

CHAPTER FIVE

MODEL LEGISLATION

This Chapter includes two pieces of model legislation. The first is a draft Maintenance Orders (Facilities for Enforcement) Bill. The Bill has three main objects. Two concern international conventions examined in this paper; the Bill contains provisions enabling effect to be given in the law of the enacting country to the United Nations Convention and the Hague Enforcement Convention. For reasons already given, the Bill does not make provision in respect of the Hague Applicable Law Convention. The other principal object of the Bill is to make improved provision for the registration and enforcement of maintenance orders as between Commonwealth jurisdictions.

The background to the existing Commonwealth legislation on maintenance orders is fully examined in Chapter 3 of The Recognition and Enforcement of Judgments and Orders and the Service of Process within the Commonwealth - A Further Report considered by the Commonwealth Law Ministers in 1977. After the matter had been examined at Regional Meetings in Basseterre (St. Kitts), Apia (Western Samoa) and Nairobi (Kenya), the position was summarised as follows in a memorandum submitted to the 1980 Law Ministers' Meeting (LMM(80)17):

"17. Almost all Commonwealth countries have legislation based upon a scheme devised in 1920. That Scheme caters for both situations encountered in this area:

(i) that in which the payer under a maintenance order leaves the jurisdiction in which the order was made, so that the payee needs to be enabled to enforce the order in the country to which the payer has gone; and

(ii) that in which a claim for maintenance is made against a defendant who has already taken up residence abroad, e.g. a claim by a wife against a husband who has travelled abroad and has now ceased to remit payments for her support.

18. This Scheme, like that on Grants of Administration is defective in a number of respects:

(i) coverage of the scheme: the legislation implementing the scheme is to be found in virtually common form in almost all countries of the Commonwealth. However, it does not apply automatically in relation to other Commonwealth countries but only those specifically designated as reciprocating states. This formality has been recognised as no longer necessary and is not required in relation to other Commonwealth countries in legislation already in force in New Zealand and Western Samoa.

(ii) refinement of procedure: the basic scheme has been found to contain lacunae and procedural difficulties. In countries in which the scheme has been heavily used, notably Australia and Canada, there have been a number of revisions incorporating improvements; many of these improvements were in the United Kingdom's Maintenance Orders (Reciprocal Enforcement) Act 1972 referred to at the 1973 Law Ministers'

Meeting. They have not been taken into account in the legislation of many Commonwealth member countries.

(iii) inapplicability to non-Commonwealth countries: the features of the Commonwealth scheme which have proved most beneficial in practice, notably the "shuttlecock" procedure designed to meet the second of the two situations outlined in para. 17 are, unfortunately, not found in the legislation of countries outside the Commonwealth. It is therefore impossible to designate such countries as reciprocating countries, and some different approach is needed.

19. After detailed discussions at the Regional Meetings there was general agreement to the following strategy:

(i) the refurbishment of the Commonwealth scheme to take account of the various improvements adopted in recent revisions, to include a wide definition of maintenance orders (including, in particular, affiliation orders, a matter once controversial but upon which there was very wide agreement at the Regional Meetings), and to dispense with the requirement for the designation of reciprocating countries so far as other Commonwealth countries are concerned;

(ii) to encourage more Commonwealth countries to accede to the United Nations Convention on the Recovery Abroad of Maintenance which provides a mechanism for dealing with claims against absent defendants (i.e. the second situation identified in para. 17) which is less satisfactory than that in the Commonwealth scheme but provides a useful basis for governing relations with non-Commonwealth countries; and

(iii) similarly to encourage more Commonwealth countries to accede to The Hague Convention on the Enforcement of Decisions Relating to Maintenance Obligations which deals with the enforcement of existing orders (and so with the first situation identified in para. 17) and is, again, suitable for governing relationships with civil law and other non-Commonwealth countries.

20. A Model Bill was prepared and discussed in various versions at the Regional Meetings. It is so constructed that individual jurisdictions could adopt it so as to refurbish the Commonwealth Scheme in its local application without necessarily acceding to either of the Conventions. Ministers may think it appropriate for the Draft Bill, with full explanatory material, to be circulated to each Commonwealth jurisdiction for detailed examination and possible enactment. The Secretariat would be able to give detailed advice as required and would take account of comments and criticisms received as a result of the examination of the Bill by the relevant officers of Commonwealth governments."

Accordingly, the Bill (which has undergone some small adjustments, most notably the addition of Clause 31(2), since it was presented to the Law Ministers) is set out in this paper, and is followed by some notes on each Clause.

The second piece of model legislation is much more tentative in nature. It is a set of draft Rules to be made under the draft Bill. The Bill itself will require adaptation to suit local

circumstances, as the notes make clear, but this is almost certainly more true of the draft Rules. Although presented to the Regional Meeting in Nairobi, they did not receive detailed attention, and can best be regarded as indicating the type of matters which need to be prescribed. The Schedule of Forms is however of considerable importance; it is desirable that these Forms should be in a standard recognisable pattern. As the Forms are referred to in the text of the Bill, they are an essential feature of the whole package.

DRAFT MODEL BILL

entitled

MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) ACT 198—

An Act to make new provision to facilitate the enforcement of maintenance orders; to make provision with a view to the accession by [] to the United Nations Convention on the Recovery Abroad of Maintenance done at New York on 20th June 1956 and to 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.

Short title 1. This Act may be cited as the Maintenance Orders (Facilities for Enforcement) Act 198—.

Interpretation 2.(1) In this Act—

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

“certificate of arrears”, in relation to a maintenance order, means a certificate certifying that the sum specified in the certificate is to the best of the information or belief of the officer giving the certificate the amount of the arrears due under the order at the date of the certificate or, as the case may be, that to the best of his 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 registrar or other proper officer of the court to be a true copy;

“Commonwealth country” means any country outside [] 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 section 34(4);

“convention country” means a country designated by [Order] made under section 23;

“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;

“Hague Convention” means the Convention referred to in section 31, and “Hague Convention country” means a country designated by [Order] under that section.

“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 was 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 [] 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;

Provided that the expression "maintenance order" shall not include an order made in a Hague Convention country of a description which that country or [] has reserved the right under article 26 of The Hague Convention not to recognise or enforce

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

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

"prescribed" means prescribed by rules of court;

"provisional order" means (according to the context)—

(a) an order made by a court in [] 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) an order 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 [] having power under Part I of this Act to confirm it;

"registered order" means an order which is for the time being registered in a court in [] under Part III;

"registering court", in relation to a registered order, means the court in which that order is for the time being registered;

"related documents" means—

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

(b) a certificate of arrears signed by the registrar of the registering court;

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

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

"the responsible authority", in relation to a Commonwealth country, means any person who in that country has functions similar to those of the [Minister for Foreign Affairs] under Part I, and in relation to a Hague Convention country means the appropriate authority in that country.

(2) Any reference in this Act to the payment of money for the maintenance of a child shall be construed as including a reference to the payment of money for the child's education.

PART I

ENFORCEMENT OF MAINTENANCE ORDERS MADE IN [] AND IN COMMONWEALTH COUNTRIES

ORDERS MADE BY COURTS IN []

Transmission of a maintenance order made in [] for registration in a Commonwealth country

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

(2) Where it appears that the payer under a maintenance order to which this section applies is residing in or is proceeding to a Commonwealth country, the registrar of the court by which the order was made [or in which it is registered] may, of his own motion or on the application of a payee under the order, send to the [Minister for Foreign Affairs] a Request for Registration in the prescribed form.

(3) The [Minister for Foreign Affairs] 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 section shall be taken as affecting any jurisdiction of a court in [] with respect to a maintenance order to which this section applies, and subject to section 7 any such order may be enforced, varied or revoked accordingly.

