

# MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) ORDINANCE, 1923-1937.<sup>(1)</sup>

**An Ordinance to facilitate the enforcement in the Territory of Papua of Maintenance Orders made in England Northern Ireland and other parts of His Majesty's Dominions in Territories under His Majesty's protection and in Mandated Territories and vice versa.**

Title substituted by No. 8 of 1937, s. 2.

**BE** it enacted by the Lieutenant-Governor of the Territory of Papua with the advice and consent of the Legislative Council thereof as follows:—

1. This Ordinance may be cited as the *Maintenance Orders (Facilities for Enforcement) Ordinance, 1923-1937.*<sup>(1)</sup>

Short title. Amended by No. 2 of 1930, s. 2.

2. In this Ordinance unless the contrary intention appears—

“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;

Definitions. Norfolk Is., No. 5 of 1923, s. 2. Cf. Fiji, No. 8 of 1923, s. 2.

“Dependants” means such persons as a person against whom a maintenance order is made is liable to maintain, according to the law in force in the part of His Majesty's Dominions in which the order is made or where the

Amended by No. 8 of 1932, s. 2.

(1) The *Maintenance Orders (Facilities for Enforcement) Ordinance, 1923-1937*, comprises the *Maintenance Orders (Facilities for Enforcement) Ordinance, 1923*, as amended by the other Ordinances referred to in the following Table:—

## ORDINANCES OF THE LEGISLATIVE COUNCIL FOR THE TERRITORY OF PAPUA.

Short title, number and year.	Date of assent by Lieut.-Gov.	Date notified in Papua <i>Govt. Gaz.</i> as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
<i>Maintenance Orders (Facilities for Enforcement) Ordinance, 1923 (No. 16 of 1923)</i>	27.12.1923	2.4.1924	27.12.1923 ( <i>Ordinances etc. of Papua, 1923, p. 63</i> )
<i>Maintenance Orders (Facilities for Enforcement) Ordinance, 1926 (No. 3 of 1926)</i>	14.7.1926	2.2.1927	14.7.1926 ( <i>Ordinances etc. of Papua, 1926, p. 11</i> )
<i>Maintenance Orders (Facilities for Enforcement) Ordinance, 1932 (No. 8 of 1932)</i>	13.12.1932	5.4.1933	13.12.1932 ( <i>Ordinances etc. of Papua, 1932, p. 19</i> )
<i>Maintenance Orders (Facilities for Enforcement) Ordinance, 1937 (No. 8 of 1937)</i>	16.8.1937	1.12.1937	16.8.1937 ( <i>Ordinances etc. of Papua, 1937, p. 15</i> )

## MARRIED WOMEN AND CHILDREN—

order is made in a Territory governed under a mandate according to the law in force in that Territory;

Inserted by  
No. 8 of 1937,  
s. 3.

“Governor” includes any Minister or officer in a reciprocating State duly authorized by the law of such State to do such things as may be done by a Governor of a reciprocating State under this Ordinance;

Amended by  
No. 8 of 1937,  
s. 3.

“Maintenance order” means an order for the periodical payment of sums of money towards the maintenance of the wife or other dependants of the person against whom the order is made and save where otherwise expressly provided includes an order of affiliation and also includes an order which though made provisionally is enforceable in the United Kingdom or a reciprocating State by reason of the order having been confirmed in either such place;

Inserted by  
No. 8 of 1937,  
s. 3.

“Order of affiliation” means an order adjudging a man to be the putative father of a bastard child and ordering him to pay a sum of money weekly or otherwise to the mother of the bastard child or to any other person who is named in the order;

Inserted by  
No. 8 of 1937,  
s. 3.

“Prescribed” means prescribed by Rules of Court;

Amended by  
No. 8 of 1932,  
s. 3.

