

# MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) ORDINANCE 1928-1938.<sup>(1)</sup>

**An Ordinance to facilitate the enforcement in the Territory of New Guinea of Maintenance Orders made in the States and Territories of the Commonwealth and vice versa.**

Amended by  
No. 18 of 1932,  
s. 2.

**BE** it ordained by the Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *New Guinea Act 1920-1926*, as follows:—

1. This Ordinance may be cited as the *Maintenance Orders (Facilities for Enforcement) Ordinance 1928-1938.*<sup>(1)</sup>

Short title.

Amended by  
No. 3 of 1934,  
s. 50.

(1) The *Maintenance Orders (Facilities for Enforcement) Ordinance 1928-1938* comprises the *Maintenance Orders (Facilities for Enforcement) Ordinance 1928*, as amended by the other Ordinances referred to in the following Table:—

TABLE.

PART I.—ORDINANCES MADE BY THE GOVERNOR-GENERAL IN COUNCIL.

Short title, number and year.	Date on which made by Gov.-Gen. in Council.	Date on which notified in <i>Cwth. Gaz.</i>	Date on which took effect.
<i>Maintenance Orders (Facilities for Enforcement) Ordinance 1928</i> (No. 8 of 1928)	15.5.1928	17.5.1928	17.5.1928 ( <i>Cwth. Gaz.</i> of 17.5.1928)
<i>Maintenance Orders (Facilities for Enforcement) Ordinance 1930</i> (No. 19 of 1930)	22.9.1930	25.9.1930	25.9.1930 ( <i>Cwth. Gaz.</i> of 25.9.1930)
<i>Maintenance Orders (Facilities for Enforcement) Ordinance 1932</i> (No. 18 of 1932)	21.9.1932	22.9.1932	22.9.1932 ( <i>Cwth. Gaz.</i> of 22.9.1932)

PART II.—ORDINANCES OF THE LEGISLATIVE COUNCIL.

Short title, number and year.	Date of assent by Administrator.	Date notified in <i>N.G. Gaz.</i> as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
<i>Maintenance Orders (Facilities for Enforcement) Ordinance 1934</i> (No. 12 of 1934)	6.2.1934	15.8.1934	6.2.1934 ( <i>Laws of T.N.G.</i> , Vol. XIII, p. 42)
<i>Maintenance Orders (Facilities for Enforcement) Ordinance 1935</i> (No. 9 of 1935)	16.1.1935	31.7.1935	16.1.1935 ( <i>Laws of T.N.G.</i> , Vol. XIII, p. 161)
<i>Maintenance Orders (Facilities for Enforcement) Ordinance 1938</i> (No. 22 of 1938)	24.8.1938	30.11.1938	24.8.1938 ( <i>Laws of T.N.G.</i> , Vol. XIV, p. 144)

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Definitions.

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;

Amended by  
No. 18 of 1932,  
s. 3.

“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 State in which the order is made;

Amended by  
No. 9 of 1935,  
s. 2.

“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;

Amended by  
No. 18 of 1932,  
s. 3.

“Reciprocating State” means any State which has been declared by the Governor-General to be a reciprocating State for the purposes of this Ordinance; and

Added by  
No. 18 of 1932,  
s. 3.

“State” means any State of the Commonwealth, and includes any Territory of the Commonwealth.

Enforcement in  
the Territory  
of maintenance  
orders made  
elsewhere.

Sub-section (1)  
amended by  
No. 12 of 1934,  
s. 2.

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 any reciprocating State, and a certified copy of the order has been transmitted by the Governor of the reciprocating State to the Administrator, and it appears to the Administrator that the person against whom the order was made is resident in the Territory, the Administrator shall send a copy of the order to the officer in charge of the records 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 in the Court in which it is so registered, and that Court shall have power to enforce the order accordingly.

Sub-section (2)  
amended by  
No. 19 of 1930,  
s. 2 and by  
No. 12 of 1934,  
s. 2.

(2.) The Court in which an order is to be so registered shall, if the Court by which the order was made was a Court of superior jurisdiction, be the Supreme Court of the Territory, and, if the Court was not a Court of superior jurisdiction, be a District Court.

Transmission of  
maintenance  
orders made in  
the Territory.

Amended by  
No. 12 of 1934,  
s. 3.

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 a reciprocating State, the Court shall send to the Administrator for transmission to the Governor of that reciprocating State a certified copy of the order.

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5.—(1.) Where an application is made to a Court in the Territory for a maintenance order against any person, and it is proved that that person is resident in 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 a reciprocating State.

