

MAINTENANCE ORDERS (RECIPROCAL ENFORCEMENT)

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The Maintenance Orders (Reciprocal Enforcement) Act 1973 No 19 was certified on 8 November 1973 and commenced on 3 October 1977 (GN No 392/1977; Gaz 66/1977).

Amending Legislation	Certified	Date of Commencement
Statute Law Revision Act 2011 No 8	15 April 2011	15 April 2011
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021

An Act to make provision for facilitating the recovery of maintenance by and from persons in the Republic from or by persons in other countries and to extend the jurisdiction of the Family Court to hear complaints by or against persons outside the Republic, and for purposes connected with the matters aforesaid.

Enacted by the Parliament of Nauru as follows:

PART 1 — PRELIMINARY

1 Short title and commencement

This Act may be cited as the *Maintenance Orders (Reciprocal Enforcement) Act 1973* and came into effect on 8 November 1973.

2 Interpretation

(1) In this Act:

‘affiliation order’ means an order, however described, adjudging, finding or declaring a person to be the father of a child, whether or not it also provides for the maintenance of the child;

‘certificate of arrears’, in relation to a maintenance order, means a certificate certifying that the sum specified in the certificate is to the best of the information or belief of the officer giving the certificate the amount of the arrears due under the order at the date of the certificate or, as the case may be, that to the best of his or her information or belief there are no arrears due thereunder at that date;

‘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;

‘convention country’ means a country declared by the Cabinet under Section 20 to be a convention country;

‘court’ includes any tribunal or person having power to make, confirm, enforce, vary or revoke a maintenance order;

‘Deputy Registrar’ means the Deputy Registrar of the Family Court;

‘Family Court’ means the Family Court established by the *Family Court Act 1973*; and

‘maintenance order’ means an order, however described, of any of the following descriptions, that is to say:

- (a) an order, including an affiliation order or order consequent upon an affiliation order, which provides for the periodical payment of sums of money towards the maintenance of a person, being a person whom the person liable to make payments under the order is, according to the law applied in the place where the order was made, liable to maintain; and
- (b) an affiliation order or order consequent upon an affiliation order, being an order which provides for the payment by a person adjudged, found or declared to be a child’s father of expenses incidental to the child’s birth or, where the child has died, of his or her funeral expenses;

and, in the case of a maintenance order which has been varied, means that order as varied;

‘the Minister’

[def rep Act 8 of 2011 s 12 and Sch 1[89], opn 15 Apr 2011]

‘payee’, in relation to a maintenance order, means the person entitled to the payments for which the order provides;

‘payer’, in relation to a maintenance order, means the person liable to make payments under the order;

‘provisional order’ means, according to the context:

- (a) an order made by the Family Court which is provisional only and has no effect unless and until confirmed, with or without alteration, by a competent court in a reciprocating country; or
- (b) an order made by a court in a reciprocating country which is provisional only and has no effect unless and until confirmed, with or without alteration, by the Family Court;

‘reciprocating country’ has the meaning assigned to it by Section 3 of this Act;

‘registered order’ means a maintenance order which is for the time being registered in the Family Court under Part 2 of this Act; and

‘the responsible authority’, in relation to a reciprocating country, means a person who in that country has functions similar to those of the Minister under Part 2 of this Act.

[def am Act 8 of 2011 s 12 and Sch 1[89], opn 15 Apr 2011]

[subs (1) am Act 8 of 2011 s 12 and Sch 1[89], opn 15 Apr 2011]

- (2) For the purposes of Part 2 of this Act an order shall be taken to be a maintenance order so far, but only so far, as it relates to the periodical payment of sums of money as mentioned in paragraph (a) of the definition of ***‘maintenance order’*** in subsection (1) or to the payment by a person adjudged, found or declared to be a child’s father of any such expenses as are mentioned in paragraph (b) of that definition.
- (3) Any reference in Part 2 of this Act to the payment of money for the maintenance of a child shall be construed as including a reference to the payment of money for the child’s education.

**PART 2 — RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS
MADE IN THE REPUBLIC OR A RECIPROCATING COUNTRY**

3 Designation of reciprocating countries

- (1) The Cabinet, if satisfied that, in the event of the benefits conferred by this Part of this Act being applied to, or to particular classes of, maintenance orders made by the courts of any country or territory other than the Republic similar benefits will in that country or territory be applied to, or to those classes of, maintenance orders made by the courts of the Republic, may by notice in the Gazette designate that country or territory as a reciprocating country for the purposes of this Part of this Act; and, subject to subsection (2), in this Part of this Act '*reciprocating country*' means a country or territory that is for the time being so designated.
- (2) A country or territory may be designated under the subsection (1) as a reciprocating country either as regards maintenance orders generally, or as regards maintenance orders other than those of any specified class, or as regards maintenance orders of one or more specified classes only; and a country or territory which is for the time being so designated otherwise than as regards maintenance orders generally shall for the purposes of this Part of this Act be taken to be a reciprocating country only as regards maintenance orders of the class to which the designation extends.