Provisional orders for confirmation in a Commonwealth country	<p>4.(1) Where an application is made to a court in [] 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 [] 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.</p> <p>(2) Where a court makes a provisional order by virtue of this section, the registrar of the court shall send to the [Minister for Foreign Affairs] a Request for Confirmation in the prescribed form.</p>
Effect of confirmation	<p>5. A provisional order made by virtue of section 4 which has been confirmed by a competent court in a Commonwealth country shall be treated for all purposes as if the court in [] 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 7 any such order may be enforced, varied or revoked accordingly.</p>
Further proceedings in respect of a provisional order	<p>6.(1) Where before a provisional order made by virtue of section 4 is confirmed, either—</p> <p style="padding-left: 40px;">(i) a document, duly authenticated, setting out or summarising evidence taken in a Commonwealth country for the purpose of proceedings relating to the confirmation of the order is received by the court in [] which made the order; or</p> <p style="padding-left: 40px;">(ii) 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 [] for the purpose of such proceedings,</p> <p>the court in [] which made the order shall consider that evidence.</p> <p>(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—</p> <p style="padding-left: 40px;">(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</p> <p style="padding-left: 40px;">(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.</p> <p>(3) Where a court makes a fresh provisional order by virtue of the preceding sub-section, the registrar of the court shall send in the prescribed manner to the court in the Commonwealth country a Request for Confirmation in the prescribed form.</p>
Variation and revocation in [] of orders	<p>7.(1) This section applies to a maintenance order which has been transmitted to a Commonwealth country in pursuance of section 3 and to a provisional order made by virtue of section 4 which has been confirmed by a competent court in a Commonwealth country.</p> <p>(2) A court in [] which, having considered an application for the variation of an order to which this section applies, proposes to vary the order—</p> <p style="padding-left: 40px;">(a) may do so by a provisional order; and</p> <p style="padding-left: 40px;">(b) shall do so by a provisional order where it proposes to increase the rate of payments under the order unless either—</p> <p style="padding-left: 80px;">(i) both the payer and the payee under the order appear in the proceedings; or</p> <p style="padding-left: 80px;">(ii) the applicant appears and the appropriate process has been duly served on the other party.</p> <p>(3) Where a court in [] makes a provisional order by virtue of this section, the registrar of the court 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.</p>
Confirmation of provisional orders affecting orders made in []	<p>8.(1) This section applies to a maintenance order which has been transmitted to a Commonwealth country in pursuance of section 3 and to a provisional order made by virtue of section 4 which has been confirmed by a competent court in a Commonwealth country.</p> <p>(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 section applies, together</p>

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 [] 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 section, 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.

ORDERS MADE IN COMMONWEALTH COUNTRIES

Registration in [] court of maintenance order made in a Commonwealth country

9.(1) This section 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 section, the registrar of a court in [] who receives from the [Minister for Foreign Affairs] a certified copy of an order to which this section applies shall register the order in the prescribed manner in the court.

(3) Before registering an order under this section, the registrar shall take such steps as he thinks fit for the purpose of ascertaining whether the payer is residing within the jurisdiction of the court, 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 [Minister for Foreign Affairs] with a statement giving such information as he possesses as to the whereabouts of the payer.

Setting aside registration

10. The registration of an order under section 9 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 section applies.

Confirmation and registration in [] of a provisional order made in a Commonwealth country

11.(1) This section 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 registrar of a court in [] receives from the [Minister for Foreign Affairs] 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,

the registrar 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 registrar shall return the certified copy of the order and documents which accompanied it to the [Minister for Foreign Affairs] with a statement giving such information as he possesses as to the whereabouts of the payer.

(4) Subject to the provisions of section 19 of this Act, 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 registrar shall return the certified copy of the order and the documents which accompanied it to the [Minister for Foreign Affairs].

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

Enforcement in [] of orders registered under Part I	<p>12.(1) An order registered in a court in [] by virtue of section 9(2) or 11(7) may be enforced in [] as if it had been made by the court in which it is registered 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.</p> <p>(2) The registrar of the court by which an order is enforceable by virtue of this section shall take all such steps for enforcing the order as may be prescribed.</p> <p>(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 this Part a certificate of arrears sent to the court or to the registrar thereof shall be evidence of the facts stated therein.</p> <p>(4) Subject to subsection (5), sums of money payable under an order registered under this Part shall be payable in accordance with the order as from the date on which the order was made.</p> <p>(5) A court confirming an order under section 11(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.</p>
Variation and revocation of orders registered under Part I	<p>13.(1) This section applies to orders registered in [] by virtue of section 9(2) or 11(7).</p> <p>(2) The court in which an order to which this section applies is registered 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.</p> <p>(3) Where the court in which an order to which this section applies is registered varies the order it may do so by means of a provisional order and shall do so unless—</p> <p style="padding-left: 40px;">(a) both the payer and the payee are for the time being residing in []; or</p> <p style="padding-left: 40px;">(b) the application is made by the payee; or</p> <p style="padding-left: 40px;">(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 registered by virtue of section 11(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.</p> <p>(4) When the court in which an order to which this section applies is registered 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 [].</p> <p>(5) On an application for the revocation of an order to which this section applies, the court shall, if both the payer and the payee are for the time being residing in [], apply the law of [], 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 subsection 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.</p> <p>(6) Where a court makes a provisional order under this section, the registrar 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.</p>
Confirmation of provisional orders affecting orders registered under Part I	<p>14.(1) This section applies to orders registered in [] by virtue of section 9(2) or 11(7).</p> <p>(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 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 a court in [] in which an order to which this section applies is registered, 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 makes reasonable.</p>

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

(4) The registrar of the court in which any order to which this section applies is registered shall register in the prescribed manner any order varying such an order.

Cancellation of registration and transfer of order

15.(1) This section applies to orders registered in [] by virtue of section 9(2) or 11(7).

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

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

(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 []; 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 registrar of that court shall cancel the registration; but any arrears due under the order at the date when its registration is cancelled shall continue to be recoverable as if the registration had not been cancelled.

(3) Where the registrar of a court in which an order to which this section applies is registered is of opinion that the payer has ceased to reside within the jurisdiction of that court, he shall cancel the registration of the order and subject to sub-section (4) shall send the certified copy of the order to the [Minister for Foreign Affairs].

(4) Where the registrar of a court in which an order to which this section applies is registered is of opinion that the payer is residing within the jurisdiction of another court in [], he shall transfer the order to that court by sending the certified copy of the order to the registrar of that other court, and that registrar shall, subject to subsection (6) register the order in the prescribed manner in that court.

(5) Where the certified copy of an order is received by the [Minister for Foreign Affairs] under this section and it appears to him that the payer is still residing in [], he shall send the certified copy of the order to the registrar of the court within the jurisdiction of which it appears that the payer is residing, and the registrar of that court shall, subject to sub-section (6), register the order in the prescribed manner in that court.

(6) Before registering an order under sub-section (4) or (5), the registrar shall take such steps as he thinks fit for the purpose of ascertaining whether the payer is residing within the jurisdiction of the court, 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 [Minister for Foreign Affairs] with a statement giving such information as he possesses as to the whereabouts of the payer.

(7) A registrar required by the provisions of this section to send to the [Minister for Foreign Affairs] or to the registrar of another court the certified copy of an order shall send with that copy—

(a) a certificate of arrears signed by him;

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

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

Transmission of certain orders by [Minister for Foreign Affairs]

16.(1) This section applies to maintenance orders received by the [Minister for Foreign Affairs] from the responsible authority in a Commonwealth country and to orders which have been registered in a court in [] by virtue of section 9(2) or 11(7).

(2) If it appears to the [Minister for Foreign Affairs] that the payer under an order to which this section applies is not residing or has ceased to reside in [], 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 a court in [], a certificate of arrears signed by the registrar of the court in which it was last registered;

(c) a statement giving such information as the [Minister for Foreign Affairs] 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 sub-section (2) are sent to the responsible authority in a Commonwealth country other than that in which the order in question was made, the [Minister for Foreign Affairs] shall inform the responsible authority in the Commonwealth country in which the order was made of what he has done.

SUPPLEMENTAL

Appeals

17.(1) No appeal shall lie from a provisional order made under any provision of this Part of this Act by a court in [] .

(2) Where any court in [] refuses to make a provisional order in pursuance of section 4 or revokes a provisional order in pursuance of section 6, 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, any court in [] 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, any court in [] makes, or refuses to make, an order varying or revoking a maintenance order made by a court in a Commonwealth country, then, subject to sub-section (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 [] .

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

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

18.(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 [] of the evidence of a person residing therein relating to matters specified in the request, a court in [] 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 section shall be sent in the prescribed manner by the registrar of the court to the court in the Commonwealth country by or on behalf of which the request was made.

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

19.(1) A court in [] 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 [] considering the confirmation of an order under section 11 and remitting the case in accordance with this section may make such interim order for periodical payments by the payer as it thinks fit.

Conversion of currency

20.(1) Where the sums of money required to be paid under an order registered in a court in [] 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 [] , then, as from the relevant date, the sums shall be treated as such sums in the currency of [] as are equivalent thereto on the basis of the rate of exchange prevailing at that date.

(2) For the purposes of this section a written certificate purporting to be signed by an officer of any bank in [] 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

[] 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 section “the relevant date” means—

(a) in relation to an order which is registered in a court in [] 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 under this Act;

(b) in relation to an order which has been varied, the date on which the last order varying that order is registered under this Act.

