

DRAFT MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) (JERSEY) LAW 200-

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by the Legislation Committee**



STATES OF JERSEY

STATES GREFFE

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REPORT

This draft legislation is intended to widen the scope of, and revise procedures for, the enforcement of various child and other maintenance orders made by courts or tribunals outside the Island. The Committee has, in relation to child maintenance orders, approached this matter with the conviction that “the child comes first”. It follows from this that the Committee’s first aim is to seek to ensure that no parent who has been ordered to pay maintenance should be able to use the fact that he or she is resident in Jersey as a shield from the enforceability of that obligation.

At present, the position is governed by the Maintenance Orders (Facilities for Enforcement) (Jersey) Law 1953 which, when it was enacted, made provision for what was then a limited range of circumstances in which persons resident in the Island might be liable to pay maintenance under court orders made outside the Island. The Law of 1953, however, has not since been amended and clearly has not kept pace either with changes in legislation elsewhere or with the many socio-economic and cultural changes bearing upon child support and maintenance in the intervening half-century. The limitations of the existing Law may be summarized briefly under the following headings.

Territorial scope

The Law of 1953 was styled on the Maintenance Orders (Facilities for Enforcement) Act 1920 which dealt only with the enforcement in England and Wales of maintenance orders made in other parts of Her Majesty’s dominions and protectorates and vice versa. This meant that Scotland fell outside the scope of the Jersey legislation.

The Law of 1953 is restricted in its operation to reciprocity with other parts of Her Majesty’s dominions and protectorates and, therefore, cannot be used to provide reciprocity of enforcement for countries which do not form part of those dominions or protectorates. Thus, members of the Island’s substantial continental community do not have the benefit of the existing provisions.

Scope of maintenance obligations and categories of claimants

A “maintenance order” is presently defined as an order, other than an order of affiliation, for the periodical payment of sums of money towards the maintenance of the wife or other dependants of the person against whom the order is made. A child of non-married partners, for example, is thus deprived of the benefit of enforcement of the obligation of support to which the relevant parent would be bound in the jurisdiction in which that parent resides.

There is also no existing provision to enable public bodies such as the Child Protection Agency to claim monies in place of the maintenance creditor.

Forms of payment

The Law of 1953 is limited in the way it defines maintenance order to periodical payments of maintenance. This excludes lump sums or sums payable to meet specific items of expenditure. Thus, if the order sought to be enforced is not strictly an order for periodical payments, the person liable to pay may, if he is resident in Jersey, effectively escape the obligation to do so.

The draft Law

The Law Draftsman’s Explanatory Note sets out in considerable detail the provisions of the five Parts of which the draft Law consists and the precise means by which the various deficiencies listed above would be overcome. It is unnecessary in this report to repeat the detailed review of the 48 Articles of the Law given in that Note.

The Legislation Committee views the draft Law as one which will eliminate existing artificial and unnecessary limitations upon the ability of a maintenance creditor to enforce in the Island the obligations of his or her maintenance debtor. The existing technical limitations, in the opinion of the Committee, serve no proper purpose and, indeed, afford in many cases a means of using Jersey to evade fundamental social obligations, most seriously those involving the maintenance, and hence the welfare, of children.

The Committee also views the draft Law as one which will bring Jersey into the front rank of countries who accept the need for comity between jurisdictions in an area which, whilst often troubled and complex, is of vital social concern in the modern world.

Explanatory Note

This Law replaces the Maintenance Orders (Facilities for Enforcement) (Jersey) Law, 1953 (“the 1953 Law”) with new provisions for the obtaining and enforcement of maintenance orders between Jersey and Commonwealth jurisdictions, under a revised and improved scheme intended to replace the scheme devised in 1920 on which the 1953 Law is based. In addition to its application within the Commonwealth, the draft Law enables the extension to Jersey of the United Nations Convention on the Recovery Abroad of Maintenance, 1956, (which provides a mechanism for dealing with claims for maintenance against absent defendants) and the Hague Convention on the Enforcement of Decisions relating to Maintenance Obligations, 1973, (which deals with the enforcement of existing orders) and will allow the States to extend the provisions applicable to a Commonwealth country to any other country.

Amongst other benefits, enacting the draft Law will enable the application of enforcement provisions between Scotland and Jersey, thus rectifying one of the major defects of the 1953 Law.

Under the draft Law, the enforcement and obtaining of maintenance orders covers four categories of countries:

- (a) Commonwealth member states and their dependencies, whether or not reciprocal powers are available;
- (b) Convention countries i.e. countries which are parties to the United Nations Convention, and therefore are reciprocating countries. (*see Article 22*);
- (c) Hague Convention countries i.e. countries party to the 1973 Hague Convention, and which are therefore reciprocating countries for the purpose of enforcement of maintenance orders. (*see Article 30*);
- (d) Non-Commonwealth countries not party to the above-mentioned Conventions, to which the same provisions as those applying to Commonwealth countries can be applied by Act of the States. (*see Article 21*)

PART 1

Article 1 contains definitions of terms.

The definition of “court” is wide enough to include agencies not generally regarded as judicial, such as social security departments, to which the task of enforcing orders has been transferred in some jurisdictions and the Child Support Agency, for example, in the United Kingdom.

The definition of “maintenance order” is central to the draft Law. Affiliation orders are included, reversing the policy of the 1953 Law. The distinction between an affiliation order and an “order consequent upon an affiliation order” reflects the separability of paternity and maintenance proceedings in some jurisdictions. Legislation in some Commonwealth jurisdictions provides for severing those parts of an order which do not relate to maintenance; the opening lines of the definition are designed to cater for this. Lump sum payments are not included, except for certain payments as to expenses in affiliation cases. Paragraph (c) of this definition applies to recovery by public bodies, as provided for in the Hague Convention, and will allow for claims to be made in Jersey by such bodies in overseas jurisdictions where they have a claim for reimbursement from a maintenance debtor in respect of benefits paid to the debtor’s wife or children out of public funds. The qualification to this definition permits reservations excluding whole categories of orders (e.g. those between persons related collaterally or by affinity), as provided by the Hague Convention.

The remaining provisions of this Part contains a modern version of the Commonwealth scheme, as first introduced in 1920, some version of which is to be found in the legislation of almost every Commonwealth jurisdiction.

Articles 2 to 7 inclusive deal with orders made in Jersey.

Article 2 deals with final (i.e. not provisional) maintenance orders made by any court in Jersey. *Article 2(2)* gives power to the Judicial Greffier to act to register an order made in Jersey in a Commonwealth country, of his own motion, so simplifying procedures as much as possible; provision is also made for cases in which the payer is “proceeding to” but cannot yet be proved to be “residing in” a Commonwealth country, so eliminating a possible source of delay. *Article 2(4)* preserves the jurisdiction of the court which originally made the order to enforce, vary or revoke it. This is however subject to *Article 6*, which requires certain variations to be by provisional orders. The Article applies to orders by the Royal Court and Petty Debts Court, whenever made.