“Reciprocating State” means any part of His Majesty’s Dominions outside the United Kingdom to which the Act of the United Kingdom intituled *The Maintenance Orders (Facilities for Enforcement) Act, 1920*, extends, and which has been declared by the Lieutenant-Governor<sup>(2)</sup> to be a reciprocating State for the purposes of this Ordinance and includes any Territory in respect of which a mandate is being exercised by the Government of any part of His Majesty’s Dominions which has in like manner been declared to be a reciprocating State for the purposes of this Ordinance;

Inserted by  
No. 8 of 1937,  
s. 3.

“United Kingdom” means Great Britain and Northern Ireland.

Enforcement in  
Papua of  
maintenance  
orders made  
elsewhere.

Cf. Imp. 10 and  
11 Geo. V, c.  
33, s. 1.

Cf. N. Is.,  
No. 5 of 1923,  
s. 3.

Cf. Fiji, No. 8  
of 1923, s. 3.

Sub-section (1)  
amended by  
No. 8 of 1937,  
s. 4.

3.—(1.) Where a maintenance order has, whether before or after the commencement of this Ordinance, been made against any person by any Court in England or Northern Ireland or any reciprocating State, and a certified copy of the order has been transmitted by the Secretary of State for the Colonies or by the Governor of the reciprocating State, as the case may be, to the Lieutenant-Governor<sup>(2)</sup> and it appears to the Lieutenant-Governor<sup>(2)</sup> that the person against whom the order was made is resident in

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940*.

the Territory the Lieutenant-Governor<sup>(2)</sup> shall send a copy of the order to the prescribed officer of a Court in the Territory for registration; and on receipt thereof the order shall be registered by that officer in a book to be kept for that purpose and shall, from the date of such registration, be of the same force and effect, and, subject to the provisions of this Ordinance, all proceedings may be taken on the order, as if it had been an order originally obtained at that date in the Court in which it is so registered and that Court shall have power to enforce the order accordingly.

(2.) The Court in which an order is to be so registered as aforesaid shall be a Court of Petty Sessions established or deemed to have been established under the provisions of the *Justices Ordinance, 1912-1920*.<sup>(3)</sup>

Provided however that when the Court by which any such order is made is a Court of superior jurisdiction such order shall be registered in the Central Court.<sup>(2)</sup>

**Proviso added by No. 8 of 1937, s. 5.**

4. Where a Court in the Territory has, whether before or after the commencement of this Ordinance, made a maintenance order against any person, and it is proved to that Court that the person against whom the order was made is resident in England or Northern Ireland or in a reciprocating State, the Court shall send to the Lieutenant-Governor<sup>(2)</sup> for transmission to the Secretary of State for the Colonies or to the Governor of that reciprocating State, as the case may be, a certified copy of the order.

Transmission of maintenance orders made in Papua.  
Cf. Imp. 10 and 11 Geo. V, Ch. 33, s. 2.  
Cf. N. Is., No. 5 of 1923, s. 4.  
Cf. Fiji, No. 8 of 1923, s. 4.  
**Amended by No. 8 of 1937, s. 6.**

5.—(1.) Where an application is made to a Court in the Territory for a maintenance order other than an order of affiliation against any person or for the variation of any maintenance order (whether or not an order of affiliation) made by that Court against any person, and it is proved that that person is resident in England or Northern Ireland or a reciprocating State, the Court may, in the absence of that person, if after hearing the evidence it is satisfied of the justice of the application, 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 in such case the order shall be provisional only, and shall have no effect unless and until confirmed by a competent Court in England or Northern Ireland or in a reciprocating State, as the case may be.

Power to make provisional orders of maintenance against persons resident outside Papua.  
Cf. Imp. Ib. s. 3.  
Cf. N. Is., Ib. s. 5.  
Cf. Fiji, Ib. s. 5.  
**Sub-section (1) amended by No. 8 of 1937, s. 7.**

(2.) The evidence of any witness who is examined on any application in pursuance of this Ordinance shall be put into writing, and the deposition shall be read over to and signed by him.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940*.

(3) Now the *Justices Ordinance, 1912-1940*.