Orders in foreign language

21. Where a maintenance order sought to be registered or confirmed in [] 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 approved by the registrar of the court, and upon such approval being given the order shall be deemed to be in the English language.

PART II

EXTENSION OF PART I TO NON-COMMONWEALTH COUNTRIES

Extension of Part I to non-Commonwealth countries

22. The [Head of State] may by [Order] declare that the provisions of Part I, with such exceptions, adaptations and modifications as may be specified in the [Order] shall apply as if any country designated in the [Order] were a Commonwealth country.

PART III

RECIPROCAL ENFORCEMENT OF CLAIMS FOR THE RECOVERY OF MAINTENANCE

CONVENTION COUNTRIES

Convention countries

23. The [Head of State] may by [Order] declare that any country or territory specified in the [Order], being a country or territory outside [] and not being a Commonwealth country or a country designated in an [Order] under section 22, 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 Act.

APPLICATION BY PERSON IN [] FOR RECOVERY ETC. OF MAINTENANCE IN A CONVENTION COUNTRY

Application by person in []

24.(1) Where a person in [] (“the applicant”) claims to be entitled to recover in a convention country maintenance from another person, and that other person is for the time being subject to the jurisdiction of that country, the applicant may apply to the [Minister for Foreign Affairs], in accordance with the provisions of this section, 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 [Minister for Foreign Affairs], in accordance with the provisions of this section, to have his application for the variation of that provision transmitted to that country.

(3) An application to the [Minister for Foreign Affairs] under this section shall be made through the registrar of the prescribed court 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 [Minister for Foreign Affairs], together with such other documents, if any, as are required by that law.

(4) On receiving an application from the registrar, the [Minister for Foreign Affairs] 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 [Minister for Foreign Affairs] may request the registrar to obtain from the court of which he is registrar such information relating to the application as may be specified in the request, and it shall be the duty of the court to furnish the [Minister for Foreign Affairs] with the information he requires.

APPLICATION BY PERSON IN CONVENTION COUNTRY FOR RECOVERY OF MAINTENANCE IN []

Application
by person in
convention
country

25.(1) Where the [Minister for Foreign Affairs] receives from the appropriate authority in a convention country an application by a person in that country for the recovery of maintenance from another person ("the defendant") who is for the time being residing in [], he shall send the application, together with any accompanying documents, to the registrar of the prescribed court.

(2) On receiving the application in accordance with sub-section (1), the registrar shall cause proceedings to be commenced in the court for the consideration of the application.

(3) If a summons to appear in the proceedings cannot be duly served on the defendant, the registrar shall subject to sub-section (4) return the application, together with any accompanying documents, to the [Minister for Foreign Affairs] with a statement giving such information as he possesses as to the whereabouts of the defendant.

(4) If a registrar who receives an application in accordance with sub-section (1) is satisfied that the defendant is residing within the jurisdiction of another court in [], he shall send the application, together with any accompanying documents, to the registrar of that other court and shall inform the [Minister for Foreign Affairs] that he has done so.

(5) A registrar receiving an application under sub-section (4) shall proceed as if he had received it under sub-section (1).

(6) In any case not falling under sub-section (3) or (4), the court shall proceed as if the applicant were before the court.

(7) If the court makes an order on the application the registrar shall register the order in the prescribed manner in the court.

FURTHER PROVISIONS AS TO REGISTERED ORDERS

Transfer or
return of orders

26.(1) Where the registrar of the registering court is of opinion that the payer under a registered order has ceased to reside within the jurisdiction of the court he shall cancel the registration and, subject to sub-section (2), send a certified copy of the order and the related documents to the [Minister for Foreign Affairs].

(2) Where the registrar of the registering court is of opinion that the payer under a registered order is residing within the jurisdiction of another court in [], he shall transfer the order to that other court by sending a certified copy of the order and the related documents to the registrar of that court and, subject to sub-section (4), that registrar shall register the order in the prescribed manner in that court.

(3) Where a certified copy of an order is received by the [Minister for Foreign Affairs] under sub-section (1) and it appears to him that the payer under the order is still residing in [] he shall transfer the order to the court within the jurisdiction of which the payer is residing by sending the copy of the order and the related documents to the registrar of that court and, subject to sub-section (4), that registrar shall register the order in the prescribed manner in that court.

(4) Before registering an order in pursuance of sub-section (2) or (3), a registrar of a court shall take such steps as he 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 he is satisfied that the payer is not so residing he shall return the certified copy of the order and

the related documents to the registrar or the [Minister for Foreign Affairs], as the case may be, from whom he received them, together with a statement giving such information as he possesses as to the whereabouts of the payer.

Enforcement of orders

27.(1) The registrar of the court in which an order is registered under this Part shall take all such steps for enforcing the order as may be prescribed.

(2) A registered order which is registered in a court other than the court by which the order was made may be enforced as if it had been made by the registering court and as if that court had had jurisdiction to make it.

(3) In any proceedings for or with respect to the enforcement of a registered order, a certificate of arrears sent under section 26 to the registrar of the court shall be evidence of the facts stated therein.

Variation and revocation of orders

28.(1) The registering court shall have jurisdiction to hear any application by the payer or the payee for the variation or revocation of a registered order where the defendant to the application is residing in [] or in a convention country.

(2) Where the [Minister for Foreign Affairs] receives from the appropriate authority in a convention country an application by a person in that country for the variation or revocation of a registered order, he shall send the application, together with any accompanying documents, to the registrar of the registering court.

(3) On receiving the application in accordance with sub-section (1), the registrar 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 a registered order unless

(a) in the case of a defendant to the application residing in [], 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.

Obtaining of evidence for purpose of proceedings in []

29.(1) A court in [] may for the purpose of any proceedings in that court under this Part arising out of an application received by the [Minister for Foreign Affairs] from a convention country request the [Minister for Foreign Affairs] 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 a court under this section shall—

(a) give details of the application in question;

(b) state the name and address of the person whose evidence is to be taken; and

(c) specify the matters relating to which the evidence of that person is required.

(3) If the [Minister for Foreign Affairs] is satisfied that a request made to him under this section contains sufficient information to enable the evidence of the person named in the request relating to the matters specified therein to be taken by a court or person in the convention country, he shall transmit the request to the appropriate authority or court in that country.

Taking of evidence at request of court in a convention country

30.(1) Where a request is made to the [Minister for Foreign Affairs] by or on behalf of a court in a convention country to obtain the evidence of a person residing in [] relating to matters connected with an application to which section 24 applies, the [Minister for Foreign Affairs] shall request such court, or such registrar or other officer of a court, as he may determine to take the evidence of that person relating to such matters connected with that application as may be specified in the request.

(2) The court by which or registrar or other officer by whom a request under sub-section (1) is received from the [Minister for Foreign Affairs] 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 registrar to the court in the convention country by or on behalf of which the request referred to in sub-section (1) was made.

PART IV

ENFORCEMENT UNDER THE HAGUE CONVENTION

HAGUE CONVENTION COUNTRIES

Hague Con-
vention
countries

31.(1) The [Head of State] may by [Order] declare that any country or territory specified in the [Order], being a country or territory outside [] and not being a Commonwealth country or a country designated in an [Order] under section 22, 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 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.

ORDERS MADE BY COURTS IN []

Transmission of
a maintenance
order made in
[]
for registration
in a Hague Con-
vention country

32.(1) This section applies to any maintenance order, not being a provisional order or an order made by virtue of a provision of Part III, made, whether before or after the commencement of this Part, by a court in [] if—

- (a) either the payer or the payee had his habitual residence in [] at the time when the application for the maintenance order was made; or
- (b) the payer and the payee were citizens of [] 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 section applies is residing in or is proceeding to a Hague Convention country, the registrar of the court by which the order was made [or in which it is registered] may, of his own motion or on the application of a payee under the order, send to the [Minister for Foreign Affairs] a Request for Enforcement in the prescribed form.

(3) The [Minister for Foreign Affairs] 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 section shall be taken as affecting any jurisdiction of a court in [] with respect to a maintenance order to which this section applies, and, subject to section 33, any such order may be enforced, varied or revoked accordingly.

Variation and
revocation in
[]
of orders

33.(1) This section applies to a maintenance order which has been transmitted to a Hague Convention country by virtue of section 32

(2) Where an application is made to a court in [] by the payee for the variation or revocation of an order to which this section applies, and the payer is residing in a Hague Convention country, the registrar of the court shall send to the [Minister for Foreign Affairs] 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 [] varies or revokes an order to which this section applies, the registrar of the court shall send to the [Minister for Foreign Affairs] a Notice of Variation or Revocation in the prescribed form.

