

PROJET DE LOI

ENTITLED

The Maintenance Orders (Facilities for Enforcement) (Guernsey) Law, 1955 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

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* Ordres en Conseil Vol. XVI, p. 161. See also the South Africa (Bailiwick of Guernsey) Law, 1963 (Ordres en Conseil Vol. XIX, p. 119); the Deputy Bailiff (Guernsey) Law, 1969 (Ordres en Conseil Vol. XXII, p. 122). This Law is prospectively repealed by the Maintenance Orders (Reciprocal Enforcement) (Bailiwick of Guernsey) Law, 1984 (Ordres en Conseil Vol. XXVIII, p. 457).

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THE STATES, in pursuance of their Resolution of the first day of December, nineteen hundred and fifty-four, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of the Island of Guernsey.

Interpretation.

1. (1) In this Law, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say –

"the appropriate Bailiwick court" means –

- (a) as respects the Island of Guernsey, the Magistrate's Court,
- (b) as respects the Island of Alderney, the Court of Alderney,
- (c) as respects the Island of Sark, the Court of the Seneschal of Sark,

"Bailiwick" means the Bailiwick of the Island of Guernsey,

"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,

"dependants" means such persons as the person against whom a maintenance order has been made is, according to the law in force in the part of Her Majesty's dominions in which the maintenance order was made, liable to maintain,

"Her Majesty's dominions" includes the British protectorates,

"the Island of Guernsey" includes the Islands of Herm and Jethou,

"maintenance order" means an order, other than an order of affiliation, 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 of court,

"reciprocating country" has the meaning assigned to it by section ten of this Law,

"the States" means the States of Guernsey.

(2) The Interpretation (Guernsey) Law, 1948, shall apply to the interpretation of this Law throughout the Bailiwick.

NOTES

The following cases have referred to this Law:

H.M. Procureur v. Flynn (1989) 8.GLJ.10;
Price v. Price (1993) 13.GLJ.21.

In accordance with the provisions of the South Africa (Bailiwick of Guernsey) Law, 1963, section 2, with effect from 31st May, 1962, this Law shall apply in relation to the Republic of South Africa as it applies in relation to a part of Her Majesty's dominions.

This Law is prospectively repealed by the Maintenance Orders (Reciprocal Enforcement) (Bailiwick of Guernsey) Law, 1984, section 19.

Enforcement of maintenance orders made in other parts of Her Majesty's dominions.

2. (1) Where a maintenance order has, whether before or after the commencement of this Law, been made against any person by any court in a reciprocating country, and a certified copy of the order has been transmitted by the Secretary of State to the Lieutenant-Governor, the Lieutenant-Governor shall send a copy of the order to the Bailiff for registration, and on receipt thereof the order shall be registered in the prescribed manner, and shall, from the date of such registration, be of the same force and effect, and, subject to the provisions of this Law, all proceedings may be taken on such order as if it had been an order originally obtained 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 –

- (a) where the person against whom the order was made is resident in the Island of Guernsey, if the court by which the order was made was a court of superior

jurisdiction, be the Royal Court sitting as an Ordinary Court, or, if the court was not a court of superior jurisdiction, be the Magistrate's Court,

- (b) where the person against whom the order was made is resident in the Island of Alderney, be the Court of Alderney,
- (c) where the person against whom the order was made is resident in the Island of Sark, be the Court of the Seneschal of Sark.

NOTES

The following case has referred to section 2:

Price v. Price (1993) 13.GLJ.21.

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the reference herein to the Bailiff included a reference to the Deputy Bailiff.

Transmission of maintenance orders made in the Bailiwick.

3. Where a court in the Bailiwick has, whether before or after the commencement of this Law, 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 country, the court shall send a certified copy of the order to the Bailiff, who shall forward the same to the Lieutenant-Governor for transmission to the Secretary of State.

NOTE

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the reference herein to the Bailiff included a reference to the Deputy Bailiff.

Power to make provisional orders of maintenance against persons resident in other parts of Her Majesty's dominions.

4. (1) Where an application is made to the appropriate Bailiwick court for a maintenance order against any person, and it is proved that that person is resident in a reciprocating country, the appropriate Bailiwick 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 such order shall be provisional only, and shall have no effect unless and until confirmed by a competent court in such reciprocating country.

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

(3) Where such an order is made, the appropriate Bailiwick court shall send to the Bailiff for transmission to the Secretary of State 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 appropriate Bailiwick court possesses for facilitating the identification of that person and ascertaining his whereabouts.