4 Transmission of a maintenance order made in the Republic for enforcement in a reciprocating country

- (1) Subject to subsection (2), where the payer under a maintenance order made, whether before or after the commencement of this Part of this Act, by a court in the Republic is residing in a reciprocating country, the payee under the order may apply for the order to be sent to that country for enforcement.
- (2) Subsection (1) shall not have effect in relation to a provisional order or to an order made by virtue of a provision of Part 3 of this Act.
- (3) Every application under this Section shall be made in the prescribed manner to the Deputy Registrar of the Family Court and, if it relates to a maintenance order not enforceable by the Family Court, shall be accompanied by a copy of the maintenance order certified by the Registrar of Courts.
- (4) Where, on an application duly made under this Section to the Deputy Registrar he or she is satisfied that the payer under the maintenance order to which the application relates is residing in a reciprocating country, the following documents, that is to say:
 - (a) a certified copy of the maintenance order;
 - (b) a certificate signed by the Deputy Registrar certifying that the order is enforceable in the Republic;
 - (c) a certificate of arrears so signed;
 - (d) a statement giving such information as he or she possesses as to the whereabouts of the payer;
 - (e) a statement giving such information as he or she possesses for facilitating the identification of the payer; and

- (f) where available, a photograph of the payer, shall be sent by the Deputy Registrar to the Minister with a view to their being transmitted by the Minister to the responsible authority in the reciprocating country if he or she is satisfied that the statement relating to the whereabouts of the payer gives sufficient information to justify that being done.
- (5) Nothing in this Section shall be taken as affecting any jurisdiction of a court in the Republic with respect to a maintenance order to which this Section applies, and any such order may be enforced, varied or revoked accordingly.

5 Maintenance order against person in a reciprocating country

- (1) Where a complaint is made to the Family Court against a person residing in a reciprocating country and the complaint is one on which the court would have jurisdiction by virtue of any written law to make a maintenance order if:
- (a) that person were residing in the Republic; and
 - (b) a summons to appear before the court to answer to the complaint had been duly served on him or her,
- the court shall have jurisdiction to hear the complaint and may, subject to subsection (2), make a maintenance order on the complaint.
- (2) A maintenance order made by virtue of this Section shall be a provisional order.
- (3) Where the court makes a maintenance order which is by virtue of this Section a provisional order, the following documents, that is to say:
- (a) a certified copy of the maintenance order;
 - (b) a document, authenticated in the prescribed manner, setting out or summarising the evidence given in the proceedings;
 - (c) a certificate signed by the Chairperson of the Family Court certifying that the grounds stated in the certificate are the grounds on which the making of the order might have been opposed by the payer under the order;
 - (d) a statement giving such information as was available to the Court as to the whereabouts of the payer;
 - (e) a statement giving such information as the officer possesses for facilitating the identification of the payer; and
 - (f) where available, a photograph of the payer,
- shall be sent by the Deputy Registrar to the Minister with a view to their being transmitted by the Minister to the responsible authority in the reciprocating country in which the payer is residing if he or she is satisfied that the statement relating to the whereabouts of the payer gives sufficient information to justify that being done.
- (4) A maintenance order made by virtue of this Section which has been confirmed by a competent court in a reciprocating country shall be treated for all purposes as if the Family Court had made it in the form in which it was confirmed and as if the order had never been a provisional order and, subject to Section 6, any such order may be enforced, varied or revoked accordingly.

6 Variation and revocation of maintenance orders made by a court in the Republic

- (1) This Section applies to a maintenance order a certified copy of which has been sent to a reciprocating country in pursuance of Section 4 and to a maintenance order made by virtue of Section 5 which has been confirmed by a competent court in such a country.
- (2) A court in the Republic having power to vary a maintenance order to which this Section applies shall have power to vary that order by a provisional order.
- (3) Where the court hearing an application for the variation of a maintenance order to which this Section applies proposes to vary it by increasing the rate of the payments under the order, then, unless either:
 - (a) both the payer and the payee under the order appear in the proceedings;
or
 - (b) the applicant appears and the appropriate process has been duly served on the other party,the order varying the order shall be a provisional order.
- (4) Where a court in the Republic makes a provisional order varying a maintenance order to which this Section applies, the Registrar or Deputy Registrar of that court shall send in the prescribed manner to the court in a reciprocating country having power to confirm the provisional order a certified copy of the provisional order together with a document, authenticated in the prescribed manner, setting out or summarising the evidence given in the proceedings.
- (5) Where a certified copy of a provisional order made by a court in a reciprocating country, being an order varying or revoking a maintenance order to which this Section applies, together with a document, duly authenticated, setting out or summarising the evidence given in the proceedings in which the provisional order was made is received by the court in the Republic which made the maintenance order, that court may confirm or refuse to confirm the provisional order and, if that order is an order varying the maintenance order, confirm it either without alteration or with such alterations as it thinks reasonable.
- (6) For the purpose of determining whether a provisional order should be confirmed under subsection (5), the court shall proceed as if an application for the variation or revocation, as the case may be, of the maintenance order in question had been made to it.
- (7) Where a maintenance order to which this Section applies has been varied by an order, including a provisional order which has been confirmed, made by a court in the Republic, or by a competent court in a reciprocating country, the maintenance order shall, as from the date on which the order was made, have effect as varied by that order and, where that order was a provisional order, as if that order had been made in the form in which it was confirmed and as if it had never been a provisional order.
- (8) Where a maintenance order to which this Section applies has been revoked by an order made by a court in the Republic or by a competent court in a reciprocating country, including a provisional order made by the last-mentioned court which has been confirmed by a court in the Republic, the maintenance order shall, as from the date on which the order revoking

it was made, be deemed to have ceased to have effect, except as respects any arrears due under the maintenance order at that date.

- (9) Where before a maintenance order made by virtue of Section 5 is confirmed a document, duly authenticated, setting out or summarising evidence taken in a reciprocating country for the purpose of proceedings relating to the confirmation of the order is received by the Family Court, or the Family Court, in compliance with a request made to it by a court in such a country, takes for the purpose of such proceedings the evidence of a person residing in the Republic, the Family Court shall consider that evidence and if, having done so, it appears to it that the order ought not to have been made:
- (a) it shall, in such manner as may be prescribed, give to the person on whose application the maintenance order was made an opportunity to consider that evidence, to make representations with respect to it and to adduce further evidence; and
 - (b) after considering all the evidence and any representations made by that person, it may revoke the maintenance order.

