



Treaty Series No. 97 (1975)

Agreement

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of the Republic of Ireland

providing for the
Reciprocal Recognition and Enforcement
of Maintenance Orders
(with Agreed Statement)

London, 9 December 1974

[The Agreement entered into force on 1 April 1975]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
July 1975*

LONDON

HER MAJESTY'S STATIONERY OFFICE

20p net

AGREEMENT
BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND AND THE
GOVERNMENT OF THE REPUBLIC OF IRELAND PROVIDING
FOR THE RECIPROCAL RECOGNITION AND ENFORCEMENT
OF MAINTENANCE ORDERS

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Ireland;

Desiring to provide, on the basis of reciprocity, for the recognition and enforcement of maintenance orders, pending the accession of their respective States to the Convention signed at Brussels on 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters;⁽¹⁾

Have agreed as follows:

ARTICLE 1

(1) For the purposes of this Agreement, the expression "maintenance order" means:

- (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 of the place where the order was made, liable to maintain; and
- (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.

(2) For the avoidance of doubt, a maintenance order includes:

- (a) such an order which is incidental to a decision as to the status of natural persons;
- (b) such an order obtained by or in favour of a public authority in connection with the provision of maintenance or other benefits in respect of a person whom the maintenance debtor is, in accordance with the law of the place where the order was made, liable to maintain;
- (c) a provision in an agreement in writing between spouses for the making by one spouse of periodical payments towards the maintenance of the other or of any of their children or of any child to whom either spouse is *in loco parentis*, being an agreement which has been embodied in or approved by a court order or made a rule of court; and

⁽¹⁾ For texts in Dutch, French, German and Italian see Official Journal of the European Communities No. L 299 of 1972 available through Agency Section, Her Majesty's Stationery Office, PO Box 569, London, SE1 9NY Tel. 01-928 6977 ext. 410.

(d) any arrears of maintenance under a maintenance order and any costs in respect of that order awarded against a maintenance debtor by a court.

(3) A maintenance order does not include an order made in one State in pursuance of an application under the United Nations Convention on the Recovery Abroad of Maintenance done at New York on 20 June 1956.

(4) In the case of a maintenance order which has been varied by a court in the State where it was made, any reference in this Agreement to a maintenance order shall be construed as a reference to that order as varied.

ARTICLE 2

Maintenance orders made in one State either before or after this Agreement comes into force shall be recognised and enforceable in the other State subject to and in accordance with the provisions of this Agreement. Provided that no arrears accruing before this Agreement comes into force shall be recoverable thereunder in that other State.

ARTICLE 3

(1) Subject to paragraph (2) of this Article, the jurisdiction of a court in one State to make a maintenance order may not be examined by a court in the other State in proceedings for the recognition and enforcement of the order.

(2) If either State amends its law after this Agreement comes into force so as to change the grounds of jurisdiction of its courts to make maintenance orders, the other State may provide that maintenance orders made on the basis of any new or amended ground of jurisdiction resulting from such amendment shall not be recognised or enforceable.

ARTICLE 4

A maintenance order made in one State and sent for recognition and enforcement in the other State may not be varied or revoked by a court in the latter State.

ARTICLE 5

Subject to the foregoing provisions of this Agreement, a maintenance order shall not be recognised or enforceable if, but only if:

- (a) recognition or enforcement would be contrary to public policy in the State in which it is sought;
- (b) where the maintenance order was made in default of appearance, the person in default was not served with notice of the institution of the proceedings in sufficient time to enable him to arrange for his defence; or
- (c) the maintenance order is irreconcilable with a judgment given in a dispute between the same parties in the State in which recognition and enforcement is sought.

ARTICLE 6

A maintenance order made in one State and sent for recognition and enforcement in the other State may not be examined as to its substance by a court in the latter State.

ARTICLE 7

A maintenance order made in one State and enforceable in that State shall, if the maintenance debtor is residing in the other State, be recognised and enforceable in that other State when enforcement of the order has been authorised in accordance with the law of that other State.

ARTICLE 8

- (1) A request for authority for enforcement shall be submitted:
 - (a) in the Republic of Ireland, to the Master of the High Court; and
 - (b) in the United Kingdom, to the Secretary of State for transmission to a court having appropriate jurisdiction.
- (2) The procedure for making the request shall be governed by the law of the State in which recognition and enforcement is sought.
- (3) The documents referred to in Article 13 of this Agreement shall be attached to the request.
- (4) The maintenance debtor shall not at this stage of the proceedings be entitled to make any submission on the request.

