STATUTORY INSTRUMENTS

1980 No. 1727 (S. 149)

COURT OF SESSION, SCOTLAND

Act of Sederunt (Maintenance Orders Acts, Rules) 1980

Made - - - - 11*th November* 1980

Coming into Operation 1*st January* 1981

The Lords of Council and Session under and by virtue of the powers conferred upon them by section 16 of the Administration of Justice (Scotland) Act 1933**(a)**, Part II of the Maintenance Orders Act 1950**(b)**, and Part I of the Maintenance Orders Act 1958**(c)** as amended by Schedule 3 to the Administration of Justice Act 1977**(d)**, and of all other powers enabling them in that behalf, do hereby enact and declare—

PART I

GENERAL

Citation, commencement, interpretation and revocation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Maintenance Orders Acts, Rules) 1980 and shall come into operation on 1st January 1981.

(2) In this Act of Sederunt, unless the context otherwise requires—

"the 1950 Act" means the said Act of 1950;

"the 1958 Act" means the said Act of 1958;

"affidavit" includes statutory declaration;

"decree" includes extract decree;

"Deputy Principal Clerk" means the Deputy Principal Clerk of Session;

"the Registrar" in relation to the High Court in England means the Senior Registrar of the principal registry of the Family Division of the High Court in England and in relation to the High Court in Northern Ireland means the Chief Registrar of the Queens Bench Division (Matrimonial) of the High Court in Northern Ireland.

(3) Except as expressly provided in paragraph (2), expressions used in this Act of Sederunt and in the 1950 and 1958 Acts have, unless the context otherwise requires, the meaning given to them by those Acts.

(4) This Act of Sederunt shall be inserted in the Books of Sederunt.

(5) Part II of the Act of Sederunt (Maintenance Orders Act, 1950, Rules) 1950**(e)** and Part I of that Act in so far as it relates to Part II, and the Act of Sederunt (Amendment to Maintenance Order Rules) 1978**(f)** are revoked.

(a) 1933 c. 41.
(b) 1950 c. 37.
(c) 1958 c. 39.
(d) 1977 c. 38.
(e) S.I. 1950/2144.
(f) S.I. 1978/117.

Application

2.—(1) Part II of this Act of Sederunt shall have effect in relation to the registration in other parts of the United Kingdom of decrees granted by the Court of Session to which the 1950 and 1958 Acts apply, and such decrees are referred to in this Act of Sederunt as "outgoing orders".

(2) Part III of this Act of Sederunt shall have effect in relation to the registration in the Court of Session of orders made by courts in other parts of the United Kingdom to which those Acts apply, and such orders are referred to in this Act of Sederunt as "incoming orders".

Maintenance Orders Register

3.—(1) The Deputy Principal Clerk shall maintain a Register called "the Maintenance Orders Register" for the purposes of the 1950 and 1958 Acts Part I of which shall relate to outgoing orders and Part II to incoming orders.

(2) The Deputy Principal Clerk shall make appropriate entries in the Maintenance Orders Register in respect of any action taken by him or notified to him in accordance with the provisions of those Acts, and shall keep in such manner as he considers appropriate any documents sent to him in connection with any such action.

Inspection of Register

4.—(1) The Deputy Principal Clerk shall, on an application in that behalf by—

(*a*) any person entitled to, or liable to make, payments under an order in respect of which any entry has been made in the Maintenance Orders Register; or

(*b*) a solicitor acting on behalf of that person,

permit that person or his solicitor, as the case may be, to inspect any such entry and any document in his possession relating to that entry and to take copies of any such entry or document.

(2) The Deputy Principal Clerk may, on an application in that behalf by any person, and on being satisfied of that person's interest, grant that person permission to inspect or take copies of any such entry or document.

Transcript of evidence

5.—(1) For the purposes of section 21 of the 1950 Act (evidence adduced in other parts of the United Kingdom) the Deputy Principal Clerk is the officer of the Court of Session to whom any transcript or summary of evidence should be sent.