7 Registration in the Family Court of a maintenance order made in a reciprocating country

- (1) This Section applies to a maintenance order made, whether before or after the commencement of this Part of this Act, by a court in a reciprocating country, including such an order made by such a court which has been confirmed by a court in another reciprocating country but excluding a provisional order which has been confirmed.
- (2) Where a certified copy of an order to which this Section applies is received by the Minister from the responsible authority in a reciprocating country, he or she shall send the copy of the order to the Deputy Registrar of the Family Court.
- (3) Where the Deputy Registrar receives from the Minister a certified copy of an order to which this Section applies, he or she shall, subject to subsection (4), register the order in the prescribed manner in the Family Court.
- (4) Before registering an order under this Section the Deputy Registrar shall take such steps as he or she thinks fit for the purpose of ascertaining whether the payer under the order is residing in the Republic and, if after taking those steps he or she is satisfied that the payer is not so residing, he or she shall return the certified copy of the order to the Minister with a statement giving such information as he or she possesses as to the whereabouts of the payer.

8 Confirmation by the Family Court of a provisional maintenance order made in a reciprocating country

- (1) This Section applies to a maintenance order made, whether before or after the commencement of this Part of this Act, by a court in a reciprocating country, being a provisional order.
- (2) Where a certified copy of an order to which this Section applies together with:
 - (a) a document, duly authenticated, setting out or summarising the evidence given in the proceedings in which order was made; and

- (b) a statement of the grounds on which the making of the order might have been opposed by the payer under the order, is received by the Minister from the responsible authority in a reciprocating country, the Minister shall send the copy of the order and the documents which accompanied it to the Deputy Registrar of the Family Court, and the Family Court shall:
- (i) if the payer under the order establishes any such defence as he or she might have raised in the proceedings in which the order was made, refuse to confirm the order; and
 - (ii) in any other case, if the court is satisfied that the payer is residing in the Republic, confirm the order either without alteration or with such alterations as it thinks reasonable.
- (3) In any proceedings for the confirmation under this Section of a provisional order, the statement received from the court which made the order of the grounds on which the making of the order might have been opposed by the payer under the order shall be conclusive evidence that the payer might have raised a defence on any of those grounds in the proceedings in which the order was made.
- (4) For the purpose of determining whether a provisional order should be confirmed under this Section the Family Court shall proceed as if an application for a maintenance order against the payer under the provisional order had been made to it.
- (5) The Deputy Registrar shall, if the Family Court confirms the order, register the order in the prescribed manner in that court, and shall, if the court refuses to confirm the order, return the certified copy of the order and the documents which accompanied it to the Minister.
- (6) Where a summons to appear in the proceedings for the confirmation of the provisional order cannot be duly served on the payer under that order, the Deputy Registrar shall return the certified copy of the order and the documents which accompanied it to the Minister with a statement giving such information as he or she possesses as to the whereabouts of the payer.

9 Enforcement of a foreign maintenance order registered in the Family Court

- (1) A registered order may be enforced in the Republic as if it had been made by the Family Court and as if that court had had jurisdiction to make it; and proceedings for or with respect to the enforcement of any such order may be taken accordingly.
- (2) A person for the time being under an obligation to make payments in pursuance of a registered order shall give notice of any change of address to the Deputy Registrar of the Family Court, and a person failing without reasonable excuse to give such notice is guilty of an offence and is liable to a fine not exceeding \$50.
- (3) An order which by virtue of this Section is enforceable by the Family Court shall be enforceable as if it were a maintenance order made by that Court under the *Maintenance Act 1959*; and the provisions of any written law with respect to the enforcement of maintenance orders, including any written law relating to the accrual of arrears and the remission of sums due shall apply accordingly.

- (4) The Family Court and the Deputy Registrar shall take all such steps for enforcing a registered order as may be prescribed.
- (5) In any proceedings for or with respect to the enforcement of an order which is for the time being registered in the Family Court under this Part of this Act a certificate of arrears sent to the Deputy Registrar shall be evidence of the facts stated therein.
- (6) Subject to subsection (7), sums of money payable under a registered order shall be payable in accordance with the order as from the date on which the order was made.
- (7) The Family Court may, if it decides to confirm a provisional order, direct that the sums of money payable under it shall be deemed to have been payable in accordance with the order as from such date, being a date later than the date on which the order was made, as it may specify; and subject to any such direction, a maintenance order registered under Section 8 shall be treated as if it had been made in the form in which it was confirmed and as if it had never been a provisional order.

10 Variation and revocation of a maintenance order registered in the Family Court

- (1) Subject to this Section, the Family Court:
 - (a) shall have the like power, on an application made by the payer or payee under a registered order, to vary or revoke the order as if it had been made by the Family Court and as if that court had had jurisdiction to make it; and
 - (b) shall have power to vary or revoke a registered order by a provisional order.
- (2) The Family Court shall not vary a registered order otherwise than by a provisional order unless:
 - (a) both the payer and the payee under the registered order are for the time being residing in the Republic;
 - (b) the application is made by the payee under the registered order; or
 - (c) the variation consists of a reduction in the rate of the payments under the registered order and is made solely on the ground that there has been a change in the financial circumstances of the payer since the registered order was made or, in the case of an order registered under Section 8, since the registered order was confirmed, and the courts in the reciprocating country in which the maintenance order in question was made do not have power, according to the law in force in that country, to confirm provisional orders varying maintenance orders.
- (3) The Family Court shall not revoke a registered order otherwise than by a provisional order unless both the payer and the payee under the registered order are for the time being residing in the Republic.
- (4) On an application for the revocation of a registered order the Family Court shall, unless both the payer and the payee under the registered order are for the time being residing in the Republic, apply the law applied by the reciprocating country in which the registered order was made; but where by virtue of this subsection the Family Court is required to apply that law, that court may make a provisional order if it has reason to believe that the ground on which the application is made is a ground on which the order