## MARRIED WOMEN AND CHILDREN—

**Sub-section (3)  
amended by  
No. 8 of 1937,  
s. 8.**

(3.) Where an order is made under this section, the Court shall send to the Lieutenant-Governor<sup>(2)</sup> for transmission to the Secretary of State for the Colonies, in a case where the person against whom the order is made is alleged to reside in England or Northern Ireland, or to the Governor of the reciprocating State in which the person against whom the order is made is alleged to reside, the depositions taken on the hearing of the application and a certified copy of the order, together with a statement of 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 such information as the Court possesses for facilitating the identification of that person, and ascertaining his whereabouts.

**Sub-sections  
4-6 omitted by  
No. 8 of 1937,  
s. 9.**

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**Sub-section (7)  
renumbered (4)  
by No. 8 of  
1937, s. 10.**

(4.) 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.

**Power of Court  
to confirm  
maintenance  
order made  
outside Papua.**

**Cf. Imp. 10 and  
11 Geo. V.,  
Ch. 33, s. 4.**

**Cf. Norfolk Is.  
No. 5 of 1923,  
s. 6.**

**Cf. Fiji, No.  
8 of 1923,  
s. 6.**

**Sub-section (1)  
amended by  
No. 8 of 1937,  
s. 11.**

6.—(1.) Where a maintenance order other than an order of affiliation or an order for the variation of a maintenance order (whether or not an order of affiliation) has been made by a Court in England or Northern Ireland or in a reciprocating State, and the order is provisional only and has no effect unless and until confirmed by a Court in the Territory) or by a Court in the United Kingdom or in a reciprocating State and a certified copy of the order, together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed has been transmitted to the Lieutenant-Governor<sup>(2)</sup> and it appears to the Lieutenant-Governor<sup>(2)</sup> that the person against whom the order was made is resident in the Territory the Lieutenant-Governor<sup>(2)</sup> may send the documents to the prescribed officer of a Court of Petty Sessions in the Territory with a requisition that a summons be issued calling upon the person to show cause why that order should not be confirmed, and upon receipt of the documents and requisition the Court shall issue the summons and cause it to be served upon such person.

**Sub-section (2)  
amended by  
No. 3 of 1926,  
s. 2.**

(2.) A summons so issued may be served in the Territory in the same manner as if it had been originally issued by a Court of Petty Sessions having jurisdiction in the place where the person happens to be, or, if that manner proves not to be effective, in such manner as is prescribed.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

*Maintenance Orders (Facilities for Enforcement) Ordinance, 1923-1937.*

(3.) At the hearing it shall be open to the person on whom the summons was served to raise any defence which he might have raised in the original proceedings had he been a party thereto, but no other defence, and 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 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.) 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 modifications as to the Court after hearing the evidence seems just.

(5.) 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 the purpose.

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Sub-section (6) omitted by No. 8 of 1937, s. 12.

(6.) Where an order has been so confirmed, 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 an order made by the Court confirming the order.

Sub-section (7) renumbered (6) by No. 8 of 1937, s. 13.

6A.—(1.) Any maintenance order enforceable by virtue of this Ordinance by any Court in the Territory may be varied by the Court by whom the order is so enforceable as to the Court after hearing the evidence may seem just and subject as hereinafter provided any such order may be rescinded by that Court and as from the date on which any such order is so rescinded the order shall cease to be in force in the Territory and this Ordinance shall cease to apply thereto except as respects any sums accrued due under the order before that date:

Variation and rescission of maintenance orders enforceable under Ordinance. Section 6A inserted by No. 8 of 1937, s. 14.

Provided that except where at the time of the application the person upon whose application the order was made is residing in the Territory no application for the rescission of an order under this subsection shall be entertained by any Court unless the Court is satisfied that a similar application could have been entertained by the Court by which the order was made.

