

No. of 2016

VIRGIN ISLANDS

**MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT)
ACT, 2016**

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SCHEDULE

No. of 2016 Maintenance Orders (Facilities for Enforcement) Act, 2016

Virgin Islands

I ASSENT

Governor.

, 2016

**VIRGIN ISLANDS
No. of 2016**

A Bill for

An Act to provide for the enforcement of maintenance orders (including those made in certain foreign countries and for connected matters.

[Gazetted , 2016]

ENACTED by the Legislature of the Virgin Islands as follows:

**PART I
PRELIMINARY**

Short title and commencement.

1. This Act may be cited as the Maintenance Orders (Facilities for Enforcement) Act, 2016 and shall come into force on a date the Minister may, by Notice published in the Gazette, appoint.

Interpretation.

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

“appropriate authority” in relation to a reciprocating country, means the person who in that country performs the functions which in Virgin Islands are performed by the Attorney General under this Act;

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

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

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

“maintenance order” or “order” (whether provisional or final) means an order, for the payment of a sum of money including the periodical payment of money towards the maintenance of a payee;

“Minister” means the Minister responsible for Health and Social Development;

“payee” means the person entitled to the payments for which the an order provides;

“payer” means the person liable to make payments under an order;

“prescribed” means prescribed by regulations made under his Act;

“proper officer” means in the case of the High Court, the Registrar of the High Court and in the case of a Magistrate’s Court, the clerk of that court;

“provisional maintenance order” means an order which has no effect until confirmed by a court in the Virgin Islands or, as the case may be, a court in a reciprocating country;

“reciprocating country” means a country or a territory declared to be a reciprocating country under section 20;

“registering court” means a court in which an order is registered under this Act.

PART II

REGISTRATION OR CONFIRMATION OF ORDERS MADE IN A RECIPROCATING COUNTRY

3. (1) Where

- (a) a maintenance order has been made against a person by a court in a reciprocating country; and
- (b) a certified copy of the order has been transmitted by the appropriate authority in the reciprocating country to the Attorney General,

Registration of
maintenance
orders made
abroad.

the Attorney General shall send to the proper officer the certified copy of the order for registration in the prescribed manner.

(2) The proper officer shall, on receipt of an order under this section, take such steps as he or she considers necessary to ascertain whether the payer named in the order is residing in the Virgin Islands and

- (a) if he or she is satisfied that the payer is not so resident, the proper officer shall return the certified copy of the order to the Attorney General together with a statement setting out such information as he or she possesses as to the whereabouts of the payer; and
- (b) in any other case, register the order in the prescribed manner.

(3) The Attorney General shall upon receipt of the certified copy returned to him or her under subsection (2)(a), forthwith remit the certified copy and statement aforesaid to the appropriate authority in the reciprocating country.

4. (1) Where

- (a) a provisional maintenance order has been made by a court in a reciprocating country; and
- (b) the Attorney General has received a certified copy of that order, together with the depositions of witnesses,

the Attorney General shall send the documents referred to in paragraph (b) to the proper officer in accordance with section 3, with a request that a summons be issued calling upon the person to show cause why that order should not be confirmed.

(2) Upon receipt of the documents and request referred to in subsection (1), the court shall issue the summons and cause it to be served upon such person.

(3) A summons so issued may be served in the Virgin Islands in the same manner as if the order has been originally issued or subsequently endorsed by a magistrate's court in Virgin Islands.

(4) If a summons issued under this section cannot be duly served on the payer, the proper officer shall return the certified copy of the order and the depositions of witnesses which accompanied it to the Attorney General

Confirmation of
provisional
orders made
abroad.

with a statement giving such information as he or she possesses as to the whereabouts of the payer.

(5) At any hearing for confirmation of the order it shall be open to the person on whom the summons was served to raise only such defence as he or she might have raised at the original proceedings had he or she been a party thereto.

(6) A certificate from the court which made the order stating the grounds on which the making of the order might have been opposed shall be conclusive evidence that those grounds are grounds on which the payer might have raised a defence.

(7) A court in which confirmation of an order is being sought may, notwithstanding anything in subsection (6), seek from the court that made the provisional order clarification of, or further particulars relating to, information furnished in a certificate referred to in subsection (6).

(8) Where, at a hearing under this section, a person who was served with a summons

- (a) does not appear; or
- (b) appears but fails to satisfy the court that the order ought not to be confirmed;

the court may confirm the order, with or without modification.