ORDERS MADE BY COURTS IN HAGUE CONVENTION COUNTRIES

Registration
in []
of maintenance
order made in
Hague Conven-
tion country

34.(1) This section 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 section, the registrar of a court in [] who receives from the [Minister for Foreign Affairs] a certified copy of an order to which this section applies shall register the order in the prescribed manner in the court.

(3) Before registering an order under this section, the registrar shall take such steps as he thinks fit for the purpose of ascertaining whether the payer is residing within the jurisdiction of the court, 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 [Minister for Foreign Affairs] with a statement giving such information as he possesses as to the whereabouts of the payer.

(4) (a) The registrar 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; or

(ii) the payer and the payee were nationals of that country at that time; or

(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 recognised by the law of [] 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 registrar shall be bound by any finding of fact on which the court based its jurisdiction.

(5) The registrar 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 [] 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 [] or in another country provided that in the latter case the order fulfils the conditions necessary for its recognition and enforcement in [] under this Act.

(6) Without prejudice to sub-section (5), if the payer did not appear in the proceedings in the Hague Convention country in which the order was made, the registrar 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.

Setting aside registration

35.(1) The payer may apply to the court in which an order is registered under section 34 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 section 34 applies or that the registrar should have refused to register the order under subsection (6) of that section.

(3) The court may set aside the registration on any ground upon which the registrar might have refused to register the order under section 34.

Appeals against refusal to register

36. The payee may appeal to the court against any refusal by the registrar to register an order to which section 34 applies.

Enforcement in [] of orders registered under section 34

37.(1) An order registered in a court in [] by virtue of section 34 may be enforced in [] 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 registrar of the court by which an order is enforceable by virtue of this section 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 section 42, a certificate of arrears sent to the court or the registrar thereof shall be evidence of the facts stated therein.

(4) Subject to subsection (5), sums of money payable under an order registered under section 42 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 [] and that country, no sums of money falling due before that date shall be payable in accordance with the order.

Cancellation transfer and transmission of orders registered under section 34

38.(1) This section applies to a maintenance order registered in a court in [] by virtue of section 34.

(2) Subject to the following subsections, section 15 and 16 shall apply in relation to orders to which this section 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 section applies, section 15 shall be amended by the omission of subsection (2)(b).

(4) In its application to the orders to which this section applies, section 16 shall be amended by the omission in subsection (2) of the words "which in all the circumstances is appropriate" and of subsection (3).

SUPPLEMENTAL

- Obtaining of evidence for purpose of proceedings in []
39. A court in [] 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 [Minister for Foreign Affairs] 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.
- Obtaining of evidence for the purpose of proceedings in a Hague Convention country
- 40.(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 [] of the evidence of a person residing therein relating to matters specified in the request, a court in [] 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 section shall be sent by the registrar of the court to the [Minister for Foreign Affairs] for transmission to the responsible authority in the Hague Convention country.
- Conversion of currency
41. Section 20 shall apply in relation to orders made by a court in a Hague Convention country as if that country were a Commonwealth country.

PART V

SUPPLEMENTAL

- Provisional order to cease to have effect on remarriage
- 42.(1) Where a court has, by virtue of Section 4, 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 reference in this section to remarriage include references to a marriage which is by law void or voidable.
- Admissibility of evidence given abroad
- 43.(1) A statement contained in—
- (a) a document, duly authenticated, which purports to set out or summarise evidence given in proceedings in a court in a Commonwealth country, a convention country, a Hague Convention country or a country designated in an [Order] under section 22; or
 - (b) a document, duly authenticated, which purports to set out or summarise evidence taken in such a country for the purpose of proceedings in a court in [] under this Act, 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 [] under this Act (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 these proceedings.
- (2) A document purporting to set out or summarise evidence given as mentioned in sub-section (1)(a), or taken as mentioned in sub-section (1)(b), shall be deemed to be duly authenticated for the purposes of that sub-section if the document purports to be certified by the judge, magistrate, or other person before whom the evidence was given or, as the case may be, by whom it was taken, to be the original document containing or recording or, as the case may be, summarising, that evidence or a true copy of that document.

(3) A document purporting to have been received in evidence as mentioned in sub-section (1)(c), or to be a copy of a document so received, shall be deemed to be duly authenticated for the purposes of that sub-section if the document purports to be certified by a judge, magistrate or officer of the court in question to have been, or to be a true copy of a document which has been, so received.

(4) It shall not be necessary in any such proceedings to prove the signature or official position of the person appearing to have given such a certificate.

(5) Nothing in this section shall prejudice the admission in evidence of any document which is admissible in evidence apart from this section.

Order, etc.,
made abroad
need not be
proved

44. For the purposes of this Act, unless the contrary is shown—

(a) any order made by a court in a Commonwealth country, a Hague Convention country or a country designated in an [Order] under section 22 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 authorised 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.

Rules of court

45. Without prejudice to the generality of the powers conferred under [the relevant legislation] [the appropriate authority] may make rules of court prescribing the practice and procedure under this Act.

Repeals

46. The [Maintenance Orders (Facilities for Enforcement) Act 192–] is hereby repealed.

Transitional
provisions

47.(1) Where immediately before the commencement of Part I, a country was one to which the [Act repealed by s.46] extended, the provisions of that Part shall apply to any order made under that Act by a court in [] against a person residing in that country and to any order made by a court in that country against a person residing in [] and transmitted to [] for the purpose of proceedings under that Act.

(2) Any proceedings brought under or by virtue of any provision of the [Act repealed by s.46] in a court in [] which are pending immediately before the commencement of Part I shall be continued as if they had been brought under or by virtue of the corresponding provision of this Act.

Commencement

48. This Act shall come into force on such day as the [Head of State] may by [Order] appoint and different days may be so appointed for different provisions or for different purposes.

Clause 1. In the absence of any requirement of reciprocity insofar as the principal provisions are concerned, this seems to be the most appropriate Short Title. It is also the Short Title retained in many jurisdictions which have legislation on this matter dating from the 1920s.

Clause 2. Clause 2(1) contains definitions of terms. Most are based upon definitions contained in the Maintenance Orders (Reciprocal Enforcement) Act 1972 (U.K.), but there are significant differences. In the U.K. Act, definitions are given in a variety of places within the Act (principally in sections 21(1), 32(8) and 39) but have been brought together in this Draft Bill. The U.K. definitions make no provision for certain terms used in connection with the Hague Convention (i.e. Part IV of the present Draft Bill) (but see U.K. S.I. 1979 No.1317 which remedies this deficiency), and use terms such as "reciprocating country" which are inappropriate in the changed situation in which this Draft Bill was prepared.

The definition of "Commonwealth country" is based on that in section 66(1) of the Domestic Proceedings Act 1968 of New Zealand. It includes dependent and other territories for the foreign relations of which a Commonwealth member State is responsible, territories which may well not be included in the definition of "Commonwealth" provided in general Interpretation Acts.

The definition of "court", corresponding to that in section 21(1) of the U.K. Act, is a wide one. It includes agencies not generally regarded as in any sense judicial such as the New Zealand Department of Social Security to which the task of enforcing orders has been transferred.

The definition of "maintenance order" is crucial to the whole Draft Bill. Affiliation orders are included, reversing the policy in the 1920 legislation and reflecting action already taken in Australia, Canada and New Zealand. The distinction between an affiliation order and an "order consequent upon an affiliation order" reflects the separability of paternity and maintenance proceedings in New Zealand and some other jurisdictions. Lump sum payments are not included, except for certain payments as to expenses in affiliation cases. Although the definition is based on the U.K. model, the inclusion of funeral expenses of a mother (i.e. after death in child birth) reflects the Family Law Act 1975, s.109, of Australia. The possibility of including other lump sums was discussed at the Nairobi meeting but it became clear that there were difficulties in limiting the scope of any such extension in a way which would be found generally acceptable. Paragraph (c) of this definition applies to recovery by public bodies, and the drafting takes account of the rules in the Hague Convention (arts. 18-20). Article 26 of that Convention, referred to in the proviso to this definition permits reservations excluding whole categories of orders (e.g. those between persons related collaterally or by affinity). Legislation in some Commonwealth jurisdictions contains express provisions for severing those parts of an order which do not relate to maintenance; the opening lines of the present definition have this effect, and no separate provision is required.

PART 1

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.

Clauses 3 to 8 inclusive deal with orders made in the country enacting the legislation.

