



**Isle of Man**

*Ellan Vannin*

**AT 15 of 1995**

**MAINTENANCE ORDERS (RECIPROCAL  
ENFORCEMENT) ACT 1995**





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## MAINTENANCE ORDERS (RECIPROCAL ENFORCEMENT) ACT 1995

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**Isle of Man***Ellan Vannin*

## MAINTENANCE ORDERS (RECIPROCAL ENFORCEMENT) ACT 1995

*Received Royal Assent:* 18 October 1995

*Passed:* 19 October 1995

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**AN ACT** to re-enact with amendments the *Maintenance Orders (Reciprocal Enforcement) Act 1978* and related enactments.

### PART 1 – RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS MADE IN THE ISLAND OR A RECIPROCATING COUNTRY

#### *Designation of reciprocating countries*

#### **1 Orders designating reciprocating countries**

[1978/2/1; 1991/3/5/10; GC155/91]

- (1) The Council of Ministers, if satisfied that, in the event of the benefits conferred by this Part being applied to, or to particular classes of, maintenance orders made by the courts of any country outside the Island, similar benefits will in that country be applied to, or to those classes of, maintenance orders made by the courts of the Island, may by order designate that country as a reciprocating country for the purposes of this Part.
- (2) Subject to subsections (3) and (4), in this Part “**reciprocating country**” means a country that is for the time being designated under subsection (1).
- (3) A country may be designated under subsection (1) as a reciprocating country either —
  - (a) as regards maintenance orders generally, or
  - (b) as regards maintenance orders other than those of a specified class, or

- (c) as regards maintenance orders of one or more specified classes only.
- (4) A country which is for the time being designated under subsection (1) otherwise than as regards maintenance orders generally shall for the purposes of this Part be taken to be a reciprocating country only as regards maintenance orders of the class to which the designation extends.

*Orders made by courts in the Island*

## **2 Transmission of order for enforcement in reciprocating country**

[1978/2/2; 1992/10/1/49; P1982/27/11/9]

- (1) Subject to subsection (2), where the payer under a maintenance order made by a court in the Island is residing or has assets in a reciprocating country, the payee under the order may apply for the order to be sent to that country for enforcement.
- (2) Subsection (1) does not apply to a provisional order.
- (3) Every application under this section shall be made in the prescribed manner to the prescribed officer.
- (4) If, on an application duly made under this section to the prescribed officer, that officer is satisfied that the payer under the maintenance order to which the application relates is residing or has assets in a reciprocating country, the officer shall send the following documents to the responsible authority in that country —
  - (a) a certified copy of the maintenance order;
  - (b) a certificate signed by the officer certifying that the order is enforceable in the Island;
  - (c) a certificate of arrears so signed;
  - (d) a statement giving such information as the officer possesses as to the payer's whereabouts and the nature and location of his assets in that country;
  - (e) a statement giving such information as the officer possesses for facilitating the identification of the payer; and
  - (f) where available, a photograph of the payer.
- (5) Nothing in this section affects any jurisdiction of a court in the Island with respect to a maintenance order to which this section applies, and any such order may be enforced, varied or revoked accordingly.

## **3 Provisional order against person residing in reciprocating country**

[1978/2/3]

- (1) Where an application is made to the prescribed court against a person residing in a reciprocating country, and the court would have jurisdiction

to make a maintenance order on the application under Part 3 of the *Matrimonial Proceedings Act 2003* or Part 2 of the *Children and Young Persons Act 2001* if that person —

- (a) were residing in the Island; and
- (b) received reasonable notice of the time and place of the hearing of the application,

the court shall (subject to subsection (2)) have jurisdiction to determine the application.<sup>1</sup>

- (2) A maintenance order made by virtue of this section shall be a provisional order.
- (3) No enactment empowering a court of summary jurisdiction to refuse to make an order on the ground that the matter is one which would be more conveniently dealt with by the High Court, applies in relation to an application to which subsection (1) applies.
- (4) Where a court makes a maintenance order which is by virtue of this section a provisional order, the prescribed officer shall send the following documents to the responsible officer in the reciprocating country —
  - (a) a certified copy of the maintenance order;
  - (b) a document, authenticated in the prescribed manner, setting out or summarising the evidence given in the proceedings;
  - (c) a certificate signed by the prescribed officer certifying that the grounds stated in the certificate are the grounds on which the making of the order might have been opposed by the payer under the order;
  - (d) a statement giving such information as was available to the court as to the payer's whereabouts;
  - (e) a statement giving such information as the officer possesses for facilitating the identification of the payer; and
  - (f) where available, a photograph of the payer.
- (5) A maintenance order made by virtue of this section which has been confirmed by a competent court in a reciprocating country shall be treated for all purposes as if —
  - (a) the court of summary jurisdiction which made the order had made it in the form in which it was confirmed, and
  - (b) the order had never been a provisional order;and subject to section 4, any such order may be enforced, varied or revoked accordingly.

#### 4 Variation and revocation of order made in the Island

[1978/2/4; 1983/13/86]

- (1) This section applies to —
  - (a) a maintenance order, a certified copy of which has been sent to a reciprocating country under section 2, and
  - (b) a maintenance order made by virtue of section 3 which has been confirmed by a competent court in a reciprocating country.
- (2) Where a court in the Island has power to vary a maintenance order to which this section applies, it may vary that order by a provisional order.
- (3) Where the court hearing an application for the variation of a maintenance order to which this section applies proposes to vary it by increasing the rate of payments under the order then, unless either —
  - (a) both the payer and the payee under the order appear in the proceedings, or
  - (b) the applicant appears and the appropriate process has been duly served on the other party in the Island,the order varying the order shall be a provisional order.
- (4) Where a court in the Island makes a provisional order varying a maintenance order to which this section applies, the prescribed officer shall send in the prescribed manner to the court in a reciprocating country having power to confirm the provisional order —
  - (a) a certified copy of the provisional order, and
  - (b) a document, authenticated in the prescribed manner, setting out or summarising the evidence given in the proceedings.
- (5) Subsection (6) applies where the following documents are received by the prescribed officer —
  - (a) a certified copy of a provisional order made by a court in a reciprocating country varying or revoking a maintenance order to which this section applies, and
  - (b) a document, duly authenticated, setting out or summarising the evidence given in the proceedings in which the provisional order was made.
- (6) Where this subsection applies, the court which made the maintenance order may —
  - (a) confirm or refuse to confirm the provisional order, and
  - (b) if it is an order varying the maintenance order, confirm it either without alteration or with such alterations as it thinks reasonable.
- (7) For the purpose of determining whether a provisional order should be confirmed under subsection (6), the court shall proceed as if an application



for the variation or revocation, as the case may be, of the maintenance order had been made to it.

- (8) Where a maintenance order to which this section applies has been varied by an order (including a provisional order which has been confirmed) made by a court in the Island or by a competent court in a reciprocating country, the maintenance order shall, as from the date on which under the provisions of the order the variation is to take effect, have effect —
  - (a) as varied by that order, and
  - (b) where that order was a provisional order, as if that order had been made in the form in which it was confirmed and as if it had never been a provisional order.
- (9) Where a maintenance order to which this section applies has been revoked by an order made by a court in the Island or by a competent court in a reciprocating country, including a provisional order made by the last-mentioned court which has been confirmed, the maintenance order shall, as from the date on which under the provisions of the order the revocation is to take effect, be deemed to have ceased to have effect except as respects any arrears due under the maintenance order at that date.
- (10) Subsection (11) applies where, before a maintenance order made by virtue of section 3 is confirmed —
  - (a) a document, duly authenticated, setting out or summarising evidence taken in a reciprocating country for the purpose of proceedings relating to the confirmation of the order is received by a court in the Island which made the order, or
  - (b) that court, in compliance with a request made to it by a court in such a country, takes the evidence of a person residing in the Island for the purpose of such proceedings.
- (11) Where this subsection applies, the court in the Island which made the order shall consider that evidence and if, having done so, it appears to it that the order ought not to have been made —
  - (a) it shall, in the prescribed manner, give to the person on whose application the maintenance order was made an opportunity to consider that evidence, to make representations with respect to it and to adduce further evidence; and
  - (b) after considering all the evidence and any representations made by that person, it may revoke the maintenance order.

*Orders made by courts in reciprocating countries***5 Registration of order made in reciprocating country**

[1978/2/5; 1992/10/1/49]

- (1) This section applies to a maintenance order made by a court in a reciprocating country, including such an order made by such a court which has been confirmed by a court in another reciprocating country, but excluding a provisional order which has not been confirmed.
- (2) Where —
  - (a) the prescribed officer receives a certified copy of an order to which this section applies from the responsible authority in a reciprocating country, and
  - (b) it appears to the prescribed officer that the payer under the order is residing or has assets in the Island,he shall (subject to subsection (3)) register the order in the prescribed court.
- (3) Before registering an order under this section the prescribed officer shall take such steps as he thinks fit for the purpose of ascertaining whether the payer under the order is residing or has assets in the Island.

**6 Confirmation by court in the Island of provisional order**

[1978/2/6; 1983/13/86]

- (1) This section applies to a maintenance order made by a court in a reciprocating country, being a provisional order.
- (2) Where the following documents are received by the prescribed officer from the responsible authority in a reciprocating country —
  - (a) a certified copy of an order to which this section applies;
  - (b) a document, duly authenticated, setting out or summarising the evidence given in the proceedings in which the order was made; and
  - (c) a statement of the grounds on which the making of the order might have been opposed by the payer under the order;and it appears to the prescribed officer that the payer under the order is residing or has assets in the Island, he shall submit the order to the prescribed court for confirmation.
- (3) The prescribed court shall —
  - (a) if the payer under the order establishes any such defence as he might have raised in the proceedings in which the order was made, refuse to confirm the order; and
  - (b) in any other case, confirm the order either without alteration or with such alterations as it thinks reasonable.

- (4) In any proceedings for the confirmation under this section of a provisional order, the statement referred to in subsection (2)(c) shall be conclusive evidence that the payer might have raised a defence on any of the grounds there stated in the proceedings in which the order was made.
- (5) For the purpose of determining whether a provisional order should be confirmed under this section, the court shall proceed as if an application for a maintenance order had been made to it and it had jurisdiction to hear the case.
- (6) If the prescribed court confirms a provisional order under this section, the prescribed officer shall register the order in that court in the prescribed manner; and if the court refuses to confirm the order, he shall return the documents referred to in subsection (2) to the responsible authority in the reciprocating country.