Article 3 enables courts in Jersey to deal with cases where the potential payer has left the jurisdiction before a maintenance order could be made against him, by making a “provisional order”. This is defined in *Article 1(1)* as an order which is provisional only and has no effect unless and until confirmed, with or without alterations, by a competent court in a Commonwealth country.

Article 4 states the legal position in Jersey once the provisional order has been confirmed by a competent court in another Commonwealth country. The order is then to be treated as having been made, in the form in which it was confirmed, by a court in Jersey. This means that it can be enforced here should the payer ever return, and that jurisdiction exists to vary or revoke it - subject to *Article 6* requiring certain variations to be by provisional orders. *Article 6* refers to a court in “a” Commonwealth country; this need not be the country to which the order was originally sent for confirmation, as some payers move more rapidly than the processes of justice.

Article 5 deals with the situation in which a provisional order has been sent to a Commonwealth country but the courts there do not immediately confirm it. This Article also deals with cases in which further evidence is taken by the court overseas in proceedings for confirmation of the order and that evidence is made available to the court which made the provisional order, and provides expressly that the original applicant should be given the opportunity to make representations and adduce further evidence. The Article also makes it clear that where the original provisional order is rescinded, a fresh provisional order can be made.

Article 6 governs the exercise of the powers conferred by *Articles 2(4) and 4* which provide that the court which originally made a maintenance order or a provisional order may vary or revoke that order notwithstanding its transmission for registration or confirmation overseas. If both parties appear or are within the jurisdiction there is no need to build in any special safeguards for the payer, and a variation or revocation can be made in the usual way. But if, as will frequently be the case, the application is by the payee and is for an increase in the sums payable by the payer who is resident abroad, the payer’s interests are at risk. *Article 6(2)* accordingly provides that in such cases a provisional order must be made, requiring confirmation in the country in which the payer is resident.

Article 7 deals with cases in which variation or revocation is initiated not in Jersey but in the Commonwealth country to which an order made in Jersey was sent for registration or confirmation. It will typically be an application by the payer for a

reduction in the payments due, on account of a change in his financial circumstances. The Article enables the Jersey court to consider a provisional order made overseas to this end, and to decide whether or not to confirm it. *Article 7(3)* effectively safeguards the interests of the payee who will be a defendant.

Articles 8 to 15 deal with orders originating in other Commonwealth countries.

Article 8 deals with the registration of final (i.e. not provisional) maintenance orders made in another Commonwealth country. It does, however, apply to orders which began as provisional orders but have matured into final orders as a result of confirmation in a third Commonwealth country. The order will be sent by the responsible authorities of the overseas country concerned to the Lieutenant Governor. If the Lieutenant Governor is satisfied that the payer is not in fact resident in Jersey, he will act under *Article 15*; but in every other case he will send the order for registration under this Article. There is no requirement that the order should be sent by the responsible authorities of the particular Commonwealth country in which it was made; it can be forwarded by the responsible authorities in the country in which it has been registered, or to which it was sent in the belief that the payer was resident there.

Article 9 makes provision for cases of registration under *Article 8* which turn out to have been mistaken, the order not falling within the scope of *Article 8*. The registration is treated as a nullity.

Article 10 deals with the procedure on the receipt of a provisional order made in another Commonwealth country. As under *Article 8*, the Lieutenant Governor will have to decide initially whether he is satisfied that the payer is resident in Jersey; if he is not so satisfied, he will act under *Article 15*. In the more usual case, he will act by sending the order to the Greffier. There are no changes of substance from the procedure under the 1953 Law. *Article 18* referred to in *Article 10(4)* enables a case to be remitted to the overseas court for further evidence to be taken.

Article 11 provides that an order, whether a final order transmitted for registration or a provisional order transmitted for confirmation and duly confirmed, may be enforced as if made in Jersey. Under the 1953 Law, in the case of provisional orders received and confirmed, payments are due with effect from the date of confirmation, the payee suffering as a result of any delays in the process; *Article 11(5)* in effect enables the court to back-date the payments to some earlier date, but not earlier than the date upon which the provisional order was first made.

Article 12 gives power to the court to vary or revoke final orders registered under *Article 8(2)* or confirmed under *Article 10(7)*. The court has wide powers, but will often have to make a provisional order requiring confirmation in the country in which the order was first made. If both parties are now resident in Jersey, the court can make any variation or revoke the order without resort to the provisional order procedure; a variation on the application of the payee can also be so made, the payee having in effect submitted to the jurisdiction. The only other case in which there is no need to use a provisional order is that set out in *Article 12(3)(c)* such cases are ones in which the power to order variation is desirable on grounds of justice and in which the provisional order procedure would not normally be available. In such a case the court, if it wished to obtain evidence as to the payee's financial circumstances, could make use of *Article 18(1)* to request the relevant evidence from the court in the payee's country of residence. In general, the law of the country in which an order originated governs; *Article 12(5)* makes an exception in the case where both parties are resident in Jersey and the application is for revocation.

Article 13 deals with the corresponding case in which the registered or confirmed order is varied or revoked by a provisional order made in the country of origin or possibly in a third Commonwealth country.

Article 14 makes provision for the cancellation of the registration or confirmation of orders which are or have been revoked, but for the continued liability of the payer in respect of accrued arrears. It also provides for action to be taken when the payer leaves the jurisdiction (*Article 14(3)*).

Article 15 has already been referred to, and deals with the procedure in a number of cases in which the payer is not residing in Jersey.

Articles 16 to 20 make supplemental provisions affecting proceedings under Part 1.

Article 16 regulates appeals in Jersey. No right of appeal is given from any provisional order, because that order in itself has no effect. Nor is any right of appeal given against the registration of a final order under *Article 8* but *Article 9* enables such registration to be set aside when it was outside the powers conferred by *Article 8*. There are, however, appeals against the refusal of, or revocation of, a provisional order, against the confirmation or the refusal to confirm a provisional order made in another Commonwealth country and against the making (otherwise than by a provisional order) or refusal to make a variation or revocation of an order originally made in another Commonwealth country. Such rights of appeal are without prejudice to those conferred under any other Law.

Article 17 enables courts in Jersey to respond to requests made by courts in other Commonwealth countries for evidence needed in relation to proceedings of the type dealt with in this Law. The corresponding provision in the 1953 Law is more limited; it would not extend to requests made, for example, in relation to possible variation of an order.

Article 18 enables a court in Jersey to obtain evidence from the courts of other Commonwealth countries to assist it in considering an application under Part 1 of the Law. *Article 18(2)* enables a court which exercises the power under *Article 18 (1)* to assist it in deciding whether or not to confirm a provisional order, so leading to some delay, to make an interim order for periodical payments. This might be useful in cases where the receiving court is minded to confirm the order but remains uncertain as to the precise quantum; an interim order fixing payments at the lower end of the likely range would assist the payee.

Article 19 deals with the conversion of currency, for which no provision was made in the 1953 Law.

Article 20 makes provision for the translation of an order in a language other than English.

PART 2

Article 21 enables Part 1 of the Law to be applied to countries which have legislation compatible with Part 1, but which are outside the Commonwealth. No express requirement of reciprocity is required but it will no doubt be insisted upon in practice.