Clause 3 (transmission of a maintenance order for registration in a Commonwealth country) deals with final (i.e. not provisional) maintenance orders made by any court in the enacting country. Orders made under Part III (e.g. under clause 25) are excluded to restrict the scope of the present clause to the familiar standard cases. Clause 3(2) is based in part upon the Australian Family Law Regulations 1975, reg. 145(1). The special features of that provision, not found in other models, are (i) the power given to the registrar to act on his own motion, so simplifying procedures as much as possible; and (ii) provision 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. Following the suggestion of the St. Kitts meeting, a form of Request for Registration is to be prescribed in Rules; this enables provision to be made for the supply of full information to the authorities in the receiving country yet simplifies the drafting of the Clause. Clause 3(4) preserves the jurisdiction of the court which originally made the order to enforce, vary or revoke it. This is however subject to clause 7, which requires certain variations to be by provisional orders. The Clause applies to orders by inferior as well as superior courts, and to orders of any date. "The responsible authority" is defined in clause 2(1).

Clause 4 (provisional orders for confirmation in a Commonwealth country). This Clause enables courts in the enacting country 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 clause 2(1) as an order which is provisional only and has no effect unless and until confirmed, with or without alteration, by a competent court in a Commonwealth country. As drafted, the Clause extends to any court in the enacting jurisdiction; it is for local decision whether this should be qualified (e.g. by limiting it to inferior courts, as in the U.K., or to designated courts). Clause 4(1) follows the Australian Family Law Regulations 1975, reg. 147(1) in making reference to persons "proceeding to" a Commonwealth country. Clause 4(2) and the prescribed form of Request for Confirmation is an innovation, based on the suggestion of the St. Kitts meeting. In some jurisdictions it may be necessary to include provisions corresponding to section 3(3) of the U.K. Act (circumventing a rule preventing a court from making certain orders unless it also deals with the legal custody of a child) and to section 3(4) of that Act (which excludes the reference of a case from an inferior court - which in the U.K. is the only court with jurisdiction to make a provisional order - to a superior court).

Clause 5 (effect of confirmation) states the legal position in the enacting jurisdiction 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 the courts in the enacting jurisdiction. This means that it can be enforced there should the payer ever return, and that jurisdiction exists to vary or revoke it - subject to clause 7, requiring certain variations to be by provisional orders. Clause 5 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.

Clause 6 (further proceedings in respect of a provisional order) 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. Earlier legislation based on the U.K. Act of 1920 commonly provides for the case in which a request is made by the overseas court for further evidence; the court which made the provisional order takes this evidence and may rescind its order in the light of that evidence. This Clause follows section 5(9) of the U.K. Act of 1972 in also dealing 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 in providing expressly that the original applicant should be given the opportunity to make representations and adduce further evidence. The Clause also makes it clear, following in this respect the Family Law Regulations (Australia), reg. 147(5), that where the original provisional order is rescinded, a fresh provisional order can be made, and indicates the procedure to be followed thereafter.

Clause 7 (variation and revocation in the enacting country of orders). Clauses 3(4) and 5 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. This Clause governs the exercise of this power. 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. Clause 7(2) accordingly provides that in such cases a provisional order must be made, requiring confirmation in the country in which the payer is resident. Although the Clause appears more elaborate than the corresponding provision in legislation dating from the 1920s it will in some cases simplify matters. Under the 1920-model legislation all variations of orders originally made as provisional orders have themselves to be by provisional order: see section 3(5), Proviso, of the U.K. Act of 1920.

Clause 8 (confirmation of provisional orders affecting orders made in the enacting country). This Clause deals with cases in which variation or revocation is initiated not in the country in which the order was first made but in the Commonwealth country to which

the order 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 Clause enables the court which originally made the order to consider a provisional order made overseas to this end, and to decide whether or not to confirm it. Clause 8(2) effectively safeguards the interests of the payee who will be a defendant.

Clauses 9 to 16 deal with orders originating in other Commonwealth countries.

Clause 9 (registration in the enacting country of maintenance order made in a Commonwealth country) 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 Minister. If the Minister is satisfied that the payer is not in fact resident in the receiving country, he will act under clause 16; but in every other case he will send the order for registration under this Clause. There is no requirement under this Draft Bill, as there is in legislation based on the U.K. Act of 1920 (see s.1(1) of that Act), 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 which it has been registered, or to which it was sent in the belief that the payer was resident there. The draft Clause may need adaptation to spell out the duty of the Minister to send the order for registration in a particular court (for example, a Family Court, or a local court at the place of residence of the payer).

Clause 10 (setting aside registration) is based upon section 63 of the Domestic Proceedings Act 1968 of New Zealand. Most legislative models make no express provision for cases of registration which turn out to have been mistaken, the order not falling within the scope of the local legislation. Such cases will be few, and there will almost certainly be procedures available to correct the mistake, under some general legislation. It was, however, thought desirable to make the point explicit. It is not provided that the registration shall be deemed to have been valid until it is set aside; it is treated as a nullity.

Clause 11 (confirmation and registration in the enacting country of a provisional order made in a Commonwealth country) deals with the procedure on the receipt of a provisional order made in another Commonwealth country. As under clause 9, the Minister will have to decide initially whether he is satisfied that the payer is resident in the enacting country; if he is not so satisfied, he will act under clause 16. In the more usual case, he will act by sending the order to the registrar of the appropriate court, and the draft Clause may here again need local adaptation to identify the court concerned. The provisions of the draft Clause are based on those of section 7 of the U.K. Act of 1972, but re-ordered to follow the usual course of events; the drafting is

influenced at some points by section 64 of the Domestic Proceedings Act 1968 of New Zealand. There are no changes of substance from the procedure under legislation on the 1920 model. Clause 19 referred to in clause 11(4) enables a case to be remitted to the overseas court for further evidence to be taken.

Clause 12 (enforcement in the enacting country of orders registered under Part I). Legislation based on the 1920 model commonly provides that a registered 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 the enacting country, and imposes a duty on court officers to take active steps on behalf of the absent payee. In some countries fairly elaborate provision is made; for example, to apply to these orders the law applicable to maintenance orders on such points as the accrual and remission of arrears and the duty of the payer to notify his address. Other countries rely upon general references to the statute law as to procedure in maintenance order cases generally. The present draft Clause may well need local adaptation in these respects. The provisions included in the draft are designed to identify the sums payable; enforcement procedures are to be prescribed by rules of court. Under the 1920 model legislation, 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; clause 12(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.

Clause 13 (variation and revocation of orders registered under Part I) is based upon a re-ordered version of section 9 of the U.K. Act of 1972. It gives considerably more power to the registering court than was given under the 1920 model, especially in enabling that court to vary or revoke final orders registered under clause 9(2). Under the earlier legislation this could not be done, even if both parties were now resident in the registering country. Under the new provisions, 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 the enacting country, 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 clause 13(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 (for those countries still operating under the 1920-model legislation would not have power to confirm such a provisional order). In such a case the court, if it wished to obtain evidence as to the payee's financial circumstances, could make use of clause 19(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; clause 13(5) makes an exception in the case where both parties are resident in the enacting country and the application is for revocation; in such a case there seems no reason not to apply the law of that country.

Clause 14 (confirmation of provisional orders affecting orders registered under Part I) deals with the corresponding case in which the registered order is varied or revoked by a provisional order made in the country of origin or possibly in a third Commonwealth country. So far as variation is concerned, this Clause is based upon section 9(6)(7) of the U.K. Act of 1972. Those provisions do not deal with the possibility of provisional revocation orders; the U.K. draftsman seems to have considered such a possibility as remote, but they are provided for under the Family Law Regulations 1975 (Australia), reg. 154(1)(a)(ii), and to omit the power to confirm such an order could cause hardship and delay.

Clause 15 (cancellation of registration and transfer of order) makes provision for the cancellation of the registration 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 (clause 15(3)(7)). Clause 15(4)(5)(6), the cross-reference in clause 15(4) "and subject to sub-section (4)", and the words in clause 15(7) "or to the registrar of another court" all apply only in those countries divided geographically for internal jurisdictional purposes. If orders are all registered in a single Family Court, for example, those provisions should be deleted.

Clause 16 (transmission of certain orders by the Minister) has already been referred to, and deals with the procedure in a number of cases in which the payer is not residing in the country enacting the legislation.

Clauses 17 to 21 make supplemental provisions affecting proceedings under Part I.

Clause 17 (appeals) regulates appeals within the enacting country. No appeal is given from any provisional order, because that order in itself has no effect. Nor is any appeal given against the registration of a final order under clause 9; but clause 10 enables such registration to be set aside when it was outwith the powers conferred by clause 9. There are however appeals against the refusal of, or revocation of, a provisional order (the draft Clause following in this respect section 73(9) of the Domestic Proceedings Act 1968 of New Zealand); 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 the general legislation of the enacting country.

