

LAWS OF BRUNEI

CHAPTER 175

**MAINTENANCE ORDERS RECIPROCAL
ENFORCEMENT**

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LAWS OF BRUNEI

REVISED EDITION 2000

CHAPTER 175

**MAINTENANCE ORDERS
RECIPROCAL ENFORCEMENT**

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**MAINTENANCE ORDERS RECIPROCAL
ENFORCEMENT ACT**

An Act to make provision for the enforcement in Brunei Darussalam of maintenance orders made in reciprocating countries and vice versa

*Commencement : 25th February, 1997
[S 2/98]*

PART I**PRELIMINARY****Citation.**

1. This Act may be cited as the Maintenance Orders Reciprocal Enforcement Act.

Interpretation.

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

“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 information or belief of the officer giving the certificate the amount of the arrears due under the order at the date of the certificate;

“certified copy”, in relation to an order of court, means a copy of the order certified by the proper officer of the court to be a true copy;

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

“maintenance order” means an order (however described) of the following descriptions —

(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 any person, being a person to 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 had died, of his funeral expenses,

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

“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 a court in Brunei Darussalam which is provisional only and has no effect unless 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 confirmed with or without alteration, by a court in Brunei Darussalam having power under this Act to confirm it.

“reciprocating country” has the meaning assigned to it by section 17;

“registered order” means a maintenance order which is for the time being registered in a court in Brunei Darussalam under this Act;

“registering court”, in relation to a registered order, means the court in which that order is for the time being registered under this Act;

“responsible authority”, in relation to a reciprocating country, means any person who in that country has functions similar to those of the Attorney General under this Act.

PART II

ORDERS MADE BY COURTS IN BRUNEI DARUSSALAM

Transmission of maintenance order made in Brunei Darussalam.

3. (1) Where the payer under a maintenance order made, whether before or after the commencement of this Act, by a court in Brunei Darussalam 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) Every application under this section shall be made to the court which made the maintenance order to which the application relates.

(3) If, on an application duly made under this section to a court in Brunei Darussalam, the court is satisfied that the payer, under the maintenance order is residing in a reciprocating country, the following documents —

- (a) a certified copy of the maintenance order;
- (b) a certificate signed by an officer of that court certifying that the order is enforceable in Brunei Darussalam;
- (c) a certificate of arrears so signed;
- (d) a statement giving such information as the officer possesses 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 court to the Attorney General, who shall transmit them to the responsible authority in the reciprocating country if he is satisfied that the statement relating to the whereabouts of the payer gives sufficient information to justify that being done.

(4) Nothing in this section shall be taken as affecting any jurisdiction of a court in Brunei Darussalam with respect to a maintenance order to which this section applies, and any such order may be enforced, varied or revoked accordingly.

Provisional maintenance order.

4. (1) Where a complaint is made to a court in Brunei Darussalam against a person residing in a reciprocating country and the complaint is one on which such court would have jurisdiction by virtue of any law to make a maintenance order if —

(a) that person were residing in Brunei Darussalam; and

(b) a summons to appear before such court to answer to the complaint had been duly served on him,

the court shall have jurisdiction to hear the complaint and may make a maintenance order on the complaint.

(2) A maintenance order made by virtue of this section shall be a provision order.

(3) If the court hearing a complaint to which subsection (1) applies is satisfied that there are grounds on which a maintenance order containing a provision requiring the making of payments for the maintenance of a child may be made on the complaint, but that it has no jurisdiction to make that order unless it also makes an order providing for the legal custody of that child, then, for the purpose of enabling the court to make the maintenance order, the complainant shall be deemed to be the person to whom the legal custody of that child has been committed by an order of the court which is for the time being in force.

(4) No enactment empowering a court in Brunei Darussalam to refuse to make an order on a complaint on the ground that the matter in question is one which would be more conveniently dealt with by the High Court shall apply in relation to a complaint to which subsection (1) applies.

(5) Where a court in Brunei Darussalam makes a maintenance order, which is by virtue of this section a provisional order, the following documents —

- (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 an officer of the 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 officer to the Attorney General, who shall transmit them to the responsible authority in the reciprocating country in which the payer is residing, if he is satisfied that the statement relating to the whereabouts of the payer gives sufficient information to justify that being done.

(6) 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 court which made the order 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 5, any such order may be enforced, varied or revoked accordingly.

Variation and revocation of maintenance order.

5. (1) This section applies to a maintenance order a certified copy of which has been sent to a reciprocating country in pursuance of section 3 and to a maintenance order made by virtue of section 4 which has been confirmed by a competent court in such a country.