PART 3

Articles 22 to 29 which comprise Part 3, contain provisions giving effect to the United Nations Convention of the Recovery Abroad of Maintenance, 1956.

Article 22 provides for the designation of states parties to the Convention as convention countries for the purposes of Part 3 of the Law.

Article 23 sets out the procedure for sending applications for maintenance to other countries and gives effect to article 1 (Scope of the Convention), article 3 (Application to Transmitting Agency) and article 4 (Transmission of Documents) of the U.N. Convention. The applicant is required to be “in” the enacting country, but there is no requirement of “residence” there, for none is contained in the Convention. *Article 23(1)* provides for initial applications, and *Article 23(2)* for requests for variation of maintenance, so giving effect to article 8 of the Convention which extends its provisions to variation. *Article 23 (5)* deals with the transmission of “information relating to the application”, obtained by the Judicial Greffier in Jersey. This reflects article 4(3) of the Convention, which authorizes the “Transmitting Agency” to express to the “Receiving Agency” an opinion as to the merits of the case. As there have been no court proceedings in respect of the application, this is an unusual power, but it accords with the practice in some civil-law countries.

Article 24 deals with the procedure to be followed on the receipt of an application initiated by an applicant in a convention country and gives effect to article 6 of the Convention.

Article 25 deals with the procedure to be followed when the payer under an order changes his residence.

Article 26 enables the enforcement of orders made under Part 3.

Article 27 enables a court in Jersey to vary or revoke an order made under Part 3, either on an application made directly to the court or on one received from a party in a convention country by way of the Transmitting and Receiving Agencies (i.e. under *Article 27(2)*). The court may not consider an application unless it is satisfied that the defendant has had notice of the proceedings.

Articles 28 and 29 contain provisions similar in object to those in *Article 17 and 18* respectively, and follow the terms of Article 7 of the convention.

PART 4

Articles 30 to 37 which comprise Part 4 contain provisions giving effect to the Hague Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations, 1973.

Article 30 provides for the designation of states parties to the Hague Convention as Hague Convention countries for the purposes of Part 4 of the Law. *Article 30(2)* gives effect to article 28 of the Convention.

Article 31 deals with the transmission of certain maintenance orders (not being provisional maintenance orders or orders made under Part 3) for enforcement as against a payer residing in or proceeding to a Hague Convention country. It incorporates, in *Article 31(1)* the conditions set out in article 7 of the Hague Convention as to the cases in which the State of origin shall be regarded as having jurisdiction. The Greffier is required to satisfy himself that the order falls within the scope of the Convention in this respect before he initiates the procedure thereunder.

Article 32 deals with the variation or revocation, on the application of the payee, of a maintenance order which has been transmitted to a Hague Convention country pursuant to *Article 31*. The court in the Island to which the application is made may not vary or revoke the order unless it is satisfied that the application has been served on the payer, and it (the court) has taken into account any representations made or evidence adduced by or on behalf of the payer.

Article 33 provides for the registration of orders transmitted by the authorities of a Hague Convention country. *Article 33(5)* gives effect to articles 7, 8 and 9 of the Convention which set out the cases in which the State of origin is to be regarded as having jurisdiction. *Article 33(6)* gives effect to article 5, and *Article 33(7)* to article 6 of the convention. Under this Article, the Greffier takes the initial decision. However *Article 34* provides for applications to set aside registration if it is thought to have been done inappropriately, and *Article 35* gives a right of appeal against a refusal to register.

Article 36 corresponds to *Article 11* which governs orders registered under Part 1. The provisions as to arrears in *Article 36 (4) and (5)* accord with articles 11 and 24 of the Convention.

Article 37 applies *Articles 14 and 15 mutatis mutandis* to orders registered under this Part.

Articles 38 to 40 make supplemental procedural provision as to evidence and exchange rates, based on *Articles 17 to 19* but adapted to suit cases falling under this Part.

PART 5

Articles 41 to 47 which comprise Part 5 contain supplemental and general provisions.

Article 41 relates only to provisional orders made under *Article 3*; it is not included in Part 1 as it does not strictly relate to enforcement. In many Commonwealth jurisdictions a maintenance order made between husband and wife ceases to have effect if the party in whose favour the order was made remarries. This Article provides for the same effect in the case of a provisional order made in Jersey and confirmed in another Commonwealth country. If there exists a provisional order which has not been confirmed, it has no effect and no provision is needed.

Article 42 is a provision essential to the working of the draft Law, making the various certificates and statements received from the authorities of other countries admissible in evidence.

Article 43 dispenses with the need to prove strictly copies of court orders and the signatures and seals they bear.

Article 46 amends the Separation and Maintenance Orders (Jersey) Law 1953 to make it clear that overseas agencies, such as the Child Support Agency in the United Kingdom, which are in their home jurisdiction empowered to take proceedings on behalf of a parent or guardian of a child, may also institute proceedings in the Island in respect of maintenance for a child resident outside the Island.

Articles 44 to 48 contain provisions as to Rules of Court, the repeal of the 1953 Law, transitional provisions and citation and commencement of the draft Law.

MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) (JERSEY) LAW 200-

ARRANGEMENT OF ARTICLES

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3. Provisional orders for confirmation in a Commonwealth country.
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PART 2

EXTENSION OF PART 1 TO NON-COMMONWEALTH COUNTRIES

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PART 3

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PART 5

SUPPLEMENTAL

41. Provisional order to cease to have effect on remarriage.
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MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) (JERSEY) LAW 200-

A LAW to make new provision to facilitate the enforcement of maintenance orders; to make provision for the extension to the Island of the United Nations Convention on the Recovery Abroad of Maintenance done at New York on 20th June, 1956 and the Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations done at the Hague on 2nd October, 1973; and for connected purposes, sanctioned by Order of Her Majesty in Council of the

(Registered on the _____ day of _____ 200

STATES OF JERSEY

The _____ day of _____ 200

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law -

PART 1

GENERAL INTERPRETATION PROVISIONS AND ENFORCEMENT OF MAINTENANCE ORDERS MADE IN THE ISLAND AND IN COMMONWEALTH COUNTRIES

ARTICLE 1

Interpretation

(1) In this Law 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 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 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;

“Commonwealth country” means any country outside the Island which is an independent sovereign member of the Commonwealth or any territory for whose international relations any such country is responsible;

“competent court in a Hague Convention country” means any court in a Hague Convention country which has jurisdiction on one of the grounds specified in Article 33(5);

“convention country” means a country designated by Act under Article 22;

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

“court in a Hague Convention country” means any judicial or administrative authority in a Hague Convention country;

“Greffier” means the Judicial Greffier;

“Hague Convention” means the Convention referred to in Article 30 and “Hague Convention country” means a country designated by Act under that Article;

