

**MAINTENANCE ORDERS (FACILITIES
FOR ENFORCEMENT)**

**THE MAINTENANCE ORDERS (FACILITIES
FOR ENFORCEMENT) ACT**

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THE MAINTENANCE ORDERS (FACILITIES
FOR ENFORCEMENT) ACT

Acts
8 of 1987,
2 of 1999.

[1st July, 1988.]

1. This Act may be cited as the Maintenance Orders (Facilities for Enforcement) Act. Short title.

2. In this Act—

Interpre-
tation.

“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;

“appropriate authority” in relation to a reciprocating state, means the person who in that state performs the functions which in Jamaica are performed by the Minister under this Act;

“certificate of arrears” in relation to a maintenance order, means a certificate certifying that the sum specified in the certificate is, to the best 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, as the case may be, that to his best 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;

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

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“court of summary jurisdiction” means a Resident Magistrate’s Court or any Family Court established pursuant to the Judicature (Family Court) Act;

“maintenance order” (whether provisional or final) means an order (however described) 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, that is to say—

- (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 provisions of paragraph (a) or (b) 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,

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

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

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

“proper officer of the court” means in the case of the Supreme Court, the Registrar of the Supreme Court and in the case of a court of summary jurisdiction, the Clerk of the Court;

“provisional order” means an order which has no effect until confirmed by a court in Jamaica or, as the case may be, a court in a reciprocating state;

“reciprocating state” means a state declared to be a reciprocating state under section 20;

“registering court” means a court in which an order is registered under this Act.

Application in Jamaica of orders made abroad

- 3.—(1) Where, before or after the 1st day of July, 1988—
- (a) a maintenance order has been made against a person by a court in a reciprocating state; and
 - (b) a certified copy of the order has been received by the Minister,

Registration of maintenance orders made abroad.

the Minister shall send to the proper officer of the court in Jamaica the certified copy of the order for registration in the prescribed manner.

(2) The proper officer of the court shall, on receipt of the certified copy of the order, take such steps as he considers necessary to ascertain whether the payer named in the order is resident in Jamaica and—

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- (a) if he is satisfied that the payer is not so resident, return the certified copy of the order to the Minister together with a statement containing such information as he possesses as to the whereabouts of the payer; and the Minister shall thereupon remit the certified copy and statement aforesaid to the appropriate authority in the reciprocating state; and
- (b) in any other case, register the order in the prescribed manner.

Confirma-
tion
of provi-
sional
orders
made
abroad.

4.—(1) Where—

- (a) a maintenance order has been made by a court in a reciprocating state and such order is provisional only;
- (b) the Minister has received a certified copy of the order, together with the depositions of witnesses; and
- (c) it appears to the Minister that the payer is resident in Jamaica,

the Minister shall send the documents referred to in paragraph (b) to the proper officer of the appropriate court in accordance with section 5, with a request that a summons be issued calling upon the person to show cause why that order should not be confirmed and upon receipt of such documents and request as aforesaid the court shall issue the summons and cause it to be served upon such person.

(2) A summons so issued may be served in Jamaica in the same manner as if the order had been originally issued or subsequently endorsed by a court of summary jurisdiction in Jamaica.

(3) At any hearing for confirmation of the order—

- (a) it shall be open to the person on whom the summons was served to raise only such defence as he might have raised at the original proceedings had he been a party thereto; and
- (b) a certificate from the court which made the provisional order stating the grounds on which the making of the order might have been opposed if the person against whom the order was made had been a party to the proceedings, shall be conclusive evidence that those grounds are grounds on which objection may be taken.

(4) A court in which confirmation of an order is being sought may, notwithstanding anything in paragraph (b) of subsection (3), seek from the court that made the provisional order clarification of, or further particulars relating to, information furnished in a certificate referred to in that paragraph.

(5) If at the hearing the person served with the summons does not appear, or on appearing, fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order either without modification or with such modification as may seem just to the court.

(6) If the person against whom the summons was issued appears at the hearing and satisfies the court that for the purpose of any defence it is necessary to remit the case to the court which made the provisional order for the taking of any further evidence, the court may so remit the case and adjourn the proceedings for that purpose.