## **7 Enforcement of registered order**

[1978/2/7; 1983/13/86; P1982/27/11/11]

- (1) A registered order may be enforced in the Island as if —
  - (a) it had been made by the prescribed court, and
  - (b) that court had had jurisdiction to make it;and proceedings for or with respect to the enforcement of any such order may be taken accordingly.
- (2) Any person for the time being under an obligation to make payments in pursuance of a registered order shall give notice of any change of address to the prescribed officer, and any person failing without reasonable excuse to give such a notice shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the standard scale.<sup>2</sup>
- (3) Where an order is registered, the prescribed court, the prescribed officer and the Clerk to the Justices shall take all such steps as may be prescribed with respect to enforcing or facilitating the enforcement of the order.
- (4) An order which by virtue of this section is enforceable by the prescribed court shall be enforceable as if it were an order of that court to pay a sum of money, and any enactment with respect to the enforcement of such orders (including the remission of sums due) applies accordingly.
- (5) In any proceedings for or with respect to the enforcement of a registered order, a certificate of arrears sent to the prescribed officer shall be evidence of the facts stated therein.
- (6) Subject to subsection (7), sums of money payable under a registered order shall be payable in accordance with the order as from the date on which they are required to be paid under the provisions of the order.
- (7) The court having power under section 6 to confirm a provisional order may, if it decides to confirm the order, direct that the sums of money

payable under it shall be deemed to have been payable in accordance with the order as from —

- (a) the date on which they are required to be paid under the provisions of the order, or
- (b) such later date as the court may specify;

and subject to any such direction, a maintenance order registered under section 6 shall be treated as if it had been made in the form in which it was confirmed and as if it had never been a provisional order.

## **8 Variation and revocation of registered order**

[1978/2/8; P1982/27/11/4 and 12]

- (1) Subject to the provisions of this section, the prescribed court may —
  - (a) on an application made by the payer or payee under a registered order, vary or revoke the order as if it had been made by the prescribed court and as if that court had had jurisdiction to make it; and
  - (b) vary or revoke a registered order by a provisional order.
- (2) The powers conferred by subsection (1) are not exercisable in relation to so much of a registered order as provides for the payment of a lump sum.
- (3) The prescribed court shall not vary or revoke a registered order if neither the payer nor the payee under the order is resident in the Island.
- (4) The prescribed court shall not vary a registered order otherwise than by a provisional order unless —
  - (a) both the payer and the payee under the registered order are for the time being residing in the Island; or
  - (b) the application is made by the payee under the registered order; or
  - (c) the following conditions are fulfilled —
    - (i) the variation consists of a reduction in the rate of payments under the registered order, and
    - (ii) the variation is made solely on the ground that there has been a change in the financial circumstances of the payer since the registered order was made or (in the case of an order registered under section 6) confirmed, and
    - (iii) the courts in the reciprocating country in which the maintenance order was made have no power, according to the law in force in that country, to confirm provisional orders varying maintenance orders.
- (5) The prescribed court shall not revoke a registered order otherwise than by a provisional order unless both the payer and the payee under the registered order are for the time being residing in the Island.

- (6) On an application for the revocation of a registered order the prescribed court shall, unless both the payer and the payee under the registered order are for the time being residing in the Island, apply the law applied by the reciprocating country in which the registered order was made; but where by virtue of this subsection the prescribed court is required to apply that law, that court may make a provisional order if it has reason to believe that the ground on which the application is made is a ground on which the order could be revoked according to the law applied by the reciprocating country, even though it has not been established that it is such a ground.
- (7) Where the prescribed court makes a provisional order varying or revoking a registered order, the prescribed officer shall send in the prescribed manner to the court in the reciprocating country which made the registered order —
  - (a) a certified copy of the provisional order, and
  - (b) a document, authenticated in the prescribed manner, setting out or summarising the evidence given in the proceedings.
- (8) Subsection (9) applies where the following documents are received by the prescribed court —
  - (a) a certified copy of a provisional order made by a court in a reciprocating country varying the registered order, and
  - (b) a document, duly authenticated, setting out or summarising the evidence given in the proceedings in which the provisional order was made.
- (9) Where this subsection applies, the prescribed court may —
  - (a) confirm the order either without alteration or with such alterations as it thinks reasonable; or
  - (b) refuse to confirm the order.
- (10) For the purpose of determining whether a provisional order should be confirmed under subsection (9), the court shall proceed as if an application for the variation of the registered order had been made to it and it had jurisdiction to hear it.
- (11) Where a registered order has been varied by an order (including a provisional order which has been confirmed) made by a court in the Island or by a competent court in a reciprocating country, the registered order shall, as from the date on which under the provisions of the order the variation is to take effect, have effect —
  - (a) as varied by that order, and
  - (b) where that order was a provisional order, as if that order had been made in the form in which it was confirmed and as if it had never been a provisional order.
- (12) Where a registered order has been revoked by an order made by a court in the Island or by a competent court in a reciprocating country, including

a provisional order made by the first-mentioned court which has been confirmed, the maintenance order shall, as from the date on which under the provisions of the order the revocation is to take effect, be deemed to have ceased to have effect, except as respects any arrears due under the maintenance order at that date.

- (13) The prescribed officer shall register in the prescribed manner any order varying a registered order, other than a provisional order which is not confirmed.

## **9 Cancellation of registration**

[1978/2/9; P1982/27/11/13]

- (1) Where —

- (a) a registered order is revoked by an order made by the prescribed court; or
- (b) a registered order is revoked by a provisional order made by that court which has been confirmed by a court in a reciprocating country and notice of the confirmation is received by the prescribed court; or
- (c) a registered order is revoked by an order made by a court in such a country and notice of the revocation is received by the prescribed court,

the prescribed officer shall cancel the registration; but any arrears due under the registered order at the date when its registration is cancelled shall continue to be recoverable as if the registration had not been cancelled.

- (2) Where the prescribed officer is of opinion that the payer under a registered order is not residing in the Island and has no assets in the Island against which the order can be effectively enforced, he shall cancel the registration of the order and shall send the certified copy of the order to the responsible authority in the reciprocating country.

## **10 Steps to be taken by prescribed officer**

[P1978/2/10; P1982/27/11/14]

- (1) This section applies where at any time it appears to the prescribed officer that the payer under a maintenance order, a certified copy of which has been received by him from a reciprocating country —
- (a) in the case of an order to which section 5 applies, is not residing and has no assets in the Island;
  - (b) in the case of an order to which section 6 applies, is not residing in the Island.
- (2) The prescribed officer shall send to the responsible authority in the reciprocating country or, if having regard to all the circumstances he

thinks it proper to do so, to the responsible authority in another reciprocating country —

- (a) the certified copy of the order and a certified copy of any order varying that order;
  - (b) if the order has at any time been a registered order, a certificate of arrears signed by the prescribed officer;
  - (c) a statement giving such information as the prescribed officer possesses as to the payer's whereabouts and, in the case of an order to which section 5 applies, the nature and location of his assets; and
  - (d) any other relevant documents in his possession relating to the case.
- (3) Where the documents mentioned in subsection (2) are sent to the responsible authority in a reciprocating country other than that in which the order was made, the prescribed officer shall inform the responsible authority in the reciprocating country in which the order was made of what he has done.

### *Appeals*

## **11 Appeals**

[1978/2/11]

- (1) No appeal lies from a provisional order made in pursuance of any provision of this Part by a court in the Island.
- (2) Where in pursuance of any such provision the prescribed court confirms or refuses to confirm a provisional order made in a reciprocating country, whether a maintenance order or an order varying or revoking a maintenance order, the payer or payee under the maintenance order has (subject to subsection (1)) the same right of appeal (if any) to the High Court from the confirmation of or refusal to confirm the provisional order as he would have had if —
  - (a) that order were not a provisional order,
  - (b) the prescribed court had had jurisdiction to make the order, and
  - (c) that court had made or, as the case may be, refused to make it.
- (3) Where in pursuance of any such provision the prescribed court makes or refuses to make an order varying or revoking a maintenance order made in a reciprocating country, the payer or payee under the maintenance order has (subject to subsection (1)) the like right of appeal (if any) from that order or the refusal to make it as he would have had if the prescribed court had had jurisdiction to make, and had made, the maintenance order.
- (4) Any order made by the High Court on an appeal under this section (except an order directing that any proceedings shall be re-heard by the prescribed court shall, for the purposes of this Part, be treated as an order of that court, and not of the High Court.

- (5) Nothing in this section (except subsection (1)) affects any right of appeal conferred by any other enactment.

### *Evidence*

## **12 Admissibility of evidence**

[1978/2/12]

- (1) A statement contained in —
- (a) a document, duly authenticated, which purports to set out or summarise evidence given in proceedings in a court in a reciprocating country; or
  - (b) a document, duly authenticated, which purports to set out or summarise evidence taken in such a country for the purpose of proceedings in a court in the Island under this Part, whether in response to a request made by such a court or otherwise; or
  - (c) a document, duly authenticated, which purports to have been received in evidence in proceedings in a court in such a country or to be a copy of a document so received;

shall in any proceedings in a court in the Island relating to a maintenance order to which this Part applies be admissible as evidence of any fact stated therein to the same extent as oral evidence of that fact is admissible in those proceedings.

- (2) A document purporting to set out or summarise evidence given as mentioned in subsection (1)(a) or taken as mentioned in subsection (1)(b), shall be deemed to be duly authenticated for the purpose of that subsection if the document purports to be certified by the judge, magistrate or other person before whom the evidence was given or by whom it was taken, as the case may be, to be the original document containing or recording or summarising, as the case may be, that evidence or a true copy of that document.
- (3) A document purporting to have been received in evidence as mentioned in subsection (1)(c), or to be a copy of a document so received, shall be deemed to be duly authenticated for the purpose of that subsection if the document purports to be certified by the judge, magistrate or officer of the court in question to have been, or to be a true copy of a document which has been, so received.
- (4) It is not necessary in any such proceeding to prove the signature or official position of the person appearing to have given such a certificate.
- (5) Nothing in this section prejudices the admission in evidence of any document which is admissible in evidence apart from this section.