Clause 18 (obtaining of evidence for the purposes of proceedings in a Commonwealth country) enables courts in the enacting country 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 Bill. The corresponding provision in legislation on the 1920 model is much more limited; it would not extend to requests made, for example, in relation to possible variation of an order.

The draft Clause contains no provisions concerning the issue of process to compel the attendance of witnesses, authorising the payment of expenses to witnesses who are not parties, or for such matters as the appointment of examiners. Any such matters which it is desirable to cover can be the subject of local adaptation, perhaps applying more general legislation to this particular case.

Clause 19 (remission of a case to a court in a Commonwealth country; interim orders) enables a court of the enacting country to obtain evidence from the courts of other Commonwealth countries to assist it in considering an application under Part I of the Bill. Clause 19(2), based on the Family Law Regulations 1975 (Australia), reg.146(8) enables a court which exercises the power under clause 19(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.

Clause 20 (conversion of currency) is a simplified version of section 16 of the U.K. Act of 1972. No provision as to the conversion of currency was made in the 1920-model legislation and courts have had to improvise. Although practical problems do not appear to have been great, it is desirable to make the position clear. In some jurisdictions it may be desired to modify clause 20(2) to require the certificate to be issued by an officer of a designated bank.

Clause 21 (orders in Foreign language) is also designed to regulate procedure in an area not covered by express provisions in most legislation on the 1920 model. It is in the form recommended before 1979 by the Canadian Commissioners on Uniform Laws.

PART II

Clause 22 (extension of Part I to non-Commonwealth countries). There are a number of countries outside the Commonwealth and so outside the scope of Part I, principally former Commonwealth members, which have legislation compatible with Part I of this Bill, generally based on the 1920 model, or on the United States Uniform Act on the subject. This Clause, based upon section 71 of the Domestic Proceedings Act 1968 (New Zealand), enables Part I to be applied in respect of such countries. No express requirement of reciprocity is included, but it will no doubt be insisted upon in practice.

PART III

Clauses 23 to 30 which comprise Part III contain provisions giving effect to the United Nations Convention of the Recovery Abroad of Maintenance, 1956.

Clause 23 (convention countries) provides for the designation of states parties to the Convention as convention countries for the purposes of Part III of the Bill.

Clause 24 (application by person in the enacting country for recovery etc. of maintenance in a convention country) 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. Clause 24(1) provides for initial applications, and clause 24(2) for requests for variation of maintenance, so giving effect to article 8 of the Convention which extends its provisions to variation. Clause 24(5) deals with the transmission of "information relating to the application", obtained from a court in the enacting country. This is a reflection of article 4(3) of the Convention, which authorises 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 and it seems desirable that the Bill should leave the possibility open.

Clause 25 (application by person in convention country for recovery of maintenance in the enacting country) 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. Clause 25(4)(5) and the words "or (4)" in clause 25(6) will be omitted in any enacting country not divided into geographical areas for internal jurisdiction purposes. This Clause may require considerable adaptation or supplementation in some enacting countries. It may be necessary to provide for the application to cases falling within this Clause of the general law of the enacting country as to maintenance and affiliation cases. Conversely, it may be necessary to exclude applications falling within this Clause from some rules of that general law. For example in the U.K. Act of 1972 provisions can be found applying the general statute law in these areas, but dispensing with certain rules: that in affiliation cases the mother must apply within twelve months of the birth of the child and give evidence on oath and in person (see section 30(3) of the U.K. Act of 1972). Clause 25(1) follows section 27(1) of that Act in requiring the defendant to be "for the time being residing in" the enacting country; the Convention (art. 1(1)) speaks of his being "subject to the jurisdiction of" that country, and it is desirable to give a clear meaning to this phrase.

Clause 26 (transfer or return of orders) deals with the procedure to be followed when the payer under an order changes his residence. In enacting countries which are not divided into geographical areas for the purposes of internal jurisdiction rules, only clause 26(1) is required and the name of the enacting country should then be substituted for the words "the jurisdiction of the court".

Clause 27 (enforcement of orders). This Clause enables rules of court to be made regulating the enforcement of orders made under Part III. An alternative approach adopted in Fiji is to apply to such orders the generally-applicable enforcement provisions. In the case of enacting countries not divided into geographical areas for the purposes of internal jurisdiction rules, only clause 27(1) is required.

Clause 28 (variation and revocation of orders). This Clause enables a court in the enacting country to vary or revoke an order made under Part III, 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 clause 28(2)). Article 8 of the Convention deals with "variation" but does not make clear what is believed to be implicit, that this includes revocation. The U.K. Act adopts the same practice, but following discussion in Apia it was decided to deal expressly with revocation. Clause 28(4) does not provide for cases where the defendant resides in some overseas but non-convention country; this could only be dealt with if the enacting country had facilities for service of process in such countries.

Clauses 29 and 30 contain provisions similar in object to those in clauses 19 and 18 respectively, the drafting according with the terms of article 7 of the Convention. The note to clause 18 as to compelling attendance, expenses, etc., applies equally to clause 30.

PART IV

Clauses 31 to 38 which comprise Part IV contain provisions giving effect to the Hague Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations, 1973.

Clause 31 (Hague Convention countries) provides for the designation of states parties to the Hague Convention as Hague Convention countries for the purposes of Part IV of the Bill. Clause 31(2) gives effect to article 28 of the Convention.

Clause 32 (transmission of a maintenance order made in the enacting country for registration in a Hague Convention country) deals with the transmission of certain maintenance orders (not being provisional maintenance orders or orders made under Part III) for enforcement as against a payer residing in or proceeding to a Hague Convention country. The drafting is influenced by section 2 of the U.K. Act of 1972 as modified by the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1979, S.I. 1979 No. 1317. Unlike that provision, however, it incorporates, in clause 32(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. It seems desirable that the registrar should be required to satisfy himself that the order falls within the scope of the Convention in this respect before he initiates the procedure thereunder.

Clause 33 (variation and revocation in the enacting country of orders). Article 2, second paragraph, of the Hague Convention applies the Convention to orders "modifying" earlier orders. Clause 33(2), based upon section 5 of the U.K. Act of 1972 as modified by S.I. 1979 No. 1317, gives some protection to the payer by requiring service of process and by enabling him to make representations and adduce evidence. Where the payer himself makes an application, so submitting himself to the jurisdiction, the usual rules requiring notice to the other party will apply by virtue of the saving in clause 32(4).

Clause 34 (registration in the enacting country of maintenance order made in Hague Convention country). This Clause provides for the registration of orders transmitted by the authorities of a Hague Convention country. Clause 34(4) 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. Clause 34(5) gives effect to article 5, and clause 34(6) to article 6 of the convention. The drafting of clause 34, while based upon section 6 of the U.K. Act of 1972 as modified by S.I. 1979 No. 1317, departs in some respects from that model. In particular, clause 34(4)(a)(iv) ends "in that matter", following the English text of article 8 in preference to the U.K. provision (s.6(5)(a)(iv)) which ends "to make the order". Clause 34(5)(d) ends "under this Act", a wider provision than the U.K. "under this Part of this Act" (s.6(6)(d)) and one thought to accord with the intention of article 5(4) of the Convention. Under this Clause, the registrar takes the initial decision. However Clause 35 provides for applications to set aside registration if it is thought to have been done inappropriately, and Clause 36 gives a right of appeal against a refusal to register.

Clause 37 (enforcement in the enacting country of orders registered under section 34) corresponds to clause 12 which governs orders registered under Part I. The provisions as to arrears in clause 37(4)(5) accord with articles 11 and 24 of the Convention.

Clause 38 (cancellation transfer and transmission of orders registered under section 34) applies clauses 15 and 16 mutatis mutandis to orders registered under this Part.

Clauses 39 to 41 make supplemental procedural provision as to evidence and exchange rates, based on clauses 18 to 20 but adapted to suit cases falling under this Part.

PART V

Clauses 42 to 48 which comprise Part V contain supplemental and general provisions.

Clause 42 (provisional order to cease to have effect on remarriage) relates only to provisional orders made under clause 4; it is not included in Part I 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. In such countries it seems desirable that the same effect should follow in the case of a provisional order made in the enacting country and confirmed in another Commonwealth country. The Clause so provides. If there exists a provisional order which has not been confirmed, it has no effect and no provision is needed.

Clause 43 (admissibility of evidence given abroad) is a provision essential to the working of the Bill, making the various certificates and statements received from the authorities of other countries admissible in evidence. In some enacting countries there may be sufficiently broad provisions in an Evidence Act, in which case this Clause will not be required.

