

# RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS

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### **34.1 Scope and interpretation of this Part**

- (1) This Part contains rules about the reciprocal enforcement of maintenance orders.
- (2) In this Part
  - the 1920 Act means the Maintenance Orders (Facilities for Enforcement) Act 1920<sup>1</sup>;
  - the 1972 Act means the Maintenance Orders (Reciprocal Enforcement) Act 1972;
  - the 1982 Act means the Civil Jurisdiction and Judgments Act 1982;
  - the 1988 Convention means the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters done at Lugano on 16th September 1988;
  - the Judgments Regulation means Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; and
  - the Lugano Convention means the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, between the European Community and the Republic of Iceland, the Kingdom of Norway, the Swiss Confederation and the Kingdom of Denmark signed on behalf of the European Community on 30th October 2007.
- (3) Chapter 1 of this Part relates to the enforcement of maintenance orders in accordance with the 1920 Act.
- (4) Chapter 2 of this Part relates to the enforcement of maintenance orders in accordance with Part 1 of the 1972 Act.
- (5) Chapter 3 of this Part relates to the enforcement of maintenance orders in accordance with
  - (a) the 1982 Act;
  - (b) the Judgments Regulation;
  - (c) the Lugano Convention; and
  - (d) the Maintenance Regulation.

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<sup>1</sup> 1920 c.33.

### **34.2 Meaning of prescribed officer in a magistrates' court**

- (1) For the purposes of the 1920 Act, the prescribed officer in relation to a magistrates' court is the designated officer for that court.
- (2) For the purposes of Part 1 of the 1972 Act and section 5(2) of the 1982 Act, the prescribed officer in relation to a magistrates' court is the justices' clerk for the local justice area in which the court is situated.

### **34.3 Registration of maintenance orders in magistrates' courts in England and Wales**

Where a magistrates' court is required by any of the enactments referred to in rule 34.1(2) or by virtue of the Maintenance Regulation to register a foreign order the court officer must

- (a) enter and sign a memorandum of the order in the register kept in accordance with rules made under section 144 of the Magistrates' Courts Act 1980; and
- (b) state on the memorandum the statutory provision under which the order is registered.

## **I ENFORCEMENT OF MAINTENANCE ORDERS UNDER THE MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) ACT 1920**

### **34.4 Interpretation**

- (1) In this Chapter  
payer, in relation to a maintenance order, means the person liable to make the payments for which the order provides; and  
reciprocating country means a country or territory to which the 1920 Act extends.
- (2) In this Chapter, an expression defined in the 1920 Act has the meaning given to it in that Act.

### **34.5 Confirmation of provisional orders made in a reciprocating country**

- (1) This rule applies where, in accordance with section 4(1) of the 1920 Act<sup>1</sup>, the court officer receives a provisional maintenance order.
- (2) The court must fix the date, time and place for a hearing.
- (3) The court officer must register the order in accordance with rule 34.3.
- (4) The court officer must serve on the payer
  - (a) certified copies of the provisional order and accompanying documents; and
  - (b) a notice
    - (i) specifying the time and date fixed for the hearing; and
    - (ii) stating that the payer may attend to show cause why the order should not be confirmed.
- (5) The court officer must inform
  - (a) the court which made the provisional order; and
  - (b) the Lord Chancellor,  
whether the court confirms, with or without modification, or decides not to confirm, the order.

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<sup>1</sup> Section 4(1) was amended by article 4(1) and (2) of the Transfer of Functions (Magistrates' Courts and Family Law) Order 1992 (S.I.1992/709) and section 1(1) of and paragraph 2(2) of Schedule 1 to the Maintenance Orders (Reciprocal Enforcement) Act 1992 (c.56).

### **34.6 Payment of sums due under registered orders**

Where an order made by a reciprocating country is registered in a magistrates' court, the court must order payments due to be made to the court officer.

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

### **34.7 Enforcement of sums due under registered orders**

- (1)** This rule applies to
  - (a) an order made in a reciprocating country which is registered in a magistrates' court; and
  - (b) a provisional order made in a reciprocating country which has been confirmed by a magistrates' court.
- (2)** The court officer must
  - (a) collect the monies due under the order in the same way as for a magistrates' court maintenance order; and
  - (b) send the monies collected to
    - (i) the court in the reciprocating country which made the order; or
    - (ii) such other person or authority as that court or the Lord Chancellor may from time to time direct.
- (3)** The court officer may take proceedings in that officer's own name for enforcing payment of monies due under the order.