(9) If the person against whom the summons was issued appears at the hearing and satisfies that court that for the purpose of any defence it is necessary to remit the case to the court which made the order for the taking of any further evidence, the court may so remit the case and adjourn the proceedings for that purpose.

(10) Where an order has been confirmed pursuant to this section, the person bound by the order shall have the same right of appeal, if any, against the confirmation of the order as that person would have had against the making of the order had the order been made by the court which confirmed it.

(11) The court may refuse to confirm the order if the court is satisfied that the order ought not to be confirmed.

(12) Where the court refuses to confirm the order, the proper officer shall return the certified copy of the order and the documents which

accompanied it to the Attorney General who shall remit the copy and documents to the appropriate authority in the reciprocating country.

Court for registration or confirmation of orders made abroad.

5. The court by which an order is to be registered or confirmed, as the case may be, shall

- (a) be the High Court, if the order was made by a court of superior jurisdiction; or
- (b) in any other case, the Magistrate's Court.

Foreign language.

6. Where a maintenance order which is sought to be registered or confirmed under this Act is in a language other than the English language, the maintenance order or a certified copy of the order shall have attached thereto, a translation in the English language for the approval of the court and upon such approval being given the maintenance order shall be deemed to be the sole and proper version of the order.

Enforcement of orders registered or confirmed.

7. (1) An order registered or confirmed, as the case may be, by a court in Virgin Islands shall, from the date of such registration or confirmation, be enforceable as if it had been originally made by that court and as if that court had had jurisdiction to make it.

Schedule

(2) The Schedule shall have effect in respect of maintenance orders registered or confirmed under this Act.

Change of address and change of employer to be notified.

8. (1) A payer named in a maintenance order registered or confirmed in Virgin Islands shall give notice to the proper officer of any change of his or her address or change of his or her employer.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding two thousand five hundred dollars.

Conversion of foreign currency.

9. (1) Where the sums payable under a maintenance order are expressed in a currency other than the currency of Virgin Islands, such order shall not be registered or confirmed until those sums are converted to the currency of Virgin Islands.

(2) For the purposes of this section, the proper officer shall

- (a) determine the equivalent of the sums payable on the basis of the prevailing rate of exchange at the date on which the order was made as ascertained from any bank licensed under the Banks and Trust Companies Act;

- (b) certify on the order the sums so determined expressed in the currency of Virgin Islands and,

the order, upon registration or confirmation, shall be deemed to be an order for payment of the sum so certified.

10. (1) Subject to this section, a court in which a maintenance order is confirmed or registered may vary or revoke such order as if it had made the order or had jurisdiction to make it.

Variation or revocation of orders registered or confirmed in Virgin Islands.

(2) An order under this section varying a registered or confirmed order shall be provisional unless

- (a) the payer and the payee are both resident in the Virgin Islands;
- (b) the application is made by the payee and the variation consists of a reduction in the rate of the payments to be made under the order; or
- (c) the application is made on the sole ground that there has been a change in the financial circumstances of the payer since the date on which the order was made or confirmed, and the court which made the order has no power under the law in the country in which the order was made to confirm a provisional order varying a maintenance order.

(3) An order under this section revoking a registered or confirmed order shall be provisional unless the payer and the payee are both resident in the Virgin Islands.

(4) Where an application is made for the revocation of a maintenance order the court shall, unless the payer and the payee are both resident in the Virgin Islands, apply the law of the country in which the order was made.

(5) Where a court makes a provisional maintenance order varying or revoking, as the case may be, a maintenance order, the proper officer shall send to the Attorney General, for transmission to the appropriate authority in the reciprocating country

- (a) a certified copy of the provisional order; and

- (b) a duly authenticated document setting out or summarising the evidence given in the proceedings.

(6) Where an order made by the court under this section is not provisional, the proper officer shall send to the Attorney General a certified copy of the order and the Attorney General shall thereupon remit the copy aforesaid to the appropriate authority in the reciprocating country.

Transmission of documents where payer ceases to reside in Virgin Islands.