## MARRIED WOMEN AND CHILDREN—

(2.) Any maintenance order made by a Court in the Territory may be rescinded by that Court notwithstanding the registration or confirmation of the order in the United Kingdom or in a reciprocating State and on the making of such a rescinding order the Court shall send to the Lieutenant-Governor<sup>(2)</sup> for transmission to the Secretary of State for the Colonies or to the Governor of the reciprocating State in which the order was registered or confirmed as the case may be and if the order is for the time being enforceable in the United Kingdom or in a reciprocating State for transmission to the said Secretary of State or the said Governor a certified copy of the rescinding order.

(3.) The power conferred by this section to vary or rescind any maintenance order may be exercised either—

- (a) on the application of the person against whom the order was made and in the absence of the person on whose application the order was made; or
- (b) on the application of the person on whose application the order was made and in the absence of the person against whom the order was made.

(4.) Where on an application under this section for the variation or rescission of any maintenance order the Court is satisfied that it is necessary to remit the case to the Court which made registered or confirmed the order for the purpose of taking further evidence the Court may so remit the case and adjourn the proceedings for the purpose.

Taking of  
further evidence.  
Inserted by  
No. 8 of 1937,  
s. 14.

6b. Where a Court in the United Kingdom or in any reciprocating State outside the Territory has remitted any case to a Court in the Territory for the purpose of taking further evidence with respect to any maintenance order made registered or confirmed by that Court that Court shall after giving such notice as may be prescribed proceed to take the evidence and subject as hereinafter provided the depositions shall be sent to the Lieutenant-Governor<sup>(2)</sup> for transmission to the Secretary of State for the Colonies or to the Governor of the reciprocating State from which the case was remitted: Provided that if upon the hearing of such evidence with respect to a provisional order made under Section Five of this Ordinance it appears to the Court that the order ought not to have been made the Court may in lieu of sending the depositions to the Lieutenant-Governor<sup>(2)</sup> rescind the order.

Enforcement of  
orders in respect  
of arrears.  
Inserted by  
No. 8 of 1937,  
s. 14.

6c. Notwithstanding that an order registered or confirmed under this Ordinance is enforceable only from the date of registration or confirmation as the case may be the Court by whom the order is enforceable may direct the payment in respect of the period between

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(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

the making of the order and the registration or confirmation thereof or in respect of any part of that period of and such sums if any as to the Court may seem just at a rate not exceeding that at which sums are payable under the order as from the date of registration or confirmation.

6d.—(1.) Where a certified copy of a maintenance order or of a provisional maintenance order has been transmitted to the Lieutenant-Governor<sup>(2)</sup> in accordance with the provisions of Sections Three or Five respectively of this Ordinance and it appears to the Lieutenant-Governor<sup>(2)</sup> that the person against whom the order was made is resident in some part of the United Kingdom or in a reciprocating State the Lieutenant-Governor<sup>(2)</sup> shall transmit the certified copy together with any documents relating thereto received by him to the Secretary of State for the Colonies or to the Governor of such State as the circumstances may require.

Retransmission of maintenance orders against persons not resident in the Territory of Papua.  
**Section 6D inserted by No. 8 of 1937, s. 14.**

(2.) Where a Court in the Territory has registered a maintenance order under Section Three of this Ordinance or confirmed a provisional maintenance order under Section Six of this Ordinance and that Court is satisfied that the person against whom the order was made is no longer resident in the Territory and is resident in the United Kingdom or in a reciprocating State the Court shall send to the Lieutenant-Governor<sup>(2)</sup> for transmission to the Secretary of State for the Colonies or to the Governor of such reciprocating State a certified copy of the order and thereupon the order shall cease to be enforceable under this Ordinance unless it is again transmitted to the Lieutenant-Governor<sup>(2)</sup> by the Secretary of State for the Colonies or by the Governor of a reciprocating State and registered under Section Three of this Ordinance.

7. The Regulations may prescribe the manner in which a case may be remitted by a Court in the Territory to Courts in the United Kingdom or in a reciprocating State and generally for facilitating communications between such Courts.