### **34.8 Prescribed notice for the taking of further evidence**

- (1)** This rule applies where a court in a reciprocating country has sent a provisional order to a magistrates' court for the purpose of taking further evidence.
- (2)** The court officer must send a notice to the person who applied for the provisional order specifying
  - (a) the further evidence required; and
  - (b) the time and place fixed for taking the evidence.

### **34.9 Transmission of maintenance orders made in a reciprocating country to the High Court**

A maintenance order to be sent by the Lord Chancellor to the High Court in accordance with section 1(1) of the 1920 Act<sup>1</sup> will be

- (a) sent to the senior district judge who will register it in the register kept for the purpose of the 1920 Act; and
- (b) filed in the principal registry.

### **34.10 Transmission of maintenance orders made in the High Court to a reciprocating country**

- (1)** This rule applies to maintenance orders made in the High Court.

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<sup>1</sup> Section 1(1) was amended by article 4(1) and (2) of the Transfer of Functions (Magistrates' Courts and Family Law) Order 1992.

- (2) An application for a maintenance order to be sent to a reciprocating country under section 2 of the 1920 Act<sup>1</sup> must be made in accordance with this rule.
- (3) The application must be made to a district judge in the principal registry unless paragraph (4) applies.
- (4) If the order was made in the course of proceedings in a district registry, the application may be made to a district judge in that district registry.
- (5) The application must be
  - (a) accompanied by a certified copy of the order; and
  - (b) supported by a record of the sworn written evidence.
- (6) The written evidence must give
  - (a) the applicant's reason for believing that the payer resides in the reciprocating country;
  - (b) such information as the applicant has as to the whereabouts of the payer; and
  - (c) such other information as may be set out in Practice Direction 34A.

### **34.11 Inspection of the register in the High Court**

- (1) A person may inspect the register and request copies of a registered order and any document filed with it if the district judge is satisfied that that person is entitled to, or liable to make, payments under a maintenance order made in
  - (a) the High Court; or
  - (b) a court in a reciprocating country.
- (2) The right to inspect the register referred to in paragraph (1) may be exercised by
  - (a) a solicitor acting on behalf of the person entitled to, or liable to make, the payments referred to in that paragraph; or
  - (b) with the permission of the district judge, any other person.

## **II ENFORCEMENT OF MAINTENANCE ORDERS UNDER PART 1 OF THE 1972 ACT**

### **34.12 Interpretation**

- (1) In this Chapter
  - (a) reciprocating country means a country to which Part 1 of the 1972 Act extends; and
  - (b) relevant court in the reciprocating country means, as the case may be
    - (i) the court which made the order which has been sent to England and Wales for confirmation;
    - (ii) the court which made the order which has been registered in a court in England and Wales;
    - (iii) the court to which an order made in England and Wales has been sent for registration; or
    - (iv) the court to which a provisional order made in England and Wales has been sent for confirmation.
- (2) In this Chapter, an expression defined in the 1972 Act has the meaning given to it in that Act.
- (3) In this Chapter, Hague Convention Countries means the countries listed in Schedule 1 to the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1993.

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<sup>1</sup> Section 2 was amended by article 4(1) and (2) of the Transfer of Functions (Magistrates' Courts and Family Law) Order 1992.

### **34.13 Scope**

- (1) Section 1 of this Chapter contains rules relating to the reciprocal enforcement of maintenance orders under Part 1 of the 1972 Act.
- (2) Section 2 of this Chapter modifies the rules contained in Section 1 of this Chapter in their application to
  - (a) omitted
  - (b) the Hague Convention Countries; and
  - (c) the United States of America.

(Practice Direction 34A sets out in full the rules for the Hague Convention Countries and the United States of America as modified by Section 2 of this Chapter.)

#### **SECTION 1**

*Reciprocal enforcement of maintenance orders under Part 1 of the 1972 Act*

### **34.14 Application for transmission of maintenance order to reciprocating country**

An application for a maintenance order to be sent to a reciprocating country under section 2 of the 1972 Act must be made in accordance with Practice Direction 34A.

### **34.15 Certification of evidence given on provisional orders**

A document setting out or summarising evidence is authenticated by a court in England and Wales by a certificate signed, as the case may be, by

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

(Section 3(5)(b), 5(4) and 9(5) of the 1972 Act require a document to be authenticated by the court.)