“maintenance order” means an order (however described), including a settlement made by or before a competent court in a Hague Convention country, of any of the following descriptions, and in the case of an order which is not limited to the following descriptions, the part of the order which is so limited, 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 any 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 is made, liable to maintain;
- (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 funeral expenses, or, where the mother of the child has died, of her funeral expenses; and
- (c) an order within the foregoing provisions of this definition made against a payer on the application of a public body which claims reimbursement of sums of money payable under the order with respect to the payee if reimbursement can be obtained by the public body under the law to which it is subject,

and, in the case of a maintenance order which has been varied (including a maintenance order which has been varied either by a court in the Island or by a competent court in a Hague Convention country whether or not the original order was made by such a court) means that order as varied, but shall not include an order made in a Hague Convention country of a description which that country or the Island has reserved the right under Article 26 of the Hague Convention not to recognize or enforce;

“payee”, in relation to a maintenance order, means the person entitled to the payments for which the order provides and, in the case of a person resident outside the Island, includes a person authorized by the law of the country or territory of that person’s residence to act on behalf of the payee;

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

“Petty Debts Court” means the Petty Debts Court constituted in pursuance of the “Loi (1891) sur la Cour pour le recouvrement de menues dettes”;^[1]

“prescribed” means prescribed by Rules of Court;

“provisional order” means (according to the context) -

- (a) a maintenance order made by a court in the Island which is provisional only and has no effect unless and until confirmed, with or without alteration, by a competent court in a Commonwealth country; or
- (b) a maintenance order or assessment made by a court in a Commonwealth country which is provisional only and has no effect unless and until confirmed with or without alteration, by a court in the Island having power under this Law to confirm it;

“responsible authority”, in relation to a Commonwealth country, means any person who in that country has functions similar to those of the Lieutenant Governor under this Law, and in relation to a Hague convention country means the appropriate authority in that country;

“Royal Court” means the Family Division of the Royal Court.

(2) A reference in this Law to the payment of money for the maintenance of a child shall be construed as a reference -

- (a) to the payment of money for the child’s education; or
- (b) to the payment, under an order of court in or outside the Island, of money to any person for the benefit of that

child.

(3) A reference in this Law to a Part, Article or Schedule by number only and without further identification is a reference to the Part, Article or Schedule of that number in this Law.

(4) A reference in an Article or other division of this Law to a paragraph, sub-paragraph or clause by number or letter only and without further identification is a reference to the paragraph, sub-paragraph or clause of that number or letter in the Article or other division of this Law.

(5) Unless the context otherwise requires, a reference in this Law to an enactment is a reference to that enactment as amended from time to time and includes a reference to that enactment as extended or applied under another enactment, including another provision of this Law.

ARTICLE 2

Transmission of a maintenance order made in the Island for registration in a Commonwealth country

(1) This Article applies to any maintenance order, not being a provisional order or an order made by virtue of a provision of Part 3, made, whether before or after the commencement of this Part, by a court in the Island.

(2) Where it appears that the payer under a maintenance order to which this Article applies is residing in or is proceeding to a Commonwealth country, the Greffier may, of his own motion or on the application of a payee under the order, send to the Lieutenant Governor a Request for Registration in the prescribed form.

(3) The Lieutenant Governor shall transmit the Request for Registration to the responsible authority in the Commonwealth 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 Article shall be taken as affecting any jurisdiction of a court in the Island with respect to a maintenance order to which this Article applies, and, subject to Article 6, any such order may be enforced, varied or revoked accordingly.

ARTICLE 3

Provisional orders for confirmation in a Commonwealth country

(1) Where an application is made to a court in the Island for a maintenance order against any person who is proved to be residing in or to be proceeding to a Commonwealth country, and the application is one on which the court would have jurisdiction to make a maintenance order if that person were resident in the Island and a summons to appear before the court to answer the application had been duly served upon him, the court shall have jurisdiction to hear the application and may make a provisional order.

(2) Where a court makes a provisional order by virtue of this Article, the Greffier shall send to the Lieutenant Governor a Request for Confirmation in the prescribed form.

ARTICLE 4

Effect of confirmation

A provisional order made by virtue of Article 3 which has been confirmed by a competent court in a Commonwealth country shall be treated for all purposes as if the court in the Island 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 Article 6 any such order may be enforced, varied or revoked accordingly.

ARTICLE 5

Further proceedings in respect of a provisional order

(1) Where before a provisional order made by virtue of Article 3 is confirmed, either -

- (a) a document, duly authenticated, setting out or summarizing evidence taken in a Commonwealth country for the purpose of proceedings relating to the confirmation of the order is received by the court in the Island which made the order; or
- (b) that court, in compliance with a request made to it by a court in a Commonwealth country, takes the evidence of a person residing in the Island for the purpose of such proceedings,

the court in the Island which made the order shall consider that evidence.

(2) If it appears to the court, having considered such evidence that the provisional order ought not to have been made, or ought not to have been made in the form in which it was made -

- (a) it shall, in such manner as may be prescribed, give to the person on whose application the 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 provisional order, and may make a fresh provisional order.

(3) Where a court makes a fresh provisional order by virtue of paragraph (2), the Greffier shall send in the prescribed manner to the court in the Commonwealth country a Request for Confirmation in the prescribed form.

ARTICLE 6

Variation and revocation in the Island of orders to which Articles 2 and 3 apply

(1) This Article applies to a maintenance order which has been transmitted to a Commonwealth country in pursuance of Article 2 and to a provisional order made by virtue of Article 3 which has been confirmed by a competent court in a Commonwealth country.

(2) A court in the Island which, having considered an application for the variation of an order to which this Article applies, proposes to vary the order -

- (a) may do so by a provisional order; and
- (b) shall do so by a provisional order where it proposes to increase the rate of payments under the order unless either -
 - (i) both the payer and the payee under the order appear in the proceedings, or
 - (ii) the applicant appears and the appropriate process has been duly served on the other party.

(3) Where a court in the Island makes a provisional order by virtue of this Article, the Greffier shall send in the prescribed manner to the court in a Commonwealth country having power to confirm the provisional order a Request for Confirmation in the prescribed form.

ARTICLE 7

Confirmation of provisional orders affecting orders made in the Island

(1) This Article applies to a maintenance order which has been transmitted to a Commonwealth country in pursuance of Article 2 and to a provisional order made by virtue of Article 3 which has been confirmed by a competent court in a Commonwealth country.

(2) Where a certified copy of a provisional order made by a court in a Commonwealth country, being an order varying or revoking an order to which this Article applies, together with a document duly authenticated, setting out or summarizing the evidence given in the proceedings in which the provisional order was made, is received by the court in the Island which made the order, that court may confirm or refuse to confirm the provisional order and if that order is an order varying the order, confirm it either without alteration or with such alterations as it thinks reasonable.

(3) For the purpose of determining whether a provisional order should be confirmed under this Article, the court

shall proceed as if an application for the variation or revocation, as the case may be, of the order in question had been made to it.

ARTICLE 8

Registration in the Island of maintenance order made in a Commonwealth country

(1) This Article applies to a maintenance order made before or after the commencement of this Part against any person by a court in a Commonwealth country, including a provisional order made by such a court which has been confirmed by a court in another Commonwealth country.