11. (1) Where the proper officer has reason to believe that the payer under an order registered or confirmed under this Part has ceased to reside in Virgin Islands, he or she shall send to the Attorney General, for transmission to the appropriate authority in the reciprocating country in which the order was made, or, as the case may be, the appropriate authority in the reciprocating country in which the payer is resident, the following:

- (a) a copy of the registered or confirmed order;
- (b) a certificate of arrears signed by him or her;
- (c) a statement containing information as to the whereabouts of the payer;
- (d) any other document which may be relevant to the order.

(2) Where the documents referred to in subsection (1) are sent to a country other than the country in which the order was made, the Attorney General shall inform the appropriate authority in the last mentioned country that the documents have been so sent.

PART III

REGISTRATION OR CONFIRMATION IN A RECIPROCATING COUNTRY OF ORDERS MADE IN THE VIRGIN ISLANDS

Transmission of maintenance orders made in Virgin Islands.

12. Where

- (a) a court in the Virgin Islands has made a maintenance order against a person; and
- (b) it is proved to the court that such person is resident in a reciprocating country,

the court shall, upon the request of the payee, send a certified copy of the order to the Attorney General for transmission to the appropriate authority in that country for registration and enforcement.

13.(1) Where an application is made to a court in Virgin Islands for a maintenance order against a person and it is proved to the court that that person is residing in a reciprocating country, the court may, in the absence of that person, make any such order as it might have made if a summons had been duly served on that person and he or she had failed to appear at the hearing.

(2) Any order so made shall be provisional only and shall have no effect unless and until confirmed by a court of competent jurisdiction in the reciprocating country.

(3) The evidence of any witness who is examined on any such application shall either

- (a) be in the form of a deposition put in writing, read over and signed by the witness; or
- (b) be recorded (whether in shorthand or other mechanism) and transcribed and thereafter certified as correct by the proper officer.

(4) Where an order is made under subsection (1), the proper officer shall send to the Attorney General for transmission to the appropriate authority in the reciprocating country

- (a) a certified copy of the order;
- (b) the depositions of witnesses or, if the evidence is recorded as referred to in subsection (3)(b), a certified copy of the transcript;
- (c) the certificate from the court which made the provisional order stating the grounds on which the making of the order might have been opposed if the person against whom the order is made had been duly served with a summons and had appeared at the hearing; and
- (d) such information in the possession of the court as would facilitate locating and identifying that person.

(5) The confirmation of an order made under this section shall not affect any power of a court in the Virgin Islands to vary or rescind the order under section 14.

(6) The applicant shall have the same right of appeal, if any, against a refusal to make a provisional order as the applicant would have had against a refusal to make the order had a summons been duly served on the person against whom the order is sought to be made.

Variation or
revocation of
orders made in the
Virgin Islands.

14. (1) Where a maintenance order (referred to in this section as “the original order”) has been made by a court in the Virgin Islands and a certified copy thereof has been sent to a reciprocating country for registration or confirmation, as the case may be, a court of competent jurisdiction in the Virgin Islands may make an order varying or revoking the original order.

(2) Where a variation under subsection (1) consists of an increase in the payments under the original order, the order for variation shall be provisional unless

- (a) the payer and the payee appear at the hearing; or
- (b) the applicant appears at the hearing and the court is satisfied that the other party has been duly served with the appropriate process.

(3) Where an original order is varied or revoked under subsection (1), the proper officer shall send to the Attorney General for transmission to the appropriate authority in the reciprocating country in which the original order was registered or confirmed

- (a) where the later order is a provisional order, the relevant documents for purposes of confirmation; or
- (b) in any other case, a certified copy of the later order for purposes of registration.

Variation or
revocation of
order made in
Virgin Islands
by a court
abroad.

15. Where

- (a) a court in a reciprocating country, by a provisional order, varies or revokes, as the case may be, a maintenance order made by a court in Virgin Islands; and
- (b) the court in the Virgin Islands has received a certified copy of that order and a duly authenticated document setting out or summarising the evidence given in the proceedings in which the provisional order was made,

the court in Virgin Islands may confirm the order with or without modification.

16. (1) Where, before the confirmation of a maintenance order made by a court in Virgin Islands (referred to in this section as “the original court”) against a person residing in a reciprocating country, the original court

Revocation of provisional order made by court in Virgin Islands before confirmation.

- (a) receives a duly authenticated document setting out or summarising the evidence taken in the reciprocating country for the purpose of proceedings relating to the confirmation of the order; or
- (b) in compliance with a request made by the court in the reciprocating country, takes additional evidence for the purpose of such proceedings, the original court shall consider that evidence and if it appears to a court that the order ought not to have been made, it shall give to the person in whose favour the order was made an opportunity to consider and refute that evidence or to adduce further evidence.

