relating to a maintenance order to which Part 1 of the 1972 Act applies.

(Section 14 of the 1972 Act makes provision for the taking of evidence needed for the purpose of certain proceedings.)

- (2) The High court has power to take the evidence where –
- (a) the request for evidence relates to a maintenance order made by a superior court in the United Kingdom; and
 - (b) the witness resides in England and Wales.
- (3) The county court has power to take the evidence where –
- (a) the request for evidence relates to a maintenance order made by a county court; and
 - (b) the maintenance order has not been registered in a magistrates' court under the 1958 Act.
- (4) The following magistrates' courts have power to take the evidence, that is –
- (a) where the proceedings in the Hague Convention Country relate to a maintenance order made by a magistrates' court, the court which made the order;
 - (b) where the proceedings relate to an order which is registered in a magistrates' court, the court in which the order is registered; and
 - (c) a magistrates' court to which the Secretary of State sends the request to take evidence.
- (5) A magistrates' court not mentioned in paragraph (4) has power to take the evidence if the magistrates' court which would otherwise have that power consents because the evidence could be taken more conveniently.
- (6) The evidence is to be taken in accordance with Part 22.

Request for the taking of evidence by a court in a Hague Convention country

34.21 [This rule does not apply to the Hague Convention countries.]

Transmission of documents

34.22

- (1) This rule applies to any document, including a notice or request, which is required to be sent to a court in a Hague Convention country by –
- (a) Part 1 of the 1972 Act; or
 - (b) Section 1 of Chapter 2 of this Part of these Rules.
- (2) The document must be sent to the Lord Chancellor for transmission to the court in the Hague Convention country.

Method of payment under registered orders

34.23

- (1) Where an order is registered in a magistrates' court in accordance with section 6(3) of the 1972 Act, the court must order that the payment of sums due under the order be made –
 - (a) to the court officer for the registering court; and
 - (b) at such time and place as the court officer directs.

(Section 6(3) of the 1972 Act makes provision for the registration of maintenance orders made in a Hague Convention country.)

- (2) Where the court orders payment to be made to the court officer, the court officer must send the payments by post to the payee under the order.

(Practice Direction 34A contains further provision relating to the payment of sums due under registered orders.)

Enforcement of payments under registered orders

34.24

- (1) This rule applies where a court has ordered periodical payments under a registered maintenance order to be made to the court officer.
- (2) The court officer must take reasonable steps to notify the payee of the means of enforcement available.
- (3) Paragraph (4) applies where periodical payments due under a registered order are in arrears.
- (4) The court officer, on that officer's own initiative –
 - (a) may; or
 - (b) if the sums due are more than 4 weeks in arrears, must, proceed in that officer's own name for the recovery of the sums due unless of the view that it is unreasonable to do so.

Notification of registration and cancellation

34.25 The court officer must send written notice to –

- (a) the Lord Chancellor, on the due registration of an order under section 10(4) of the 1972 Act; and
- (b) the payer under the order, on –
 - (i) the registration of an order under section 10(4) of the 1972 Act; or
 - (ii) the cancellation of the registration of an order under section 10(1) of the 1972 Act.

General provisions as to notices

34.25A

- (1) A notice to a payer of the registration of an order in a magistrates' court in accordance with section 6(3) of the 1972 Act must be in the form referred to in a practice direction.

(Section 6(8) of the 1972 Act requires notice of registration to be given to the payer.)

- (2) If the court sets aside the registration of a maintenance order following an appeal under section 6(9) of the 1972 Act, the court officer must send written notice of the decision to the Lord Chancellor.
- (3) A notice to a payee that the court officer has refused to register an order must be in the form referred to in a practice direction.

(Section 6(11) of the 1972 Act requires notice of refusal of registration to be given to the payee.)
- (4) Where, under any provision of Part 1 of the 1972 Act, a court officer serves a notice on a payer who resides in a Hague Convention Country, the court officer must send to the Lord Chancellor a certificate of service.

Annex 3

Application for Section 1 of Chapter 2 of Part 34 to the United States of America

Application for transmission of maintenance order to the United States of America

- 34.14** An application for a maintenance order to be sent to the United States of America under section 2 of the 1972 Act must be made in accordance with Practice Direction 34A.

