



MONTSERRAT

## CHAPTER 5.09

# MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) ACT

Subsidiary and Related Legislation

### Revised Edition

showing the law as at 1 January 2013

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

	Page
<b>MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) ACT</b>	3
Act 11 of 1921 .. in force 25 February 1921	
Amended by Acts: 2 of 1922	
5 of 1931	
24 of 1956	
23 of 1961	
9 of 2011 .. in force 27 September 2011 (S.R.O. 40/2011)	
<b>MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) REGULATIONS – Section 7</b>	11
L.I. Gazette 14 June 1923	
Amended by Act 9 of 2011 .. in force 27 September 2011 (S.R.O. 40/2011)	
<b>RECIPROCAL ENFORCEMENT ORDERS – Section 12</b>	13
<b>MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) ACT 1920 (U.K.)</b>	15
Extended to Montserrat by (UK) S.I. 1959 No 377	
<b>MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) – Section 12</b>	21
O.I.C. 1921 No. 962	

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O.I.C. 1921 No. 962	



**CHAPTER 5.09**

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

**ARRANGEMENT OF SECTIONS**

SECTION

1. Short title
2. Interpretation
3. Enforcement in Montserrat of maintenance orders made in England or Northern Ireland
4. Transmission of maintenance orders made in Montserrat
5. Power to make provisional orders of maintenance against persons resident in England or Northern Ireland
6. Power of Magistrate's Court to confirm maintenance order made in England or Northern Ireland
7. Regulations for facilitating communications between courts
8. Mode of enforcing orders
9. Application of Magistrate's Court Act
10. Proof of documents signed by officers of court
11. Depositions to be evidence
12. Extension to British possession and territory under H. M.'s protection



## CHAPTER 5.09

### MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) ACT

*(Acts 11 of 1921, 2 of 1922, 5 of 1931, 24 of 1956, 23 of 1961  
and 9 of 2011)*

#### Commencement

*[25 February 1921]*

#### Short title

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

#### Interpretation

2. In this Act—

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

“**dependants**” means such persons as that person is, according to the law in force in that part of England or Northern Ireland in which the maintenance order was made, liable to maintain;

“**maintenance order**” means an order other than an order of affiliation, for the periodical payment of sums of money towards the maintenance of the wife or other dependents of the person against whom the order is made;

“**prescribed**” means prescribed by rules of Court.

#### Enforcement in Montserrat of maintenance orders made in England or Northern Ireland

3. (1) Where a maintenance order has, whether before or after the passing of this Act, been made against any person by any Court in England or Northern Ireland and a certified copy of the order has been transmitted by a Secretary of State to the Governor, the Governor shall send a copy of the order to the prescribed officer of a Court in Montserrat for registration; and on receipt thereof the order shall be registered in the prescribed manner, and shall, from the date of such registration, be of the same force and effect, and, subject to the provisions of this Act, all proceedings may be taken on such order as if it had been an order originally obtained in the Court in which it is so registered, and that Court shall have power to enforce the order accordingly.

(2) The Court in which an order is to be so registered as aforesaid shall if the Court by which the order was made was a Court of Superior Jurisdiction be the High Court and if the Court was not a Court of Superior Jurisdiction be a Magistrates Court.

#### **Transmission of maintenance orders made in Montserrat**

4. Where a Court in Montserrat has whether before or after the commencement of this Act made a maintenance order against any person and it is proved to that Court that the person against whom the order was made is resident in England or Northern Ireland the Court shall send to the Governor for transmission to a Secretary of State a certified copy of the order.

#### **Power to make provisional orders of maintenance against persons resident in England or Northern Ireland**

5. (1) Where an application is made to the Magistrates Court in Montserrat for a maintenance order against any person and it is proved that that person is resident in England or Northern Ireland the Court may in the absence of that person if after hearing the evidence it is satisfied of the justice of the application make any such order as it might have made if a summons had been duly served on that person and he had failed to appear at the hearing but in such case the order shall be provisional only and shall have no effect unless and until confirmed by a competent Court in England or Northern Ireland.

(2) The evidence of any witness who is examined on any such application shall be put into writing and such deposition shall be read over to and signed by him.

(3) Where such an order is made the Court shall send to the Governor for transmission to a Secretary of State the depositions so taken and a certified copy of the order together with a statement of 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 such information as the Court possesses for facilitating the identification of that person and ascertaining his whereabouts.

(4) Where any such provisional order has come before a Court in England or Northern Ireland for confirmation and the order has by that Court been remitted to the Magistrates Court which made the order for the purpose of taking further evidence that Court shall after giving the prescribed notice proceed to take the evidence in like manner and subject to the like conditions as the evidence in support of the original application.

If upon the hearing of such evidence it appears to the Court that the order ought not to have been made the Court may rescind the order but in any other case the depositions shall be sent to the Governor and dealt with in like manner as the original depositions.



(5) The confirmation of an order made under this section shall not affect any power of the Magistrates Court to vary or rescind that order:

Provided that, on the making of a varying or rescinding order the Court shall send a certified copy thereof to the Governor for transmission to a Secretary of State and that in the case of an order varying the original order the order shall not have any effect unless and until confirmed in like manner as the original order.

