

LAWS OF MALAYSIA

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Act 34

MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) ACT 1949

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MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) ACT 1949

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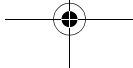
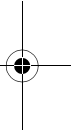
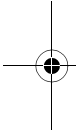
MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) ACT 1949

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MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) ACT 1949

An Act to facilitate the enforcement in Malaysia of maintenance orders made in reciprocating countries and *vice versa*.

*[Peninsular Malaysia—1 December 1949,
Ord. No. 55 of 1949;
Sabah and Sarawak—1 January 1971,
P.U.(A)460/1970]*

Short title

1. This Act may be cited as the Maintenance Orders (Facilities for Enforcement) Act 1949.

Interpretation

2. In this Act, unless the context otherwise requires—

“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” in relation to any person means such persons as that person is, according to the law in force in a reciprocating country or in Malaysia in which a maintenance order was made, liable to maintain;

“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, and includes, with reference to Northern Ireland, an order or decree for the recovery or repayment of the cost of relief or maintenance made by virtue of the Imperial Acts entitled the Poor Relief (Ireland) Acts 1839 to 1914;

“local Court” means a Sessions Court or a Magistrate’s Court having jurisdiction to try suits relating to maintenance of wives or children, and “appropriate local Court” means the local Court in the district where the person, against whom a maintenance order is made, resides;

“reciprocating country” means any country or territory, including England, Wales and Northern Ireland, to which this Act for the time being applies and which is specified in the Schedule.

Enforcement in Malaysia of maintenance orders made in reciprocating countries

3. Where a maintenance order has, whether before or after the commencement of this Act, been made against any person by any court in a reciprocating country, and a certified copy of the order has been transmitted to the Minister charged with responsibility for the judiciary, the Minister shall cause a copy thereof to be sent to the appropriate local Court for registration, and, on receipt thereof, the order shall be registered in the prescribed manner and shall, from the date of the registration, be of the same force and effect and, subject to this Act, all proceedings may be taken on the order as if it had been an order originally obtained in the local Court, and that Court shall have power to enforce the order accordingly.

Transmission of maintenance orders made in Malaysia

4. Where a local Court has, whether before or after the commencement of this Act, made a maintenance order against any person, and it is proved to the Court that the person against whom the order was made is resident in a reciprocating country, the Court shall send to the Minister charged with responsibility for foreign affairs for transmission to the appropriate authority in the reciprocating country a certified copy of the order.

Power to make provisional orders of maintenance against persons resident in reciprocating countries

5. (1) Where an application is made to a local Court for a maintenance order against any person, and it is proved that that person is resident in a reciprocating country, the Court may, in the absence of that person, if after hearing the evidence it is satisfied

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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 that case the order shall be provisional only, and shall have no effect unless and until confirmed by a competent court in that reciprocating country.

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

(3) Where an order is made as aforesaid, the Court shall send to the Minister charged with responsibility for foreign affairs for transmission to the appropriate authority in the reciprocating country the depositions so taken and a certified copy of the order, together with a certificate 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 such information as the Court possesses for facilitating the identification of that person, and ascertaining his whereabouts.

(4) (a) Where any such provisional order has come before a competent court in the reciprocating country for confirmation, and the order has by that court been remitted to the appropriate local Court which made the order for the purpose of taking further evidence, the local 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.

(b) If upon the hearing of the evidence it appears to the Court 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 Minister charged with responsibility for foreign affairs 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 a local Court 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 Minister charged with responsibility for foreign affairs for transmission to the appropriate authority in the reciprocating country, 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 the 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 local Court to confirm provisional orders of maintenance made in reciprocating countries against persons resident in Malaysia

6. (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 a Court having jurisdiction in Malaysia, and a certified copy of the order together with the depositions of witnesses and a certificate stating the grounds on which the order might have been opposed has been transmitted to the Minister charged with responsibility for the judiciary and it appears to the Minister that the person against whom the order was made is resident in Malaysia, the Minister shall cause the documents to be sent to the appropriate local Court 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 document and requisition the appropriate local Court shall issue a summons and cause it to be served upon that person.

(2) A summons so issued may be served in the same manner as if it had been originally issued under the Criminal Procedure Code [*Act 593*].

(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 local Court that the order ought not be confirmed, the Court may confirm the order either without modification or with such modifications as to the Court after hearing the evidence may seem just.

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(5) If the person against whom the summons was issued appears at the hearing and satisfies the local 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.