### **34.16 Confirmation of a provisional order made in a reciprocating country**

- (1) This rule applies to proceedings for the confirmation of a provisional order made in a reciprocating country.
- (2) Paragraph (3) applies on receipt by the court of
  - (a) a certified copy of the order; and
  - (b) the documents required by the 1972 Act to accompany the order.
- (3) On receipt of the documents referred to in paragraph (2)
  - (a) the court must fix the date, time and place for a hearing or a directions appointment; and
  - (b) the court officer must send to the payer notice of the date, time and place fixed together with a copy of the order and accompanying documents.
- (4) The date fixed for the hearing must be not less than 21 days beginning with the date on which the court officer sent the documents to the payer in accordance with paragraph (2).
- (5) The court officer will send to the relevant court in the reciprocating country a certified copy of any order confirming or refusing to confirm the provisional order.
- (6) This rule does not apply to the confirmation of a provisional order made in a reciprocating country varying a maintenance order to which sections 5(5) or 9(6) of the 1972 Act applies.

(Section 5(5) and 7 of the 1972 Act provide for proceedings for the confirmation of a provisional order.)

(Provision in respect of confirmation of a provisional order varying a maintenance order under the 1972 Act is in rules made under section 144 of the Magistrates' Courts Act 1980).

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

### **34.17 Consideration of revocation of a provisional order made by a magistrates' court**

(1) This rule applies where

- (a) a magistrates' court has made a provisional order by virtue of section 3 of the 1972 Act;
- (b) before the order is confirmed, evidence is taken by the court or received by it as set out in section 5(9) of the 1972 Act; and
- (c) on consideration of the evidence the court considers that the order ought not to have been made.

(Section 5(9) of the 1972 Act provides that a magistrates' court may revoke a provisional order made by it, before the order has been confirmed in a reciprocating country, if it receives new evidence.)

(2) The court officer must serve on the person who applied for the provisional order (the applicant) a notice which must

- (a) set out the evidence taken or received by the court;
- (b) inform the applicant that the court considers that the order ought not to have been made; and
- (c) inform the applicant that the applicant may
  - (i) make representations in relation to that evidence either orally or in writing; and
  - (ii) adduce further evidence.

(3) If an applicant wishes to adduce further evidence

- (a) the applicant must notify the court officer at the court which made the order;
- (b) the court will fix a date for the hearing of the evidence; and
- (c) the court officer will notify the applicant in writing of the date fixed.

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

(1) This rule applies where

- (a) a maintenance order has been sent to a reciprocating country in pursuance of section 2 of the 1972 Act; and
- (b) the court makes an order, not being a provisional order, varying or revoking that order.

(2) The court officer must send a certified copy of the order of variation or revocation to the relevant court in the reciprocating country.

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

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

- (1)** This rule applies where a magistrates' court makes an order
  - (a) not being a provisional order, revoking a maintenance order to which section 5 of the 1972 Act<sup>1</sup> applies;
  - (b) under section 9 of the 1972 Act, revoking a registered order; or
  - (c) under section 7(2) of the 1972 Act<sup>2</sup>, confirming an order to which section 7 of that Act applies.
- (2)** The court officer must send written notice of the making, revocation or confirmation of the order, as appropriate, to the relevant court in the reciprocating country.
- (3)** This rule does not apply to a provisional order varying a maintenance order to which sections 5 or 9 of the 1972 Act apply.

(Section 5 of the 1972 Act applies to a provisional order made by a magistrates' court in accordance with section 3 of that Act which has been confirmed by a court in a reciprocating country.)

(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.)

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

### **34.20 Taking of evidence for court in reciprocating country**

- (1)** This rule applies where a request is made by or on behalf of a court in a reciprocating 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<sup>3</sup> 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 reciprocating country relate to a maintenance order made by a magistrates' court, the court which made the order;

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1 Section 5 was amended by section 1 (2) of and paragraph 7 of Schedule 1 to the Maintenance Orders (Reciprocal Enforcement) Act 1992 and article 185(1) of and paragraph 67 of Schedule 9 to the Children (Northern Ireland) Order 1995 (S.I. 1995/755) and section 54(a) and (b) of the Domestic Proceedings and Magistrates' Courts Act 1978.