Clause 44 (order, etc., made abroad need not be proved) dispenses with the need to prove strictly copies of court orders and the signatures and seals they bear. The last sentence in the note to clause 43 applies here also.

Clause 45 (rules of court) is in general terms. In this respect the precedent of Canada and Singapore is preferred to that favoured in the U.K., Fiji and Hong Kong, where detailed enabling powers are listed.

Clauses 46 and 47 (repeals and transitional provisions) will need modification to meet the requirements of particular enacting countries.

Clause 48 (commencement). The provision for the appointment of different days for different purposes is particularly important because of the different nature of the provisions in Parts I, III and IV, the latter involving accession to international conventions.

VARIANT FORMS OF THE DRAFT MODEL BILL

VARIANT A.

In any enacting country not willing or unable to accede to either of the international Conventions to which the Bill gives effect, but desiring to implement the proposals in the Bill to improve its legislation on the 1920 model, the Bill should be modified as follows:

(i) In the Long Title, omit from "to make provision" to "1973".

(ii) In Clause 2(1), omit the entries relating to "competent court in a Hague Convention country", "convention country", "Hague Convention" and "Hague Convention country", "registered order", "registering court", "related documents", and in the entry relating to "the responsible authority", all words after "Part I".

(iii) In Clause 2(1), for the entry relating to "maintenance order" substitute the following:

"maintenance order" means an order (however described) of any of the following descriptions, that is to say -

(a) an order (including an affiliation order or order consequent upon an affiliation order) which provides for the periodical payment of sums of money towards the maintenance of 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 was made, liable to maintain; and

(b) an affiliation order or order consequent upon an affiliation order, being an order which provides for the payment by a person adjudged, found or declared to be a child's father of expenses incidental to the child's birth, or, where the child has died, of his funeral expenses, or, where the mother of the child has died, her funeral expenses, and, in the case of a maintenance order which has been varied, means that order as varied;

(iv) Insert a new Clause 2(2) (renumbering existing Clause 2(2) as 2(3):

(2) For the purposes of Part I an order shall be taken to be a maintenance order so far (but only so far) as it relates to the payment of such periodical payments or the payment of such expenses as are mentioned in the definition of "maintenance order" in subsection (1).

(v) In Clause 3(1), omit the words "or an order made by a provision of Part III".

(vi) Omit Parts III and IV.

(vii) In Clause 43(1)(a), omit the words "a convention country, a Hague Convention country".

(viii) In Clause 44(a), omit the words "a Hague Convention country".

VARIANT B.

In any enacting country acceding to the Hague Convention but not the U.N. Convention, the Bill could be enacted with the following modifications:

(i) In the Long Title, omit the words from "the United Nations" to "and to".

(ii) In Clause 2(1), omit the entries relating to "convention country", "registered order", "registering court", and "related documents".

(iii) In Clause 3(1), omit the words "or an order made by virtue of a provision of Part III".

(iv) Omit Part III.

(v) In Clause 43(1)(a), omit the words "a convention country".

VARIANT C.

In any enacting country acceding to the U.N. Convention but not the Hague Convention, the Bill could be enacted with the following modifications:

(i) In the Long Title, omit the words from "and to the" to "1973".

(ii) In Clause 2(1), omit the entries relating to "competent court in a Hague Convention country", "Hague Convention" and "Hague Convention country", and in the entry relating to "the responsible authority", all words after "Part I".

(iii) In Clause 2(1) substitute the definition of "maintenance order" set out in paragraph (iii) under Variant A, above.

(iv) Insert Clause 2(2) as set out in paragraph (iv) under Variant A, above.

(v) Omit Part IV

(vi) In Clause 43(1)(a), omit the words "a Hague Convention country".

(vii) In Clause 44(a), omit the words "a Hague Convention country".

MAINTENANCE ORDERS (FACILITIES FOR
ENFORCEMENT) RULES 198-

1. In these Rules, "the Act" means the Maintenance Orders (Facilities for Enforcement) Act 198- and other terms have the same meaning as in the Act.

2.(1) Where a registrar is required by any provision of the Act to register any order he shall cause the order to be registered in his court by means of a minute or memorandum entered and signed by him in the register of the court.

(2) Every minute or memorandum entered in pursuance of this Rule shall specify the section of the Act under which the order in question is registered.

Proceedings under Part I of the Act

3. A document setting out or summarising any evidence required by any provision of the Act or these Rules to be authenticated shall be authenticated by a certificate, signed by [the judge] [the magistrate] [one of the justices] before whom that evidence was given, that the document is the original document containing or recording or, as the case may be, summarising that evidence or a true copy of that document.

4. Any documents required by any provision of the Act or these Rules to be sent to a court in a Commonwealth country shall be sent to the registrar of that court by post.

5.(1) An application by a payee under section 3 of the Act (transmission of a maintenance order made in [] for registration in a Commonwealth country) shall be made in writing to the registrar.

- (2) An application made in pursuance of paragraph (1) above shall -
- (a) specify the date on which the order was made;
 - (b) contain such particulars as are known to the applicant of the whereabouts of the payer;
 - (c) specify any matters likely to assist in the identification of the payer;
 - (d) where possible, be accompanied by a recent photograph of the payer.

6. A Request for Registration under section 3(2) of the Act shall be in Form 1 in the Schedule to these Rules.

7.(1) A Request for Confirmation under section 4(2) of the Act shall be in Form 2 in the Schedule to these Rules.

(2) A Request for Confirmation under section 6(3), 7(3) or 13(6) of the Act shall be in Form 3 in the Schedule to these Rules.

8.(1) For the purposes of compliance with section 6(2) of the Act (Further proceedings in respect of a provisional order) there shall be served on the person on whose application the order was made a notice which shall -

(a) set out the evidence received or taken, as the case may be, in pursuance of section 6(1) of the Act;

(b) inform that person that it appears to the court that the order ought not to have been made or, as the case may be, ought not to have been made in the form in which it was made; and

(c) inform that person that if he wishes to make representations with respect to the evidence set out in the notice he may do so orally or in writing and that if he wishes to adduce further evidence he should notify the registrar.

(2) Where a registrar receives notification that the person on whose application the order was made wishes to adduce further evidence, he shall fix a date for the hearing of such evidence and shall send that person written notice of the date fixed.

9.(1) Where the evidence of any person is to be taken in pursuance of section 18(1) of the Act, subject to paragraph (2) below,

(a) the evidence shall be taken in the same manner as if that person were a witness in proceedings on an application for maintenance;

(b) any oral evidence so taken shall be put into writing and read to the person who gave it, who shall be required to sign the document; and

(c) the [judge] [magistrates] [justices] by whom the evidence of any person is so taken shall certify at the foot of any document setting out the evidence of, or produced in evidence by, that person that such evidence was taken, or document received in evidence, as the case may be, by them.

(2) Where such a request as is mentioned in section 18(1) of the Act includes a request that the evidence be taken in a particular manner, the court by which the evidence is taken shall, so far as circumstances permit, comply with that request.

10. Any request under section 19 of the Act for the taking or provision of evidence by a court in a Commonwealth country shall be sent to the court in question by post.

11.(1) Where under section 7 of the Act (variation and revocation in [] of orders) a court makes an order (not being a provisional order) varying or revoking an order to which that section applies, the registrar of the court shall send to any court in a Commonwealth country in which to his knowledge the original order is registered or by which it was confirmed, written notice of the variation or revocation.

(2) Where under section 10 of the Act (setting aside registration) a court sets aside the registration of an order, the registrar shall send written notice of that action to the [Minister for Foreign Affairs].

(3) Where under section 11(7) of the Act (confirmation and registration in [] of a provisional order made in a Commonwealth country) a court confirms a provisional order, the registrar shall send written notice of the confirmation and of any alteration made in the provisional order to the court which made the provisional order.

(4) Where under section 13 of the Act (variation and revocation of registered orders) a court makes an order (not being a provisional order) varying or revoking an order to which that section applies, the registrar shall send written notice of the variation or revocation to the court which made the order.

(5) Where under section 14(2) of the Act (confirmation of provisional orders affecting registered orders) a court confirms a provisional order, the registrar shall send written notice of the confirmation and of any alteration made in the provisional order to the court which made the provisional order.

12. Where a registrar registers an order under section 9(2), 11(7), 15(4) or 15(5) of the Act, he shall send written notice to the [Minister for Foreign Affairs] that the order has been duly registered.

13. Where a registrar registers an order under section 9(2), 11(7), 14(4), 15(4), or 15(5) of the Act, he shall send written notice to the payer that the order has been duly registered and of the person to whom and the hours and place at which payments under the order should be made.