Certification of evidence given on provisional orders

- 34.15** [This rule does not apply to the United States of America]

Confirmation of a provisional order made in a reciprocating country

- 34.16** [This rule does not apply to the United States of America]

Consideration of revocation of a maintenance order made by a magistrates' court

34.17

- (1) This rule applies where –
 - (a) an application has been made to a magistrates' court by a payee for the revocation of an order to which section 5 of the 1972 Act applies; and
 - (b) the payer resides in the United States of America.
- (2) The court officer must serve on the payee by post a copy of any representations or evidence adduced by or on behalf of the payer.

(Provision relating to consideration of variation of a maintenance order made by a magistrates' court to which section 5 of the 1972 Act applies is made in rules made under section 144 of the Magistrates' Courts Act 1980.)

Notification of variation or revocation

- 34.18** If the High Court or a county court makes an order varying or revoking a maintenance order to which section 5 of the 1972 Act applies, the court officer will send to the Lord Chancellor the documents required by section 5(7) of that Act.

Notification of confirmation or revocation of a maintenance order by a magistrates' court

- 34.19** [This rule does not apply to the United States of America]

Taking of evidence for court in United States of America

34.20

- (1) This rule applies where a request is made by or on behalf of a court in the United States of America for the taking of evidence for the purpose of proceedings relating to a maintenance order to which Part 1 of the 1972 Act applies.

(Section 14 of the 1972 Act makes provision for the taking of evidence needed for the purpose of certain proceedings.)

- (2) The High Court has power to take the evidence where –
 - (a) the request for evidence relates to a maintenance order made by a superior court in the United Kingdom; and
 - (b) the witness resides in England and Wales.
- (3) The county court has power to take the evidence where –
 - (a) the request for evidence relates to a maintenance order made by a county court; and
 - (b) the maintenance order has not been registered in a magistrates' court under the 1958 Act.
- (4) The following magistrates' courts have power to take the evidence, that is –
 - (a) where the proceedings in the United States of America relate to a maintenance order made by a magistrates' court, the court which made the order;
 - (b) where the proceedings relate to an order which is registered in a magistrates' court, the court in which the order is registered; and
 - (c) a magistrates' court to which the Secretary of State sends the request to take evidence.
- (5) A magistrates' court not mentioned in paragraph (4) has power to take the evidence if the magistrates' court which would otherwise have that power consents because the evidence could be taken more conveniently.
- (6) The evidence is to be taken in accordance with Part 22.

Request for the taking of evidence by a court in a reciprocating country

34.21 [This rule does not apply to the United States of America]

Transmission of documents

34.22

- (1) This rule applies to any document, including a notice or request, which is required to be sent to a court in the United States of America by –
 - (a) Part 1 of the 1972 Act; or
 - (b) Section 1 of Chapter 2 of this Part of these Rules.
- (2) The document must be sent to the Lord Chancellor for transmission to the court in the United States of America.

Method of payment under registered orders

34.23

- (1) Where an order is registered in a magistrates' court in accordance with section 6(3) of the 1972 Act, the court must order that the payment of sums due under the order be made –
 - (a) to the court officer for the registering court; and
 - (b) at such time and place as the court officer directs.

(Section 6(3) of the 1972 Act makes provision for the registration of maintenance orders made in the United States of America.)

- (2) Where the court orders payment to be made to the court officer, the court officer must send the payments by post to the payee under the order.

(Practice Direction 34A contains further provisions relating to the payment of sums due under registered orders.)

Enforcement of payments under registered orders

34.24

- (1) This rule applies where a court has ordered periodical payments under a registered maintenance order to be made to the court officer.
- (2) The court officer must take reasonable steps to notify the payee of the means of enforcement available.
- (3) Paragraph (4) applies where periodical payments due under a registered order are in arrears.
- (4) The court officer, on that officer's own initiative –
 - (a) may; or
 - (b) if the sums due are more than 4 weeks in arrears, must, proceed in that officer's own name for the recovery of the sums due unless of the view that it is unreasonable to do so.

Notification of registration and cancellation

34.25 The court officer must send written notice to –

- (a) the Lord Chancellor, on the due registration of an order under section 10(4) of the 1972 Act; or
- (b) the payer under the order, on –
 - (i) the registration of an order under section 10(4) of the 1972 Act; or
 - (ii) the cancellation of the registration of an order under section 10(1) of that Act.

