EXECUTIVE NOTE TO

THE RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS (UNITED STATES OF AMERICA) (SCOTLAND) ORDER 2007 (S.S.I. 2007/354)

THE RECOVERY OF MAINTENANCE (UNITED STATES OF AMERICA) (SCOTLAND) ORDER 2007 (S.S.I. 2007/355)

The above instruments are Orders in Council made in exercise of the powers conferred by sections 40 and 45(1) of the Maintenance Orders (Reciprocal Enforcement) Act 1972. Both instruments are subject to negative resolution procedure.

Policy Objectives

The Orders enable the reciprocal enforcement of maintenance orders and facilitation of maintenance claims between Scotland and the United States of America on a federal basis instead of the State by State arrangement which currently applies.

The Orders implement for Scotland a new bilateral agreement with the United States of America to enable the UK to reciprocate more effectively in the mutual recognition and enforcement of child (and spousal) family maintenance. This means that a maintenance order made in one country can be enforced through the courts or administrative systems of the other and that new maintenance obligations can be established in a cross-border setting. The agreement will work at a federal level, replacing the current arrangements with individual States.

The changes made to the current arrangements also remove the power of courts in Scotland to vary or revoke incoming maintenance orders. This makes the application consistent as the competent authorities in the United States do not have a power to vary orders from Scotland.

These Orders apply only to maintenance orders and claims within devolved competence. Matching UK Orders in Council, which cover orders and claims in Scotland outwith the scope of these Orders, along with the rest of the UK, are to be made simultaneously with these Orders and laid at Westminster (SIs 2007/2005 and 2006). This is because the reservation of child support matters reserves the enforcement of certain maintenance orders and claims. The rules which apply in Scotland are however being kept consistent between devolved and reserved matters.

Essentially, the new arrangement will affect orders or claims for maintenance received or made after 1 October 2007. Applications for reciprocal enforcement made before that date will not be affected and will continue to be dealt with under existing arrangements.

Consultation

There has been no formal consultation on the reforms in this instrument in Scotland as it has no impact on business, charities or voluntary bodies. There has however been on-going engagement with stakeholders concerning the reciprocal enforcement arrangements with the USA which have generally worked well.

Financial Effect

None.

Scottish Executive Civil and International Justice Directorate
1 August 2007