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| **Act of Sederunt (Child Care and Maintenance Rules) 1997**  **Statutory Instrument 1997 No. 291 (S.19)**  **Applications lodged on or after 28 November 2011 and before 1 August 2014** | |
| **PART III OUTGOING ORDERS UNDER THE 1972 ACT** | |
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**Application for transmission of order for enforcement in a reciprocating country**

**5.14** (1) An application for the transmission of a maintenance order for enforcement in a reciprocating country shall be made by letter addressed to the sheriff clerk.

(2) There shall be lodged with any such application-

(a) a certified copy of the relevant order;

(b) a statement signed by the applicant or his solicitor of any arrears outstanding in respect of the order;

(c) a statement signed by the applicant or his solicitor giving such information as to the whereabouts of the payer as he possesses;

(d) a statement signed by the applicant or his solicitor giving such information as the applicant possesses for facilitating the identification of the payer;

(e) where available, a photograph of the payer.

**Application for transmission of order to Hague Convention Country**

**5.16** (1) An application for the transmission of a maintenance order to a Court in a Hague Convention Country for registration and enforcement shall be made by letter addressed to the sheriff clerk.

(2) There shall be lodged with any such application-

(a) a certified copy of the relevant order;

(b) a statement signed by the applicant or his solicitor of any arrears outstanding in respect of that order;

(c) a statement signed by the applicant or his solicitor giving such information as to the whereabouts of the payer as he possesses;

(d) a statement signed by the applicant or his solicitor giving such information as the applicant possesses for facilitating the identification of the payer;

(e) where available, a photograph of the payer;

(f) a statement signed by the applicant or his solicitor which establishes that notice of the order was sent to the payer;

(g) if the payee received legal aid in the proceedings, a statement to that effect; and

(h) if the payer did not appear in the proceedings in which the maintenance order was made, the original or a certified true copy of a document which establishes that notice of the institution of the proceedings was served on the payer.

**Application for transmission of order for enforcement in the USA**

**5.16A** (1) An application for the transmission of a maintenance order to the United States of America for enforcement shall be made by letter addressed to the sheriff clerk.

(2) There shall be lodged with any such application-

(a) three certified copies of the maintenance order;

(b) a certificate of arrears signed by the applicant or his solicitor;

(c) a sworn statement signed by the payee-

(i) giving the address of the payee;

(ii) giving such information as is known as to the whereabouts of the payer; and

(iii) giving a description, so far as is known, of the nature and location of any assets of the payer available for execution; and

(d) a statement signed by the applicant giving such information as the applicant possesses for facilitating the identification of the payer including a photograph if available.

**Service on defender in Hague Convention Country**

**5.17** For the purposes of section 4(4) of the 1972 Act as applied in respect of a defender in a Hague Convention Country, service on such a defender shall be effected in accordance with the Ordinary Cause Rules.

**Service of notice of proceedings on payer residing in USA**

**5.17A**. Where service of a document is executed in accordance with section 5(4)(a) of the 1972 Act as applied to the United States of America, the Scottish Ministers shall obtain and lodge with the sheriff clerk a certificate by a person who is conversant with the law of the United States of America and who practises or who has practised law in that country or is a duly accredited representative of the Government of the United States of America, stating that the method of service employed is in accordance with the law of the place where service was executed.

**Provisional order made with a view to transmission to a reciprocating country**

**5.18** A certificate signed by the sheriff clerk in terms of section 3(5)(c) of the 1972 Act (certificate of grounds), as read with section 4(6) thereof, shall also be signed by the sheriff.

**Evidence adduced prior to confirmation of provisional order**

**5.19** (1) Where under section 5(9) of the 1972 Act it appears to the sheriff that a provisional order ought not to have been made, the sheriff clerk shall send by first class recorded delivery a notice on Form 66 to the person on whose application the order was made.

(2) Where such a person wishes to make representations, he shall lodge with the sheriff clerk within 21 days of the date of posting of the notice a minute narrating the representations and the further evidence which he intends to adduce.

(3) On the expiry of the period of 21 days, the cause shall be enrolled before the sheriff who shall appoint a diet for the hearing of further evidence or make such other order as may be appropriate.

**Provisions in relation to intimation and entering appearance**

**5.20** (1) Where the 1972 Act provides that on intimation to a payee of the receipt by the Court of a provisional order the payee is to enter appearance within a prescribed period, intimation shall be given in Form 67 and the period shall be-

(a) 21 days from the date of posting where the payee is resident in Europe; and

(b) 42 days from the date of posting where the payee is resident outside Europe.

(2) To enter appearance in terms of section 5(6) of the 1972 Act, the payee shall lodge an application-

(a) stating that he opposes confirmation of the order; and

(b) setting forth averments in answer to the case upon which the provisional order was made, supported by the appropriate pleas-in-law.