(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 local Court is satisfied that it is necessary to remit the case to the court which made the order for the purpose of taking further evidence, the local Court may so remit the case and adjourn the proceedings for the purpose.

(7) 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.

Power of Minister to make rules for facilitating communications between courts

7. The Minister charged with responsibility for the judiciary may make rules as to the manner in which a case can be remitted by a Court authorized to confirm a provisional order to the court which made the provisional order, and generally for facilitating communications between the courts, and may make such other rules as he deems necessary to carry into effect the purposes of this Act.

Mode of enforcing orders

8. An order which has been registered or which has been confirmed by a local Court under this Act shall be enforceable in like manner as if the order had been made—

- (a) in the States of Malaya, under the Married Women and Children (Maintenance) Act 1950 [*Act 263*], of the Federation of Malaya; or under any State law as is referred to in section 13 of that Act;
- (b) in Sabah, under the Maintenance Ordinance 1959 of Sabah [*Ord. 7 of 1959*];

- (c) in Sarawak, under Chapter XXXIII (sections 335 to 340A) of the Criminal Procedure Code Cap. 62 (1948 Revised Edition) of Sarawak.

NOTE

[This Chapter is still in force by virtue of section 5 of the Revised Edition of the Laws Ordinance 1956 of Sarawak.]

Proof of documents signed by officers of court

9. Any document purporting to be signed by a Judge or officer of a court in a reciprocating country 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

10. Depositions taken in a court in a reciprocating country for the purposes of this Act shall be received in evidence in proceedings under this Act.

Extension of the Act

11. Where the Yang di-Pertuan Agong is satisfied that reciprocal provisions have been or will be made by the legislature of any country or territory for the enforcement within that country or territory of maintenance orders made by courts in Malaysia, the Yang di-Pertuan Agong may, by order, extend this Act to that country or territory and may amend the Schedule in any manner which may be necessary or expedient to give effect to such order and to remove any inconsistency therewith in the Schedule.

Application of Act

12. (1) (*Omitted*).

(2) This Act shall apply to all court orders made and all proceedings commenced under any Enactment or Ordinance in force in any part of Malaysia before the commencement of this

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Act to all intents as if the orders had been made or the proceedings had been commenced under this Act, and, where any such Enactment or Ordinance has been extended to any country or territory specified in the Schedule, this Act shall, for the purposes of any such order or proceeding, be deemed to have been extended to that country or territory notwithstanding the fact that no order in that behalf has been made under section 11.

SCHEDULE

[Sections 2, 11 and 12]

RECIPROCATING COUNTRIES

Australia—

State of New South Wales;
State of Queensland;
State of South Australia;
State of Tasmania;
State of Victoria;
State of Western Australia;
Capital Territory of Australia;
Territory of Norfolk Island;
Northern Territory of Australia;
Territory of Papua;
Cocos (Keeling Island);

Brunei, State of;

Ceylon, Dominion of;

England;

Guernsey, Bailiwick of the Island of;

Hong Kong Special Administrative Region of the People's Republic of China;

India (excluding Jammu and Kashmir), Republic of;

Jersey, Island of;

Man, Isle of;

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New Zealand;

Cook Islands (including Niue);

Western Samoa, Trust Territory of;

Northern Ireland;

Norfolk Island;

Pakistan, Republic of;

Singapore, Republic of;

South Africa, Union of;

Wales.

LAWS OF MALAYSIA**Act 34****MAINTENANCE ORDERS (FACILITIES FOR
ENFORCEMENT) ACT 1949****LIST OF AMENDMENTS**

Amending law	Short title	In force from
L.N. 332/1958	Federal Constitution (Modification of Laws) (Ordinances and Proclamations) Order 1958	13-11-1958
P.U.(A)460/1970	Maintenance Ordinance (Extension) Order 1970	01-01-1971
P.U.(A)208/1980	Revision of Laws (Maintenance Orders (Facilities for Enforcement) Act 1949) Order 1980	01-07-1971
P.U.(A)33/2004	Maintenance Orders (Facilities for Enforcement)(Extension of the Act) Order 2003	23-01-2004
P.U.(A)78/2004	Corrigendum Maintenance Orders (Facilities for Enforcement)(Extension of the Act) Order 2004	20-02-2004

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**MAINTENANCE ORDERS (FACILITIES FOR
ENFORCEMENT) ACT 1949**

LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
Schedule	P.U.(A)460/1970	01-01-1971
	P.U.(A)208/1980	01-07-1971
	P.U.(A)33/2004	23-01-2004