2 Section 7(2) was amended by section 1(2) of and paragraphs 8(2) to (5) of Schedule 1 to the Maintenance Orders (Reciprocal Enforcement) Act 1992.

3 Section 14 was amended by article 14(1) of and paragraph 22 of Schedule 5 to the Northern Ireland (Modification of Enactments - No 1) Order 1973 (S.I. 1973/2163) and section 154 of and paragraph 105 of Schedule 7 to the Magistrates' Courts Act 1980 and article 170(2) of and paragraph 21 of Schedule 6 to the Magistrates' Courts (Northern Ireland) Order 1981.



- (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 Lord Chancellor 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.

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

- (1) This rule applies where a request is made by a magistrates' court for the taking of evidence in a reciprocating country in accordance with section 14(5) of the 1972 Act.
  - (2) The request must be made in writing to the court in the reciprocating country.
- (Rule 34.22 provides for the transmission of documents to a court in a reciprocating country.)

#### **34.22 Transmission of documents**

- (1) This rule applies to any document, including a notice or request, which is required to be sent to a court in a reciprocating 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 reciprocating country.

#### **34.23 Method of payment under registered orders**

- (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 reciprocating country.)

- (2) Where the court orders payments to be made to the court officer, whether in accordance with paragraph (1) or otherwise, the court officer must send the payments
  - (a) by post to either
    - (i) the court which made the order; or
    - (ii) such other person or authority as that court, or the Lord Chancellor, directs; or
  - (b) if the court which made the order is a country or territory specified in the Practice Direction 34A
    - (i) to the Crown Agents for Overseas Governments and Administrations for transmission to the person to whom they are due; or
    - (ii) as the Lord Chancellor directs.

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

### 34.24 Enforcement of payments under registered orders

- (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.

### 34.25 Notification of registration and cancellation

- (1) The court officer must send written notice to the Lord Chancellor of the due registration of orders registered in accordance with section 6(3), 7(5), or 10(4) of the 1972 Act.
- (2) The court officer must, when registering an order in accordance with section 6(3), 7(5), 9(10), 10(4) or (5) or 23(3) of the 1972 Act<sup>1</sup>, send written notice to the payer stating
  - (a) that the order has been registered;
  - (b) that payments under the order should be made to the court officer; and
  - (c) the hours during which and the place at which the payments should be made.
- (3) The court officer must, when cancelling the registration of an order in accordance with section 10(1) of the 1972 Act, send written notice of the cancellation to the payer.

#### SECTION 2

*Modification of rules in Section 1 of this Chapter*

SUB-SECTION 1 Omitted

### 34.26 Omitted

SUB-SECTION 2 Hague Convention Countries

### 34.27 Application of Section 1 of this Chapter to the Hague Convention Countries

- (1) In relation to the Hague Convention Countries, Section 1 of this Chapter has effect as modified by this rule.
- (2) A reference in this rule, and in any rule which has effect in relation to the Hague Convention Countries by virtue of this rule to
  - (a) the 1972 Act is a reference to the 1972 Act as modified by Schedule 2 to the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1993<sup>2</sup>; and
  - (b) a section under the 1972 Act is a reference to the section so numbered in the 1972 Act as so modified.
- (3) A reference to a reciprocating country in rule 34.12(1) and Section 1 of this Chapter is a reference to a Hague Convention Country.

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<sup>1</sup> Section 23(3) was amended by section 90(1) of and paragraphs 71 and 75(1) and (2) of Schedule 13 to the Access to Justice Act 1999.  
<sup>2</sup> S.I. 1993/593.

- (4) Rules 34.15 (certification of evidence given on provisional orders), 34.16 (confirmation of provisional orders), 34.19 (notification of confirmation or revocation of a maintenance order by a magistrates' court) and 34.21 (request for the taking of evidence by a court in a reciprocating country) do not apply.

- (5) For rule 34.17 (consideration of revocation of a provisional order made by a magistrates' court) substitute

**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.).

- (6) For rule 34.18 (notification of variation or revocation of a maintenance order by the High Court or county court) substitute

**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..

- (7) For rule 34.23(2) (method of payment under registered orders) substitute

(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..