- could be revoked according to the law applied by the reciprocating country, notwithstanding that it has not been established that it is such a ground.
- (5) Where the Family Court makes a provisional order varying or revoking a registered order, the Deputy Registrar shall send in the prescribed manner to the court in the reciprocating country which made the registered order a certified copy of the provisional order together with a document, authenticated in the prescribed manner, setting out or summarising the evidence given in the proceedings.
 - (6) Where a certified copy of a provisional order made by a court in a reciprocating country, being an order varying a registered order, together with a document, duly authenticated, setting out or summarising the evidence given in the proceedings in which the provisional order was made, is received by the Family Court, that court may confirm the order either without alteration or with such alterations as it thinks reasonable or may refuse to confirm the order.
 - (7) For the purpose of determining whether a provisional order should be confirmed under subsection (6), the Family Court shall proceed as if an application for the variation of the registered order had been made to it.
 - (8) Where a registered order has been varied by an order, including a provisional order which has been confirmed, made by the Family Court or by a competent court in a reciprocating country, the registered order shall, as from the date on which the order was made, have effect as varied by that order and, where that order was a provisional order, as if that order had been made in the form in which it was confirmed and as if it had never been a provisional order.
 - (9) Where a registered order has been revoked by an order made by the Family Court or by a competent court in a reciprocating country, including a provisional order made by the Family Court which has been confirmed by a competent court in a reciprocating country, the registered order shall, as from the date on which the order was made, be deemed to have ceased to have effect except as respect any arrears due under the registered order at that date.
 - (10) The Deputy Registrar shall register in the prescribed manner any order varying a registered order other than a provisional order which is not confirmed.

11 Cancellation of registration of foreign maintenance order

- (1) Where:
 - (a) a registered order is revoked by an order made by the Family Court;
 - (b) a registered order is revoked by a provisional order made by that court which has been confirmed by a court in a reciprocating country and notice of the confirmation is received by the Family Court; or
 - (c) a registered order is revoked by an order made by a court in such a country and notice of the revocation is received by the Family Court, the Deputy Registrar shall cancel the registration.
- (2) Where the Deputy Registrar is of opinion that the payer under a registered order has ceased to reside in the Republic, he or she shall cancel the registration of the order and shall send the certified copy of the order to the Minister together with:

- (a) a certificate of arrears signed by him or her;
- (b) a statement giving such information as he or she possesses as to the whereabouts of the payer; and
- (c) any relevant documents in his or her possession relating to the case.

12 Steps to be taken by the Minister where payer is not residing in the Republic

- (1) Where it appears to the Minister that the payer under a maintenance order, a certified copy of which has been received by him or her from a reciprocating country, is not residing in the Republic or, in the case of an order which subsequently became a registered order, has ceased to reside therein, he or she shall send to the responsible authority in that country or, if having regard to all the circumstances he or she thinks it proper to do so, to the responsible authority in another reciprocating country:
 - (a) the certified copy of the order in question and a certified copy of any order varying that order;
 - (b) if the order has at any time been a registered order, a certificate of arrears signed by the Deputy Registrar;
 - (c) a statement giving such information as the Minister possesses as to the whereabouts of the payer; and
 - (d) any other relevant documents in his or her possession relating to the case.
- (2) Where the documents mentioned in subsection (1) are sent to the responsible authority in a reciprocating country other than that in which the order in question was made, the Minister shall inform the responsible authority in the reciprocating country in which that order was made of what he or she has done.

13 Appeals

- (1) No appeal shall lie from a provisional order made in pursuance of any provision of this Part of this Act by a court in the Republic.
- (2) Where in pursuance of any provision of this Part of this Act a court in the Republic confirms or refuses to confirm a provisional order made by a court in a reciprocating country, whether a maintenance order or an order varying or revoking a maintenance order, the payer or payee under the maintenance order shall have the like right of appeal, if any, from the confirmation of, or refusal to confirm, the provisional order as he or she would have if that order were not a provisional order and the court in the Republic had made or, as the case may be, refused to make it.
- (3) Where in pursuance of any provision of this Part of this Act a court in the Republic makes, or refuses to make, an order varying or revoking a maintenance order made by a court in a reciprocating country, then, subject to subsection (1), the payer or payee under the maintenance order shall have the like right of appeal, if any, from that order or from the refusal to make it as he or she would have if the maintenance order had been made by the court in the Republic.
- (4) Nothing in this Section, except subsection (1), shall be construed as affecting any right of appeal conferred by any other written law.