ARTICLE 9

- (1) Where in a maintenance order made in one State there are provisions which are not enforceable in the other State, enforcement may be authorised for any other provision in the maintenance order.
- (2) A maintenance creditor may request the partial enforcement of a maintenance order.

ARTICLE 10

The court or, in the Republic of Ireland, the Master of the High Court shall cause the decision on a request for authority for enforcement to be brought to the notice of the maintenance creditor and also, if enforcement is authorised, of the maintenance debtor.

ARTICLE 11

- (1) If authority for enforcement is granted, the maintenance debtor may, within one month of notice thereof being served, appeal:
 - (a) where the authority is granted in the Republic of Ireland, to the High Court; and
 - (b) where the authority is granted in the United Kingdom, to the court which granted it.

(2) The judgment given on an appeal under paragraph (1) of this Article may be contested only by way of appeal on a point of law.

(3) The court to which an appeal is made under paragraph (1) of this Article may, on the application of the appellant, stay the proceedings if either:

- (a) enforcement of the maintenance order has been suspended in the State in which it was made pending the determination of any form of appeal; or
- (b) the time for an appeal has not yet expired and enforcement has been suspended pending the making of an appeal.

In the latter case, the court to which the appeal is made may lay down the time within which the proceedings will be stayed.

(4) During the time allowed for an appeal under paragraph (1) of this Article, and until any such appeal has been determined, no measures of execution may be taken against the property of the maintenance debtor, other than those designed to protect the interests of the maintenance creditor.

ARTICLE 12

(1) If authority for enforcement is refused, the maintenance creditor may appeal:

- (a) where the authority is refused in the Republic of Ireland, to the High Court; and
- (b) where the authority is refused in the United Kingdom, to the court which refused it.

(2) The maintenance debtor shall be given notice of the appeal.

(3) The judgment given on an appeal under paragraph (1) of this Article may be contested only by way of appeal on a point of law.

ARTICLE 13

A request for authority for enforcement of a maintenance order shall be accompanied by:

- (a) a certified copy of the order;
- (b) in the case of an order made in default of appearance, the original or a certified true copy of the document which establishes that notice of the institution of the proceedings was served on the person in default;
- (c) documents which establish that the order is enforceable according to the law of the State in which it was made, and that the maintenance debtor has been notified of the order;
- (d) where appropriate, a document showing that the maintenance creditor received legal aid in the State in which the maintenance order was made;

- (e) a certificate of any arrears under the order;
- (f) a statement giving information as to the whereabouts of the maintenance debtor and for facilitating his identification; and
- (g) where available, a photograph of the maintenance debtor.

ARTICLE 14

(1) If the documents specified in sub-paragraphs (b) and (d) of Article 13 of this Agreement are not produced, the court or, in the Republic of Ireland, the Master of the High Court may allow time for their production, accept equivalent documents or, if the court or Master considers that there is sufficient information available, dispense with their production.

(2) If required a translation of the documents shall be produced, which shall be certified as correct by a person competent to do so.

ARTICLE 15

Subject to the provisions of this Agreement, the procedure for the enforcement of a maintenance order shall be governed by the law of the State in which enforcement is sought.

ARTICLE 16

No security or deposit, however described, may be demanded from a party who in one State seeks the enforcement of a maintenance order made in the other State, either on the ground that he is a foreign national, or on the ground that he is not resident in the State in which the enforcement is sought.

ARTICLE 17

Where proceedings for the making, variation or revocation of a maintenance order are instituted in one State against a person resident in the other State:

- (a) notice of the institution of the proceedings shall be served on the person against whom the proceedings are brought in accordance with the law of the State where he is resident and in sufficient time to enable him to arrange for his defence; and
- (b) the notice shall include a statement of the substance of the claim.

ARTICLE 18

If, in connection with proceedings before a court in one State to make, vary or revoke a maintenance order or to enforce a maintenance order made in the other State, the evidence of a witness residing in that other State is required, and a request is made on behalf of the court to the appropriate

authority of the State in which the witness is residing for such evidence to be taken, the appropriate authority shall arrange for the request to be complied with subject to and in accordance with the law of that State.