**13 Obtaining of evidence for certain proceedings**

[1978/2/13]

- (1) Subsections (2) to (5) apply where, for the purpose of any proceedings in a court in a reciprocating country relating to a maintenance order to which this Part applies, a request is made by or on behalf of that court for the taking in the Island of the evidence of a person residing therein relating to matters specified in the request.
- (2) The prescribed court may take that evidence and, after giving notice of the time and place at which the evidence is to be taken to such persons and in such manner as it thinks fit, shall take the evidence in such manner as may be prescribed.
- (3) Evidence taken under subsection (2) shall be sent in the prescribed manner by the prescribed officer to the court in the reciprocating country by or on behalf of which the request was made.
- (4) Where any person, not being the payer or payee under the maintenance order to which the proceedings relate, is required by virtue of this section to give evidence before a court in the Island, the court may order that there shall be paid out of money provided by Tynwald such allowances as may be allowed, by virtue of any enactment in force for the time being, to witnesses who attend before the High Court.
- (5) Section 59 of the *Summary Jurisdiction Act 1989* (attendance of witnesses) applies in relation to a court of summary jurisdiction having power under subsection (2) to take the evidence of any person, as if the proceedings in the court in a reciprocating country for the purpose of which a request for the taking of the evidence has been made were proceedings in the court of summary jurisdiction and had been begun by complaint.
- (6) A court in the Island may, for the purpose of any proceedings in that court under this Part relating to a maintenance order to which this Part applies, request a court in a reciprocating country to take or provide evidence relating to such matters as may be specified in the request, and may remit the case to that court for that purpose.

**14 Proof of orders made abroad**

[1978/2/14]

For the purposes of this Part, unless the contrary is shown —

- (a) any order made by a court in a reciprocating country purporting to bear the seal of that court or to be signed by any person in his capacity as a judge, magistrate or officer of that court shall be deemed without further proof to have been duly sealed or to have been signed by that person, as the case may be;
- (b) the person by whom the order was signed shall be deemed without further proof to have been a judge, magistrate or officer, as the case

may be, of that court when he signed it and, in the case of an officer, to have been authorised to sign it; and

- (c) a document purporting to be a certified copy of an order made by a court in a reciprocating country shall be deemed without further proof to be such a copy.

### *Supplemental*

## **15 Payment of sums under orders**

[1978/2/15]

- (1) Payment of sums due under a registered order shall, while the order is registered in a court in the Island, be made in such manner and to such person as may be prescribed.
- (2) Where the sums required to be paid under a registered order are expressed in a currency other than the currency of the Island, then as from the relevant date, the order shall be treated as if it were an order requiring the payment of those sums in the currency of the Island as, on the basis of the rate of exchange prevailing at that date, are equivalent to the sums so required to be paid.
- (3) Where the sum specified in any statement, being a statement of the amount of any arrears due under a maintenance order made by a court in a reciprocating country, is expressed in a currency other than the currency of the Island, that sum shall be deemed to be such sum in the currency of the Island as, on the basis of the rate of exchange prevailing at that date, is equivalent to the sum so specified.
- (4) For the purposes of this section a written certificate purporting to be signed by an officer of any bank in the Island certifying that a specified rate of exchange prevailed between currencies at a specified date and that at such rate a specified sum in another currency is equivalent to a sum in the currency of the Island shall be evidence of the rate of exchange so prevailing on that date and of the equivalent sums in terms of the respective currencies.
- (5) In this section “the relevant date” means —
  - (a) in relation to a registered order or to a statement of arrears due under a maintenance order made in a reciprocating country, the date on which the order first becomes a registered order or (if earlier) the date on which it is confirmed by a court in the Island;
  - (b) in relation to a registered order which has been varied, the date on which the last order varying that order is registered in a court in the Island or (if earlier) the date on which the last order varying that order is confirmed by a court in the Island.

**16 Powers of court if respondent does not appear**

[1978/2/16(6)]

Where the respondent to an application for the variation or revocation of —

- (a) a maintenance order made by a court of summary jurisdiction, being an order to which section 4 applies, or
- (b) a registered order registered in the prescribed court,

does not appear at the time and place appointed for the hearing of the complaint, but the court is satisfied that the respondent is residing in a reciprocating country, the court may proceed to hear and determine the complaint at the time and place appointed for the hearing or for any adjourned hearing in like manner as if the respondent had appeared at that time and place.

**17 Effect of remarriage of party**

[1978/2/37]

- (1) This section applies where —

- (a) the prescribed court has, by virtue of section 3, made a provisional maintenance order consisting of or including a provision such as is mentioned in section 60(1)(a) of the *Matrimonial Proceedings Act 2003*, and<sup>3</sup>
- (b) that order has been confirmed by a competent court in a reciprocating country.

- (2) If after the making of that order the marriage of the parties is dissolved or annulled but the order continues in force, that order or that provision of it, as the case may be —

- (a) shall cease to have effect on the remarriage of the party in whose favour it was made, except in relation to any arrears due under it on the date of such remarriage, and
- (b) shall not be capable of being revived.

- (3) The reference in this section to remarriage includes a reference to a marriage which is by law void or voidable.

**18 Interpretation of Part 1**

[1978/2/18]

- (1) In this Part —

“**affiliation order**” means an order (however described) adjudging, finding or declaring a person to be the father of a child, whether or not it also provides for the maintenance of the child;

“**certificate of arrears**”, in relation to a maintenance order, means a certificate certifying —

- (a) that the sum specified in the certificate is to the best of the information or belief of the officer giving the certificate the amount of the arrears due under the order at the date of the certificate, or
- (b) that to the best of his information or belief there are no arrears due thereunder at that date;

“**certified copy**”, in relation to an order of a court, means a copy of the order certified by the proper officer of the court to be a true copy;

“**country**” includes a territory;

“**court**” includes any tribunal or person having power to make, confirm, enforce, vary or revoke a maintenance order;

“**maintenance order**” has the meaning given by subsections (2) and (3);

“**payee**”, in relation to a maintenance order, means the person entitled to the payments for which the order provides;

“**payer**”, in relation to a maintenance order, means the person liable to make payments under the order;

“**prescribed**” means prescribed by rules of court, and “**prescribed court**” means such court of summary jurisdiction as is prescribed;

“**provisional order**” means (according to the context) —

- (a) an order made by a court in the Island which is provisional only and has no effect unless and until confirmed, with or without alterations, by a competent court in a reciprocating country; or
- (b) an order made by a court in a reciprocating country which is provisional only and has no effect unless and until confirmed, with or without alterations, by a court in the Island having power under this Part to confirm it;

“**reciprocating country**” has the meaning given by section 1;

“**registered order**” means a maintenance order which is for the time being registered in the prescribed court under this Part;

“**the responsible authority**”, in relation to a reciprocating country, means any person who in that country has functions similar to those of the prescribed officer under this Part.

(2) In this Part “**maintenance order**” means an order (however described) of any of the following descriptions —

- (a) an order (including an affiliation order or an order consequent upon an affiliation order) which provides for the payment of a lump sum or the making of periodical payments towards the maintenance of any person, being a person whom the person liable to make the payments under the order is, according to the law applied in the place where the order was made, liable to maintain; and

- (b) an affiliation order or an order consequent upon an affiliation order, being an order which provides for the payment by a person adjudged, declared or found to be a child's father of expenses incidental to the child's birth or, where the child has died, of his funeral expenses;

and in the case of a maintenance order which has been varied, means that order as varied.

- (3) For the purposes of this Part an order shall be taken to be a maintenance order so far (but only so far) as it relates to —
  - (a) the payment of a lump sum or the making of periodical payments as mentioned in subsection (2)(a), or
  - (b) the payment by a person adjudged, declared or found to be a child's father of any such expenses as are mentioned in subsection (2)(b).
- (4) Any reference in this Part to the payment of money for the maintenance of a child shall be construed as including a reference to the payment of money for the child's education.

## PART 2 – RECIPROCAL ENFORCEMENT OF CLAIMS FOR MAINTENANCE

### *Convention countries*

#### **19 Convention countries**

[1978/2/22; GC155/91]

- (1) The Council of Ministers may by order declare that any country or territory specified in the order, being a country or territory outside the Island to which the Maintenance Convention extends, is a convention country for the purposes of this Part.
- (2) In this section “the Maintenance Convention” means the United Nations Convention on the Recovery Abroad of Maintenance done at New York on the 20th June 1956.

### *Application by person in the Island*

#### **20 Application for recovery of maintenance in convention country**

[1978/2/23; 1992/10/1/49]

- (1) Where —
  - (a) a person in the Island (“the applicant”) claims to be entitled to recover in a convention country maintenance from another person, and

- (b) that other person is for the time being subject to the jurisdiction of that country,

the applicant may apply to the prescribed officer in accordance with this section to have his claim for the recovery of maintenance from that other person transmitted to that country.

- (2) Where —

- (a) the applicant seeks to vary any provision made in a convention country for the payment by any other person of maintenance to the applicant, and

- (b) that other person is for the time being subject to the jurisdiction of that country,

the applicant may apply to the prescribed officer in accordance with this section to have his claim for the variation of that provision transmitted to that country.

- (3) The prescribed officer shall assist the applicant in completing an application under subsection (1) or (2) which will comply with the law applied by the convention country, and, unless he is satisfied that it is not made in good faith or that it does not comply with the requirements of the law applied by the convention country, forward it, together with any accompanying documents, to the Lord Chancellor.
- (4) Any court in the Island shall furnish the prescribed officer with such information as he may request for the purpose of an application under subsection (1) or (2).