14 Admissibility of evidence given in a reciprocating country

- (1) A statement contained in:
 - (a) a document, duly authenticated, which purports to set out or summarise evidence given in proceedings in a court in a reciprocating country;
 - (b) a document, duly authenticated, which purports to set out or summarise evidence taken in such a country for the purpose of proceedings in a court in the Republic under this Part of this Act, whether in response to a request made by that court or otherwise; or
 - (c) a document, duly authenticated, which purports to have been received in evidence in proceedings in a court in such a country or to be a copy of a document so received,shall in any proceedings in the court in the Republic relating to a maintenance order to which this Part of this Act applies be admissible as evidence of any fact stated therein to the same extent as oral evidence of that fact is admissible in those proceedings.
- (2) A document purporting to set out or summarise evidence given as mentioned in subsection (1)(a), or taken as mentioned in subsection (1)(b), shall be deemed to be duly authenticated for the purposes of that subsection if the document purports to be certified by the Judge, magistrate or other person before whom the evidence was given, or, as the case may be, by whom it was taken, to be the original document containing or recording, or, as the case may be, summarising, that evidence or a true copy of that document.
- (3) A document purporting to have been received in evidence as mentioned in subsection (1)(c), or to be a copy of a document so received, shall be deemed to be duly authenticated for the purposes of that subsection if the document purports to be certified by a Judge, magistrate or officer of the court in question to have been, or to be a true copy of a document which has been, so received.
- (4) It shall not be necessary in any such proceedings to prove the signature or official position of the person appearing to have given such a certificate.
- (5) Nothing in this Section shall prejudice the admission in evidence of any document which is admissible in evidence apart from this Section.

15 Obtaining evidence for certain maintenance proceedings

- (1) Where for the purpose of any proceedings in a court in a reciprocating country relating to a maintenance order to which this Part of this Act applies a request is made by or on behalf of that court for the taking in the Republic of the evidence of a person residing therein relating to matters specified in the request, the Family Court shall have power to take that evidence and, after giving notice of the time and place at which the evidence is to be taken to such persons and in such manner as it thinks fit, shall take the evidence in such manner as may be prescribed.
- (2) Evidence taken in compliance with such a request shall be sent by the Deputy Registrar in the prescribed manner to the court in the reciprocating country by or on behalf of which the request was made.
- (3) Subsection (2) of Section 8 and Section 19 of the *Family Court Act 1973* shall have effect where the Family Court exercises its power to take evidence under subsection (1).

- (4) The Family Court may for the purpose of any proceedings therein under this Part of this Act relating to a maintenance order to which this Part of this Act applies request a court in a reciprocating country to take or provide evidence relating to such matters as may be specified in the request and may remit the case to that court for that purpose.

16 **Order, etc, made abroad need not be proved**

For the purposes of this Part of this Act, unless the contrary is shown:

- (a) an order made by a court in a reciprocating country purporting to bear the seal of that court or to be signed by a person in his or her capacity as a Judge, magistrate or officer of that court shall be deemed without further proof to have been duly sealed or, as the case may be, to have been signed by that person;
- (b) the person by whom the order was signed shall be deemed without further proof to have been a Judge, magistrate or officer, as the case may be, of that court when he or she signed it and, in the case of an officer, to have been authorised to sign it; and
- (c) a document purporting to be a certified copy of an order made by a court in a reciprocating country shall be deemed without further proof to be such a copy.

17 **Payment of sums under orders made abroad: Conversion of currency**

- (1) Payment of sums due under a registered order shall, while the order is registered in the Family Court, be made in such manner and to such person as may be prescribed.
- (2) Where the sums required to be paid under a registered order are expressed in a currency other than Australian dollars then, as from the relevant date, the order shall be treated as if it were an order requiring the payment of such sums in Australian dollars as, on the basis of the rate of exchange prevailing at that date, are equivalent to the sums so required to be paid.
- (3) Where the sum specified in any statement, being a statement of the amount of any arrears due under a maintenance order made by a court in a reciprocating country, is expressed in a currency other than Australian dollars, that sum shall be deemed to be such sum in Australian dollars as, on the basis of the rate of exchange prevailing at the relevant date, is equivalent to the sum so specified.
- (4) For the purposes of this Section a written certificate purporting to be signed by an officer of any commercial and trading bank in the Republic certifying that a specified rate of exchange prevailed between currencies at a specified date and that at such rate a specified sum in Australian dollars is equivalent to a specified sum in another specified currency shall be evidence of the rate of exchange so prevailing on that date and of the equivalent sums in terms of the respective currencies.
- (5) In this Section, *'the relevant date'* means:
- (a) in relation to a registered order or to a statement of arrears due under a maintenance order made by a court in a reciprocating country, the date on which the order first becomes a registered order or, if earlier, the date on which it is confirmed by the Family Court; and

- (b) in relation to a registered order which has been varied, the date on which the last order varying that order is registered in the Family Court or, if earlier, the date on which the last order varying that order is confirmed by that court.

18 Procedure in the Family Court

- (1) Save as may be otherwise expressly provided by this Act or by rules of court, the procedure applicable to proceedings in the Family Court under this Part of this Act shall be the procedure applicable to proceedings in that court for and relating to maintenance orders.
- (2) An application which is made to the Family Court by virtue of a provision of this Part of this Act shall be made by complaint.
- (3) Sections 7, 8, 11, 12, 13, 14, 15, 16, 18, 19, 23 and 26 of the *Family Court Act 1973* shall apply to all proceedings in the Family Court under this Part of this Act.

19 Rules of court

Without prejudice to the generality of the power to make rules under Section 29 of the *Family Court Act 1973*, provision may be made by such rules with respect to any of the following matters, namely:

- (a) the orders made, or other things done, by the Family Court or the Deputy Registrar under this Part of this Act, or by a court in a reciprocating country, notice of which is to be given to such persons as the rules may provide and the manner in which such notice shall be given;
- (b) the cases and manner in which courts in reciprocating countries are to be informed of orders made, or other things done, by a court in the Republic under this Part of this Act;
- (c) the circumstances and manner in which cases may be remitted by the Family Court to courts in reciprocating countries; or
- (d) the circumstances and manner in which the Family Court may for the purposes of this Part of this Act communicate with courts in reciprocating countries.