(2) The original court may revoke or vary the order after considering all the evidence and any representations made by the person in whose favour the order was made.

17. (1) Where a court in the Virgin Islands or a court in a reciprocating country makes an order (whether or not such order is a provisional order that has been confirmed) varying a maintenance order such maintenance order shall have effect as varied.

Effective date of variation or revocation.

(2) Where a maintenance order is revoked by an order made by a court in the Virgin Islands or by a court in a reciprocating country, such maintenance order shall be deemed to have ceased to have effect as from the date on which the revocation order was made but without prejudice to the recovery of any arrears due under the maintenance order up to that date.

PART IV MISCELLANEOUS

18. In any proceedings before a court in the Virgin Islands under this Act, the following documents duly certified, shall be admissible as evidence of the facts stated therein

Admissibility of documentary evidence.

- (a) a document which sets out or summarises evidence given in a court in a reciprocating country
- (b) a document which sets out or summarises evidence taken in a reciprocating country for the purpose of proceedings in a court in Virgin Islands under this Act;

- (c) a document which was received in evidence in a court in a reciprocating country or a copy of a document so received.

Appeals.

19. (1) Where a court in Virgin Islands refuses to confirm a provisional order made by a court in a reciprocating country the applicant shall have a right of appeal against such refusal.

(2) A payer or a payee, as the case may be, shall have the right of appeal against

- (a) an order made by a court in the Virgin Islands varying or revoking a maintenance order made by a court in the reciprocating country;
- (b) a refusal by a court in the Virgin Islands to vary or revoke a maintenance order made by a court in a reciprocating country.

Designation of reciprocating countries.

20. Where the Minister is satisfied that reciprocal provisions have been or will be made by any country for the enforcement in that country of maintenance orders made in the Virgin Islands, the Minister may, by Order, declare that country to be a reciprocating country for the purposes of this Act.

Access to information.

21. (1) The proper officer may, for the purpose of enforcing a maintenance order

- (a) obtain from any person information that is shown on a record in the person's possession or control and indicates the place of employment, address or location of the person against whom the order is being enforced; and
- (d) provide the information so obtained to a person performing similar functions in a reciprocating country.

(2) Information obtained under subsection (1)(a) shall not be disclosed except to the extent necessary for the enforcement of the order.

Court may order access to information.

22. (1) If on an application, it appears to a court that

- (a) the proper officer has been refused information requested by him or her under section 21 (1); and

- (b) the information is needed for the enforcement of a maintenance order,

the court may order the person to provide the court, or the proper officer with the requested information.

(2) Information obtained under an order made under subsection (1) shall be sealed in the court file and shall not be disclosed except as permitted by the order or to the extent necessary for the enforcement of the maintenance order.

23. The Minister may, with the approval of Cabinet, amend the Schedule by Order published in the *Gazette*.

Amendment of
Schedule.

24. (1) The Minister may, with the approval of Cabinet, make regulations for giving effect to the provisions of this Act.

Regulations.

(2) Without limiting the generality of subsection (1), regulations may provide for

- (a) the forms to be used for carrying into effect the provision of this Act;
- (b) facilitating communication between courts in the Virgin Islands and courts in a reciprocating country.

(3) Regulations made under this Act shall be subject to a negative resolution of the House of Assembly.

25. (1) The Maintenance Orders (Facilities For Enforcement) Act is repealed.

Repeal and
savings.
Cap. 45

(2) Notwithstanding subsection (1),

- (a) any proclamation made under the repealed Act which is in force immediately prior to the commencement of this Act is deemed to be made under this Act, and until an Order is made to replace it, it shall be construed to bring it into consistency with this Act; and
- (b) any Orders registered or confirmed or anything done under the repealed Act is deemed to have been registered or confirmed or done under this Act.

(3) For the avoidance of doubt, any country or territory in respect of which the repealed Act applied immediately before the commencement of this Act, shall be deemed to be a reciprocating country for the purposes of this Act.

SCHEDULE

[Section 7(2)]

Provisions Applicable To Maintenance Orders Registered or Confirmed Under This Act

1. The proper officer of the court by which an order is enforceable by virtue of this Act shall take such steps for enforcing the order as may be prescribed.