(4) Where any such provisional order has come before a court in a reciprocating country for confirmation and the order has by that court been remitted to the appropriate Bailiwick court for the purpose of taking further evidence, the appropriate Bailiwick 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. If, upon the hearing of such evidence, it appears to the appropriate Bailiwick court that the order ought not to have been made, the appropriate Bailiwick court may rescind the order, but in any other case the depositions shall be sent to the Bailiff and dealt with in like manner as the original depositions.

(5) The confirmation of an order made under this section shall not affect any power of the appropriate Bailiwick court to vary or rescind that order:

PROVIDED that, on the making of a varying or rescinding order, the appropriate Bailiwick court shall send a certified copy thereof to the Bailiff for transmission to the Secretary of State 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.

(6) 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.

NOTE

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the references herein to the Bailiff included a reference to the Deputy Bailiff.

Power of appropriate Bailiwick court to confirm maintenance orders made in other parts of Her Majesty's dominions.

5. (1) Where a maintenance order has been made by a court in a reciprocating country, and the order is provisional only and has no effect unless and until confirmed by the appropriate Bailiwick court, 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, and it appears to the Lieutenant-Governor that the person against whom the order was made is resident in the Bailiwick, the Lieutenant-Governor shall send the said documents to Her Majesty's Procureur, with a requisition that a summons be issued calling upon the person to show cause before the appropriate Bailiwick court why that order should not be confirmed.

(2) 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.

(3) If at the hearing the person served with the summons does not

appear or, on appealing, fails to satisfy the appropriate Bailiwick court that the order ought not to be confirmed, the appropriate Bailiwick court may confirm the order either without modification or with such modifications as to the court, after hearing the evidence, may seem just.

(4) If the person against whom the summons was issued appears at the hearing and satisfies the appropriate Bailiwick 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 appropriate Bailiwick court may so remit the case and adjourn the proceedings for the purpose.

(5) 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 appropriate Bailiwick court, and where, on an application for the rescission or variation, the appropriate Bailiwick court is satisfied that it is necessary to remit the case to the court which made the order for the purpose of taking any further evidence, the appropriate Bailiwick court may so remit the case and adjourn the proceedings for the purpose.

(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 appropriate Bailiwick court.

Rules of Court.

6. (1) The Royal Court may from time to time make rules of court –

(a) for prescribing anything which may be prescribed under this Law, and

- (b) as to the manner in which a case can be remitted by a court authorised to confirm a provisional order to the court which made the provisional order and generally for facilitating communications between such courts.

(2) Any rules of court made under this section may at any time be varied or revoked by subsequent rules of court made by the Royal Court.

NOTE

The following Rules have been made by Order of the Royal Court under section 6:

Maintenance Orders (Facilities for Enforcement) (Guernsey) Rules, 1955.

Enforcement of orders.

7. (1) Where the Royal Court sitting as an Ordinary Court or the appropriate Bailiwick court has registered or confirmed an order under this Law, the officers of the court shall take all such steps for enforcing the order as may be prescribed.

(2) Every such order shall be enforceable in like manner as if the order were for the payment of a civil debt.

Proof of documents signed by officers of court.

8. Any document purporting to be signed by a judge or officer of a court outside the Bailiwick 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.

9. Depositions taken in a court in a reciprocating country for the purposes of this Law may be received in evidence in proceedings before the appropriate Bailiwick court under this Law.

Application.

10. Where the States are satisfied that reciprocal provisions have been made by the legislature of any part of Her Majesty's dominions outside the Bailiwick for the enforcement within that part of maintenance orders made by courts within the Bailiwick, the States may by Ordinance declare such part to be a reciprocating country for the purposes of this Law, and thereupon such part shall become a reciprocating country within the meaning of this Law.

NOTES

The Law received Royal Sanction on 17th March, 1955 and was registered on the Records of the Island of Guernsey and came into force on 16th April, 1955.

The following Ordinances have been made under section 10:

Maintenance Orders (Facilities for Enforcement) (Reciprocating Countries) (Guernsey) Ordinance, 1959;

Maintenance Orders (Facilities for Enforcement) (Reciprocating Countries) (Guernsey) (Amendment) Ordinance, 1960;

Maintenance Orders (Facilities for Enforcement) (Reciprocating Countries) (Guernsey) (Amendment) Ordinance, 1961;

Maintenance Orders (Facilities for Enforcement) (Reciprocating Countries) (Guernsey) (Amendment) Ordinance, 1962

Maintenance Orders (Facilities for Enforcement) (Reciprocating Countries) (Guernsey) (Amendment) Ordinance, 1974.

The following case has referred to section 10:

H.M. Procureur v. Flynn (1989) 8.GLJ.10.