(2) On receiving any such transcript or summary, the Deputy Principal Clerk shall cause it to be lodged in the appropriate process, and shall give notice to the parties to the action or the solicitors acting on their behalf that he has done so.

PART II

OUTGOING ORDERS

Applications for registration

6.—(1) An application for the registration in the High Court in England or

Northern Ireland of a decree granted by the Court of Session shall be made by sending to the Deputy Principal Clerk—

(*a*) a letter of application in that behalf;

(*b*) an affidavit by the applicant;

(*c*) a copy of that affidavit; and

(*d*) a certified copy of the decree.

(2) An affidavit under this rule shall include—

(*a*) the name and address of the person liable to make payments under the decree;

(*b*) the arrears due under the decree, if any, and the date to which they are calculated;

(*c*) the reason for the application; and

(*d*) a statement that the decree is not already registered under the 1950 Act.

Transmission

7.—(1) If it appears that the person liable to make payments under the decree resides in another part of the United Kingdom and that it is convenient that the decree should be enforceable there the Deputy Principal Clerk shall send to the Registrar—

(*a*) the affidavit of the applicant;

(*b*) a certified copy of the decree;

(*c*) a letter stating that the application has been granted and requesting registration of the decree, and notification of registration.

(2) On so acting, the Deputy Principal Clerk shall enter in Part I of the Maintenance Orders Register—

(*a*) particulars of the decree; and

(*b*) details of those actings.

Notice of registration

8.—(1) For the purposes of section 17(4) of the 1950 Act (notice of registration), the Deputy Principal Clerk is the officer of the Court to whom notice of registration of the decree should be sent by the Registrar.

(2) On receiving such notice, the Deputy Principal Clerk shall make an entry to that effect in Part I of the Maintenance Orders Register.

Re-registration in magistrates' court

9.—(1) When a decree has been registered in the High Court in England or Northern Ireland, an application to the Court of Session for the registration of that decree in the magistrates' court under the 1958 Act, shall be made by sending to the Deputy Principal Clerk—

(*a*) a letter of application in that behalf specifying the magistrates' court in which registration is sought;

(*b*) an affidavit by the applicant;

(*c*) a copy of that affidavit; and

(*d*) a certified copy of the decree.

(2) An affidavit under this rule shall include—

(*a*) the matters mentioned in sub-paragraphs (*a*), (*b*) and (*c*) of paragraph (2) of rule 6;

(*b*) the date and place of the original registration;

(*c*) where the order has been re-registered, the date and place of the last re-registration and whether or not that has been cancelled or where any of these facts is not known a statement to that effect; and

(*d*) the steps, if any, taken to enforce the registered order.

Transmission for re-registration

10.—(1) The prescribed period for the purpose of section 2(2) of the 1958 Act shall be 14 days.

(2) If the application under rule 9 is granted, the Deputy Principal Clerk shall send to the clerk of the magistrates court in which re-registration is sought—

(*a*) the affidavit of the applicant;

(*b*) a certified copy of the decree;

(*c*) a letter stating that the application has been granted and requesting him to take steps to register the order, and to notify him accordingly.

(3) On receiving notice that the order has been so registered, the Deputy Principal Clerk shall enter the name of the magistrates' court and the date of registration of the order in that Court in Part I of the Maintenance Orders Register.

Registration and re-registration

11. Application may be made for registration under rule 6 and for re-registration under rule 9 in one letter of application made to the Deputy Principal Clerk and accompanied by—

(*a*) an affidavit by the applicant, which shall include the matters mentioned in rule 6(2);

(*b*) two copies of that affidavit;

(*c*) two certified copies of the decree referred to in rule 6(1).

Transmission for registration and re-registration

12. If the application under rule 11 is granted the Deputy Principal Clerk shall act in accordance with the requirements of rules 7 and 8 and on complying with rule 8(2) shall act in accordance with the requirements of rule 10(2).

