

CONTENTS

Short title and extent

Definitions

Reciprocal arrangements

Registration of maintenance orders

Transmission of maintenance orders made in Pakistan

Power of summary Courts to make Provincial maintenance orders

Power of Court of summary jurisdiction to confirm maintenance order made out of Pakistan

Enforcement of maintenance orders

Payment of charges for transmission of sums awarded as maintenance and other costs and charges

Proof of documents signed by officers of Court

Depositions to be evidence

Rule-making power

Page 1 of 6

THE MAINTENANCE ORDERS ENFORCEMENT ACT, 1921
'ACT No. XVIII OF 1921
[5" October, 1921]

An Act to facilitate the enforcement ?[Pakistan] of Maintenance Orders made in other ?[Countries] and vice versa.

WHEREAS it is expedient to facilitate the enforcement in 7[Pakistan] of Maintenance Orders made in other *[Countries] and vice versa; It is hereby enacted as follows:—

1. Short title and extent.—(1) This Act may be called the Maintenance Orders Enforcement Act, 1921.

4[(2) It extends to the whole of Pakistan.]

2. Definitions. In this Act, unless there is anything repugnant in the subject or context,-
“Court of summary jurisdiction” means the Court >[* * *] of a District Magistrate;

“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 “[country] in which the maintenance order is made;

“maintenance order” means a decree or order, other than an order of affiliation, made by a Court in the exercise of civil or criminal jurisdiction 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;

“prescribed” means prescribed by rules made under this Act;

“Proper authority” means the authority appointed by, or under the law of, a reciprocating territory to receive and transmit documents to which this Act applies; and "reciprocating territory" means any °[country] ’* *in respect of which this Act for the time being applies.

' For Statement of Objects and Reasons, see Gazette of India, 1921, Pt. V, p. 5; and for Report of Select

It has been extended to the Leased Areas of Baluchistan by the Leased Areas (Laws) Order, 1950 (G.G. Areas of Baluchistan, see Gazette of India, 1937, Pt. I, p. 1499.

?See foot-note | on page 8, supra.

Subs. by the Maintenance Orders Enforcement (Amdt.) Ordinance, 1962 (LXIX of 1962), s. 2, for “parts o Protectorates [Acceding States and non-Acceding States]”. The words in crotchets were ins. by A.O., 194

‘The original sub-section (2) as amended by A.O., 1949 and the Federal Laws (Revision and Declaration) subs. by the Central Laws (Statue Reform) Ordinance, 1960 (XXI of 1960), s. 3 and 2nd Sch. (with effect

‘The words “of a Chief Presidency Magistrate or” omitted by A.O., 1949.

°Subs. by the Maintenance Orders Enforcement (Amdt.) Ordinance, 1962 (LXIX of 1962), s. 3, for “Part o

"The words “outside [Pakistan]” have been omitted by A.O., 1961, Art. 2 and Sch. (with effect from the 23 were subs. by A.O., 1949, for “British India”.

'[3. Reciprocal arrangements. If the 7[Federal Government is satisfied that provisions have been made by the legislature of any country for the enforcement within that country of maintenance orders made by Courts in Pakistan, the 7[Federal Government] may, by notification in the official Gazette, *[declare that this Act applies in respect of that country and thereupon it shall apply accordingly.]

414. Registration of maintenance orders].__ (1) Where a maintenance order has, whether before or after the passing of this Act, been made against any person by any Court in any reciprocating territory, and a certified copy of the order has been transmitted by the proper authority of that territory to the *[Federal Government], the °[Federal Government] shall send a copy of the order to the prescribed officer of a Court in [Pakistan] for registration, and, on receipt thereof, the order shall be registered in the prescribed manner.

(2) The Court in which an order is to be so registered as aforesaid shall, if the Court by which the order was made was, in the opinion of the °[Federal Government], a Court of superior jurisdiction, be a High Court, and, if the Court was not, to “[its] opinion, a Court of superior jurisdiction, be a Court of summary jurisdiction.