(2) Subject to the following provisions of this Article, whenever the Greffier receives from the Lieutenant Governor a certified copy of an order to which this Article applies he shall register the order in the prescribed manner in the court.

(3) Before registering an order under this Article, the Greffier shall take such steps as he thinks fit for the purpose of ascertaining whether the payer is residing in the Island, and, if after taking those steps he is satisfied that the payer is not so residing, he shall return the certified copy of the order to the Lieutenant Governor with a statement giving such information as he possesses as to the whereabouts of the payer.

(4) The court in which an order is to be registered shall be, if the court in which the order was made was a court of unlimited jurisdiction, the Royal Court, and, if the court was a court of limited jurisdiction, the Petty Debts Court.

ARTICLE 9

Setting aside registration

The registration of an order under Article 8 shall be set aside if the court in which the order has been registered is satisfied on an application by the payer that the order is not an order to which that Article applies.

ARTICLE 10

Confirmation in the Island of a provisional order made in a Commonwealth country

(1) This Article applies to a provisional order made before or after the commencement of this Part against any person by a court in a Commonwealth country.

(2) Where the Greffier receives from the Lieutenant Governor a certified copy of an order to which this Article applies together with -

- (a) a document, duly authenticated, setting out or summarizing 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,

the Greffier shall cause proceedings to be commenced in the court for the confirmation of the order.

(3) If a summons to appear in the proceedings for the confirmation of the order cannot be duly served on the payer, the Greffier shall return the certified copy of the order and documents which accompanied it to the Lieutenant Governor with a statement giving such information as he possesses as to the whereabouts of the payer.

(4) Subject to the provisions of Article 18, proceedings for the confirmation of the order shall be conducted as if an application for a maintenance order against the payer had been made to the court.

(5) At the hearing it shall be open for the payer to raise any defence which he might have raised in the original proceedings had he been present, but no other defence, and the statement received from the court which made the order of the grounds on which the making of the order might have been opposed shall be conclusive evidence that the payer might have raised a defence on any of those grounds.

(6) If the payer establishes any such defence as he might have raised in the original proceedings, the court shall

refuse to confirm the order, and the Greffier shall send the certified copy of the order and the documents which accompanied it to the Lieutenant Governor for return to the responsible authority in the Commonwealth country.

(7) In any other case, the court shall confirm the order either without alteration or with such alteration as it thinks reasonable.

(8) For the purposes of this Article, the court by which the order is to be confirmed shall be, if the court in which the order was made was a court of unlimited jurisdiction, the Royal Court, and if the court was a court of limited jurisdiction, the Petty Debts Court.

ARTICLE 11

Enforcement in the Island of orders registered or confirmed under Part 1

(1) An order registered in a court in the Island by virtue of Article 8(2) or confirmed under Article 10(7) may be enforced in the Island as if it had been made by the court in which it is registered or confirmed 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) The Viscount shall take all such steps for enforcing the order as may be prescribed.

(3) In any proceedings for or with respect to the enforcement of an order which is for the time being registered in, or confirmed by, any court under this Part a certificate of arrears sent to the court or to the Greffier thereof shall be evidence of the facts stated therein.

(4) Subject to paragraph (5), sums of money payable under an order registered or confirmed under this Part shall be payable in accordance with the order as from the date on which the order was made.

(5) A court confirming an order under Article 10(7) may 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 an order so confirmed 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.

ARTICLE 12

Variation and revocation of orders registered or confirmed under Part 1

(1) This Article applies to orders registered in the Island by virtue of Article 8(2) or confirmed under Article 10(7).

(2) The court in which an order to which this Article applies is registered or has been confirmed shall have the like power, on an application made by the payer or the payee, to vary or revoke the order as if the court had made the order and had had jurisdiction to make it.

(3) Where the court in which an order to which this Article applies is registered or has been confirmed varies the order it may do so by means of a provisional order and shall do so unless -

(a) both the payer and the payee are for the time being residing in the Island; or

(b) the application is made by the payee; or

(c) the variation consists of a reduction in the rate of payments under the order and is made solely on the ground that there has been a change in the financial circumstances of the payer since the order was made or, in the case of an order confirmed under Article 10(7), since the order was confirmed, and the courts in the Commonwealth country in which the order was made do not have power, according to the law in force in that country, to confirm provisional orders varying maintenance orders.

(4) When the court in which an order to which this Article applies is registered or has been confirmed revokes the order it may do so by means of a provisional order and shall do so unless both the payer and the payee are for the time being resident in the Island.

(5) On an application for the revocation of an order to which this Article applies the court shall, if both the payer

and the payee are for the time being residing in the Island, apply the law of the Island, but shall in any other case apply the law of the Commonwealth country in which the order was made; but where the court is required by virtue of this paragraph to apply the law of a Commonwealth country it 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 that law, notwithstanding that it has not been established that it is such a ground.

(6) Where a court makes a provisional order under this Article, the Greffier shall send in the prescribed manner to the court in the Commonwealth country which made the order a Request for Confirmation in the prescribed form.

ARTICLE 13

Registration or confirmation of provisional orders affecting orders under Part 1

(1) This Article applies to orders registered in the Island by virtue of Article 8(2) or confirmed under Article 10 (7).

(2) Where a certified copy of a provisional order made by a court in a Commonwealth country, being an order varying or revoking an order to which this Article applies, together with a document duly authenticated, setting out or summarizing the evidence given in the proceedings in which the provisional order was made, is received by a court in the Island in which an order to which this Article applies is registered or has been confirmed, that court may confirm or refuse to confirm the provisional order and if that order is an order varying the order, confirm it either without alteration or with such alterations as it thinks reasonable.

(3) For the purpose of determining whether a provisional order should be confirmed under this Article, the court shall proceed as if an application for the variation or revocation, as the case may be, of the order in question had been made to it.

ARTICLE 14

Cancellation of registration or confirmation and transfer of order

(1) This Article applies to orders registered in the Island by virtue of Article 8(2) or confirmed under Article 10 (7).

(2) Where an order to which this Article applies is revoked -

(a) by an order made by the court in which it is registered or has been confirmed;

(b) by a provisional order made by that court which has been confirmed by a court in a Commonwealth country and notice of the confirmation is received by the court in the Island; or

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

the Greffier shall cancel the order but any arrears due under the order at the date of cancellation shall continue to be recoverable as if the order had not been cancelled.

(3) Where the Greffier is of opinion that the payer has ceased to reside in the Island, he shall cancel the order and shall send a certified copy thereof to the Lieutenant Governor together with -

(a) a certificate of any arrears, signed by the Viscount;

(b) a statement giving such information as he possesses as to the whereabouts of the payer; and

(c) any relevant document in his possession relating to the case.

ARTICLE 15

Transmission of certain orders by Lieutenant Governor

(1) This Article applies to maintenance orders received by the Lieutenant Governor from the responsible

authority in a Commonwealth country and to orders which have been registered in a court in the Island by virtue of Article 8 (2) or confirmed under Article 10(7).