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(7) Where an order has been confirmed pursuant to this section, the person bound thereby 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 had the order been made by the court which confirmed it.

(8) The court may refuse to confirm the order if the court is satisfied that the order ought not to be confirmed; and where the court so refuses the proper officer of the court shall return the certified copy of the order and the documents which accompanied it to the Minister who shall thereupon remit the copy and documents aforesaid to the appropriate authority in the reciprocating state.

Court for
registration
or confirma-
tion of
orders made
abroad.
2/1999
S. 2.

5. The court by which an order is to be registered or confirmed, as the case may be, pursuant to this Act shall, whether or not the court which made the order is a court of superior jurisdiction, be—

(a) the Supreme Court; or

(b) the Family Court or, where in any parish there is no such court, the Resident Magistrate's Court.

Foreign
language.

6. Where a maintenance order which is sought to be registered or confirmed, as the case may be, under this Act is in a language other than the English language, the maintenance order or a certified copy thereof shall have attached thereto, for consideration and approval by the court, a translation in the English language and, upon such approval being given, the approved translation shall, for the purposes of this Act, be deemed to be the sole and proper version of the order.

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7.—(1) An order registered or confirmed, as the case may be, by a court in Jamaica, shall, from the date of such registration or confirmation, have the same force and effect and be enforceable as if it had been originally made by that court and as if that court had had jurisdiction to make it.

Enforcement
of orders
registered
or con-
firmed.

(2) The provisions of the Schedule shall have effect in respect of maintenance orders registered or confirmed under this Act.

Schedule.

8.—(1) A payer named in a maintenance order registered or confirmed in Jamaica shall give notice to the proper officer of the court of any change of address.

Payer to
notify court
of change
of address.

(2) A payer who contravenes subsection (1) shall be guilty of an offence against this section and liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding one hundred dollars.

9.—(1) Where sums payable under a maintenance order made in a reciprocating state are expressed in a currency other than the currency of Jamaica, such order shall not be registered or confirmed until those sums are converted to the currency of Jamaica.

Conversion
to Jamaican
currency.

(2) For the purposes of this section—

- (a) the proper officer of the court in which registration or confirmation of the order is sought shall—
 - (i) determine the equivalent of such sums as aforesaid in the currency of Jamaica on the basis of the prevailing rate of exchange at the date on which the order was registered or confirmed as ascertained from any bank licensed under the Banking Act;

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- (ii) certify on the order the sums so determined expressed in the currency of Jamaica;
- (b) the order, upon registration or confirmation, as the case may be, shall be deemed to be an order for payment of the sum so certified.

Variation or revocation of maintenance orders made abroad and registered or confirmed in Jamaica.

10.—(1) Subject to the provisions of this section, a court in which a maintenance order made abroad was confirmed or registered may vary or revoke such order as if it had made the order and has jurisdiction to make it.

(2) An order under this section varying a maintenance order shall be provisional unless—

- (a) the payer and the payee are both resident in Jamaica; or
- (b) the application is made by the payee; or
- (c) the variation consists of a reduction in the rate of payments to be made under the order on the ground that there has been a change in the financial circumstances of the payer since the date on which the order was made or confirmed, as the case may be, and the court in which the order was made has no power under the law in that country to confirm a provisional variation order.

(3) An order under this section revoking a maintenance order shall be provisional unless the payer and the payee are both resident in Jamaica.

(4) Where an application is made for the revocation of a maintenance order the court shall, unless the payer and the payee are both resident in Jamaica, apply the law of the state in which the order was made.

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(5) Where a court makes a provisional order under this section varying or revoking, as the case may be, a maintenance order, the proper officer of the court shall send to the court in the reciprocating state—

- (a) a certified copy of the provisional order; and
- (b) a duly authenticated document setting out or summarising the evidence given in the proceedings.

(6) Where an order made by the court pursuant to this section is not provisional, the proper officer of the court shall send to the Minister a certified copy of the order and the Minister shall thereupon remit the copy aforesaid to the appropriate authority in the reciprocating state.