2. In any proceedings for or with respect to the enforcement of such order a certificate of arrears sent to the proper officer shall be evidence of the facts stated therein.

3. Subject to paragraph 4, sums of money payable under such order shall be payable in accordance with the order as from the date on which the order was made.

4. A court confirming an order under section 4 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 not earlier than the date on which the order was made, as it may specify, and subject to such direction an order so confirmed shall be treated as if it has been made in the form in which it was confirmed and as if it had never been a provisional order.

Passed by the House of Assembly this day of , 2016.

Speaker.

Clerk of the House of Assembly.

OBJECTS AND REASONS

This Bill seeks to repeal and replace the Maintenance Orders (Facilities For Enforcement), Act (cap 45).

The Bill consists of four parts.

Part I would set out the short title and commencement, as well as the interpretation of certain terms used in the Act.

Part II would provide for the registration or confirmation of maintenance orders made in a reciprocating country.

Clause 3 would provide for the registration of maintenance orders made abroad where a certified copy of the order is received by the Attorney General. It would also set out the duties of the proper officer in registering an order from abroad.

Clause 4 would provide for confirmation of provisional orders made abroad. It should be noted that prior to confirming an order the person against whom the order is made has an opportunity to show cause why the order should not be confirmed.

Clause 6 would provide for orders which are in a foreign language to be translated into English with such translation being subject to the approval of the Court.

Clause 7 would provide that from the date of registration or confirmation of an order that order shall have the same force and effect and be enforceable as if it had been made by the relevant Court in the Virgin Islands.

Clause 8 would require the payer named in a maintenance order to notify the Court of any change of address or employer and failure to do so would result in an offence being committed.

Clause 9 would provide for the sums payable under a maintenance order to be converted into local currency where those sums are stated in a foreign currency.

Clause 10 would permit the Court which confirmed or registered an order made abroad to vary or revoke that order. It would also provide that an order varying such maintenance order shall be provisional unless the payer and payee are both resident in the Virgin Islands, or the application is made by the payee, or the variation is sought on the ground that there has been a change in the financial circumstances of the payer since the date on which the

order was confirmed and the court which made the order has no power to confirm a provisional variation order.

Clause 11 would provide that where a payer ceases to reside in the Virgin Islands the documents pertaining to the maintenance order are to be transmitted to the appropriate authority in the reciprocating country in which the order was made or the reciprocating country in which the payer resides.

Part III would provide for the registration or confirmation in a reciprocating country of orders made in the Virgin Islands.

Clauses 12 and 13 would allow a Court in the Virgin Islands to make a maintenance order against a person where that person is residing in a reciprocating country. The order so made is provisional only and has no effect unless and until confirmed in the reciprocating country.

Clause 14 would empowers the Court to vary and revoke an original maintenance order which has been sent to a reciprocating country for registration or confirmation and where such order has been varied or revoked by a court in a reciprocating country clause 15 would provide for the court in the Virgin Islands to confirm that provisional order.

Clause 16 would provide for the revocation or variation of an order where additional evidence is taken prior to the confirmation of a maintenance order made in the Virgin Islands.

Clause 17 would provide for the effective date of variation or revocation where an order is varied or revoked. In addition, it would provide that the revocation of an order is without prejudice to the recovery of any arrears due under the maintenance order up to the date of revocation.

Part IV would set out some miscellaneous provisions.

Clause 18 would provide for the admissibility of documentary evidence. While clause 19 would give an applicant a right of appeal where a Court refuses to confirm a provisional order made by a court in a reciprocating country.

Clause 20 would provide for the Minister to designate reciprocating countries for the purposes of the Act.

Clause 21 would give proper officers the power to access information for the purpose of enforcing the provisions of the Act, however any information obtained shall not be disclosed except where necessary for the enforcement of the order.

Clause 22 would empower the Court to order that access be given to information where the proper officer has been refused information requested under clause 21 and such information is needed for the enforcement of the maintenance order.

Clause 23 would provide for the Minister, with the approval of Cabinet, to amend the Schedule, by Order.

Clause 24 would provide for the Minister, with the approval of Cabinet, to make regulations for giving effect to the provisions of the Act and those regulations shall be subject to a negative resolution.

Clause 25 would provide for the repeal and savings provisions.

Minister for Health and Social Development.