- (8) For rule 34.25 (notification of registration and cancellation) substitute

**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..

- (9) After rule 34.25 insert

**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..

#### SUB-SECTION 3 United States of America

### 34.28 Application of Section 1 of this Chapter to the United States of America

- (1) In relation to the United States of America, Section 1 of this Chapter has effect as modified by this rule.
- (2) A reference in this rule and in any rule which has effect in relation to the United States of America by virtue of this rule to
  - (a) the 1972 Act is a reference to the 1972 Act as modified by Schedule 1 to the Reciprocal Enforcement of Maintenance Orders (United States of America) Order 2007<sup>1</sup>; and
  - (b) a section under the 1972 Act is a reference to the section so numbered in the 1972 Act as so modified.
- (3) A reference to a reciprocating country in rule 34.12(1) and Section 1 of this Chapter is a reference to the United States of America.
- (4) Rules 34.15 (certification of evidence given on provisional orders), 34.16 (confirmation of provisional orders), 34.19 (notification of confirmation or revocation of a maintenance order made by a magistrates' court) and 34.21 (request for the taking of evidence in a reciprocating country) do not apply.
- (5) For rule 34.17 (consideration of revocation of a provisional order made by a magistrates' court) substitute

#### **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.).

- (6) For rule 34.18 (notification of variation or revocation), substitute

#### **Notification of variation or revocation**

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<sup>1</sup> S.I. 2007/2006.

**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..

- (7) For rule 34.23(2)(method of payment under registered orders) substitute  
(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..
- (8) For rule 34.25 (notification of registration and cancellation) substitute  
**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.

### III ENFORCEMENT OF MAINTENANCE ORDERS UNDER THE CIVIL JURISDICTION AND JUDGMENTS ACT 1982, THE JUDGMENTS REGULATION, THE MAINTENANCE REGULATION AND THE LUGANO CONVENTION

#### **34.28A Application of this Chapter**

- (1) In this Chapter  
(a) references to a maintenance order include reference to a decision, a court settlement or an authentic instrument within the meaning of Article 2 of the Maintenance Regulation where that Regulation applies;  
(b) references to the Hague Protocol are to the Protocol on the Law Applicable to Maintenance Obligations done at The Hague on 23 November 2007<sup>1</sup>.
- (2) In relation to the Maintenance Regulation  
(a) Section 1 applies to maintenance orders to which Sections 2 and 3 of Chapter IV of the Maintenance Regulation apply (decisions given in a Member State which does not apply the rules of the Hague Protocol, that is, Denmark, and decisions to which Sections 2 and 3 of Chapter IV of that Regulation apply by virtue of Article 75(2)(a) or (b));  
(2) Section 2 applies to all maintenance orders made in a magistrates' court in England and Wales for which reciprocal enforcement is sought in any Member State of the European Union, including Denmark.

(Provision in respect of enforcement of maintenance orders to which Section 1 of the Maintenance Regulation applies (maintenance decisions given in Member States other than Denmark) is made in the Magistrates' Courts Rules 1981<sup>2</sup>).

#### **SECTION 1**

*Registration and Enforcement in a Magistrates' Court of Maintenance Orders made in a Contracting State to the 1968 Convention, a Contracting State to the 1988 Convention, a Regulation State or a State bound by the Lugano Convention*

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<sup>1</sup> OJ L 331, 16.12.2009 p.17-23.

<sup>2</sup> S.I 1981/552.

### **34.29 Interpretation**

In this Section

- (a) an expression defined in the 1982 Act has the meaning given to it in that Act, subject to paragraph (b); and
- (b) Regulation State means a Member State of the European Union which does not apply the rules of the Hague Protocol, or, where registration is sought for a maintenance order to which Article 75(2)(a) or (b) of the Maintenance Regulation applies, the Member State of the European Union from which the order originated.

### **34.29A Application under Article 30 of the Maintenance Regulation for a declaration of enforceability**

An application under Article 30 of the Maintenance Regulation for a declaration of enforceability of a maintenance decision will be determined by the justices' clerk for the local justice area in which the court is situated.