Power to make Regulations for communications between courts.  
Cf. Imp. 10 and 11 Geo. V, c. 33, s. 5.  
Cf. N. Is., No. 5 of 1923, s. 7.  
Cf. Fiji, No. 8 of 1923, s. 7.  
**Amended by No. 8 of 1937, s. 15.**

8.—(1.) A Court in which an order has been registered under this Ordinance or by which an order has been confirmed under this Ordinance, and the officers of that Court, shall take all such steps for enforcing the order as are prescribed.

Mode of enforcing orders  
Cf. Imp. *Ib.* s. 6.  
Cf. N. Is., *Ib.* s. 8.  
Cf. Fiji, *Ib.* s. 8.

(2.) Every such order shall be enforceable in the case of an order of affiliation in like manner as an affiliation order made under

**Sub-section (2) amended by No. 8 of 1937, s. 16.**

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

MARRIED WOMEN AND CHILDREN—

the *Deserted Wives and Children Ordinance*, 1912, and in the case of any other order in like manner as if the order were for the payment of a civil debt recoverable summarily:

Provided that, if the order is of such a nature that if made by the Court in which it is so registered, or by which it is so confirmed, it would be enforceable in like manner as an order of affiliation, the order shall be so enforceable.

(3.) A warrant of distress or commitment issued by a Court for the purpose of enforcing any order so registered or confirmed may be executed in any part of the Territory.

Proof of documents signed by Officers of Court.  
Cf. Imp. 10 and 11 Geo. V., c. 33, s. 8.  
Cf. N. Is., No. 5 of 1923, s. 9.  
Cf. Fiji, No. 8 of 1923, s. 9.  
Amended by No. 8 of 1937, s. 17.

9. Any document purporting to be signed by a judge or officer of a Court in England or Northern Ireland or in a reciprocating State shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it, and the officer of a Court by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of the Court to sign the document.

Depositions to be evidence.  
Cf. Imp. *Ib.* s. 9.  
Cf. N. Is., *Ib.* s. 10.  
Cf. Fiji, *Ib.* s. 10.

10. Depositions taken in a Court in England or Ireland or in a reciprocating State, for the purposes of this Ordinance may be received in evidence in proceedings before Courts in the Territory under this Ordinance.

Reciprocal arrangements.  
Cf. Imp. *Ib.* s. 12.  
Cf. N. Is., *Ib.* s. 11.  
Cf. Fiji, *Ib.* s. 11.

11.—(1.) Where the Lieutenant-Governor<sup>(2)</sup> is satisfied that reciprocal provisions have been made by the legislature or other competent authority of any part of His Majesty's Dominions outside the United Kingdom for the enforcement within that part of maintenance orders made by Courts within the Territory the Lieutenant-Governor<sup>(2)</sup> may by Proclamation<sup>(4)</sup> published in the *Gazette* declare that part to be a reciprocating State for the purposes of this Ordinance.

Sub-section (1) amended by No. 3 of 1926, s. 3.

(2.) In any proceedings under this Ordinance the fact that any part of His Majesty's Dominions outside the United Kingdom is a reciprocating State shall be judicially noticed.

Sub-section (3) added by No. 3 of 1926, s. 3.

(3.) For the purposes of this section the expression "part of His Majesty's Dominions outside the United Kingdom" shall be deemed to include and always to have included any territory which is under His Majesty's protection or in respect of which a man-

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

(4) A Table containing particulars of proclamations declaring parts of His Majesty's Dominions to be reciprocating States is printed on p. 3016.

*Maintenance Orders (Facilities for Enforcement) Ordinance, 1923-1937.*

date is being exercised by the Government of any part of His Majesty's Dominions.

12. The Lieutenant-Governor<sup>(2)</sup> may make Regulations,<sup>(5)</sup> not Regulations.  
inconsistent with this Ordinance, prescribing all matters which are, Cf. N. Is., No.  
by this Ordinance, required or permitted to be prescribed or which 5 of 1923, s. 12.  
are necessary or convenient to be prescribed for giving effect to  
this Ordinance.

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(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

(5) See the *Maintenance Orders (Facilities for Enforcement) Regulations, 1926,*  
printed on p. 3014.