*Application by person in convention country*

## **21 Applications for recovery of maintenance**

[1978/2/24]

- (1) This section applies to any application which —
  - (a) is received by the prescribed officer (through the Lord Chancellor or otherwise) from the appropriate authority in a convention country, and
  - (b) is an application by a person in that country for the recovery of maintenance from another person who is for the time being residing in the Island.
- (2) Subject to subsection (5) and to sections 22 and 23, an application to which this section applies shall be treated for the purposes of any enactment as if it were an application to the prescribed court, made at the time it was received by the prescribed officer, for a maintenance order under the relevant enactment, that is —

- (a) in the case of an application for maintenance for a minor or minors alone, Part 2 of the *Children and Young Persons Act 2001*;<sup>4</sup>
  - (b) in any other case, Part 2 of the *Matrimonial Proceedings Act 2003*.<sup>5</sup>
- (3) If notice of the hearing of the application by the prescribed court cannot be duly served on the respondent, the prescribed officer shall return the petition or complaint and the accompanying documents to the Lord Chancellor with a statement giving such information as he possesses as to the whereabouts of the respondent.
- (4) When hearing the application the court shall proceed as if the applicant were before the court.
- (5) Where the prescribed court makes an order on an application to which this section applies, the prescribed officer shall register the order in the prescribed manner in that court.
- (6) Payment of sums due under a registered order shall be made in such manner and to such person as may be prescribed.

## **22 Application by spouse under 2003 Act**

[1978/2/25; 1983/13/87]

- (1) The prescribed court hearing an application which by virtue of section 21 is to be treated as if it were an application for a maintenance order under Part 2 of the *Matrimonial Proceedings Act 2003* may make any order which it has power to make under section 60 or 68(1) of that Act.<sup>6</sup>
- (2) Part I of that Act applies in relation to such an application, and to any order made on such an application, with the following modifications —
  - (a) omit sections 6 to 8, 15 to 17, 24 to 26 and 27(2);
  - (b) in section 28 (1), for “either the complainant or the defendant ordinarily resides” substitute “the defendant resides”.
- (3) Subsections (1) and (2) do not apply where section 23 applies.

## **23 Application by former spouse for maintenance**

[1978/2/25A; 1983/13/88; 1986/22/27]

- (1) This section applies where, in the case of any application which by virtue of section 21 is treated as if it were an application for a maintenance order under Part 2 of the *Matrimonial Proceedings Act 2003* (“the [2003] Act”) —
  - (a) the applicant and the respondent were formerly married;
  - (b) their marriage was dissolved or annulled in a country or territory outside the Island by a divorce or annulment which is recognised as valid by the law of the Island;
  - (c) an order for the payment of maintenance for the benefit of the applicant or a child of the family has, by reason of the divorce or annulment, been made by a court in a convention country; and

- (d) where the order for the payment of maintenance was made by a court of a different country from that in which the divorce or annulment was obtained, either the applicant or the respondent was resident in the convention country whose court made the maintenance order at the time that order was applied for.<sup>7</sup>
- (2) The prescribed court has jurisdiction to hear the application under section 28 of the 1983 Act (as modified in accordance with subsection (6)) notwithstanding the dissolution or annulment of the marriage.
- (3) If the prescribed court, on hearing the application, is satisfied that the respondent has failed to comply with the provisions of any such order as is mentioned in subsection (1)(c), it may (subject to subsections (4) and (5)) make any order which it has power to make under section 2 or 18(1)(i) of the 1983 Act.
- (4) The prescribed court shall not make an order for the making of periodical payments for the benefit of the applicant or any child of the family unless the order made in the convention country provides for the making of periodical payments for the benefit of the applicant or that child, as the case may be.
- (5) The prescribed court shall not make an order for the payment of a lump sum for the benefit of the applicant or any child of the family unless the order made in the convention country provides for the payment of a lump sum to the applicant or that child, as the case may be.
- (6) Part I of the 1983 Act applies in relation to the application and any order made on the application subject to the following modifications —
- (a) omit section 1;
  - (b) in section 2(1), for the reference to any ground mentioned in section 1 substitute a reference to non-compliance with any such order as is mentioned in subsection (1)(c);
  - (c) in section 3(2) and (3), for references to the occurrence of the conduct which is alleged as the ground of the application substitute references to the breakdown of the marriage;
  - (d) in section 4(2), omit the reference to the subsequent dissolution or annulment of the marriage of the parties affected by the order;
  - (e) omit sections 6 to 8, 15 to 17 and 24 to 27; and
  - (f) in section 28(1), for “either the complainant or the defendant ordinarily resides” substitute “the defendant resides”.
- (7) A divorce or annulment obtained in a country or territory outside the Island shall be presumed for the purpose of this section to be one the validity of which is recognised by the law of the Island unless the contrary is proved by the respondent.
- (8) In this section “child of the family” has the meaning given by section 90 of the 1983 Act.



**24 Enforcement of orders**

[1978/2/28]

Where a maintenance order is registered in the prescribed court under this Part, the court, the prescribed officer and the Clerk to the Justices shall take all such steps with respect to enforcing the order as may be prescribed.

**25 Variation and revocation of orders**

[1978/2/29 and 30]

- (1) Where the prescribed court revokes a registered order, it shall cancel the registration.
- (2) Where the prescribed officer receives from the Lord Chancellor an application by a person in a convention country for the variation of a registered order, he shall submit the application to the prescribed court.
- (3) Notwithstanding anything in section 22(2) or 23(6)(e), the prescribed court has jurisdiction to hear an application for the variation or revocation of a registered order, made by the person against whom or on whose application the order was made, even though the person by or against whom the application is made is residing outside the Island.
- (4) Where the respondent to an application for the variation or revocation of a registered order does not appear at the time and place appointed by the court for the hearing, but the court is satisfied —
  - (a) that the respondent is residing outside the Island, and
  - (b) that the prescribed notice of the making of the application and of the time and place appointed for the hearing has been given to the respondent in the prescribed manner,

the court may proceed to hear and determine the application, at the time and place appointed for the hearing or for any adjourned hearing, as if the respondent had appeared at that time and place.

*Evidence*

**26 Admissibility of evidence**

[1978/2/31]

- (1) A statement contained in —
  - (a) a document, duly authenticated, which purports to set out or summarise evidence given in proceedings in a court in a convention country; or
  - (b) a document, duly authenticated, which purports to set out or summarise evidence taken in such a country for the purpose of proceedings in a court in the Island under this Part, whether in response to a request made by such a court or otherwise; or

- (c) a document, duly authenticated, which purports to have been received in evidence in proceedings in a court in such a country or to be a copy of a document so received;

shall, in any proceedings in a court arising out of an application received by the prescribed officer from the Lord Chancellor as mentioned in section 21(1) or out of an application made by any person for the variation or revocation of a registered order or in proceedings on appeal from any such proceedings, be admissible as evidence of any fact stated therein to the same extent as oral evidence of that fact is admissible in those proceedings.

- (2) A document purporting to set out or summarise evidence given as mentioned in subsection (1)(a) or taken as mentioned in subsection (1)(b), shall be deemed to be duly authenticated for the purpose of that subsection if the document purports to be certified by the judge, magistrate or other person before whom the evidence was given or by whom it was taken, as the case may be, to be the original document containing or recording or summarising, as the case may be, that evidence or a true copy of that document.
- (3) A document purporting to have been received in evidence as mentioned in subsection (1)(c), or to be a copy of a document so received, shall be deemed to be duly authenticated for the purpose of that subsection if the document purports to be certified by the judge, magistrate or officer of the court in question to have been, or to be a true copy of a document which has been, so received.
- (4) It is not necessary in any such proceeding to prove the signature or official position of the person appearing to have given such a certificate.
- (5) Nothing in this section prejudices the admission in evidence of any document which is admissible in evidence apart from this section.

## **27 Obtaining of evidence for certain proceedings**

[1978/2/32]

- (1) A court in the Island may, for the purpose of any proceedings in that court under this Part arising out of an application received by the Lord Chancellor from a convention country, direct the prescribed officer to forward a request for the taking in that country of the evidence of a person residing therein relating to matters connected with the application.
- (2) A request made by a court under this section shall —
  - (a) give details of the application in question;
  - (b) state the name and address of the person whose evidence is to be taken; and
  - (c) specify the matters relating to which the evidence of that person is required.

- (3) If the prescribed officer is satisfied that a request made to him under this section contains sufficient information to enable the evidence of the person named in the request relating to the matters specified therein to be taken by a court or person in the convention country, he shall forward the request to the Lord Chancellor.

## 28 Taking of evidence in the Island

[1978/2/33]

- (1) Where a request, made on behalf of a court in a convention country to obtain the evidence of a person residing in the Island relating to matters connected with an application to which section 20 applies, is received by the prescribed officer from the Lord Chancellor, the prescribed officer shall, as he may determine, take, or cause the prescribed court to take, the evidence of that person relating to such matters connected with the application as may be specified in the request.
- (2) The prescribed court or the prescribed officer, as the case may be, shall give notice of the time and place at which the evidence is to be taken to such persons and in such manner as it or he thinks fit, and shall take the evidence of the person named in the request relating to the matters relating therein in such manner as may be prescribed.
- (3) Evidence taken under subsection (2) shall be sent in the prescribed manner by the prescribed officer to the court in the convention country by or on behalf of which the request was made.
- (4) Where any person, not being the payer or payee under the maintenance order to which the proceedings relate, is required to give evidence before a court in the Island, the court may order that there shall be paid out of money provided by Tynwald such allowances as may be allowed, by virtue of any enactment in force for the time being, to witnesses who attend before the High Court.
- (5) Section 59 of the *Summary Jurisdiction Act 1989* (attendance of witnesses) applies in relation to the prescribed court as if the proceedings in the court in a convention country for the purpose of which a request for the taking of the evidence has been made were proceedings in the prescribed court and had been begun by complaint.

### *Supplemental*

## 29 Interpretation of Part 2

[1978/2/34]

In this Part —

“**convention country**” means a country so designated under section 19(1);

“**prescribed**” means prescribed by rules of court, and “**prescribed court**” means such court of summary jurisdiction as is prescribed;

“**registered order**” means an order which is for the time being registered in the prescribed court under this Part.