14. Where it appears to the registrar of the court in which an order is registered under Part I of the Act that any sums payable under the order are in arrear he may, and if such sums are in arrear to an amount equal to four times the sum payable weekly under the order, he shall proceed in his own name for the recovery of those sums, unless it appears to him that it is unreasonable in the circumstances to do so.

15. Where the registration of an order is cancelled under section 15(2) of the Act, the registrar shall send written notice of that action to the [Minister for Foreign Affairs].

Proceedings under Part III of the Act

16. An application under section 24 of the Act shall be made through the registrar of the [type of] court [within the jurisdiction of which the applicant is residing].

17. An application received by the [Minister for Foreign Affairs] under section 25 of the Act shall be sent to the registrar of the [type of] court [within the jurisdiction of which the defendant is residing].

18. Where a court dismisses an application under section 25 of the Act for a maintenance order or an application received under section 28(2) of the Act for the variation of a registered order, the registrar shall send written notice of the decision and a statement of the court's reasons to the [Minister for Foreign Affairs].

19. Where a registrar registers an order under section 25(7), 26(2) or 26(3) of the Act, he shall send written notice to the [Minister for Foreign Affairs] that the order has been duly registered.

20. Where it appears to the registrar of the court in which an order is registered under Part III of the Act that any sums payable under the order are in arrear he may, and if such sums are in arrear to

an amount equal to four times the sum payable weekly under the order, he shall proceed in his own name for the recovery of those sums, unless it appears to him that it is unreasonable in the circumstances to do so.

21. Notice under section 28(4)(b) of the Act of an application for the variation or revocation of a registered order shall be in Form 4 in the Schedule to these Rules and shall be sent by post not less than six weeks before the date of the hearing of the application to the [Minister for Foreign Affairs] for transmission to the appropriate authority in the convention country in which the defendant to the application is residing.

22.(1) Where the evidence of any person is to be taken in pursuance of section 29(1) of the Act, subject to paragraph (2) below,

(a) the evidence shall be taken in the same manner as if that person were a witness in proceedings on an application for maintenance;

(b) any oral evidence so taken shall be put into writing and read to the person who gave it, who shall be required to sign the document; and

(c) the [judge] [magistrates] [justices] by whom the evidence of any person is so taken shall certify at the foot of any document setting out the evidence of, or produced in evidence by, that person that such evidence was taken, or document received in evidence, as the case may be, by them.

(2) Where such a request as is mentioned in section 29(1) of the Act includes a request that the evidence be taken in a particular manner, the court by which the evidence is taken shall, so far as circumstances permit, comply with that request.

(3) Any such document as is referred to in paragraph (1)(c) above shall be sent to the [Minister for Foreign Affairs] for transmission to the appropriate authority in the convention country in which the request originated.

Proceedings under Part IV of the Act

23. A Request for Enforcement under section 32(2) of the Act shall be in Form 5 in the Schedule to these Rules.

24.(1) A Notice of Application for the variation or revocation of a maintenance order under section 33(2) of the Act shall be in Form 6 in the Schedule to these Rules.

(2) The registrar shall give the payer notice in writing of the date fixed for the hearing by sending notice by post addressed to his last known or usual place of abode.

25. A Notice of Variation or Revocation under section 33(3) of the Act shall be in Form 7 in the Schedule of these Rules.

26. Where a registrar registers an order under section 34(2) of the Act, he shall send written notice to the [Minister for Foreign Affairs] that the order has been duly registered.

27. Where a registrar registers an order under section 34(2) of the Act, he shall send written notice to the payer by post addressed to his last known or usual place of abode that the order has been duly registered and of the person to whom and the hours and place at which payments under the order should be made.

28. If a registrar refuses to register an order under section 34 of the Act he shall give written notice of his refusal and of the grounds to the [Minister for Foreign Affairs].

29. If the payer applies under section 35 for the registration of a maintenance order to be set aside, the registrar shall give written notice of the application to the [Minister for Foreign Affairs], and if the registration is set aside shall give written notice thereof to the [Minister].

30. If the payee appeals under section 36 against any refusal to register, the registrar shall give written notice of the appeal and of the date of the hearing of the appeal to the payer by post addressed to his last known or usual place of abode.

31. Where it appears to the registrar of the court in which an order is registered under Part IV of the Act that any sums payable under the order are in arrear he may, and if such sums are in arrear to an amount equal to four times the sum payable weekly under the order, he shall proceed in his own name for the recovery of those sums, unless it appears to him that it is unreasonable in the circumstances to do so.

32.(1) Where the evidence of any person is to be taken in pursuance of section 40(1) of the Act, subject to paragraph (2) below,

(a) the evidence shall be taken in the same manner as if that person were a witness in proceedings on an application for maintenance;

(b) any oral evidence so taken shall be put into writing and read to the person who gave it, who shall be required to sign the document; and

(c) the [judge] [magistrates] [justices] by whom the evidence of any person is so taken shall certify at the foot of any document setting out the evidence of, or produced in evidence by, that person that such evidence was taken or document received in evidence, as the case may be, by them.

(2) Where such a request as is mentioned in section 49(1) of the Act includes a request that the evidence be taken in a particular manner, the court by which the evidence is taken shall, so far as circumstances permit, comply with that request.

3. Request for Confirmation of Provisional Order under Section 6, 7 or 13 of the Act

Maintenance Orders (Facilities for Enforcement) Act
198-, s.6, s.7 or s.13

REQUEST FOR CONFIRMATION OF A PROVISIONAL ORDER

[name of court] The Registrar,
[address of court]
.....
.....
.....

1. I enclose a certified copy of a provisional order made by this court and request that proceedings be instituted in your court for the confirmation of the order.
2. The order is provisional only and has no effect unless and until it is confirmed, with or without alteration, by a competent court.
3. I enclose a document, duly authenticated, setting out or summarising the evidence given in the proceedings in this court.

Orders made under s.6 only: [delete if inapplicable]

4. The order is a fresh provisional order in place of the order dated _____ and previously sent for confirmation in your court, which has been revoked.

[Signature of Registrar]

[Date of signature]19..

[Note: This form is to be sent to the Registrar of the court in which confirmation is sought.]

5. Request for Enforcement under Section 32

Maintenance Orders (Facilities for Enforcement) Act 198-, s.32
Hague Convention on the Recognition and Enforcement of
Maintenance Obligations

REQUEST FOR ENFORCEMENT OF A MAINTENANCE ORDER

The Registrar

[name of court]
[address of court]
.....

1. I enclose a certified copy of a maintenance order now registered in this court for transmission to the responsible authority in [name of country], requesting the enforcement of the order under the terms of the Hague Convention on the Recognition of Maintenance Obligations.
2. I certify that the order is no longer subject to the ordinary forms of review and that it is legally enforceable in [].
3. (Either) I certify that the payer appeared in the proceedings
(Or) I certify that notice of the institution of the proceedings, including notice of the substance of the claim, was served on the payer, and enclose a copy of a document establishing that fact.
4. I certify that legal aid was granted as follows: [give details, or delete if inapplicable]
5. (Either) I certify that to the best of my information and belief the arrears due under the order at the date hereof are [amount, in words in [] currency]
.....
(Or) I certify that to the best of my information and belief no arrears are due under the order at the date thereof.
6. The following is the information I have as to the whereabouts of the payer:
7. The following information may facilitate the identification of the payer:
8. I enclose a photograph of the payer [delete if no photograph is available].

[signature of registrar]
[Date of signature]19..

[Note: This form is to be sent to the [Minister for Foreign Affairs] for onward transmission to the responsible authority in the relevant Hague Convention country.]

6. Notice of application under Section 33

Maintenance Orders (Facilities for Enforcement) Act 198-
Hague Convention on the Recognition and Enforcement of
Maintenance Obligations

NOTICE OF APPLICATION

[name of court] The Registrar
[address of court]

To: [name of payer]
of [address of payer]

1. An application has been made by [name of payee]
..... that an order made by this court on [date]
..... and by which you were ordered as follows:
[details of order]

[Either] should be revoked
[Or] should be varied by an order requiring: [give details]

2. The substance of the application is as follows: [give details
of grounds, etc.]

3. The hearing may take place at any time after the expiry of six
weeks from the service on you of this notice. If you wish to
make written representations to the Court, or to adduce evidence
in person or through a representative you may do so.

[Signature of registrar]
[Date of signature]19..

[Note: This form is to be sent to the [Minister for Foreign Affairs]
for onward transmission to the relevant authority in the
Hague Convention country.]