11.—(1) Where the proper officer of the court has reason to believe that the payer under an order registered or confirmed by a court in Jamaica has ceased to reside in Jamaica, he shall send to the Minister, for transmission to the appropriate authority in the reciprocating state in which the order was made, or, as the case may be, the appropriate authority in the reciprocating state in which the payer is residing, the following—

Transmission
of documents
where payer
ceases to
reside in
Jamaica.

- (a) a copy of the registered or confirmed order;
- (b) a certificate of arrears signed by him;
- (c) a statement containing information as to the whereabouts of the payer;
- (d) any other document which may be relevant to the order.

(2) Where the documents referred to in subsection (1) are sent to a state other than the state in which the order was made, the Minister shall inform the appropriate

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authority in the state in which the order was made that the documents have been so sent.

Application Abroad of Orders made in Jamaica

Trans-
mission of
maintenance
orders made
in Jamaica.

12. Where before or after the 1st day of July, 1988—
- (a) a court in Jamaica has made a maintenance order against a person; and
 - (b) it is proved to the court that such person is resident in a reciprocating state,

the court shall, upon the request of the payee, send a certified copy of the order to the Minister for transmission through the appropriate authority to the appropriate court in that state for registration and enforcement.

Provisional
order by
court in
Jamaica
against
person
residing
abroad.

- 13.—(1) Where—
- (a) an application is made to a court in Jamaica for a maintenance order against any person; and
 - (b) it is proved to the court that that person is residing in a reciprocating state,

the court may, in the absence of that person, make any such order as it might have made if a summons had been duly served on that person and he had failed to appear at the hearing but any order so made shall be provisional only and shall have no effect unless and until confirmed by a competent court in that state.

(2) The evidence of any witness who is examined on any such application shall either—

- (a) be in the form of a deposition put in writing, read over and signed by the witness; or

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(b) be recorded (whether in shorthand or other mechanism) and transcribed and thereafter certified as correct by the proper officer of the court.

(3) Where an order is made under subsection (1), the proper officer of the court shall send to the Minister for transmission through the appropriate authority to a court in the reciprocating state—

- (a) a certified copy of the order;
- (b) the depositions of witnesses or, if the evidence is recorded as referred to in subsection (2) (b), a certified copy of the transcript;
- (c) the certificate from the court which made the provisional order stating the grounds on which the making of the order might have been opposed if the person against whom the order is made had been duly served with a summons and had appeared at the hearing; and
- (d) such information in the possession of the court as would facilitate locating and identifying that person.

(4) The confirmation of an order made under this section shall not affect any power of a court in Jamaica to vary or rescind the order pursuant to section 14.

(5) 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 had a summons been duly served on the person against whom the order is sought to be made.

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Variation and revocation of maintenance orders made by court in Jamaica.

14.—(1) Where a maintenance order (hereinafter referred to as “the original order”) has been made by a court in Jamaica and a certified copy thereof has been sent to a reciprocating state for registration or confirmation, as the case may be, a court in Jamaica of competent jurisdiction may make an order varying or revoking the original order.

(2) Where a variation under subsection (1) consists of an increase in the payments under the original order, the order for variation shall be provisional unless—

- (a) both parties appear at the hearing; or
- (b) the applicant appears at the hearing and the court is satisfied that the other party has been duly served with the appropriate process.

(3) Where an original order made by the court in Jamaica is varied or revoked by a later order pursuant to subsection (1), the proper officer of the court shall send to the Minister for transmission through the appropriate authority to the court in the reciprocating state in which the original order was registered or confirmed—

- (a) where the later order is a provisional order, the relevant documents for purposes of confirmation; or
- (b) where the later order is not a provisional order, a certified copy of the later order for purposes of registration.

15. Where—

- (a) a court in a reciprocating state by a provisional order varies or revokes, as the case may be, a maintenance order made by a court in Jamaica; and

Variation and revocation of maintenance order made in Jamaica by court abroad.

- (b) the court in Jamaica has received a certified copy of the provisional order made by the court in the reciprocating state and a duly authenticated document setting out or summarising the evidence given in the proceedings in which the provisional order was made,

the court in Jamaica may confirm the provisional order with or without modification.

16.—(1) Where, before the confirmation of a maintenance order made by a court in Jamaica (hereinafter referred to as “the original court”) against a person residing in a reciprocating state, the original court—

Revocation of provisional order made by court in Jamaica before confirmation.