(2) If it appears to the Lieutenant Governor that the payer under an order to which this Article applies is not residing or has ceased to reside in the Island, he shall send to the responsible authority of the Commonwealth country which in all the circumstances is appropriate -

- (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 registered in, or confirmed by, a court in the Island, a certificate of arrears signed by the Viscount;
- (c) a statement giving such information as the Lieutenant Governor possesses as to the whereabouts of the payer; and
- (d) any other relevant documents in his possession relating to the case.

(3) Where the documents mentioned in paragraph (2) are sent to the responsible authority in a Commonwealth country other than that in which the order in question was made, the Lieutenant Governor shall inform the responsible authority in the Commonwealth country in which the order was made of what he has done.

ARTICLE 16

Appeals

(1) No appeal shall lie from a provisional order made under any provision of this Part by a court in the Island.

(2) Where any court in the Island refuses to make a provisional order in pursuance of Article 3 or revokes a provisional order in pursuance of Article 5, the applicant shall have the like right of appeal (if any) from the refusal to make, or the revocation of, the provisional order as he would have if that order were not a provisional order.

(3) Where in pursuance of any provision of this Part, a court in the Island confirms or refuses to confirm a provisional order made by a court in a Commonwealth country (including a provisional order varying or revoking a maintenance order), the payer or payee under the 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, as the case may be, refused to make it.

(4) Where in pursuance of any provision in this Part, a court in the Island makes, or refuses to make, an order varying or revoking a maintenance order made by a court in a Commonwealth country, then, subject to paragraph (1), the payer or payee 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 court in the Island.

(5) Nothing in this Article (except paragraph (1)) shall be construed as affecting any right of appeal conferred by any other enactment.

ARTICLE 17

Obtaining of evidence for the purposes of proceedings in a Commonwealth country

(1) Where for the purpose of any proceedings in a court in a Commonwealth country relating to a maintenance order to which this Part applies a request is made by or on behalf of that court for the taking in the Island of the evidence of a person residing therein relating to matters specified in the request, a court in the Island 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 by virtue of this Article shall be sent in the prescribed manner by the Greffier to the court in the Commonwealth country by or on behalf of which the request was made.

ARTICLE 18

**Remission of case to a court in a Commonwealth country;
interim orders**

(1) A court in the Island may for the purpose of any proceedings in that court under this Part relating to an order to which this Part applies request a court in a Commonwealth 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.

(2) A court in the Island considering the confirmation of an order under Article 10 and remitting the case in accordance with this Article may make such interim order for periodical payments by the payer as it thinks fit.

ARTICLE 19

Conversion of currency

(1) Where the sums of money required to be paid under an order registered in, or confirmed by, a court in the Island under this Part or specified in any statement of arrears due under a maintenance order made by a court in a Commonwealth country are expressed in a currency other than the currency of the Island, then, as from the relevant date, the sums shall be treated as such sums in the currency of the Island as are equivalent thereto on the basis of the rate of exchange prevailing at that date.

(2) For the purposes of this Article a written certificate purporting to be signed by an officer of any bank in the Island 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 the Island 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.

(3) In this Article “the relevant date” means -

- (a) in relation to an order which is registered in, or confirmed by, a court in the Island or to a statement of arrears due under a maintenance order made by a court in a Commonwealth country, the date on which the order is first registered or confirmed under this Law;
- (b) in relation to an order which has been varied, the date on which the last order varying that order is registered or confirmed under this Law.

ARTICLE 20

Orders in a foreign language

Where a maintenance order or a provisional order sought to be registered or confirmed in the Island under this Part is in a language other than English, the certified copy of the order shall have attached thereto for all purposes of this Part, a translation in the English language.

PART 2

EXTENSION OF PART 1 TO NON-COMMONWEALTH COUNTRIES

ARTICLE 21

Extension of Part 1 to non-Commonwealth countries

The States may by Act declare that the provisions of Part 1, with such exceptions, adaptations and modifications as may be specified in the Act shall apply as if any country designated in the Act were a Commonwealth country.

PART 3

FACILITIES FOR ENFORCEMENT OF CLAIMS FOR THE RECOVERY OF MAINTENANCE

ARTICLE 22

Convention countries

The States may by Act declare that any country or territory specified in the Act, being a country or territory outside the Island and not being a Commonwealth country or a country designated in an Act under Article 21, to which the United Nations Convention on the Recovery Abroad of Maintenance done at New York on 20th June 1956 extends, is a convention country for the purposes of this Law.

ARTICLE 23

Application by person in the Island

(1) Where a person in the Island (in this Part 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 Lieutenant Governor, in accordance with the provisions of this Article, to have his 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 Lieutenant Governor, in accordance with the provisions of this Article, to have his application for the variation of that provision transmitted to that country.

(3) An application to the Lieutenant Governor under this Article shall be made through the Greffier who shall assist the applicant in completing an application which will comply with the requirements of the law of the convention country and shall send the application to the Lieutenant Governor, together with such other documents, if any, as are required by that law.

(4) On receiving an application from the Greffier, the Lieutenant Governor shall transmit it, together with any accompanying documents, to the appropriate authority in the convention country, unless he is satisfied that the application is not in good faith or that it does not comply with the requirements of the law of that country.

(5) The Lieutenant Governor may request the Greffier to obtain such information relating to the application as may be specified in the request.

ARTICLE 24

Application by person in convention country for recovery of maintenance in the Island

(1) Where the Lieutenant Governor 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 (in this Part referred to as “the defendant”) who is for the time being residing in the Island, he shall send the application, together with any accompanying documents, to the Greffier.

(2) On receiving the application in accordance with paragraph (1), the Greffier shall cause proceedings to be commenced in the Royal Court for the consideration of the application.

(3) If a summons to appear in the proceedings cannot be duly served on the defendant, the Greffier shall return the application, together with any accompanying documents, to the Lieutenant Governor with a statement giving such information as he possesses as to the whereabouts of the defendant.

(4) In any case not falling under paragraph (3), the Court shall proceed as if the applicant were before the Court.

ARTICLE 25

Return of orders

(1) Where the Greffier is of opinion that the payer under an order made under this Part has ceased to reside within the Island he shall cancel the order and send a certified copy thereof and the related documents to the Lieutenant Governor for return to the appropriate authority in the convention country.

(2) In this Article, “related documents” means -

(a) the application on which the order was made;

- (b) a certificate of any arrears, signed by the Viscount;
- (c) a statement by the Greffier giving such information as he possesses as to the whereabouts of the payer; and
- (d) any relevant documents in the possession of the Greffier relating to the case.

ARTICLE 26

Enforcement of orders

- (1) The Viscount shall take all such steps as may be prescribed for enforcing an order made under this Part.
- (2) In any proceedings for or with respect to the enforcement of an order under this Part, a certificate of arrears sent under Article 24 to the Greffier shall be evidence of the facts stated therein.

ARTICLE 27

Variation and revocation of orders

(1) The Royal Court shall have jurisdiction to hear any application by the payer or the payee for the variation or revocation of an order under this Part where the defendant to the application is residing in the Island or in a convention country.