## PART 3 – MISCELLANEOUS AND SUPPLEMENTAL

### 30 Application of Act to certain countries

[1978/2/35; GC155/91; P1982/27/11/17]

- (1) This section applies where the Council of Ministers is satisfied —
  - (a) that arrangements have been or will be made in a country or territory outside the Island to ensure that maintenance orders made by courts in the Island can be enforced in that country or territory, or that applications by persons in the Island for the recovery of maintenance from persons in that country or territory can be entertained by courts in that country or territory; and
  - (b) that in the interests of reciprocity it is desirable to ensure that maintenance orders made by courts in that country or territory can be enforced in the Island or that applications by persons in that country or territory for the recovery of maintenance from persons in the Island can be entertained by courts in the Island.
- (2) The Council of Ministers may by order make provision for applying the provisions of this Act, with such exceptions, adaptations and modifications as may be specified in the order to such orders and applications as are referred to in subsection (1)(a) and (b) and to maintenance and other orders made in connection with such applications by courts in the Island or in that country or territory.

### 31 Exclusion of certain provisions relating to evidence

[1978/2/39; P1972/18/44(2)]

- (1) Section 12 of the *Family Law Reform (Isle of Man) Act 1971* (scientific tests etc.) does not apply to proceedings under this Act; but this subsection is without prejudice to the power of a court to allow the report of a person who has carried out such tests to be given in evidence in those proceedings.
- (2) The Evidence (Proceedings in Other Jurisdictions) Act 1975 (an Act of Parliament) does not apply to the taking of evidence in the Island for the taking of which section 13 or 28 applies.

### 32 Rules of court

[1978/2/17]

- (1) Rules of court may provide —

- (a) for prescribing any matter which by this Act may be prescribed;
  - (b) for the cases and manner in which courts outside the Island are to be informed of orders made, or other things done, by courts in the Island;
  - (c) for the giving of notice of matters under this Act to such persons and in such manner as may be provided by the rules;
  - (d) for empowering the prescribed officer to take evidence for any of the purposes of this Act and to administer oaths for that purpose;
  - (e) for the circumstances and manner in which cases may be remitted by courts in the Island to courts elsewhere, and in which courts in the Island may communicate with courts elsewhere;
  - (f) where different courts or officers are prescribed for different purposes of this Act, for requiring one court or officer to transmit documents and information to another;
  - (g) for treating a prescribed officer who is not an officer of a specified court as if he were such an officer for any purpose of this Act or the rules.
- (2) Rules of court may make transitional provision for the transfer from one court in the Island to another of the registration of any order registered under any enactment repealed by this Act.
- (3) This section is without prejudice to any power to make rules of court under any other enactment.

### 33 **Hague Convention countries**

[GC299/84; Cmnd 7939]

- (1) For the purpose of giving effect in the Island to the Hague Convention, Part 1 has effect as set out in Schedule 1 in relation to countries and territories (other than the United Kingdom) in which that Convention is in force.
- (2) The Council of Ministers may by order amend or modify Schedule 1 for the purpose of giving effect to the Hague Convention as it is in force from time to time, including any amendment or modification of the Hague Convention effected by an international agreement to which the Government of the United Kingdom is a party, being an agreement which extends to the Island.
- (3) In this section “the Hague Convention” means the Convention on the Recognition and Enforcement of Decisions relating to Maintenance Obligations concluded at The Hague on 2nd October 1973.

### 34 **Re-enactment of 1921 provisions**

Schedule 2 has effect for the purpose of re-enacting the provisions of the *Maintenance Orders (Facilities for Enforcement) Act 1921* and related enactments.

**35 Tynwald control over certain orders**

- (1) An order under section 30 or 33(2) shall not have effect unless it is approved by Tynwald.
- (2) An order under section 1 (including that section as modified by Schedule 1), section 19 or paragraph 1(1) of Schedule 2 shall be laid before Tynwald as soon as may be after it is made.

**36 Short title etc**

- (1) This Act may be cited as the Maintenance Orders (Reciprocal Enforcement) Act 1995.
- (2) This Act shall come into operation on such day or days as the Council of Ministers may by order appoint.<sup>8</sup>
- (3)
  - (a) [Repealed]<sup>9</sup>
  - (b) [Amends section 48 of the *Summary Jurisdiction Act 1989*.]
- (4) The enactments specified in Schedule 3 are repealed to the extent specified in column 3 of that Schedule.

## SCHEDULE 1

### PART 1 AS MODIFIED IN RELATION TO HAGUE CONVENTION COUNTRIES

Section 33[GC299/84]

#### 1. Designation of Hague Convention countries

(1) The Council of Ministers shall by order designate the countries (other than the United Kingdom and the Island) in which the Hague Convention is in force.

(2) In this Part —

“**the Hague Convention**” means the Convention on the Recognition and Enforcement of Decisions relating to Maintenance Obligations concluded at The Hague on 2nd October 1973;

“**Hague Convention country**” means a country that is for the time being designated under subsection (1).

#### 2. Transmission of order for enforcement in Hague Convention country

(1) Subject to subsection (2), where the payer under a maintenance order made at any time by a court in the Island is residing in a Hague Convention country, the payee under the order may apply for the order to be sent to that country for recognition and enforcement.

(2) Subsection (1) does not apply to —

(a) a maintenance order made under section 3, or

(b) an order made by virtue of any provision of Part 2.

(3) Every application under this section shall be made in the prescribed manner to the prescribed officer.

(4) If, on an application under this section, the prescribed officer is satisfied —

(a) that the payer under the maintenance order to which the application relates is residing in a Hague Convention country, and

(b) that he has sufficient information as to the whereabouts of the payer to justify that being done,

he shall transmit the documents specified in subsection (4A) to the appropriate authority in the Hague Convention country.

(4A) The documents referred to in subsection (4) are —

(a) a certified copy of the maintenance order;

(b) a certificate signed by the prescribed officer certifying that the order is enforceable and that it is no longer subject to the ordinary forms of review;

- (c) a certificate of arrears so signed;
- (d) a statement giving such information as the officer possesses as to the whereabouts of the payer;
- (e) a statement giving such information as the officer possesses for facilitating the identification of the payer;
- (f) where available, a photograph of the payer;
- (g) a written statement signed by that officer as to whether or not the payer appeared in the proceedings in which the maintenance order was made, and, if he did not appear, the original or a certified copy of a document which establishes that notice of the institution of the proceedings, including notice of the substance of the claim, was served on the payer;
- (h) a document which establishes that notice of the order was sent to the payer; and
- (i) a written statement signed by that officer as to whether or not the payee received legal aid either in the said proceedings or in connection with the said application.

(5) Nothing in this section shall be taken as affecting any jurisdiction of a court in the Island with respect to a maintenance order to which this section applies, and subject to section 4 any such order may be enforced, varied or revoked accordingly.

### **3. Power of court to make maintenance order against person in Hague Convention country**

(1) Where an application is made to the prescribed court by a person who is habitually resident in the Island against a person residing in a Hague Convention country and the application is one which the court would have jurisdiction to determine under Part 3 of the *Matrimonial Proceedings Act 2003* or Part 2 of the *Children and Young Persons Act 2001* if at any time when the proceedings were instituted that person —

- (a) were residing in the Island; and
- (b) received reasonable notice of the time and place of the hearing of the application,

the court shall have jurisdiction to determine the application.<sup>10</sup>

(3) No enactment empowering a court of summary jurisdiction to refuse to make an order on the ground that the matter is one which would be more conveniently dealt with by the High Court, applies in relation to an application to which subsection (1) applies.

(5) On the making of an application to which subsection (1) applies, the prescribed officer, if he is satisfied that he has sufficient information as to the whereabouts of the respondent to justify that being done, shall transmit the following documents to the appropriate authority in the Hague Convention country in which the respondent is residing —



- (a) notice of the institution of the proceedings, including notice of the substance of the application;
- (b) a statement signed by the prescribed officer, giving such information as he possesses as to the whereabouts of the respondent;
- (c) a statement giving such information as the officer possesses for facilitating the identification of the respondent; and
- (d) where available, a photograph of the respondent;

for service on the respondent of the document mentioned in paragraph (a).

(6) In considering whether or not to make a maintenance order pursuant to an application to which subsection (1) applies, the court shall take into account any representations made and any evidence adduced by or on behalf of the respondent.

(6A) Where the respondent makes any representations or adduces any evidence, a copy of the representations or evidence shall be served on the applicant by the prescribed officer before the hearing.

(6B) The prescribed officer shall give the respondent notice in writing of the date fixed for the hearing by sending the notice by post addressed to his last known or usual place of abode.

(6C) A maintenance order pursuant to an application to which subsection (1) applies shall not be made unless the document mentioned in subsection (5)(a) has been served on the respondent in accordance with the law for the service of such documents in the Hague Convention country in which he is residing or in such other manner as may be authorised by the prescribed officer not less than 6 weeks previously.

(6D) Where a maintenance order has been made under this section, the prescribed officer shall transmit the following documents to the appropriate authority in the Hague Convention country in which the respondent resides —

- (a) a certified copy of the order;
  - (b) a certificate signed by that officer certifying that the order is enforceable and that it is no longer subject to the ordinary forms of review;
  - (c) a written statement signed by that officer as to whether or not the respondent appeared in the proceedings in which the order was made, and, if he did not appear, the original or a certified copy of a document which establishes that the document mentioned in subsection (5)(a) has been served on the payer in accordance with subsection (6C);
  - (d) a document which establishes that notice of the order was sent to the respondent; and
  - (e) a written statement signed by that officer as to whether or not the complainant received legal aid in the proceedings;
- for recognition and enforcement of the order.

(6E) A maintenance order made under this section may, subject to section 4, be enforced, varied or revoked in like manner as any other maintenance order made by a court of summary jurisdiction.

#### **4. Variation and revocation of maintenance order made in the Island**

(1) This section applies to a maintenance order a certified copy of which has been sent to a Hague Convention country for recognition and enforcement of the order.

(2) The jurisdiction of a court of summary jurisdiction to revoke or vary a maintenance order shall be exercisable notwithstanding that the proceedings for the revocation or variation, as the case may be, of the order are brought by or against a person residing in a Hague Convention country.

(3) Where an application is made by the payee to a court in the Island for the variation or revocation of an order to which this section applies, and the payer is residing in a Hague Convention country, the prescribed officer shall transmit notice of the institution of the proceedings, including notice of the substance of the application, to the appropriate authority in the Hague Convention country for service on the payer.