- (a) receives a duly authenticated document setting out or summarising the evidence taken in the reciprocating state for the purpose of proceedings relating to the confirmation of the order; or
- (b) in compliance with a request made by the court in the reciprocating state, takes additional evidence for the purpose of such proceedings,

the original court shall consider that evidence and if it appears to that court that the order ought not to have been made it shall give to the person in whose favour the order was made an opportunity to consider and refute that evidence or to adduce further evidence.

(2) The original court may revoke or vary the order after considering all the evidence and any representations made by the person in whose favour the order was made.

[The inclusion of this page is authorized by L.N. 17/1989]

**MAINTENANCE ORDERS (FACILITIES
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General

Effective date of variation or revocation.

17.—(1) Where a court in Jamaica or a court in a reciprocating state makes an order (whether or not such order is a provisional order that has been confirmed) varying a maintenance order, such maintenance order shall have effect as varied.

(2) Where a maintenance order is revoked by an order made by a court in Jamaica or by a court in a reciprocating state, such maintenance order shall be deemed to have ceased to have effect as from the date on which the revocation order was made but without prejudice to the recovery of any arrears due under the maintenance order up to that date.

Admissibility of documentary evidence.

18. In any proceedings before a court in Jamaica under this Act, the following documents duly certified, shall be admissible as evidence of the facts stated therein—

- (a) a document which sets out or summarises evidence given in a court in a reciprocating state;
- (b) a document which sets out or summarises evidence taken in a reciprocating state for the purpose of proceedings in a court in Jamaica under this Act;
- (c) a document which was received in evidence in a court in a reciprocating state or a copy of a document so received.

Appeals.

19.—(1) Where a court in Jamaica has refused to confirm a provisional order made by a court in a reciprocating state the applicant shall have a right of appeal against such refusal.

(2) A payer or a payee, as the case may be, shall have a right of appeal against—

- (a) an order made by a court in Jamaica varying or revoking a maintenance order made by a court in a reciprocating state;
- (b) a refusal by a court in Jamaica to vary or revoke a maintenance order made by a court in a reciprocating state.

20. Where the Minister is satisfied that reciprocal provisions have been or will be made by any state for the enforcement in that state of maintenance orders made in Jamaica, the Minister may, by order, declare that state to be a reciprocating state for the purposes of this Act.

Designation
of reciprocating
countries.

21. The Minister may make regulations for giving effect to the provisions of this Act, and, without prejudice to the generality of the foregoing, may make regulations—

Regulations.

- (a) prescribing the forms to be used for carrying into effect the provisions of this Act;
- (b) generally for facilitating communication between courts in Jamaica and courts in reciprocating states.

22.—(1) If at the 1st of July, 1988, there is in force any order made by a court in Jamaica or elsewhere, pursuant to the repealed Act or there is pending in any court (in Jamaica or elsewhere) any application for the making or confirmation of an order pursuant to the repealed Act, this Act shall apply in relation thereto as if the order was made or pending, as the case may be, pursuant to this Act, and the court (in Jamaica or elsewhere), if it had jurisdiction pursuant to the repealed Act, also has jurisdiction pursuant to this Act.

Savings.

(2) In this section “repealed Act” means the Maintenance Orders (Facilities for Enforcement) Act in force immediately prior to 1st July, 1988.

**MAINTENANCE ORDERS (FACILITIES
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SCHEDULE

(Section 7)

*Provisions applicable to Maintenance Orders registered or confirmed
under this Act*

1. The proper officer of the court by which an order is enforceable by virtue of this Act shall take such steps for enforcing the order as may be prescribed.
2. In any proceedings for or with respect to the enforcement of such order a certificate of arrears sent to the proper officer of the court shall be evidence of the facts stated therein.
3. Subject to paragraph 4, sums of money payable under such order shall be payable in accordance with the order as from the date on which the order was made.
4. A court confirming an order under section 4 may direct that the sums of money payable under it shall be deemed to have been payable in accordance with the order as from such date, being a date not earlier than the date on which the order was made, as it may specify, and subject to such direction an order so confirmed 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.