Power to make provisional orders of maintenance against persons resident elsewhere.

(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.

(3.) Where an order is made under this section, the Court shall send to the Administrator for transmission 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-section (3) amended by No. 12 of 1934, s. 3.

(4.) Where any order under this section has come before a Court in a reciprocating State for confirmation, and the order has by that Court been remitted to the Court which made the order for the purpose of taking further evidence, that Court or any other Court sitting and acting for the same place shall, after giving notice to such persons and in such manner as to the Court seems just, proceed to take evidence in like manner and subject to the like conditions as the evidence in support of the original application.

(5.) 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 Administrator and dealt with in like manner as the original depositions.

Sub-section (5) amended by No. 12 of 1934, s. 3.

(6.) The confirmation of an order made under this section shall not affect any power of a 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 Administrator for transmission to the Governor of the reciprocating State in which the original order was confirmed, and that in the case of an order varying the original order the varying order shall not have any effect unless and until confirmed in like manner as the original order.

Proviso amended by No. 12 of 1934, s. 3.

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(7.) 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 elsewhere.  
Sub-section (1) amended by No. 12 of 1934, s. 3.

6.—(1.) Where a maintenance order has been made by a Court in a reciprocating State, and the order is provisional only and has no effect unless and until confirmed by a Court in the Territory, 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 Administrator, and it appears to the Administrator that the person against whom the order was made is resident in the Territory, the Administrator may send the said documents to the officer in charge of the records of the appropriate Court 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.

(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 having jurisdiction in the place where the person happens to be.

(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.

Sub-section (4) amended by No. 18 of 1932, s. 4.

(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, seem 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.

(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

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is necessary to remit the case to the Court which made the order for the purpose of taking any further evidence, the 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.

7. The regulations may prescribe the manner in which a case may 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 those Courts.

Communication between Courts.

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 steps for enforcing the order as are prescribed:

Mode of enforcing orders.

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

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Proviso omitted by No. 12 of 1934, s. 4.

(2A.) Every order referred to in sub-section (1.) of this section which is registered in a District Court may be enforced in the same manner as an order for the support of a wife or child made by a District Court under the *Deserted Wives and Children Ordinance* 1934, and non-compliance therewith may be punished in the same manner as if the order was made under that Ordinance.

Sub-section (2A) inserted by No. 12 of 1934, s. 4.

(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 in the same manner as if the warrant had been originally issued by a Court having jurisdiction in the place where the warrant is executed.

9. Any document purporting to be signed by a Judge or officer of a Court 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 so<sup>(2)</sup> signed shall, until the contrary is proved, be deemed to have been the proper officer of the Court to sign the document.

Proof of documents signed by officers of Court.

10. Depositions taken 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.

Depositions to be evidence.

(2) The word "so" appeared in the original Ordinance. It has now been repealed and the word "is" inserted in its stead by the First Schedule of the *Ordinances Reprint and Revision Ordinance* 1947 of the Territory of Papua-New Guinea.

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Reciprocal arrangements.  
Section 11 substituted by No. 18 of 1932, s. 5.

11.—(1.) If the Governor-General is satisfied that adequate provisions have been made by the Legislature or other competent authority of any State for the enforcement within that State of maintenance orders made by Courts within the Territory, he may declare<sup>(3)</sup> that State to be a reciprocating State for the purposes of this Ordinance.

(2.) In any proceedings under this Ordinance the fact that any State is a reciprocating State shall be judicially noticed.

Regulations.  
Sub-section (1) amended by No. 22 of 1938, s. 2.

12.—(1.) The Administrator in Council may make regulations,<sup>(4)</sup> not inconsistent with this Ordinance, prescribing all matters which are, by this Ordinance, required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for giving effect to this Ordinance.

Sub-sections (2) and (3) omitted by No. 22 of 1938, s. 2.

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(3) The Governor-General, by proclamations, particulars of which are set out in the following Table, declared the States and Territory referred to in the respective notices to be reciprocating States:—

Date on which proclamation made by Governor-General.	Date on which published in <i>Orwth. Gaz.</i>	Date on which notified in <i>N.G. Gaz.</i>	States or Territory declared.
2.11.1932	10.11.1932	15.8.1933	Western Australia
12.7.1933	13.7.1933	15.8.1933	South Australia Tasmania Papua
26.9.1934	27.9.1934	31.10.1934	Victoria
7.1.1936	16.1.1936	31.3.1936	Queensland

(4) See the *Maintenance Orders (Facilities for Enforcement) Regulations*, printed on p. 3201.