**PART 3 — RECIPROCAL ENFORCEMENT OF CLAIMS FOR THE
RECOVERY OF MAINTENANCE**

20 Convention countries

- (1) The Cabinet may by notice in the Gazette declare that any country or territory specified in the notice, being a country to which the Maintenance Convention extends, is a convention country for the purposes of this Part of this Act.
- (2) In this Section:
‘Maintenance Convention’ means the United Nations Convention on the Recovery Abroad of Maintenance done at New York on the 20th day of June, 1956.

21 Application by a person in the Republic for recovery, etc, of maintenance in a convention country

- (1) Where a person in the Republic (in this Section referred to as *‘the applicant’*) claims to be entitled to recover in a convention country maintenance from another person and that other person is for the time being subject to the jurisdiction of that country, the applicant may apply to the Minister, in accordance with the provisions of this section, to have his or her claim for the recovery of maintenance from that other person transmitted to that country.
- (2) Where the applicant seeks to vary any provision made in a convention country for the payment by any other person of maintenance to the applicant and that other person is for the time being subject to the jurisdiction of that country, the applicant may apply to the Minister, in accordance with the provisions of this Section, to have his or her application for the variation of that provision transmitted to that country.
- (3) An application to the Minister under subsection (1) or subsection (2) shall be made through the Chairperson of the Family Court, who shall assist the applicant in completing an application which will comply with the requirements of the law applied by the convention country and shall send the application to the Minister, together with such other documents, if any, as are required by that law.
- (4) On receiving an application from the Chairperson of the Family Court, the Minister shall transmit it together with any accompanying documents, to the appropriate authority in the convention country, unless he or she is satisfied that the application is not made in good faith or that it does not comply with the requirements of the law applied by that country.
- (5) The Minister may request the Chairperson of the Family Court to furnish such information relating to the application as may be specified in the request and it shall be the duty of the Chairperson to furnish the Minister with the information he or she requires.

22 Application by a person in a convention country for recovery, etc, of maintenance in the Republic

- (1) Where the Minister responsible for Foreign Affairs receives from the appropriate authority in a convention country an application by a person in

that country for the recovery of maintenance from another person who is for the time being residing in the Republic, he or she shall send the application, together with any accompanying documents, to the Deputy Registrar of the Family Court and the application shall be treated for the purposes of any enactment as if it were a complaint and references in this Section to the complaint, the complainant and the defendant shall be construed accordingly.

- (2) Where a summons to appear before the Family Court cannot be duly served on the defendant, the Deputy Registrar shall return the complaint and the accompanying documents to the Minister with a statement giving such information as he or she possesses as to the whereabouts of the defendant.
- (3) When hearing the complaint, the Family Court shall proceed as if the complainant were before the court.
- (4) Where the Family Court makes an order on the complaint, the Deputy Registrar shall register the order in the prescribed manner in that court.
- (5) Payment of sums due under a registered order shall, while the order is registered in the Family Court, be made in such manner and to such person as may be prescribed.
- (6) Without prejudice to the generality of the power to make rules under Section 29 of the *Family Court Act 1973*, the said power shall include power to prescribe the orders made or other things done by the Family Court, or by the Chairperson, a member or an officer of that court, under this Part of this Act, notice of which is to be given to such persons as the rules may provide and the manner in which such notice shall be given.

23 Admissibility of evidence given in a convention country

- (1) A statement contained in:
 - (a) a document, duly authenticated, which purports to set out or summarise evidence given in proceedings in a court in a convention country;
 - (b) a document, duly authenticated, which purports to set out or summarise evidence taken in such a country for the purpose of proceedings in the Family Court under this Part of this Act, whether in response to a request made on behalf of that court or otherwise; or
 - (c) a document, duly authenticated, which purports to have been received in evidence in proceedings in a court in such a country, or to be a copy of a document so received,shall in any proceedings in the Family Court arising out of an application received by the Minister as mentioned in Section 22(1) or out of an application made by a person for the variation or revocation of a registered order or in proceedings on appeal from any such proceedings, be admissible as evidence of any fact stated therein to the same extent as oral evidence of that fact is admissible in those proceedings.
- (2) A document purporting to set out or summarise evidence given as mentioned in subsection (1)(a) or taken as mentioned in subsection (1)(b), shall be deemed to be duly authenticated for the purposes of that subsection if the document purports to be certified by the Judge, magistrate or other person before whom the evidence was given or, as the case may be, by whom it was taken, to be the original document containing or recording, or, as the case may be, summarising, that evidence or a true copy of that document.

- (3) A document purporting to have been received in evidence as mentioned in subsection (1)(c), or to be a copy of a document so received, shall be deemed to be duly authenticated for the purposes of that subsection if the document purports to be certified by a Judge, magistrate or officer of the court in question to have been, or to be a true copy of a document which has been, so received.
- (4) It shall not be necessary in any such proceedings to prove the signature or official position of the person appearing to have given such a certificate.
- (5) Nothing in this Section shall prejudice the admission in evidence of any document which is admissible in evidence apart from this Section.

24 Obtaining of evidence for the purpose of proceedings in the Family Court

- (1) The Family Court may for the purpose of any proceedings in that court under this Part of this Act arising out of an application received by the Minister from a convention country request the Minister to make to the appropriate authority or court in the convention country a request for the taking in that country of the evidence of a person residing therein relating to matters connected with the application.
- (2) A request made by the Family Court under this Section shall:
 - (a) give details of the application in question;
 - (b) state the name and address of the person whose evidence is to be taken; and
 - (c) specify the matters relating to which the evidence of that person is required.
- (3) Where the Minister is satisfied that a request made to him or her under this Section contains sufficient information to enable the evidence of the person named in the request relating to the matters specified therein to be taken by a court or person in the convention country, he or she shall transmit the request to the appropriate authority or court in that country.