Discharge and variation

13.—(1) If the Court of Session makes an order varying or discharging a decree registered under the 1950 or 1958 Acts, the party on whose application the order is made shall so inform the Deputy Principal Clerk and he shall on being so informed send to the Registrar, and where the order is registered in a magistrates' court, to the Clerk of that court—

(*a*) a certified copy of the interlocutor;

(*b*) a letter requesting the Registrar and, as the case may be, the clerk of the magistrates' court, to take the appropriate action under those Acts, in accordance with the interlocutor, and to notify him of the result.

(2) The Deputy Principal Clerk shall enter in Part I of the Maintenance Orders Register—

(*a*) the date and nature of the interlocutor;

(*b*) the date of its transmission under paragraph (1); and

(*c*) on receiving notice under sub-paragraph (*b*) of that paragraph, the particulars contained in that notice.

Cancellation

14.—(1) Where the registration of a decree is cancelled under section 24(1) of the 1950 Act, the Deputy Principal Clerk is the officer of the Court to whom notice of the cancellation should be sent.

(2) On receiving such notice, he shall make an entry to that effect in Part I of the Maintenance Orders Register.

PART III

INCOMING ORDERS

Registration

15.—(1) For the purposes of section 17(2) of the 1950 Act, the Deputy Principal Clerk is the officer of the Court to whom an order of the High Court in England or Northern Ireland should be sent for registration in the Court of Session.

(2) On receiving a certified copy of such an order for registration, he shall—

(*a*) make an entry in respect of the order in Part II of the Maintenance Orders Register;

(*b*) if the certified copy of the order is accompanied by an affidavit or certificate of arrears due under the order, make an entry in respect of those arrears in Part II of the Maintenance Orders Register;

(*c*) on receipt of the dues of extract, endorse on the certified copy of the order a warrant for registration in the Books of Council and Session and send the copy so endorsed to the Keeper of the Registers of Scotland, who shall cause registration to be made in accordance with the warrant, and an extract of the registered order may then be issued with a warrant for diligence in common form to the Deputy Principal Clerk, for transmission by him to the applicant;

(*d*) notify the Registrar that the order has been registered.

Discharge and variation

16.—(1) For the purposes of section 23 of the 1950 Act,t he Deputy Principal Clerk is the officer of the Court to whom notice of an order varying or discharging a registered order should be given by the Registrar.

(2) On receiving a certified copy of such an order, the Deputy Principal Clerk shall—

(*a*) make an entry in respect of the order in Part II of the Maintenance Orders Register;

(*b*) notify the Registrar that he has done so;

(3) In the case of an order varying the registered order, sub-paragraphs (*b*) and (*c*) of rule 15(2) shall apply in relation to that order, as they apply in relation to an order under that rule.

Cancellation

17.—(1) An application for the cancellation of an order registered under this Part shall be made by sending to the Deputy Principal Clerk—

(*a*) a letter of application in that behalf;

(*b*) an affidavit by the applicant.

(2) An affidavit under this rule shall include—

(*a*) the date of the registration of the order;

(*b*) the reason for the application;

(*c*) the arrears, if any, that are due under the order.

(3) If the registration is cancelled, the Deputy Principal Clerk shall—

(*a*) notify the Registrar;

(*b*) notify the person liable under the order;

(*c*) make an entry in respect of the cancellation in the Maintenance Orders Register.

Emslie,
Lord President,
I.P.D.

Edinburgh.
11th November, 1980.

EXPLANATORY NOTE

(*This Note is not part of the Act of Sederunt.*)

This Act of Sederunt re-enacts with minor modifications the provisions of the Act of Sederunt (Maintenance Orders Act, 1950, Rules) 1950 in so far as they relate to the Court of Session and makes new provision under the amendments to the Maintenance Orders Act 1958 made by Schedule 3 to the Administration of Justice Act 1977 in rules 9 to 14 to enable a creditor under a decree of the Court of Session which has been registered in the High Court in England or Northern Ireland to have the decree registered and enforced in a magistrates' court.

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