(2) Where the Lieutenant Governor receives from the appropriate authority in a convention country an application by a person in that country for the variation or revocation of an order under this Part, he shall send the application, together with any accompanying documents, to the Greffier.

(3) On receiving the application in accordance with paragraph (1), the Greffier shall cause proceedings to be commenced in the Court for the consideration of the application.

(4) The Court shall not proceed to the hearing of an application for the variation or revocation of an order under this Part unless -

- (a) in the case of a defendant to the application residing in the Island, a summons to appear in the proceedings has been duly served on him; and
- (b) in the case of a defendant residing in a convention country, such notice of the proceedings as may be prescribed has been given to the defendant in the prescribed manner.

ARTICLE 28

Obtaining of evidence for purpose of proceedings in the Island

(1) The Royal Court may for the purpose of any proceedings in that Court under this Part arising out of an application received by the Lieutenant Governor from a convention country request the Lieutenant Governor 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 Court under this Article 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) If the Lieutenant Governor is satisfied that a request made to him under this Article 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 shall transmit the request to the appropriate authority or court in that country.

ARTICLE 29

Taking of evidence at request of court in a convention country

(1) Where a request is made to the Lieutenant Governor by or on behalf of a court in a convention country to obtain the evidence of a person residing in the Island relating to matters connected with an application to which Article 24 applies, the Lieutenant Governor shall transmit the request to the Royal Court which either shall take the evidence or shall nominate the Viscount or an officer of the Court to take the evidence of that person relating to such matters connected with that application as may be specified in the request.

(2) The Royal Court, the Viscount or other officer of the Court 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 it or he 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 Greffier to the court in the convention country by or on behalf of which the request referred to in paragraph (1) was made.

PART 4

ENFORCEMENT UNDER THE HAGUE CONVENTION

ARTICLE 30

Hague Convention countries

(1) The States may by Act declare that any country or territory specified in the Act, being a country or territory outside the Island and not being a Commonwealth country or a country designated in an Act under Article 21, in which the Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations concluded at the Hague on 2nd October 1973 is in force, is a Hague Convention country for the purposes of this Part.

(2) In relation to a Hague Convention country comprising territories in which different systems of law are in force in relation to the recognition and enforcement of maintenance orders, any reference to -

- (a) the law or procedure of a Hague Convention country; or
- (b) a court in a Hague Convention country; or
- (c) habitual residence in a Hague Convention country,

shall have effect as if each territory were a separate Hague Convention country.

ARTICLE 31

Transmission of a maintenance order made in the Island for registration in a Hague Convention country

(1) This Article applies to any maintenance order, not being a provisional order or an order made by virtue of a provision of Part 3, made, whether before or after the commencement of this Part, by a court in the Island if -

- (a) either the payer or the payee had his habitual residence in the Island at the time when the application for the maintenance order was made;
- (b) the payer and the payee were British citizens at that time; or
- (c) the payer appeared in the proceedings in which the maintenance order was made and defended on the merits without objecting to the jurisdiction of the court.

(2) Where it appears that the payer under a maintenance order to which this Article applies is residing in or is proceeding to a Hague Convention country, the Greffier may, of his own motion or on the application of a payee under the order, send to the Lieutenant Governor a Request for Enforcement in the prescribed form.

(3) The Lieutenant Governor shall transmit the Request for Enforcement to the responsible authority in the Hague Convention 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 Article shall be taken as affecting any jurisdiction of a court in the Island with respect to a maintenance order to which this Article applies, and, subject to Article 32, any such order may be enforced, varied or revoked accordingly.

ARTICLE 32

Variation and revocation in the Island of orders

(1) This Article applies to a maintenance order which has been transmitted to a Hague Convention country by virtue of Article 31.

(2) Where an application is made to a court in the Island by the payee for the variation or revocation of an order to which this Article applies, and the payer is residing in a Hague Convention country, the court shall direct the Greffier to send to the Lieutenant Governor a notice of the application in the prescribed form, and the court may not vary or revoke the maintenance order unless -

- (a) it is satisfied that the notice of the application has been served on the payer in accordance with the law of the Hague Convention country in which he is residing not less than six weeks before the date of the hearing of the application; and
- (b) it has taken into account any representations made and any evidence adduced by or on behalf of the payer.

(3) Where a court in the Island varies or revokes an order to which this Article applies, the Greffier shall send to the Lieutenant Governor a Notice of Variation or Revocation in the prescribed form.

ARTICLE 33

Registration in the Island of maintenance order made in Hague Convention country

(1) This Article applies to a maintenance order made before or after the commencement of this Part against any person by a court in a Hague Convention country.

(2) Subject to the following provisions of this Article, whenever the Greffier receives from the Lieutenant Governor a certified copy of an order to which this Article applies he shall register the order in the prescribed manner in the court.

(3) Before registering an order under this Article, the Greffier shall take such steps as he thinks fit for the purpose of ascertaining whether the payer is residing in the Island and if after taking those steps he is satisfied that the payer is not so residing he shall return the certified copy of the order to the Lieutenant Governor with a statement giving such information as he possesses as to the whereabouts of the payer.

(4) The court in which an order is to be registered shall be, if the court in which the order was made was a court of unlimited jurisdiction, the Royal Court, and if the court was a court of limited jurisdiction, the Petty Debts Court.

- (5) (a) The Greffier may refuse to register the order if the court in the Hague Convention country by or before which the order was made did not have jurisdiction to make the order; and for these purposes a court in a Hague Convention country shall be considered to have jurisdiction if -
- (i) either the payer or the payee had his habitual residence in the Hague Convention country at the time when the proceedings in which the maintenance order was made were instituted,
 - (ii) the payer and the payee were nationals of that country at that time,
 - (iii) the defendant in those proceedings had submitted to the jurisdiction of the court, either expressly or by defending on the merits of the case without objecting to the jurisdiction, or
 - (iv) in the case of a maintenance order made by reason of a divorce or a legal separation or a declaration that a marriage is void or annulled, the court is recognized by the law of the Island as having jurisdiction in that matter.

- (b) In deciding whether a court in a Hague Convention country had jurisdiction to make a maintenance order the Greffier shall be bound by any finding of fact on which the court based its jurisdiction.
- (6) The Greffier may refuse to register the order -
 - (a) if such registration is manifestly contrary to public policy;
 - (b) if the order was obtained by fraud in connection with a matter of procedure;
 - (c) if proceedings between the same parties and having the same purpose are pending before a court in the Island and those proceedings were the first to be instituted; or
 - (d) if the order is incompatible with an order made in proceedings between the same parties and having the same purpose, either in the Island or in another country provided that in the latter case the order fulfils the conditions necessary for its recognition and enforcement in the Island under this Law.
- (7) Without prejudice to paragraph (6), if the payer did not appear in the proceedings in the Hague Convention country in which the order was made, the Greffier shall refuse to register the order unless -
 - (a) notice of the institution of the proceedings, including notice of the substance of the claim, was served on the payer in accordance with the law of that Hague Convention country; and
 - (b) having regard to the circumstances, the payer had sufficient time to enable him to defend the proceedings.