5. Transmission of maintenance orders made in Pakistan. Where a Court in '[Pakistan] has, whether before or after the commencement of this Act, 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 a reciprocating territory, the Court shall send to the °[Federal Government], for transmission to the proper authority of that territory, a certified copy of the order.

6. Power of summary Courts to make Provincial maintenance orders °[* *].—(1) Where application is made to a Court of summary jurisdiction in [Pakistan] for a maintenance order against any person, and it is proved that that person is resident in a reciprocating territory, 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 that person had wilfully neglected to attend the Court; but in such case the order shall be provisional only and shall have no effect unless and until confirmed by a competent Court in such territory.

(2) The evidence of every witness who is examined on any such application shall be reduced to writing, and such deposition shall be read over to, and signed by, him.

(3) Where such an order is made, the Court shall send to the °[Federal Government], for transmission to the proper authority of the reciprocating territory in which the person against whom the order is made is alleged to reside, the depositions so taken 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.

'Subs. by Ord. No. LXIX of 1962, s.4, for the original sectionn 3 as amended by A.O., 1937, A.O., 1949 O and the Foreign Awards and Maintenance Orders (Enforcement) (Amdt.) Ordinance, 1962 (LIII of 1962).

?Subs. by F.A.O., 1975, Art.2 and Table "for Central Government".

*For such declaration in respect of any country outside Pakistan, see G.S.R.O. and Gaz. of P., 1961 Pt.I, Malaya, see Gaz. of P., 1956, Pt.I, p.546.

4Subs. by the Maintenance Orders Enforcement (Arndt.) Ordinance, 1962 (LXIX of 1962), s. 5, for the ori

Subs. by F. A. O., 1975 Art 2 and Table, “for Central Government”, which was previously amended by A.

®Subs. by A. O. 1937 for “G. G. in C.”.

⁷See foot note 1. on page 8, *supra*.

SSubs. by A. O., 1937, for “his”.

°The words “against persons resident in His Majesty’s Dominions outside the Provinces, etc.,” omitted by the Maintenance Ordinance (Arndt.) Ordinance, 1962 (LXIX of 1962), s. 6.

(4) Where any such provisional order has come before a Court in a reciprocating territory for confirmation, and the order has by that Court been remitted to the Court of summary jurisdiction which made the order for the purpose of taking further evidence, that Court shall, after giving the prescribed notice, proceed to take the evidence in like manner and subject to the like conditions as the evidence in support of the original application.

(5) If it appears to the Court hearing such evidence that the order ought not to have been made, the Court may rescind the order, but in any other case the depositions shall be sent to the '[Federal Government]' and dealt with in like manner as the original depositions.

(6) The confirmation of an order made under this section shall not affect any power of a Court of summary jurisdiction to vary or rescind that order:

Provided that, on the making of a varying or rescinding order, the Court shall send a certified copy thereof to the '[Federal Government]' for transmission to the proper authority of the reciprocating territory in which the original order was confirmed, or to which it was sent for confirmation and that, in the case of an order varying the original order, the order shall not have any effect unless and until confirmed in like manner as the original order.

7. Power of Court of summary jurisdiction to confirm maintenance order made out of Pakistan.—(1) Where a maintenance order has been made by a Court in a reciprocating territory and the order is provisional only, and has no effect unless and until confirmed by a Court of summary jurisdiction in 7[Pakistan], and a certified copy of the order, together with the depositions of the witnesses and a statement of the grounds, on which the order might have been opposed, has been transmitted to the *[Federal Government], and it appears to the “[Federal Government]”, that the person against whom the order has been made is resident in [Pakistan] the “[Federal Government]” may send the said documents to the prescribed officer of a Court of summary jurisdiction, 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 such documents and requisition, the Court shall issue such a summons and cause it to be served upon such person.