(6) The applicant shall have the same right of appeal if any against a refusal to make a provisional order as he 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.

### **Power of Magistrate's Court to confirm maintenance order made in England or Northern Ireland**

6. (1) Where a maintenance order has been made by a Court in England or Northern Ireland and the order is provisional only and has no effect unless and until confirmed by the Magistrates Court in Montserrat and a certified copy of the order together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed has been transmitted to the Governor and it appears to the Governor that the person against whom the order was made is resident in Montserrat the Governor may send the said documents to the prescribed officer of the Magistrates Court in the district wherein such person resides with a requisition that a summons be issued calling upon the person to show cause why that order should not be confirmed and upon receipt of such documents and requisition the court shall issue such a summons and cause it to be served upon such person.

(2) A summons so issued may be served in Montserrat in the manner prescribed for the service of a summons by the Magistrate's Court Act.

(3) At the hearing it shall be open to the person on whom the summons was served to raise any defence which he might have raised in the original proceedings had he been a party thereto but no other defence and 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 was made had been a party to the proceedings shall be conclusive evidence that those grounds are grounds on which objection may be taken.

(4) If at the hearing the person served with the summons does not appear or on appearing fails to satisfy the Court that the order ought not to be confirmed the Court may confirm the order either without modification or with such modifications as to the Court after hearing the evidence may seem just.

(5) If the person against whom the summons was issued appears at the hearing and satisfies the Court that for the purpose of any defence it is necessary to remit the case to the Court which made the provisional order

for the taking of any further evidence the Court may so remit the case and adjourn the proceedings for that purpose.

(6) Where a provisional order has been confirmed under this section it may be varied or rescinded in like manner as if it had originally been made by the confirming Court and where on an application for rescission or variation the Court is satisfied that it is necessary to remit the case to the Court which made the order for the purpose of taking any further evidence the Court may so remit the case and adjourn the proceedings for the purpose.

(7) Where an order has been so confirmed the person bound thereby shall have the same right of appeal if any against the confirmation of the order as he would have had against the making of the order had the order been an order made by the Court confirming the order.

### **Regulations for facilitating communications between courts**

7. The Governor acting on the advice of Cabinet may make regulations as to the manner in which a case can be remitted by a Court authorized to confirm a provisional order to the Court which made the provisional order and generally for facilitating communications between such Courts. *(Amended by Act 9 of 2011)*

### **Mode of enforcing orders**

8. (1) A Magistrate's Court in which an order has been registered under this Act or by which an order has been confirmed under this Act and the officers of such Court shall take all such steps for enforcing the order as may be prescribed.

(2) Every such order shall be enforceable in like manner as if the order were for the payment of a civil debt recoverable summarily provided that, if the order is of such a nature that if made by the Court in which it is so registered or by which it is so confirmed it would be enforceable in like manner as an order of affiliation, the order shall be so enforceable.

(3) A warrant of distress or commitment issued by a Magistrate's Court for the purpose of enforcing any order so registered or confirmed may be executed in any part of Montserrat in the manner prescribed by the Magistrate's Court Act.

### **Application of Magistrate's Court Act**

9. The Magistrate's Court Act shall apply to proceedings before Magistrate's Courts under this Act in like manner as they apply to proceedings under that Act and the power of the Governor acting on the advice of Cabinet to make rules under the Magistrate's Court Act, shall include power to make rules regulating the procedure. *(Amended by Act 9 of 2011)*

**Proof of documents signed by officers of court**

**10.** Any document purporting to be signed by a Judge or officer of a Court in England or Northern Ireland shall until the contrary is proved be deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it and the officer of a Court by whom a document is signed shall until the contrary is proved be deemed to have been the proper officer of the Court to sign the document.

**Depositions to be evidence**

**11.** Depositions taken in a Court in England or Northern Ireland for the purposes of this Act may be received in evidence in proceedings before the Magistrates Court.

**Extension to British possession and territory under H. M.'s protection**

**12.** Where the Governor is satisfied that reciprocal provisions have been made by the Legislature of any British possession or any territory under Her Majesty's protection for the enforcement within such possession or territory, of maintenance orders made by Courts in Montserrat, the Governor may by Proclamation extend this Act to such possession or territory, and this Act shall thereupon apply in respect of such possession or territory as though the references to England or Northern Ireland were references to such possession or territory and the references to a Secretary of State were references to the Governor of such possession or territory.

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**MAINTENANCE ORDERS  
(FACILITIES FOR ENFORCEMENT) REGULATIONS –SECTION 7**

*(Leeward Islands Gazette 14.6.1923 and Act 9 of 2011)*

**Short title**

1. These Regulations may be cited as the Maintenance Orders (Facilities for Enforcement) Regulations.

**Where copy of order shall be sent**

2. The copy of an order made by a Court outside Montserrat and received by the Governor under section 3 of the Maintenance Orders (Facilities for Enforcement) Act, (hereinafter referred to as “**the Act**”) shall, unless the order was made by a Court of Superior Jurisdiction, be sent to the Magistrate.