25 Taking of evidence at the request of a court in a convention country

- (1) Where a request is made to the Minister by or on behalf of a court in a convention country to obtain the evidence of a person residing in the Republic relating to matters connected with an application to which Section 21 applies, the Minister shall request the Chairperson of the Family Court to take the evidence of that person relating to such matters connected with that application, as may be specified in the request.
- (2) Where a request under subsection (1) is received by the Chairperson of the Family Court from the Minister, he or she shall have power to take the evidence and, after giving notice of the time and place at which the evidence is to be taken to such persons and in such manner as he or she thinks fit, shall take the evidence of the person named in the request relating to the matters specified therein in such manner as may be prescribed and the evidence so taken shall be sent in the prescribed manner by the Chairperson to the court in the convention country by or on behalf of which the request referred to in subsection (1) was made.
- (3) Where a request under subsection (1) is made to the Chairperson of the

Family Court, Sections 8 and 19 of the *Family Court Act 1973* shall apply *mutatis mutandis* as if the application to which the request relates were a complaint to be heard by the Family Court and the Chairperson shall have and may exercise the powers vested in him or her or in the Family Court by those Sections.

PART 4 — MISCELLANEOUS AND SUPPLEMENTAL

26 Power to apply this Act to maintenance orders and applications for recovery of maintenance made in certain countries

Where the Cabinet is satisfied:

- (a) that arrangements have been or will be made in another country or territory to ensure that maintenance orders made by courts in the Republic against persons in that country or territory can be enforced in that country or territory or that applications by persons in the Republic for the recovery of maintenance from persons in that country or territory can be entertained by courts in that country or territory; and
- (b) that in the interest of reciprocity it is desirable to ensure that maintenance orders made by courts in that country or territory against persons in the Republic can be enforced in the Republic or, as the case may be, that applications by persons in that country or territory for the recovery of maintenance from persons in the Republic can be entertained by courts in the Republic,

the Cabinet may by an order published in the Gazette make provision for applying the provisions of this Act, with such, exceptions, adaptations and modifications as may be specified in the order, to such orders or applications as are referred to in paragraphs (a) and (b) and to maintenance and other orders made in connection with such applications by the courts in the Republic or by courts in that country or territory.

27 Application for variation, etc, of maintenance order by or against a person outside the Republic

The jurisdiction to annul, rescind or vary a maintenance order conferred on the Family Court by the *Maintenance Act 1959* shall be exercisable notwithstanding that the proceedings for the annulment, rescission or variation, as the case may be, of the maintenance order are brought by or against a person residing outside the Republic.

28 Provisional order for maintenance of a party to a marriage to cease to have effect if that party remarries

- (1) Where the Family Court has, by virtue of Section 5 of this Act, made a provisional maintenance order consisting of, or including, a provision for the payment of maintenance by one party to a marriage to the other party to that marriage and the order has been confirmed by a competent court in a reciprocating country, then, if after the making of that order the marriage of the parties to the proceedings in which the order was made is dissolved or annulled but the order continues in force, that order or, as the case may be, that provision thereof shall cease to have effect on the remarriage of the party in whose favour it was made, except in relation to any arrears due under it on the date of such remarriage and shall not be capable of being revived.

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- (2) For the avoidance of any doubt, it is hereby declared that references in this Section to remarriage include references to a marriage which is by law void or voidable.

Maintenance Orders (Reciprocal Enforcement) Rules 1976

TABLE OF PROVISIONS

<i>Rule</i>	<i>Title</i>
1	Citation
2	Application under Section 4 of the Act
3	Authentication of documents
4	Documents to be sent by air mail post
5	Notice to applicant under Section 6(9) of the Act
6	Registration of a foreign maintenance order
7	Payment of monies under a registered maintenance order
8	Taking of evidence for a foreign court
9	Request for evidence to be taken or provided by a foreign court
10	Provisional variation order
11	Notice of cancellation of registration

Maintenance Orders (Reciprocal Enforcement) Rules 1976

TABLE OF AMENDMENTS

The Maintenance Orders (Reciprocal Enforcement) Rules 1976 were made and commenced on 16 August 1976.

Amending Legislation	Notified	Date of Commencement
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IN EXERCISE of the powers conferred on me by Section 29 of the *Family Court Act 1973* and by Section 19 of the *Maintenance Orders (Reciprocal Enforcement) Act 1973*, I hereby make the following Rules:

1 Citation

These Rules may be cited as the *Maintenance Orders (Reciprocal Enforcement) Rules 1976*.

2 Application under Section 4 of the Act

- (1) An application under Section 4 of the Act for a maintenance order to be sent to a reciprocating country for enforcement shall be made in writing and signed by or on behalf of the payee under the order.
- (2) Any such application as is referred to in subrule (1) shall:
 - (a) specify the date on which the order was made;
 - (b) contain such particulars as are known to the applicant of the whereabouts of the payer;
 - (c) specify any matters likely to assist in the identification of the payer; and
 - (d) where possible be accompanied by a recent photograph of the payer.

3 Authentication of documents

Where under Section 5(3)(b), Section 6(4) or Section 10(5) of the Act a document setting out or summarising evidence is required to be authenticated, it shall be authenticated by a certificate signed by the Chairperson of the Family Court that the document is the original record or summary of evidence or that it is a true copy of the original record or summary.

4 Documents to be sent by air mail post

Where under Section 6(4) or Section 10(5) of the Act or under these Rules a document is required to be sent to a court in a reciprocating country it shall be sent to that court by prepaid registered air mail post.