(2) A summons issued under sub-section (1) shall for all purposes be deemed to be a summons issued by the Court in the exercise of its original criminal jurisdiction.

(3) At the hearing it shall be open to the person to whom the summons was issued 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, notwithstanding any pecuniary limit imposed on its power by any law for the time being in force in 7[Pakistan], confirmed the order either without modification or with such modifications as to the Court after hearing the evidence may seem just:

'Subs. by F.A.O., 1975. Art. 2 and Table, for “Central Government” which was previously amended by A.

Subs by the Central Laws (Statute Reform) Ordinance, 1960 (XXI of 1960), s.3 and 2nd Sch. (with effect Provinces and the Capital of the Federation” which had been subs. by A.O. 1949, for “British India”.

3Subs. by F.A.O.,1975, Art 2 and Table for “Central Government”, which was previously amended by A. C

'Subs. by A. O.,1937 for “G. G. in C.”.

Provided that no sum shall be awarded as maintenance under this section, or shall be recoverable as such, at a rate exceeding that proposed in the provisional order.

(5) If the person to 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 for that purpose send a certified copy of the record to the '[Federal Government]' for transmission to that Court through the proper authority of the reciprocating territory, and may adjourn the proceedings.

(6) Where a provisional order has been confirmed under this section it may be varied or rescinded in like manner as if it had originally been made by the confirming Court, and where on an application for rescission or variation the Court is satisfied that it is necessary to remit the case to the Court which made the provisional order for the purpose of taking any further evidence, the Court may for that purpose send a certified copy of the record to the '[Federal Government]' for transmission to that Court through the proper authority of the reciprocating territory, and may adjourn the proceedings.

8. Enforcement of maintenance orders.—(1) Subject to the provisions of this Act, where an order has been registered under this Act in a High Court, the order shall, from the date of such registration, be of the same force and effect, and all proceedings may be taken thereon as if it had been an order originally obtained in the High Court in the exercise of its civil jurisdiction, or in such Civil Court subordinate to that High Court as may be named by the High Court in this behalf, and that Court shall have power to enforce the order accordingly.

(2) A Court of summary jurisdiction in which an order has been registered under this Act or by which an order has been confirmed under this Act, and the officers of such Court, shall have such powers and perform such duties, for the purpose of enforcing the order, as may be prescribed.

9, Payment of charges for transmission of sums awarded as maintenance and other costs and charges. A Court in registering or confirming an order for maintenance in accordance with the provisions of this Act shall direct that the charges for the transmission to the Court, from which the order has been received or in which the provisional order has been made, as the case may be, of the sum awarded as maintenance shall be borne by the person against whom the order has been so made or confirmed, and shall be recovered from him in addition to the sum awarded as maintenance and in addition to, and in the same manner as, such other costs and charges as may be awarded or levied by the Court.

10. Proof of documents signed by officers of Court. For the purposes of this Act, any document purporting to be signed by a judge or officer of a Court outside 7[Pakistan] shall, until the contrary is proved, be deemed to have been so signed without proof of the signature of 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.

11. Depositions to be evidence. Depositions taken in a Court in any reciprocating territory may, for the purposes of this Act, be received in evidence in proceedings before Courts of summary jurisdiction under this Act.

'Subs. by F. A. O., 1975, Art. 2. and Table, for "Central Government" which was previously amended by A Subs by the Central Laws (Statute Reform) Ordinance, 1960 (XXI of 1960), s.3 and 2nd Sch. (with effect Provinces and the Capital of the Federation" which had been subs. by A.O. 1949, for "British India".

12. Rule-making power. The '[Federal Government] may make rules for the purpose of carrying into effect the purposes of this Act, and in particular may make rules for the levy of the costs or charges for anything done under this Act and for all matters which are directed or permitted to be prescribed.

'Subs. by F. A. O., 1975, Art. 2 and Table, for "Central Government", which was previously amended by A