(4) Where an application is made by the payee to a court in the Island for the variation or revocation of an order to which this section applies, and the payer is residing in a Hague Convention country —

- (a) the court, in considering whether or not to vary or revoke the order, shall take into account any representations made and any evidence adduced by or on behalf of the payer;
- (b) a copy of any such representations or evidence shall be served on the payee in the prescribed manner before the hearing;
- (c) the prescribed officer shall give the payer notice in writing of the date fixed for the hearing by sending the notice by post addressed to his last known or usual place of abode.

(5) Where an application is made by the payee to a court in the Island for the variation or revocation of an order to which this section applies, and the payer is residing in a Hague Convention country, the order shall not be varied or revoked unless the document mentioned in subsection (3) has been served on the payer in accordance with the law for the service of such a document in the Hague Convention country not less than 6 weeks previously.

(6) Where an application is made by the payer to a court in the Island for the variation or revocation of an order to which this section applies, the prescribed officer shall arrange for the service of the document mentioned in subsection (3) on the payee.

(7) Where an order to which this section applies is varied or revoked by a court in the Island the prescribed officer shall send the following documents to the appropriate authority in the Hague Convention country —

- (a) a certified copy of the order of variation or revocation;

- (b) a certificate signed by that officer certifying that the order of variation or revocation is enforceable and that it is no longer subject to the ordinary forms of review;
- (c) a written statement signed by that officer as to whether or not the respondent appeared in the proceedings for the variation or revocation of the order, and, if he did not appear, the original or a certified copy of a document which establishes that notice of the institution of the proceedings has been served on the respondent;
- (d) a document which establishes that notice of the order of variation or revocation was sent to the respondent; and
- (e) a written statement signed by that officer as to whether or not the payer or the payee received legal aid in the proceedings;

for recognition and enforcement of the order of variation or revocation.

(8) Where a maintenance order to which this section applies has been varied by an order made by a court in the Island the maintenance order shall, as from the date on which the order of variation took effect, have effect as varied by that order.<sup>11</sup>

(9) Where a maintenance order to which this section applies has been revoked by an order made by a court in the Island the maintenance order shall, as from the date on which the order of revocation took effect, be deemed to have ceased to have effect except as respects any arrears due under the maintenance order at that date.<sup>12</sup>

(10) [Repealed]<sup>13</sup>

## **5. Registration in Island of maintenance order made in Hague Convention country**

(1) This section applies to a maintenance order made at any time by a competent court in a Hague Convention country.

(2) Where a certified copy of an order to which this section applies is received by the prescribed officer from a Hague Convention country, he shall, subject to the following subsections, register the order in the prescribed manner.

(4) Before registering an order under this section the prescribed officer shall take such steps as he thinks fit for the purpose of ascertaining whether the payer under the order is residing in the Island, and if after taking those steps he is satisfied that the payer is not so residing he shall return the certified copy of the order and the accompanying documents to the Hague Convention country with a statement giving such information as he possesses as to the whereabouts of the payer.

(5) The prescribed officer may refuse to register the order if the court in the Hague Convention country by or before which the order was made did not have jurisdiction to make the order; and for these purposes a court in a Hague Convention country shall be considered to have jurisdiction if —

- (a) either the payer or the payee had his habitual residence in the Hague Convention country at the time when the proceedings were instituted; or
- (b) the payer and the payee were nationals of that country at that time; or
- (c) the respondent in those proceedings had submitted to the jurisdiction of the court, either expressly or by defending on the merits of the case without objecting to the jurisdiction; or
- (d) in the case of an order made by reason of a divorce or a legal separation or a declaration that a marriage is void or annulled, the court is recognised by the law of the Island as having jurisdiction to make the order.

In deciding whether a court in a Hague Convention country had jurisdiction to make an order the prescribed officer shall be bound by any finding of fact on which the court based its jurisdiction.

- (6) The prescribed officer may refuse to register the order —
  - (a) if such registration is manifestly contrary to public policy;
  - (b) if the order was obtained by fraud in connection with a matter of procedure;
  - (c) if proceedings between the same parties and having the same purpose are pending before a court in the Island and those proceedings were the first to be instituted; or
  - (d) if the order is incompatible with an order made in proceedings between the same parties and having the same purpose, either in the Island or in another country, provided that the latter order itself fulfils the conditions necessary for its registration and enforcement under this Part.

(7) Without prejudice to subsection (6), if the payer did not appear in the proceedings in the Hague Convention country in which the order was made, the prescribed officer shall refuse to register the order unless notice of the institution of the proceedings, including notice of the substance of the claim, was served on the payer in accordance with the law of that Hague Convention country and, having regard to the circumstances, the payer had sufficient time to enable him to defend the proceedings.

(8) If the order is registered under subsection (2), the prescribed officer shall serve notice in the prescribed form on the payer and give notice to the payee that the order has been registered.

(9) The payer may, before the end of one calendar month beginning with the date of service of the said notice, appeal to the court in which the order is registered to set aside the registration of the order on one of the grounds set out in subsections (5), (6) and (7).

(10) If the payer appeals to the prescribed court to set aside the registration of the order, the prescribed officer shall give notice to the payee of the appeal and of the date of the hearing of the appeal.

(11) If the prescribed officer refuses to register the order he shall give notice to the payee in the prescribed form that registration has been refused.

(12) A payee to whom notice has been given by the prescribed officer under subsection (11) may within 2 calendar months from the date when the notice was given, appeal to the prescribed court against the refusal to register the order.

(13) If the payee appeals to the court against the refusal to register the order, the prescribed officer shall give notice to the payer of the appeal and of the date of the hearing of the appeal.

## **7. Enforcement of maintenance order registered in the Island**

(1) Subject to subsections (1A) and (1B) a registered order may be enforced in the Island as if —

- (a) it had been made by the prescribed court, and
- (b) that court had had jurisdiction to make it;

and proceedings for or with respect to the enforcement of any such order may be taken accordingly.

(1A) Where in a maintenance order made in a Hague Convention country there are provisions which are not enforceable under this Part, this section applies only to the remaining provisions of the order.

(1B) The payee under a registered order may request the partial enforcement of that order.

(2) Any person for the time being under an obligation to make payments in pursuance of a registered order shall give notice of any change of address to the prescribed officer, and any person failing without reasonable excuse to give such a notice shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the standard scale.<sup>14</sup>

(3) Where an order is registered, the prescribed court, the prescribed officer and the Clerk to the Justices shall take all such steps as may be prescribed with respect to enforcing or facilitating the enforcement of the order.

(4) An order which by virtue of this section is enforceable by the prescribed court shall be enforceable as if it were an order of that court to pay a sum of money, and any enactment with respect to the enforcement of such orders (including the remission of sums due) applies accordingly.

(5) In any proceedings for or with respect to the enforcement of a registered order, a certificate of arrears sent to the prescribed officer shall be evidence of the facts stated therein.

(6) Subject to subsection (7) a sum of money payable under a registered order shall be payable in accordance with the order, or such part thereof as the payee may have requested should be enforced, as from the date on which the order took effect.

(7) Where a registered order was made by a court in a Hague Convention country before the 1st April 1985, no sum of money falling due before that date shall be payable in accordance with the order.

## **8. Variation and revocation of maintenance order registered in the Island**

(1) Subject to the provisions of this section —

- (a) the prescribed court shall have the like power, on an application made by the payer or payee under a registered order, to vary the method of payment of the order as if it had been made by the prescribed court and as if that court had had jurisdiction to make it;<sup>15</sup>
- (b) the jurisdiction of a court of summary jurisdiction to vary the method of payment of a registered order shall be exercisable notwithstanding that the proceedings for the variation of the order are brought by or against a person residing in a Hague Convention country.<sup>16</sup>

(2) The prescribed court shall not vary a registered order unless

- (a) the payer under the order had his habitual residence in the Island at the time when the proceedings to vary the order were instituted, or
- (b) the respondent in those proceedings had submitted to the jurisdiction of the prescribed court, either expressly or by defending on the merits of the case without objecting to the jurisdiction.

(3) to (7) [Repealed]<sup>17</sup>

(8) Where a registered order has been varied by the prescribed court or by a court in a Hague Convention country, the prescribed officer shall register the variation order in the prescribed manner.

(9) Where a registered order has been varied by the prescribed court or by a court in a Hague Convention country, the registered order shall, as from the date on which the variation order took effect, have effect as so varied.

## **9. Cancellation of registration**

(1) Where a registered order is revoked by an order made by a court in a Hague Convention country and notice of the revocation is received by the prescribed court, the prescribed officer shall cancel the registration, but any arrears due under the registered order at the date on which the order of revocation took effect, other than, in the case of a registered order made by a court in a Hague Convention country before the date of entry into force of the Hague Convention between the Island and that country,

arrears due before that date, shall continue to be recoverable as if the registration had not been cancelled.

(2) Where the prescribed officer is of opinion that the payer under a registered order is not residing in the Island, he shall cancel the registration of the order and shall send the certified copy of the order to the appropriate authority in the Hague Convention country.

#### **10. Steps to be taken by prescribed officer**

If it appears to the prescribed officer that the payer under a maintenance order, a certified copy of which has been received by him from a Hague Convention country, is not residing in the Island or, in the case of an order which subsequently became a registered order, has ceased to reside therein, he shall send to the appropriate authority in that country —

- (a) the certified copy of the order in question and a certified copy of any order varying that order;
- (b) if the order has at any time been a registered order, a certificate of arrears signed by the prescribed officer;
- (c) a statement giving such information as the prescribed officer possesses as to the whereabouts of the payer; and
- (d) any other relevant documents in his possession relating to the case.

#### **11. Appeals**

Where in pursuance of section 8 the prescribed court makes, or refuses to make, an order varying a registered order, the payer or the payee under the registered order shall have the like right of appeal (if any) from the order of variation or from the refusal to make it as he would have if the registered order had been made by the prescribed court.

#### **12. Admissibility of evidence given in Hague Convention country**

- (1) A statement contained in —
  - (a) a document, duly authenticated, which purports to set out or summarise evidence given in proceedings in a court in a Hague Convention country; or
  - (b) a document, duly authenticated, which purports to set out or summarise evidence taken in such a country for the purpose of proceedings in a court in the Island under this Part, whether in response to a request made by such a court or otherwise; or
  - (c) a document, duly authenticated, which purports to have been received in evidence in proceedings in a court in such a country or to be a copy of a document so received; or

- (d) a document purporting to be signed by a judicial officer, official or other competent person in a Hague Convention country which establishes that certain documents were served on a person,

shall in any proceedings in a court in the Island relating to a maintenance order to which this Part applies be admissible as evidence of any fact stated therein to the same extent as oral evidence of that fact is admissible in those proceedings.