### **34.30 Registration of maintenance orders**

- (1) In this rule, assets to which the 1958 Act applies means assets against which, after registration in the High Court, the maintenance order could be enforced under Part 1 of the 1958 Act.
- (2) This rule applies where the court officer for a magistrates' court receives
  - (a) an application under Article 31 of the 1968 Convention for the enforcement of a maintenance order made in a Contracting State other than the United Kingdom;
  - (b) an application under Article 31 of the 1988 Convention for the enforcement of a maintenance order made in a State bound by the 1988 Convention other than a Member State of the European Union;
  - (c) an application under Article 26 of the Maintenance Regulation for a declaration of enforceability of a maintenance order made in a Regulation State other than the United Kingdom; or
  - (d) an application under Article 38 of the Lugano Convention for the enforcement of a maintenance order made in a State bound by the Lugano Convention other than a Member State of the European Union.
- (3) The court officer must
  - (a) take such steps as appear appropriate for ascertaining whether the payer resides within the local justice area for which the court acts; and
  - (b) consider any available information as to the nature and location of the payer's assets.
- (4) If the court officer is satisfied that the payer
  - (a) does not reside within the local justice area for which the court acts; and
  - (b) does not have assets to which the 1958 Act applies,the court officer must refuse the application and return the application to the Lord Chancellor stating the information the court officer has as to the whereabouts of the payer and the nature and location of the payer's assets.
- (5) If the court officer is satisfied that the payer
  - (a) does not reside within the local justice area for which the court acts; but
  - (b) has assets to which the 1958 Act applies,then either
  - (i) the court officer must register the order; or

- (ii) if the court officer believes that the payer is residing within the local justice area in which another magistrates' court acts, the court officer may refuse the application and return the documents to the Lord Chancellor with the information referred to in paragraph (4) above.
- (6) Except where paragraphs (4) or (5) apply, the court officer must register the order unless
  - (a) in the case of an application under Article 31 of the 1968 Convention, Articles 27 or 28 of that Convention apply; and
  - (b) in the case of an application under Article 31 of the 1988 Convention, Articles 27 or 28 of that Convention apply.
- (7) If the court officer refuses to register an order to which this rule relates the court officer must notify the applicant.
- (8) If the court officer registers an order the court officer must send written notice of that fact to
  - (a) the Lord Chancellor;
  - (b) the payer; and
  - (c) the applicant.
- (9) If the court officer considers that it would be appropriate for all or part of a registered order to be enforced in the High Court the court officer must notify the applicant
  - (a) that the court officer so considers it appropriate; and
  - (b) that the applicant may apply under the 1958 Act for the order to be registered in the High Court.

#### **34.31 Appeal from a decision relating to registration**

- (1) This rule applies to an appeal under
  - (a) Article 36 or Article 40 of the 1968 Convention;
  - (b) Article 36 or Article 40 of the 1988 Convention;
  - (c) Article 32 of the Maintenance Regulation; or
  - (d) Article 43 of the Lugano Convention.
- (2) The appeal must be to the magistrates' court
  - (a) in which the order is registered; or
  - (b) in which the application for registration has been refused, as the case may be.

#### **34.32 Payment of sums due under a registered order**

- (1) Where an order is registered in accordance with section 5(3) of the 1982 Act, Article 38 of the Judgments Regulation or Article 38 of the Lugano Convention or declared enforceable under Article 26 of the Maintenance Regulation by virtue of registration, the court must order that 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.
- (2) Where the court orders payments to be made to the court officer, whether in accordance with paragraph (1) or otherwise, the court officer must send the payments by post either
  - (a) to the court which made the order; or
  - (b) to such other person or authority as that court, or the Lord Chancellor, directs.

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

### **34.33 Enforcement of payments under registered orders**

- (1) This rule applies where a court has ordered periodical payments under a registered maintenance order to be made to the court officer for a magistrates' court.
- (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.

### **34.34 Variation and revocation of registered orders**

- (1) This rule applies where the court officer for a registering court receives notice that a registered maintenance order has been varied or revoked by a competent court in a Contracting State to the 1968 Convention, a Contracting State to the 1988 Convention (other than a Member State of the European Union), a Regulation State or a State bound by the Lugano Convention, other than a Member State of the European Union.
- (2) The court officer for the registering court must
  - (a) register the order of variation or revocation; and
  - (b) send notice of the registration by post to the payer and payee under the order.
- (3) Where the court officer for a registering court receives notice that a maintenance order registered in that court by virtue of the provisions of the Judgments Regulation<sup>1</sup> has been varied or revoked by a competent court in another Member State of the European Union, the court officer must
  - (a) note against the entry in the register that the original order so registered has been varied or revoked, as the case may be; and
  - (b) send notice of the noting of the variation or revocation, as the case may be, by post to the payer and payee under the order.