ARTICLE 34

Setting aside registration

- (1) The payer may apply to the court in which an order is registered under Article 33 for the registration to be set aside.
- (2) The court shall set aside the registration if it is satisfied that the order is not an order to which Article 33 applies or that the Greffier should have refused to register the order under paragraph (6) of that Article.
- (3) The court may set aside the registration on any ground upon which the Greffier might have refused to register the order under Article 33.

ARTICLE 35

Appeals against refusal to register

The payee may appeal to the court against any refusal by the Greffier to register an order to which Article 33 applies.

ARTICLE 36

Enforcement in the Island of orders registered under Article 33

- (1) An order registered in a court in the Island by virtue of Article 33 may be enforced in the Island as if it had been made by the court in which it is registered 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) The Viscount shall take all such steps for enforcing the order as may be prescribed.
- (3) In any proceedings for or with respect to the enforcement of an order which is for the time being registered in any court under Article 33, a certificate of arrears sent to the Greffier shall be evidence of the facts stated therein.
- (4) Subject to paragraph (5), sums of money payable under an order registered under Article 33 shall be payable in accordance with the order as from the date on which the order was made.
- (5) Where an order was made by a court in a Hague Convention country prior to the date of the entry into force

of the Hague Convention between the Island and that country, no sums of money falling due before that date shall be payable in accordance with the order.

ARTICLE 37

Cancellation transfer and transmission of orders registered under Article 33

- (1) This Article applies to a maintenance order registered in a court in the Island by virtue of Article 33.
- (2) Subject to the following paragraphs, Article 14 and 15 shall apply in relation to orders to which this Article applies as if the Hague Convention country in which the maintenance order was made was a Commonwealth country.
- (3) In its application to the orders to which this Article applies, Article 14 shall apply with the omission of paragraph (2)(b).
- (4) In its application to the orders to which this Article applies, Article 15 shall apply with the omission in paragraph (2) of that Article of the words “which in all the circumstances is appropriate” and of paragraph (3) of that Article.

ARTICLE 38

Obtaining of evidence for the purpose of proceedings in the Island

A court in the Island may for the purpose of any proceedings in that court under this Part relating to a maintenance order to which this Part applies request the Lieutenant Governor to make to the responsible authority in a Hague Convention country a request for the taking or provision of evidence relating to such matters as may be specified in the request.

ARTICLE 39

Obtaining of evidence for the purpose of proceedings in a Hague Convention country

(1) Where for the purpose of any proceedings in a court in a Hague Convention country relating to a maintenance order to which this Part applies a request is made by or on behalf of that court for the taking in the Island of the evidence of a person residing therein relating to matters specified in the request, a court in the Island 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 by virtue of this Article shall be sent by the Greffier to the Lieutenant Governor for transmission to the responsible authority in the Hague Convention country.

ARTICLE 40

Conversion of currency

Article 19 shall apply in relation to orders made by a court in a Hague Convention country as if that country were a Commonwealth country.

PART 5

SUPPLEMENTAL

ARTICLE 41

Provisional order to cease to have effect on remarriage

(1) Where a court has, by virtue of Article 3, made a provisional order consisting of or including a provision for periodical payments by a husband or wife and the order has been confirmed by a competent court in a Commonwealth 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 payee except in relation to any arrears due under it on the date of such remarriage and shall not be capable of being revived.

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

ARTICLE 42

Admissibility of evidence given abroad

- (1) A statement contained in -
- (a) a document, duly authenticated, which purports to set out or summarize evidence given in proceedings in a court in a Commonwealth country, a convention country, a Hague Convention country or a country designated in an Act under Article 21;
 - (b) a document, duly authenticated, which purports to set out or summarize evidence taken in such a country for the purpose of proceedings in a court in the Island under this Law, whether in response to a request made on behalf of such a 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 a court in the Island under this Law (including any 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 summarize evidence given as mentioned in paragraph (1)(a), or taken as mentioned in paragraph (1)(b), shall be deemed to be duly authenticated for the purposes of that paragraph 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, summarizing, that evidence or a true copy of that document.

(3) A document purporting to have been received in evidence as mentioned in paragraph (1)(c), or to be a copy of a document so received, shall be deemed to be duly authenticated for the purposes of that paragraph 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 Article shall prejudice the admission in evidence of any document which is admissible in evidence apart from this Article.

ARTICLE 43

Order, etc. made abroad need not be proved

For the purposes of this Law, unless the contrary is shown -

- (a) any order made by a court in a Commonwealth country, a convention country, a Hague Convention country or a country designated in an Act under Article 21 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, as the case may be, of that court when he signed it and, in the case of an officer, to have been authorized to sign it; and
- (c) a document purporting to be a certified copy of an order made by a court in such a country shall be deemed without further proof to be such a copy.

ARTICLE 44

Rules of Court

Without prejudice to the generality of the powers conferred under Article 11 of the Royal Court (Jersey) Law 1948,^[2] Article 2 of the Law Reform (Miscellaneous Provisions) (Jersey) Law 1967^[3] or any other Law, the Superior Number of the Royal Court, with the advice and assistance of the Rules Committee may make Rules of Court prescribing the practice and procedure under this Law before the Royal Court and the Petty Debts Court.

ARTICLE 45

Repeal

The Maintenance Orders (Facilities for Enforcement) (Jersey) Law 1953^[4] (hereinafter referred to as “the repealed Law”) shall be repealed.

ARTICLE 46

Amendment of Separation and Maintenance Orders (Jersey) Law 1953

Article 11 of the Separation and Maintenance Orders (Jersey) Law 1953^[5] shall be re-numbered as paragraph (1) of that Article and there shall be inserted after that paragraph the following paragraph -

“(2) Proceedings under this Law for the maintenance of a child may, if the child or the parent of the child having care and control of that child is resident outside the Island, be brought on behalf of the child by any person who is, by the law of the country or territory of residence, competent to bring those proceedings.”.

ARTICLE 47

Transitional provisions

(1) Where immediately before the commencement of Part 1, a country was one to which the repealed Law extended, the provisions of that Part shall apply to any order made under that Law by a court in the Island against a person residing in that country and to any order made by a court in that country against a person residing in the Island and transmitted to the Island for the purpose of proceedings under that Law.

(2) Any proceedings brought under or by virtue of any provision of the repealed Law in a court in the Island which are pending immediately before the commencement of Part 1 shall be continued as if they had been brought under or by virtue of the corresponding provision of this Law.

ARTICLE 48

Citation and commencement

This Law may be cited as the Maintenance Orders (Facilities for Enforcement) (Jersey) Law 200- and shall come into force on such day as the States may by Act appoint and different days may be appointed for different provisions or for different purposes of this Law.

^[1] Tomes IV-VI, page 102, Volume 1984-1985, page 6 and Volume 1992-1993, page 242.

^[2] Tome VII, page 510 and Volume 1996-1997, page 147.

^[3] Volume 1966-1967, page 428.

^[4] Tome VIII, page 323.

^[5] Tome VIII, page 206.