(2) A document purporting to set out or summarise evidence given as mentioned in subsection (1)(a), or taken as mentioned in subsection (1)(b), shall be deemed to be duly authenticated for the purposes of that subsection if the document purports to be certified by the judicial officer or other person before whom the evidence was given, or, as the case may be, summarising, that evidence or a true copy of that document.

(3) A document purporting to have been received in evidence as mentioned in subsection (1)(c), or to be a copy of a document so received, shall be deemed to be duly authenticated for the purposes of that subsection if the document purports to be certified by a judge, or officer of the court in question to have been, or to be a true copy of a document which has been, so received.

(4) It shall not be necessary in any such proceedings to prove the signature or official position of the person appearing to have given such a certificate.

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

### **13. Obtaining of evidence needed for purpose of certain proceedings**

(1) Subsections (2) to (5) apply where, for the purpose of any proceedings in a court in a Hague Convention country relating to a maintenance order to which this Part applies, a request is made by or on behalf of that court for the taking in the Island of the evidence of a person residing therein relating to matters specified in the request.

(2) The prescribed court may take that evidence and, after giving notice of the time and place at which the evidence is to be taken to such persons and in such manner as it thinks fit, shall take the evidence in such manner as may be prescribed.

(3) Evidence taken under subsection (2) shall be sent by the prescribed officer to the appropriate authority in the Hague Convention country.

(4) Where any person, not being the payer or payee under the maintenance order to which the proceedings relate, is required by virtue of this section to give evidence before a court in the Island, the court may order that there shall be paid out of money provided by Tynwald such allowances as may be allowed, by virtue of any enactment in force for the time being, to witnesses who attend before the High Court.

(5) Section 59 of the *Summary Jurisdiction Act 1989* (attendance of witnesses) shall apply in relation to a court of summary jurisdiction having power under subsection (2) to take the evidence of any person as if the proceedings in the court in a Hague Convention country for the purpose of which a request for the taking of the



evidence has been made were proceedings in the court of summary jurisdiction and had been begun by complaint.

(6) A court in the Island may, for the purpose of any proceedings in that court under this Part relating to a maintenance order to which this Part applies, send to the prescribed officer for transmission to the appropriate authority in a Hague Convention country a request for a court in a Hague Convention country to take or provide evidence relating to such matters as may be specified in the request.

#### **14. Proof of orders made abroad**

For the purposes of this Part, unless the contrary is shown —

- (a) any order made by a court in a Hague Convention country purporting to bear the seal of that court or to be signed by any person in his capacity as a judge, or officer of the court, shall be deemed without further proof to have been duly sealed or, as the case may be, to have been signed by that person;
- (b) the person by whom the order was signed shall be deemed without further proof to have been a judge, or officer, as the case may be, of that court when he signed it and, in the case of an officer, to have been authorised to sign it; and
- (c) a document purporting to be a certified copy of an order made by a court in a Hague Convention country shall be deemed without further proof to be such a copy.

#### **15. Payment of sums under orders**

(1) Payment of sums due under a registered order shall, while the order is registered in the prescribed court, be made in such manner and to such person as may be prescribed.

(2) Where the sums required to be paid under a registered order are expressed in a currency other than the currency of the Island, then, as from the relevant date, the order shall be treated as if it were an order requiring the payment of those sums in the currency of the Island as, on the basis of the rate of exchange prevailing at that date, are equivalent to the sums so required to be paid.

(3) Where the sum specified in any statement, being a statement of the amount of any arrears due under a maintenance order made by a court in a Hague Convention country, is expressed in a currency other than the currency of the Island, that sum shall be deemed to be such sum in the currency of the Island as, on the basis of the rate of exchange prevailing at the relevant date, is equivalent to the sum so specified.

(4) For the purposes of this section a written certificate purporting to be signed by an officer of any bank in the Island certifying that a specified rate of exchange prevailed between currencies at a specified date and that at such rate a specified sum in the currency of the Island is equivalent to a specified sum in another specified currency

shall be evidence of the rate of exchange so prevailing on that date and of the equivalent sums in terms of the respective currencies.

- (5) In this section “the relevant date” means —
- (a) in relation to a registered order or to a statement of arrears due under a maintenance order made by a court in a Hague Convention country, the date on which the order first becomes a registered order;
  - (b) in relation to a registered order which has been varied, the date on which the last order varying that order is registered in the prescribed court.

## 16. Powers of court where respondent does not appear

Where the respondent to an application —

- (a) for the variation or revocation of a maintenance order made by a court of summary jurisdiction, being an order to which section 4 applies; or
- (b) for the variation of a registered order registered in the prescribed court,

does not appear at the time and place appointed for the hearing of the application, but the court is satisfied that the respondent is residing in a Hague Convention country and that the requirements of section 4(4), (6) or (7) or section 8(3), as the case may be, have been complied with, the court may proceed to hear and determine the application at the time and place appointed for the hearing or for any adjourned hearing as if the respondent had appeared at that time and place.

## 18. Interpretation of Part 1

- (1) In this Part —

“**affiliation order**” means an order (however described) adjudging, finding or declaring a person to be the father of a child, whether or not it also provides for the maintenance of the child;

“**certificate of arrears**”, in relation to a maintenance order, means a certificate certifying that the sum specified in the certificate is to the best of the information or belief of the officer giving the certificate the amount of the arrears due under the order at the date of the certificate except any arrears that accrued before the date of entry into force of the Hague Convention between the Island and the country in which the payer is residing, or, as the case may be, that to the best of his information or belief there are no arrears due thereunder at the date of the certificate;

“**certified copy**”, in relation to an order of a court, means a copy of the order certified by the proper officer of the court to be a true copy;

“**court**” includes any tribunal or person having power to make, confirm, enforce, vary or revoke a maintenance order, and “**competent court in a Hague**

**Convention country**” means a court having jurisdiction on one of the grounds specified in section 5(5)(a);

**“maintenance order”** has the meaning given by subsection (2);

**“payee”**, in relation to a maintenance order, means the person entitled to the payments for which the order provides and includes a public body which has provided benefits for the payee and which is entitled ipso jure under the law to which it is subject to claim enforcement of the said order to the extent of the benefits so provided in place of the said person;

**“payer”**, in relation to a maintenance order, means the person liable to make payments under the order;

**“prescribed”** means prescribed by rules of court, and **“prescribed court”** means such court of summary jurisdiction as may be prescribed;

**“registered order”** means a maintenance order which is for the time being registered in the prescribed court under this Part and **“registered”** and **“registration”** shall be construed accordingly.

(2) In this Part **“maintenance order”** means an order (however described), including a settlement made by or before a court in a Hague Convention country, of any of the following descriptions, and, in the case of an order which is not limited to the following descriptions, the part of the order which is so limited —

- (a) an order (including an affiliation order or order consequent upon an affiliation order) which provides for the periodical payment of sums of money towards the maintenance of any person, being a person whom the person liable to make payments under the order is according to the law applied in the place where the order was made, liable to maintain;
- (b) an affiliation order or order consequent upon an affiliation order, being an order which provides for the payment by a person adjudged, found or declared to be a child’s father of expenses incidental to the child’s birth or, where the child has died, of his funeral expenses; and
- (c) an order within the foregoing provisions of this definition made against a payer on the application of a public body which claims reimbursement of sums of money payable under the order with respect to the payee if reimbursement can be obtained by the public body under the law to which it is subject,

and in the case of a maintenance order which has been varied (including a maintenance order which has been varied either by a court in the Island or by a competent court in a Hague Convention country whether or not the original order was made by such a court), means that order as varied:

Provided that the expression “maintenance order” shall not include an order made in a Hague Convention country of a description which that country or the United Kingdom (in extending the Hague Convention to the Island) has reserved the right under Article 26 of the Hague Convention not to recognise or enforce.

(4) Any reference in this Part to the payment of money for the maintenance of a child shall be construed as including a reference to the payment of money for the child's education.

## SCHEDULE 2

### FACILITIES FOR ENFORCEMENT OF MAINTENANCE ORDERS (1921 PROVISIONS)

#### Section 34

##### *Countries to which this Schedule applies*

1. (1) The Council of Ministers shall by order designate the countries to which this Schedule applies, being the countries to which, immediately before the commencement of this Act, the 1921 Act extended.

(2) An order under section 1(1) designating a reciprocating country may amend an order under this paragraph by omitting that country from it, and that country shall thereupon cease to be a country to which this Schedule applies.

##### *Enforcement in Island of maintenance orders made elsewhere*

2. (1) Where —

- (a) a maintenance order has been made against any person by any court in a country to which this Schedule applies, and
- (b) a certified copy of the order has been transmitted by the appropriate officer of any such country to the prescribed officer,

the prescribed officer shall register the order in the prescribed court in the prescribed manner.

(2) From the date of such registration, the order shall be of the same force and effect and, subject to the provisions of this Schedule, all proceedings may be taken on the order as if —

- (a) it had been an order originally made by the prescribed court, and
- (b) that court had had jurisdiction to make it,

and that court may enforce the order accordingly.

##### *Transmission of maintenance orders made in the Island*

3. Where a court in the Island has made a maintenance order against any person and it is proved to the court that the person against whom it was made is resident in a country to which this Schedule applies, the prescribed officer shall transmit a certified copy of the order to the appropriate officer of that country.

*Provisional order against person resident elsewhere*

4. (1) Where —

- (a) an application is made to a court of summary jurisdiction in the Island for a maintenance order against any person, and
- (b) it is proved that the person is resident in a country to which this Schedule applies, and
- (c) the court, after hearing the evidence, is satisfied of the justice of the application,

the court may, in the absence of that person, make any such order as it might have made if notice of the time and place of the hearing had been given to that person and he had failed to appear at the hearing.

(2) An order under this paragraph shall be provisional only, and shall have no effect unless confirmed by a competent court in the country in question.

