

RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS.

1° EDWD. VIII., No. VII.

No. 7 of 1936.

AN ACT to amend the Reciprocal Enforcement of
Maintenance Orders Act, 1921.

[Assented to 3rd December, 1936.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (a) This Act may be cited as the *Reciprocal Enforcement of Maintenance Orders Act Amendment Act, 1936*, and shall be read as one with the Reciprocal Enforcement of Maintenance Orders Act, 1921 (No. 27 of 1921), as amended by Act No. 29 of 1923. Short title.

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(b) The Reciprocal Enforcement of Maintenance Orders Act, 1921, with the amendment hereinbefore referred to, is hereinafter referred to as "the principal Act."

Amendment
of s. 2 of the
principal Act.

2. Section two of the principal Act is hereby amended—

(a) by inserting the following definition after the definition of "certified copy":—

"Depositions" includes any sworn statement reduced to writing or any official statement of evidence certified by the court:

(b) by inserting a further definition after the definition of "Maintenance Order":—

"Mandated Territory" means any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty or any part of His Majesty's Dominions;

(c) by inserting a further definition after the foregoing definition of "mandated territory":—

"Reciprocating jurisdiction" means the United Kingdom, the Dominion of New Zealand, and also any part of the King's Dominions, British Protectorate or Mandated Territory to which this Act applies;

(d) by inserting the words "or in any mandated territory" after the words "British Protectorate," in the fifth line of the definition of "Superior Court";

(e) by inserting a further definition after the definition of "Superior Court":—

"United Kingdom" means Great Britain and Northern Ireland.

Amendment
of s. 5 of the
principal Act.

3. Section five of the principal Act is hereby amended by striking out subsections four and five of the section.

Amendment
of s. 6 of the
principal Act.

4. Section six of the principal Act is amended—

(a) by striking out the words "or subsequently endorsed" after the word "issued," in lines two and three of subsection (2);

(b) by striking out the whole of subsection (6).

5. New sections are hereby added after section six of the principal Act:— New sections.

6A. (1.) Subject as hereinafter provided any maintenance order enforceable by virtue of this Act by any court in the State may be varied or rescinded by the court in which the order is enforceable in such manner as the court after hearing evidence thinks just, and as from the date on which any such order is so varied or rescinded the order shall be enforceable only according to the terms of variation or, in case of rescission, shall cease to be in force in Western Australia, except in either case in regard to any sums accrued due under the order before the date of the order of variation or rescission;

Orders confirmed in this State or registered in this State may be varied or rescinded here.

Provided that, except where at the time of the application the person on whose application the order was made is residing in this State, no application for the variation or rescission of an order under this subsection shall be entertained by any court in the State unless the court is satisfied that a similar application could have been entertained by the court in which the order was originally made.

(2) (a) Any maintenance order made by a court in this State may be varied or rescinded by that court in accordance with the laws applicable to the variation or rescission of maintenance orders made between parties resident in the State, notwithstanding that the order may have been registered or confirmed in some other reciprocating jurisdiction.

Varying final orders or provisional orders made here which have been registered or confirmed in some other reciprocating jurisdiction.

(b) On the making of any such order the court in this State making the order shall send a certified copy thereof to the Governor for transmission to a Secretary of State if the original order was registered or confirmed in the United Kingdom, and if it was registered or confirmed in any other reciprocating jurisdiction, then to the governing officer of such reciprocating jurisdiction.

(3.) The power conferred by this section to vary or to rescind any maintenance order may be exercised on the application of either party in the absence of the other, but in such case any order made by the court shall be provisional only, and the provisions of section five of this Act shall, *mutatis mutandis*, apply.

Orders to be provisional only unless both parties present.

Court may
remit case
for further
evidence.

(4.) Where on an application under this section for the variation or rescission of any maintenance order the court is satisfied that it is necessary to remit the case to the court which made, registered, or confirmed the order for the purpose of taking any further evidence, the court may so remit the case and adjourn the proceedings for that purpose.

Where case
remitted to
court in this
State to take
further
evidence, the
court shall
proceed to
take the
evidence.

6B. Where any court in any reciprocating jurisdiction has remitted any case to a court in this State for the purpose of taking any further evidence with respect to any application before such first-mentioned court to confirm a provisional maintenance order made by a court in this State, or with respect to any maintenance order made, registered, or confirmed by such first-mentioned court, the court in this State to which the case is remitted shall, after giving the prescribed notice, proceed to take the evidence and, subject as hereinafter provided, the depositions shall be sent to the Governor for transmission to a Secretary of State in a case where the court making the order for the taking of further evidence is in the United Kingdom, and in other cases to the governing officer in the reciprocating jurisdiction:

Provided that, if upon hearing such evidence with respect to a provisional order made under section five of this Act it appears to the court that the provisional order ought not to have been made, or should be varied, the court may, in the former case, in lieu of sending the depositions to the Governor, rescind the order and, in the latter case, vary the provisional order and send the variation order to the Governor, together with the depositions for transmission as aforesaid.

In confirming
a provisional
order the
court may
make pro-
vision for
payment of
arrear.

6C. Notwithstanding that an order registered or confirmed under this Act is enforceable only from the date of registration or confirmation, as the case may be, the court by which the order is so enforceable may on application being made to it in the prescribed manner direct the payment in respect of the period between the making of the order and the registration or

confirmation thereof, or in respect of any part of that period, of such sums, if any, as to the court may seem just, at a rate not exceeding that at which sums are payable under the order as from the date of registration or confirmation.

6D. (1.) Where a certified copy of a maintenance order or of a provisional maintenance order, together with the depositions and accompanying documents has been transmitted to the Governor in accordance with the provisions hereinbefore contained, and it appears to the Governor that the person against whom the order was made is resident in some other reciprocating jurisdiction, the Governor shall transmit the certified copy, together with the depositions and other documents relating thereto, to a Secretary of State where such person is resident in the United Kingdom, and in any other case, to the governing officer of the reciprocating jurisdiction where such person resides.

Where defendant leaves State and goes to another reciprocating jurisdiction, papers may be sent on.

(2.) Where a court in this State has registered a maintenance order under section three of this Act, or has confirmed a maintenance order under section six of this Act, and that court is satisfied that the person against whom the order was made is no longer resident in this State but is resident in some other reciprocating jurisdiction, the court shall send a certified copy of the order to the Governor for transmission to a Secretary of State, if such person is resident in the United Kingdom, and in any other case for transmission to the governing officer of the reciprocating jurisdiction in which such person is resident.

Where defendant leaves State and goes to another reciprocating jurisdiction after order is registered or confirmed here, papers may be sent on.

The order shall thereupon cease to be enforceable under this Act, unless and until it is again transmitted to the Governor by a Secretary of State or by a governing officer of some other reciprocating jurisdiction, as the case may be, and registered under section three or confirmed under section six of this Act.

6. Subsection four of section fourteen of the principal Act is amended by inserting after the word "Protectorate" where it occurs in line two and in line three the words "or mandated territory."

Amendment of s. 14 of the principal Act.

Provision for reciprocity.

7. The amendments effected by this Act shall have effect only in regard to those reciprocating jurisdictions which the Governor by Order in Council declares he is satisfied have—

- (a) enacted legislation affording a measure of reciprocity substantially similar in its provisions to the amendments effected by this Act; and
- (b) made provision for applying the benefit of such reciprocal provisions to this State.

Amendment of long title of principal Act.

8. The long title of the principal Act is amended by striking out the words “and Protectorates” in the second line of the long title and substituting the words—

“British Protectorates and Territories in respect of which a mandate has been accepted by His Majesty or by any part of His Majesty’s Dominions.”