(2) A court in Brunei Darussalam 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 Brunei Darussalam makes a provisional order varying a maintenance order to which this section applies, an officer of the court shall send 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 by the court, 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 Brunei Darussalam 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 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 Brunei Darussalam 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 has 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 Brunei Darussalam 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 Brunei Darussalam, the maintenance order shall, as from the date on which the order 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 4 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 court in Brunei Darussalam which made the order, or that court, in compliance with a request made to it by a court in such a country, takes the evidence of a person residing in Brunei Darussalam for the purpose of those proceedings, the court in Brunei Darussalam which made the order shall consider that evidence and if, having done so, it appears to it that the order ought not to have been made, the court —

(a) shall 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) may, after considering all the evidence and any representations made by that person, revoke the maintenance order.

PART III

ORDERS MADE BY COURTS IN RECIPROCATING COUNTRIES

Registration in Brunei Darussalam.

6. (1) This section applies to a maintenance order made, whether before or after the commencement of the 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 not been confirmed.

(2) Where a certified copy of an order to which this section applies is received by the Attorney General from the responsible authority in a

reciprocating country, and it appears to the Attorney General that the payer under the order is residing in Brunei Darussalam, he shall send the copy of the order to the appropriate court.

(3) Where the appropriate court receives from the Attorney General a certified copy of an order to which this section applies, it shall, subject to subsection (4), register the order in the prescribed manner in that court.

(4) Before registering an order under this section, the court shall take such steps as it thinks fit for the purpose of ascertaining whether the payer under the order is residing within the jurisdiction of the court, and if after taking those steps it is satisfied that the payer is not so residing it shall return the certified copy of the order to the Attorney General with a statement giving such information as it possesses as to the whereabouts of the payer.

Confirmation by Brunei Darussalam court of provisional maintenance order.

7. (1) This section applies to a maintenance order made, whether before or after the commencement of this Act, by a court in 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 the 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 Attorney General from the responsible authority in a reciprocating country, and it appears to the Attorney General that the payer under the order is residing in Brunei Darussalam, he shall send the copy of the order and documents which accompanied it to the appropriate court, and that court shall —

(i) if the payer under the order establishes any such defence as he might have been raised in the proceedings in which the order was made, refuse to confirm the order; and

(ii) in any other case, 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 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 court having power under this section to confirm a provisional order shall, if the court confirms the order, register the order in that court or, if the court refuses to confirm the order, return the certified copy of the order and the documents which accompanied it to the Attorney General.

(6) If 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 court by which the certified copy of the order was received shall return that copy and the documents which accompanied it to the Attorney General with a statement giving such information as it possesses as to the whereabouts of the payer.

Enforcement of maintenance order.

8. (1) A registered order may be enforced in Brunei Darussalam as if had been made by the registering court and as if that court had jurisdiction to make it; and proceedings for or with respect to the enforcement of any such order may be taken accordingly.

(2) Any 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 registering court. Any person failing without reasonable excuse to give such a notice shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

(3) The court by which an order is enforceable by virtue of this section, shall take all necessary steps for enforcing the order.

(4) In any proceedings for the enforcement of an order which is for the time being registered in any court under this Act, a certificate of arrears sent to the court shall be evidence of the facts stated therein.

(5) Subject to subsection (6), 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.

(6) The court having power under section 7 to confirm a provisional order may, if it decides to confirm the order, direct that the sums of money payable under the order 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. Subject to any such direction, a maintenance order registered under that section 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.

Variation and revocation of maintenance order.

9. (1) Subject to this section, the registering 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 that court had jurisdiction to make it; and

(b) shall have power to vary or revoke a registered order by a provisional order.

(2) The registering 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 Brunei Darussalam;

(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 7, 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 registering 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 Brunei Darussalam.

(4) On an application for the revocation of a registered order, the registering court shall, unless both the payer and the payee under the registered order are for the time being residing in Brunei Darussalam, apply the law applied by the reciprocating country in which the registered order was made. If, by virtue of this subsection, the registering 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 registering court makes a provisional order varying or revoking a registered order, the court shall send to the court in the reciprocating country which made the registered order a certified copy of the provisional order together with a document, duly authenticated, 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 registering court, that court may confirm the order either without alteration or with such alterations as it thinks reasonable or refuse to confirm the order.

(7) For the purpose of determining whether a provisional order should be confirmed under subsection (6), the 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 a court in Brunei Darussalam 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 had never been a provisional order.

(9) Where a registered order has been revoked by an order made by a court in Brunei Darussalam or by a competent court in a reciprocating country, including a provisional order made by the first-mentioned 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 respects any arrears due under the registered order at that date.

(10) The registering court shall register any order varying a registered order other than a provisional order which is not confirmed.

Cancellation of registration of order.

10. (1) Where a registered order is revoked by —

(a) an order made by the registering court;

(b) 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 registering court; or

(c) an order made by a court in such a country and notice of the revocation is received by the registering court,

the registering court shall cancel the registration.

(2) Any arrears due under the registered order at the date when its registration is cancelled by virtue of subsection (2) shall continue to be recoverable as if the registration had not been cancelled.