(3) Where the payee enters appearance in terms of section 5(6) of the 1972 Act, the sheriff shall appoint a diet for the hearing of evidence or make such other order as may be appropriate to enable the court to proceed in accordance with the procedure and practice in ordinary civil proceedings in the sheriff court as if the application for the variation or revocation of the maintenance order had been made to it.

**Authentication of documents**

**5.21** Where the 1972 Act provides that a document is to be authenticated in a prescribed manner, it shall be authenticated by a certificate signed by the sheriff clerk declaring that the document is authentic.

**Application under section 4 or 5 of the 1972 Act**

**5.22** An application for a provisional order under section 4 of the 1972 Act or an application under section 5 of that Act for variation or revocation of a maintenance order shall proceed as an ordinary cause in accordance with the terms of Chapter 33 (family actions) or 33A (civil partnership actions), as the case may be, of the Ordinary Cause Rules.

**Representations or evidence by payer residing in the USA**

**5.22A.** (1) Where notices are provided in accordance with section 5(4) of the 1972 Act as applied to the United States of America, the sheriff clerk shall notify the recipients of the notices that if the payer wishes the court in Scotland to take into account any representations made by him or any evidence adduced by him or on his behalf, then such representations or evidence must be lodged with the sheriff clerk not later than 21 days before the date fixed for the hearing.

(2) Where such representations are lodged, or such evidence is lodged, the sheriff clerk shall serve a copy of the representations or evidence–

(a) where the payee is represented by a solicitor, on that solicitor, by–

(i) personal delivery;

(ii) facsimile transmission;

(iii) first class ordinary post; or

(iv) delivery to a document exchange; and

(b) where the payee is not represented by a solicitor, on the payee, by any of the methods of service provided for in Chapter 5 of the Ordinary Cause Rules (citation, service and intimation).

**Application by payer residing in the USA for variation or revocation of order**

**5.22B.** (1) Where an application is made in accordance with section 5(6) of the 1972 Act as applied to the United States of America, the sheriff clerk shall give notice of institution of the proceedings, including notice of the substance of the application, in accordance with subparagraph (2) or (3).

(2) Where the payee is represented by a solicitor, the document referred to in subparagraph (1) shall be served on that solicitor by–

(a) personal delivery;

(b) facsimile transmission;

(c) first class ordinary post; or

(d) delivery to a document exchange.

(3) Where the payee is not represented by a solicitor, the document referred to in subparagraph (1) shall be served on the payee by any of the methods of service provided for in Chapter 5 of the Ordinary Cause Rules (citation, service and intimation).

**Evidence**

**5.23** (1) Where any request to take evidence is made by or on behalf of a court in terms of section 14 of the 1972 Act, or section 14 of the 1972 Act as amended by any Order in Council made under Part III of that Act, or by the Secretary of State in terms of section 38 thereof, such evidence shall be taken before a sheriff of the sheriffdom in which the witness resides and shall be–

(a) recorded by tape recording or other mechanical means

approved by the court; or

(b) taken down by a shorthand writer, or where the sheriff so directs, by the sheriff,

and the extended notes of evidence certified by the sheriff shall be the notes of the evidence taken.

(2) Where a provisional order is made under section 4 or 5 of the 1972 Act and evidence has been taken by a shorthand writer, the applicant or his solicitor shall provide the sheriff clerk with a copy of the extended notes of evidence.

**Taking of evidence at request of a court in the USA**

**5.23A**. Where evidence is taken by a sheriff under section 14(1) of the 1972 Act as applied to the United States of America, rules 29.7 (citation of witnesses), 29.9 (second diligence against a witness) and 29.10 (failure of witness to attend) of the Ordinary Cause Rules shall apply in respect of the matters set out in those rules.

**Requests for the taking of evidence by a court in the USA**

**5.23B.** An application made to a sheriff for the purposes of section 14(5) of the 1972 Act as applied to the United States of America shall follow as nearly as may be the procedure set out in rule 28.14 of the Ordinary Cause Rules (letters of request), subject to any modifications necessitated by that provision of the 1972 Act as so applied.

**Communication with courts in the USA**

**5.23C**.  In so far as applicable to outgoing orders under the 1972 Act to the United States of America, for the purposes of the provisions in Part I of the 1972 Act, the sheriff may communicate with a court or courts in the United States of America in such circumstances and in such manner as he thinks fit.

**Disapplication of provisions where payer resides or has assets in the USA**

**5.23D**. In any case in which the payer under a maintenance order made by a court in Scotland is residing or has assets in the United States of America, none of the provisions in this Part shall apply except this rule and rules 5.16A, 5.17A, 5.21, 5.22, 5.22A, 5.22B, 5.23, 5.23A, 5.23B and 5.23C.