5 Notice to applicant under Section 6(9) of the Act

- (1) Where under Section 6(9) of the Act the Family Court is required to give to a person on whose application a maintenance order has been made under Section 5 of the Act an opportunity to consider evidence taken in a court in a reciprocating country, or by the Family Court at the request of such a court, and to make representations with respect to it and to adduce further evidence, the Deputy Registrar shall cause to be served on that person a notice which shall:
 - (a) set out the evidence so taken;
 - (b) inform that person that it appears to the court that the maintenance order ought not to have been made; and
 - (c) inform that person that, if he or she wishes to make representations with respect to the evidence set out in the notice, he or she may do so orally or in writing and that, if he or she wishes to adduce further evidence, he or she should notify the Deputy Registrar.

- (2) Where the Deputy Registrar receives notification that the person on whose application the maintenance order was made wishes to adduce further evidence, the Chairperson shall fix a date for the hearing of that evidence and the Deputy Registrar shall send to the person written notice of that date.

6 Registration of a foreign maintenance order

- (1) Where a certified copy of an order, not being a provisional order, received by Deputy Registrar is required under any of the provisions of Part 2 of the Act to be registered, the Deputy Registrar shall cause the order to be registered in the court by means of a minute entered and signed by him or her in a register to be maintained by him or her for the purpose.
- (2) Where the court makes or confirms an order which is required under Section 8(5) or Section 10(10) of the Act to be registered, the Deputy Registrar shall enter and sign a minute or memorandum thereof in the register referred to in subrule (1).
- (3) Every minute or memorandum entered in pursuance of subrule (1) or (2) shall specify the Section of the Act under which the order in question is registered.

7 Payment of monies under a registered maintenance order

- (1) While a maintenance order is registered in the Family Court under Part 2 of the Act, payment of monies due under that order shall be made to the Deputy Registrar during the hours when the office of the Family Court is open to the public.
- (2) Where the Deputy Registrar receives monies due under a maintenance order registered under Part 2 of the Act, he or she shall credit those monies to the Courts Trust Fund and pay them into a bank account of the Fund. As soon as reasonably possible thereafter he or she shall notify the Registrar of Courts of the payment of the monies into that bank account and the Registrar shall thereupon draw, and deliver to the Deputy Registrar, a cheque on that bank account for the amount of those monies in favour of the court which made the order under which the monies were paid or of a person or authority to whom that court has for the time being directed that such monies are to be sent.
- (3) The Deputy Registrar, upon receiving that cheque, shall forthwith send it by prepaid registered air mail post to that court or to that person or authority, as the case may be.
- (4) Where it appears to the Deputy Registrar that any monies due and payable under a maintenance order registered in the Family Court under Part 2 of the Act have not been paid, he or she may and, if the amount of such monies is equal to or exceeds the total amount payable under the order for a period of 4 weeks, he or she shall, whether the person for whose benefit the monies are payable requests him or her to do so or not, apply to the Family Court to make such orders as are necessary or expedient, to enable those monies to be recovered from the payer.

8 Taking of evidence for a foreign court

- (1) Where a request is made under Section 15 of the Act by or on behalf of a

court in a reciprocating country for evidence to be taken in the Republic, then, subject to the following paragraphs:

- (a) the evidence shall be taken in the same manner as if that person were a witness in proceedings in the Family Court on a complaint;
 - (b) any oral evidence so taken shall be recorded in writing and read to the person who gave it, and that person shall be required to sign the document; and
 - (c) the Chairperson shall certify at the foot of any document setting out the evidence of, or produced in evidence by, that person that such evidence was taken, or such document received in evidence, as the case may be, by the Family Court.
- (2) Where any such request as is referred to in subrule (3) is accompanied by or contains a request for the evidence to be taken in a particular manner, the court shall, so far as circumstances permit, comply with that request.
 - (3) Any such document as is mentioned in subrule (1)(c) shall be sent to the court in the reciprocating country by or on behalf of which the request was made.

9 Request for evidence to be taken or provided by a foreign court

Where a request is made under Section 15(3) of the Act for evidence to be taken or provided by a court in a reciprocating country, that request shall be made in writing by the Deputy Registrar and shall be sent to that court.

10 Provisional variation order

- (1) Where a provisional order is made under Section 6 of the Act for the variation of a maintenance order, the Deputy Registrar shall send to the court in the reciprocating country having power to confirm that provisional order a written notice that the provisional order has been made and a copy of the provisional order certified by the Deputy Registrar.
- (2) Where a maintenance order to which Section 6 of the Act applies is revoked by the court by which the order was made, the Deputy Registrar shall send to the court in a reciprocating country which has power to confirm that maintenance order, or by which that maintenance order has been confirmed or registered for enforcement, a written notice that the maintenance order has been revoked and a copy of the order of revocation certified by the Deputy Registrar.
- (3) Where a maintenance order made by a court in a reciprocating country is registered in the Family Court under Part 2 of the Act and the Family Court makes an order, not being a provisional order, varying or revoking that order, the Deputy Registrar shall send to the court which made the maintenance order a written notice that the order of variation or revocation has been made and a copy of the order certified by the Deputy Registrar.
- (4) Where a provisional maintenance order made by a court in a reciprocating country is confirmed by the Family Court under Section 8(2) of the Act, the Deputy Registrar shall send to the court by which the provisional maintenance order was made a written notice of its confirmation.

11 Notice of cancellation of registration

Where under Section 11(1) of the Act the Deputy Registrar cancels the registration of a maintenance order, he or she shall deliver or send by post to the payer under that order a written notice of the cancellation.