### **34.35 Transfer of registered order**

- (1) This rule applies where the court officer for the court where an order is registered considers that the payer is residing within the local justice area in England and Wales for which another magistrates' court acts.
- (2) Subject to paragraph (4), the court officer must transfer the order to the other court by sending to that court
  - (a) the information and documents relating to the registration;
  - (b) a certificate of arrears, if applicable, signed by the court officer;

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<sup>1</sup> OJ L 12, 16.1.2001 p.1-23.



- (c) a statement giving such information as the court officer possesses as to the whereabouts of the payer and the nature and location of the payer's assets; and
  - (d) any other relevant documents which the court officer has relating to the case.
- (3) The information and documents referred to in paragraph (2)(a) are those required, as appropriate, under
- (a) Articles 46 and 47 of the 1968 Convention;
  - (b) Articles 46 and 47 of the 1988 Convention;
  - (c) Article 53 of the Judgments Regulation;
  - (d) Article 53 of the Lugano Convention; or
  - (e) Article 28 or 29 of the Maintenance Regulation.
- (4) If an application is pending in the registering court for the registration of the whole or part of the order in the High Court under Part 1 of the 1958 Act, the court officer must not transfer the order, or the part to which the application relates, under paragraph (2).
- (5) The court officer must give notice of the transfer of an order to
- (a) the payee; and
  - (b) the Lord Chancellor.
- (6) If an order is transferred, the court officer for the court to which it is transferred must register the order.

#### **34.36 Cancellation of registered orders**

- (1) Where the court officer for the registering court
- (a) has no reason to transfer a registered order under rule 34.35; and
  - (b) considers that the payer under the registered order is not residing within the local justice area for which the court acts and has no assets to which the 1958 Act applies, the court officer must cancel the registration of the order.
- (2) The court officer must
- (a) give notice of cancellation to the payee; and
  - (b) send the information and documents relating to the registration and the other documents referred to in rule 34.35(2) to the Lord Chancellor.

#### **34.36A Directions as to stays, documents and translations**

At any stage in proceedings for registration of a maintenance order under this Section of this Chapter, the court may give directions about the conduct of the proceedings, including

- (a) staying of proceedings in accordance with
  - (i) Article 30 or 38 of the 1968 Convention,
  - (ii) Article 30 or 38 of the 1988 Convention,
  - (iii) Article 37 or 46 of the Lugano Convention, or
  - (iv) Article 25 or 35 of the Maintenance Regulation;
- (b) the provision of documents in accordance with
  - (i) Article 48 of the 1968 Convention,
  - (ii) Article 48 of the 1988 Convention,
  - (iii) Article 55 of the Lugano Convention, or
  - (iv) Article 29 of the Maintenance Regulation;
- (c) the provision of translations in accordance with
  - (i) Article 48 of the 1968 Convention,

- (ii) Article 48 of the 1988 Convention,
- (iii) Article 55 of the Lugano Convention, or
- (iv) Article 28 of the Maintenance Regulation.

## SECTION 2

*Reciprocal enforcement in a Contracting State or a Member State of the European Union of Orders of a court in England and Wales*

### 34.37 Omitted

### 34.38 Admissibility of Documents

- (1) This rule applies to a document, referred to in paragraph (2) and authenticated in accordance with paragraph (3), which comprises, records or summarises evidence given in, or information relating to, proceedings in a court in another part of the UK, another Contracting State to the 1968 Convention or the 1988 Convention, Member State of the European Union or State bound by the Lugano Convention, and any reference in this rule to "the court", without more, is a reference to that court.
- (2) The documents referred to at paragraph (1) are documents which purport to
  - (a) set out or summarise evidence given to the court;
  - (b) have been received in evidence to the court;
  - (c) set out or summarise evidence taken in the court for the purpose of proceedings in a court in England and Wales to which the 1982 Act, the Judgments Regulation or the Maintenance Regulation applies; or
  - (d) record information relating to payments made under an order of the court.
- (3) A document to which paragraph (1) applies shall, in any proceedings in a magistrates' court in England and Wales relating to a maintenance order to which the 1982 Act, the Judgments Regulation or the Maintenance Regulation applies, be admissible as evidence of any fact stated in it to the same extent as oral evidence of that fact is admissible in those proceedings.
- (4) A document to which paragraph (1) applies shall be deemed to be authenticated
  - (a) in relation to the documents listed at paragraph 2(a) or (c), if the document purports to be
    - (i) certified by the judge or official before whom the evidence was given or taken; or
    - (ii) the original document recording or summarising the evidence, or a true copy of that document;
  - (b) in relation to a document listed at paragraph (2)(b), if the document purports to be certified by a judge or official of the court to be, or to be a true copy of, the document received in evidence; and
  - (c) in relation to the document listed at paragraph (2)(d), if the document purports to be certified by a judge or official of the court as a true record of the payments made under the order.
- (5) It shall not be necessary in any proceedings in which evidence is to be received under this rule to prove the signature or official position of the person appearing to have given the certificate referred to in paragraph (4).
- (6) Nothing in this rule shall prejudice the admission in evidence of any document which is admissible in evidence apart from this rule.
- (7) Any request by a magistrates' court in England and Wales for the taking or providing of evidence by a court in another part of the United Kingdom or in another Contracting State to the 1968 Convention or the 1988 Convention or the Lugano Convention (other than a