ARTICLE 19

This Agreement shall not apply to the non-metropolitan territories for the international relations of which the United Kingdom is responsible.

ARTICLE 20

This Agreement shall come into force upon a date to be mutually decided by the two Governments.⁽²⁾ It may be terminated by either Government giving one month's notice to the other and shall in any event cease to have effect when the Convention signed at Brussels on 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters has entered into force for both the United Kingdom and the Republic of Ireland.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done in two originals at London this 9th day of December, 1974.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

GORONWY-ROBERTS

For the Government of the Republic of Ireland:

PATRICK COONEY

⁽²⁾ The Agreement entered into force on 1 April 1975.

AGREED STATEMENT

1. In the course of the negotiations leading to the signature today of an Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Ireland providing for the Reciprocal Recognition and Enforcement of Maintenance Orders the question of the provision of legal aid and other assistance to parties involved in proceedings for the making or enforcement of such maintenance orders was discussed.

2. In the course of the discussion the United Kingdom representatives drew attention to the provisions of the Legal Aid Act 1974⁽³⁾ (and equivalent legislation for Scotland and Northern Ireland) which authorise the provision of legal aid in proceedings in the United Kingdom under Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972⁽⁴⁾ relating to maintenance orders made outside the United Kingdom or for the making of maintenance orders which would be sent outside the United Kingdom for enforcement. The United Kingdom representatives asked to be informed of the arrangements for legal aid that could be provided in the Republic of Ireland corresponding to those available in the United Kingdom.

3. The Irish representatives said that, apart from the informal arrangement referred to in paragraph 7 below, there was at present no provision for legal aid in civil proceedings. However, a committee had been set up by the Minister for Justice in May 1974 to advise on the introduction at an early date of a comprehensive scheme of legal aid and advice in civil matters and to recommend on the form, nature and administration of the scheme and on the legislation necessary to establish it. The committee had also been asked to consider whether, pending the introduction of a fully comprehensive scheme, it would be desirable and possible to develop as a matter of urgency a system of legal advice centres and legal aid in certain categories of cases which the committee considered merited immediate consideration.

4. As regards the position of an indigent maintenance creditor living in the United Kingdom who wished to enforce the maintenance order in the Republic of Ireland, the Irish representatives explained that under the provisions of the Maintenance Orders Act 1974 the enforcement of the order would not normally involve her in any costs: transmission of the order and the making of an order for its enforcement would be effected through official channels and the local district court clerk would collect the maintenance payments and send them to her or to some public authority authorised by her to receive them. If the debtor defaulted, the court clerk would institute enforcement proceedings on her behalf if she so requested in writing.

5. As regards indigent maintenance debtors living in the United Kingdom, the Irish representatives stated that the State would, in appropriate cases, contribute to their reasonable expenses of travelling to the Republic of Ireland to defend the proceedings.

⁽³⁾ 1974 c. 4.

⁽⁴⁾ 1972 c. 18.

6. Special evidential provisions had been included in the Maintenance Orders Act 1974 to render admissible documentary evidence submitted by parties to maintenance proceedings who lived in the United Kingdom and the rules which would regulate the procedure in the District Court in relation to maintenance orders to be made under the Act provided expressly that a defendant living in the United Kingdom might submit his defence in writing.

7. Finally, the Irish representatives referred to the existence of an informal arrangement between the Minister for Finance and the Attorney General for the payment of costs in High Court or Supreme Court proceedings where it was desirable in the public interest that important questions of law should be decided. The Irish representatives stated that this arrangement would apply to persons living in the United Kingdom who were parties to proceedings in either of those courts arising from the enforcement or non-enforcement in the Republic of Ireland of a maintenance order to which the Agreement relates or from the making of, or a refusal to make, such an order by a court in the Republic of Ireland.

8. The United Kingdom representatives took note that a committee had been set up in the Republic of Ireland to advise on the introduction and details of a comprehensive scheme of legal aid and advice in civil matters. They also took note of the statements made by the Irish representatives in regard to indigent maintenance debtors living in the United Kingdom and to persons living in the United Kingdom who were parties to certain types of maintenance proceedings in the High Court or Supreme Court. Pending the advice of the committee on legal aid, the United Kingdom representatives considered that the arrangements proposed were acceptable.

Signed in two originals at London this 9th day of December, 1974.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

GORONWY-ROBERTS

For the Government of the Republic of Ireland:

PATRICK COONEY