(3) The evidence of any witness who is examined on any such application shall be put into writing, and shall be read over to and signed by him.

(4) Where an order is made under this paragraph, the prescribed officer shall transmit to the appropriate officer in the country in question

- (a) the evidence so taken;
- (b) a certified copy of the order;
- (c) a statement of the grounds on which the making of the order might have been opposed if notice of the time and place of the hearing had been given to the person against whom the order was made and he had appeared at the hearing; and
- (d) such information as the court possesses for facilitating the identification of that person and ascertaining his whereabouts.

(5) Where —

- (a) a provisional order made under this paragraph has come before a court in a country to which this Schedule applies, and
- (b) that court has remitted the order to the court which made the order for the purpose of taking further evidence,

the latter court or any other court of summary jurisdiction shall, after giving the prescribed notice, proceed to take the evidence in like manner and subject to the like conditions as the evidence in support of the original application.

(6) If upon a hearing under sub-paragraph (5) it appears to the court that the order ought not to have been made, it may revoke the order, but otherwise the evidence so taken shall be dealt with in like manner as the original evidence.

(7) The confirmation of an order made under this paragraph does not affect any power of a court of summary jurisdiction to vary or revoke the order.

(8) Where a court varies or revokes an order made under this paragraph, the prescribed officer shall transmit a certified copy of the varying or revoking order to the appropriate officer of the country in which the original order was confirmed.

(9) An order varying an order under this paragraph shall not have effect unless confirmed in like manner as the original order.

(10) The applicant shall have the same right of appeal, if any, against a refusal to make a provisional order as he would have had against a refusal to make the order if notice of the time and place of the hearing had been given to the person against whom the order is sought to be made.

*Confirmation of maintenance order made elsewhere*

5. (1) Where —

- (a) a maintenance order has been made against any person by any court in a country to which this Schedule applies, and
  - (b) the order is provisional only and has no effect unless confirmed by a court of summary jurisdiction in the Island, and
  - (c) a certified copy of the order, together with the evidence of witnesses and a statement of the grounds on which the order might have been opposed, has been transmitted by the appropriate officer of any country to the prescribed officer, and
  - (d) it appears to the prescribed officer that the person against whom the order was made is resident in the Island,
- the prescribed officer shall give to the person against whom the order was made notice of the time and place of a hearing at which he may appear before the prescribed court and show cause why the order should not be confirmed.

(2) At that hearing that person may oppose the confirmation of the order on any grounds on which he might have opposed the making of the order in the original proceedings if he had been a party to them, but on no other grounds; and the statement by the court which made the order of the grounds on which the making of the order might have been opposed if that person had been a party to the proceedings shall be conclusive evidence that those grounds are grounds on which objection may be taken.

(3) If, at the hearing, that person does not appear or, on appearing, fails to satisfy the court that the order ought not to be confirmed, the prescribed court may confirm the order either without modification or with such modifications as the court, after hearing the evidence, thinks just.

(4) If that person appears at the hearing and satisfies the court that, for the purpose of establishing any grounds on which he opposes the confirmation of the order, it is necessary to remit the case to the court which made the order for the taking of further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

(5) Where an order has been confirmed under this paragraph, it may be varied or revoked in like manner as if it had originally been made by the prescribed court.

(6) Where, on an application for revocation or variation, it is necessary to remit the case to the court which made the order for the taking of further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

(7) Where an order has been confirmed under this paragraph, the person against whom it was made shall have the same right of appeal, if any, against the confirmation of the order as he would have had against the making of the order if it had been made by the prescribed court and that court had had jurisdiction to make it.

*Variation and revocation of maintenance orders*

6. (1) This paragraph applies to —

- (a) any maintenance order made by virtue of paragraph 4 which has been confirmed as mentioned in that paragraph; and
- (b) any maintenance order which has been confirmed under paragraph 5.

(2) Where the respondent to an application for the variation or revocation of a maintenance order to which this paragraph applies is residing in a country to which this Schedule applies, the prescribed court has jurisdiction to hear the application (where it would not have such jurisdiction apart from this sub-paragraph) if that court would have had jurisdiction to hear it had the respondent been residing in the Island.

(3) Where —

- (a) the respondent to an application for the variation or revocation of a maintenance order to which this paragraph applies does not appear at the time and place appointed for the hearing of the application by the prescribed court, and
- (b) the court is satisfied that the respondent is residing in a country to which this Schedule applies,  
the court may proceed to hear and determine the application at the time and place appointed for the hearing or for any adjourned hearing in like manner as if the respondent had appeared at that time and place.

*Communication between courts*

7. Rules of court may make provision —

- (a) as to the manner in which a case can be remitted by a court authorised to confirm a provisional order; and
- (b) generally for facilitating communications between such courts.

*Evidence*

8. (1) Any document purporting to be signed by a judge or officer of a court outside the Island shall, until the contrary is proved, be deemed to have been so signed

without proof of the signature or judicial or official character of the person appearing to have signed it.

(2) The officer of a court outside the Island by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of the court to sign the document.

(3) Evidence taken in a court in a country to which this Schedule applies for the purposes of this Schedule may be received in evidence in proceedings before courts of summary jurisdiction under this Schedule.

*Transfer of order made by High Court*

9. (1) This paragraph applies where —

- (a) a country to which this Schedule applies becomes a reciprocating country for the purpose of Part 1 and, immediately before the country ceases to be a country to which this Schedule applies, a maintenance order made by a court in that country is registered in the High Court under paragraph 2; or
- (b) a country to which the 1921 Act extended immediately before the 1st January 1980 became a reciprocating country before the commencement of this Act, and immediately before the order under section 21 of the 1921 Act extending that Act to that country was revoked, a maintenance order made by a court in that country was registered in the High Court under section 1 of that Act.

(2) The High Court may, on an application by the payer or the payee under the maintenance order referred to in sub-paragraph (1) or of its own motion, transfer the order to the prescribed court with a view to the order being registered in that court under Part 1.

(3) Where the High Court transfers an order to the prescribed court under this paragraph it shall —

- (a) cause a certified copy of the order to be sent to the prescribed officer; and
- (b) cancel the registration of the order in the High Court.

(4) The prescribed officer shall register the order in the prescribed manner.

*Application of Part 1 to orders etc. under this Schedule*

10. An order under section 1(1) designating as a reciprocating country a country to which this Schedule applies may contain such provisions as the Council of Ministers considers expedient for the purpose of securing —

- (a) that the provisions of Part 1 apply, subject to such modifications as may be specified in the order, to maintenance orders, or maintenance orders of a specified class —



- (i) made by a court in the Island against a person residing or having assets in that country, or
- (ii) made by a court in that country against a person residing or having assets in the Island,  
being orders to which immediately before the date of the coming into operation of the order this Schedule applied;
- (b) that any maintenance order, or maintenance order of a specified class, made by a court in that country which has been confirmed by a court in the Island under paragraph 5 and is in force immediately before that date is registered under section 6;
- (c) that any proceedings brought under or by virtue of a provision of this Schedule in a court in the Island which are pending at that date, being proceedings affecting a person resident in that country, are continued as if they had been brought under or by virtue of the corresponding provision of Part 1.

### *Interpretation*

11. In this Schedule —

“**the 1921 Act**” means the Maintenance Orders (Facilities for Enforcement) Act 1921;

“**country**” includes a territory;

“**dependants**”, in relation to a person against whom a maintenance order is made, means such persons as that person is liable to maintain according to the law in force in the country in which the order is made;

“**maintenance order**” means an order (other than an affiliation order) for the periodical payment of sums of money towards the maintenance of the wife or other dependants of the person against whom the order is made;

“**prescribed**” means prescribed by rules of court, and “**the prescribed court**” and “**the prescribed officer**” have the same meanings as in Part 1.

## SCHEDULE 3

### ENACTMENTS REPEALED

#### Section 36(4)

[Sch 3 repeals the following Acts and Order wholly —

Maintenance Orders (Facilities for Enforcement) Act 1921

Maintenance Orders (Facilities for Enforcement) Amendment Act 1935

Maintenance Orders (Reciprocal Enforcement) Act 1978

Maintenance Orders (Reciprocal Enforcement) (Hague Convention Countries) Order 1984

and the following Acts and Orders in part —

Matrimonial Proceedings (Magistrates' Courts) Act 1962

Collection of Fines etc. Act 1985

Matrimonial Proceedings Act 1986

Summary Jurisdiction Act 1989

Family Law Act 1991

Transfer of Functions (Governor in Council) Order 1991 (GC155/91)

Transfer of Governor's Functions Act 1992

Statute Law Revision Act 1992

Maintenance Orders (Reciprocal Enforcement) (Hague Convention Countries) Order 1994 (GC400/94).]

## ENDNOTES

### Table of Endnote References

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- <sup>1</sup> Subs (1) amended by Matrimonial Proceedings Act 2003 Sch 5.
- <sup>2</sup> Subs (2) amended by Fines and Penalties Act 2024 Sch 1.
- <sup>3</sup> Para (a) amended by Matrimonial Proceedings Act 2003 Sch 5.
- <sup>4</sup> Para (a) substituted by Matrimonial Proceedings Act 2003 Sch 5.
- <sup>5</sup> Para (b) substituted by Matrimonial Proceedings Act 2003 Sch 5.
- <sup>6</sup> Subs (1) amended by Matrimonial Proceedings Act 2003 Sch 5.
- <sup>7</sup> Subs (1) amended by Matrimonial Proceedings Act 2003 Sch 5.
- <sup>8</sup> ADO (whole Act) 1/4/1996 (SD77/96).
- <sup>9</sup> Para (a) repealed by Children and Young Persons Act 2001 Sch 13.
- <sup>10</sup> Subs (1) amended by Matrimonial Proceedings Act 2003 Sch 5.
- <sup>11</sup> Subs (8) amended by SD450/99.
- <sup>12</sup> Subs (9) amended by SD450/99.
- <sup>13</sup> Subs (10) repealed by SD450/99.
- <sup>14</sup> Subpara (2) amended by Fines and Penalties Act 2024 Sch 1.
- <sup>15</sup> Para (a) amended by SD450/99.
- <sup>16</sup> Para (b) amended by SD450/99.
- <sup>17</sup> subss (3) to (7) repealed by SD450/99.