Member State of the European Union) for the purpose of proceedings to which the 1982 Act applies or by a court in Denmark for the purpose of proceedings to which the Maintenance Regulation applies, shall be communicated in writing to the court in question.

(Chapter 2 of Part 24 makes provision for taking of evidence by a court in another Member State of the European Union).

### **34.39 Enforcement of orders of a magistrates' court**

- (1)** This rule applies to applications to a magistrates' court under
  - (a) section 12 of the 1982 Act<sup>1</sup>;
  - (b) Article 40(2) of the Maintenance Regulation; or
  - (c) article 54 of the Lugano Convention.
- (2)** A person who wishes to enforce in a Contracting State to the 1968 Convention, a Contracting State to the 1988 Convention (other than a Member State of the European Union), a Member State of the European Union or a State bound by the Lugano Convention (other than a Member State of the European Union) a maintenance order obtained in a magistrates' court must apply for a certified copy of the order.
- (3)** An application under this rule must be made in writing to the court officer and must specify
  - (a) the names of the parties to the proceedings;
  - (b) the date, or approximate date, of the proceedings in which the maintenance order was made and the nature of those proceedings;
  - (c) the Contracting State or Member State of the European Union in which the application for recognition or enforcement has been made or is to be made; and
  - (d) the postal address of the applicant.
- (4)** The court officer must, on receipt of the application, send a copy of the order to the applicant certified in accordance with a practice direction, and where the Maintenance Regulation applies, a completed extract from the decision in the form of Annex II to that Regulation.
- (5)** Paragraph (6) applies where
  - (a) a maintenance order is registered in a magistrates' court in England and Wales; and
  - (b) a person wishes to obtain a certificate giving details of any payments made or arrears accrued under the order while it has been registered, for the purposes of an application made or to be made in connection with that order in
    - (i) another Contracting State to the 1968 Convention;
    - (ii) another Contracting State to the 1988 Convention (other than a Member State of the European Union);
    - (iii) another Member State of the European Union;
    - (iv) another State bound by the Lugano Convention (other than a Member State of the European Union); or
    - (v) another part of the United Kingdom.
- (6)** The person wishing to obtain the certificate referred to in paragraph (5) may make a written application to the court officer for the registering court.
- (7)** On receipt of an application under paragraph (6) the court officer must send to the applicant a certificate giving the information requested.

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<sup>1</sup> Section 12 was amended by section 3 of and paragraph 7 of Schedule 2 to the Civil Jurisdiction and Judgments Act 1991 (c.12).

(Rule 74.12 (application for certified copy of a judgment) and 74.13 (evidence in support) of the CPR apply in relation to the application for a certified copy of a judgment obtained in the High Court or a county court.)

#### **34.40 Enforcement of orders of the High Court or a county court**

Rules 74.12 (application for a certified copy of a judgment) and 74.13 (evidence in support) of the CPR<sup>1</sup> apply in relation to an application under Article 40(2) of the Maintenance Regulation for a certified copy of a judgment relating to maintenance obtained in the High Court or a county court (including the principal registry when treated as a divorce county court or a civil partnership proceedings county court), or for an extract relating to that judgment in the form of Annex II to that Regulation, as they do to applications under section 12 of the 1982 Act or article 54 of the Lugano Convention.

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<sup>1</sup> S.I.1998/3132.