(3) Where the registering court is of the opinion that the payer under a registered order has ceased to reside within the jurisdiction of that court, it shall cancel the registration of the order and send the certified copy of the order to the Attorney General.

Where payer is not residing in Brunei Darussalam.

11. If it appears to the Attorney General that the payer under a maintenance order, a certified copy of which has been received by him from a reciprocating country, is not residing in Brunei Darussalam or, in the case

of an order which subsequently became a registered order, has ceased to reside therein, he shall send to the responsible authority in that 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 court;

(c) a statement giving such information as the Attorney General possesses as to the whereabouts of the payer; and

(d) any other relevant documents in his possession relating to the case.

PART IV

MISCELLANEOUS PROVISIONS

Appeals.

12. (1) An applicant shall have the same right of appeal, if any, against a refusal by a court in Brunei Darussalam to make a provisional order under any provision of this Act as he would have had against a refusal to make the order if a summons been duly served on the person against whom the order is sought to be made.

(2) Where in pursuance of any such provision any such court 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 would have if that order were not a provisional order and the court which confirmed or refused to confirm it had made or refused to make it.

(3) Where in pursuance of any such provision any such court 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 would have if the maintenance order had been made by the first-mentioned court.

(4) Nothing in this section (except subsection (1)) shall be construed as affecting any right of appeal conferred by any other written law.

Admissibility of evidence.

13. (1) A statement contained in a document, duly authenticated, which purports —

(a) to set out or summarise evidence given in proceedings in a court in a reciprocating country;

(b) to set out or summarise evidence taken in such a country for the purpose of proceedings in a court in Brunei Darussalam under this Act, whether in response to a request made by such a court or otherwise; or

(c) 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 a court in Brunei Darussalam relating to a maintenance order to which 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, to be the original document containing or 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 an officer of the court in question 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.

Obtaining of evidence.

14. (1) Where, for the purpose of any proceedings in a court in a reciprocating country relating to a maintenance order to which this Act applies, a request is made by or on behalf of that court for the taking in Brunei Darussalam of the evidence of a person residing therein relating to matters specified in the request, such court in Brunei Darussalam 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 it may think fit.

(2) Evidence taken in compliance with such a request shall be sent by the court in Brunei Darussalam to the court in the reciprocating country by which the request was made.

(3) Where any person, not being the payer or the payee under the maintenance order to which the proceedings in question relate, is required by virtue of this section to give evidence before a court in Brunei Darussalam, the court may order that there shall be paid such sums as appear to the court reasonably sufficient to compensate that person for the expense, trouble or loss of time properly incurred in or incidental to his attendance.

(4) A court in Brunei Darussalam may for the purpose of any proceedings in that court under this Act relating to a maintenance order to which 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.

Order etc., made abroad.

15. (1) For the purpose of this Act, unless the contrary is shown —

(a) any order made by a court in a reciprocating country purporting to bear the seal of that court or to be signed by any person in his capacity as a judge, magistrate or officer of the 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 of that court when he signed it; and

(c) a document purporting to be a certified copy of an order made by a court in reciprocating country shall be deemed without further proof to be such a copy.

Payment of sums under orders made abroad.

16. (1) Payments of sums due under a registered order shall, while the order is registered in a court in Brunei Darussalam, be made in such manner and to such person as the court may order.

(2) Where the sums required to be paid under a registered order are expressed in a currency other than the currency of Brunei Darussalam, the order shall be treated as if it were an order requiring the payment of such sums in the currency of Brunei Darussalam as, on the basis of the rate of exchange prevailing at the relevant 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 due under a maintenance order made by a court in a reciprocating country, is expressed in a currency other than the currency of Brunei Darussalam, that sum shall be deemed to be such sum in the currency of Brunei Darussalam 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 bank in Brunei Darussalam certifying that a specified rate of exchange prevailed between currencies at a specified date and that at such rate a specified sum in the currency of Brunei Darussalam 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 a court in Brunei Darussalam; 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 a court in Brunei Darussalam or (if earlier) the date on which the last order varying that order is confirmed by such a court.

Designation of reciprocating country.

17. (1) Where the Attorney General is satisfied that, in the event of the benefits conferred by this Act being applied to, or to particular classes of, maintenance orders made by the court of any country or territory outside Brunei Darussalam, similar benefits will in that country or territory be applied to, or to those classes of, maintenance orders made by the courts of Brunei Darussalam, the Attorney General may, by notification in the *Gazette*, designate that country or territory as a reciprocating country of the purposes of this Act and subject to subsection (2), “reciprocating country” means a country or territory that is for the time being so designated.

(2) A country or territory may be designated under 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 Act be taken to be a reciprocating country only as regards maintenance orders of the class to which the designation extends.

Power to make rules.

18. The Attorney General may from time to time make rules giving effect to the provisions of this Act and for its due administration.