**Where copy of provisional order shall be sent**

3. The copy of a provisional order made by a Court outside Montserrat and received by the Governor under section 6 of the Act shall be sent to the Magistrate’s Court in the manner provided by the foregoing regulation with the accompanying documents and a requisition for the issue of a summons.

**Entry of order in Magistrate’s register**

4. The Magistrate to whom any order is sent in accordance with the above regulations shall enter it in his register on the date on which he receives it in the same manner as though the order had been made at his Court, distinguishing it from the other entries in such manner as he may find most convenient, so as to show that it is entered in pursuance of this Act.

**Procedure where order is either confirmed or not**

5. When an order provisionally made outside Montserrat has been confirmed with or without modification under section 6 of the Act by the Magistrate’s Court, or the Court has decided not to confirm it, the Magistrate shall send notice thereof to the Court from which it issued and also to a Secretary of State.

**Directions when order has been registered**

6. When an order has been registered in the Magistrate’s Court under section 3 of the Act or a provisional order has been confirmed by the Magistrate’s Court under section 6 that Court shall, unless satisfied that it is undesirable to do so direct that all payments due thereunder shall be made through an officer of the Court, or such other person as it may specify for the purpose.

**Manner of collecting payments due under order**

7. The person through whom the payments are directed to be made shall collect the monies due under the order in the same manner as though it were an affiliation order, and may take proceedings in his own name for enforcing payment, and shall

send the monies, when so collected, to the Court from which the order originally issued:

Provided that, if the Court from which the order originally issued is in an Overseas Territory for which the Crown Agents for the Colonies act the monies so collected shall be paid to the Crown Agents for transmission to the person to whom they are due.

*(Amended by Act 9 of 2011)*

#### **Procedure under section 5(4) of the Act**

8. When a provisional order made under section 5 of the Act has been remitted under subsection 4 of that section to the Magistrates' Court for the purpose of taking further evidence, notice specifying the further evidence required and the time and place fixed for taking it shall be sent by the Magistrate to the person on whose application the provisional order was made.

**RECIPROCAL ENFORCEMENT ORDERS – SECTION 12**

Reciprocal Orders have been made with the following countries—

Anguilla	S.R.O. 8/1957
Antigua	S.R.O. 8/1957
Australia	Capital Territory S.R.O. (L.I.) 6/1929
Bahamas	L.I. Gazette 30/8/1923
Barbados	L.I. Gazette 30/8/1923
Belize	L.I. Subsidiary Legislation 1924
Bermuda	L.I. Gazette 30/8/1923
Dominica	S.R.O. (L.I.) 14/1945
Grenada	L.I. Gazette 30/8/1923
Guyana	L.I. Gazette 9/8/1922
Jamaica	L.I. Gazette 14/5/1925
Jersey	S.R.O. (L.I.) 44/1954
New South Wales	L.I. Subsidiary Legislation 1924
St. Kitts and Nevis	S.R.O. 8/1957
St. Lucia	L.I. Gazette 30/8/1923
St. Vincent and the Grenadines	L.I. Gazette 30/8/1923
Trinidad (and Tobago)	L.I. Gazette 30/8/1923
(British) Virgin Islands	S.R.O. 8/1957

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## CHAPTER 5.09

### MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) ACT 1920 (U.K.)

AN ACT TO FACILITATE THE ENFORCEMENT IN ENGLAND AND IRELAND OF MAINTENANCE ORDERS MADE IN OTHER PARTS OF HIS MAJESTY'S DOMINIONS AND PROTECTORATES AND VICE VERSA. EXTENDED TO MONTSERRAT BY (U.K.) S.I. 1959 No 377.

#### Commencement

[16 August 1920]

#### Enforcement in England and Ireland of Maintenance Orders made in His Majesty's dominions outside the United Kingdom

1. (1) Where a maintenance order has, whether before officer of a court in England or Ireland for registration; and on by any court in any part of His Majesty's dominions outside the United Kingdom to which this Act extends, and a certified copy of the order has been transmitted by the governor of that part of His Majesty's dominions to the Secretary of State, the Secretary of State shall send a copy of the order to the prescribed officer of a court in England or Ireland for registration, and on receipt thereof the order shall be registered in the prescribed manner, and shall, from the date of such registration, be of the same force and effect, and, subject to the provisions of this Act, all proceedings may be taken on such order as if it had been an order originally obtained in the court in which it is so registered, and that court shall have power to enforce the order accordingly.

(2) The court in which an order is to be so registered as aforesaid shall, if the court by which the order was made was a court of superior jurisdiction, be the Probate, Divorce and Admiralty Division of the High Court, or in Ireland the King's Bench Division (Matrimonial) of the High Court of Justice in Ireland, and, if the court was not a court of superior jurisdiction, be a court of summary jurisdiction.

#### Transmission of Maintenance Orders made in England or Ireland

2. Where a court in England or Ireland has, whether before or after the commencement of this Act, made a maintenance order against any person, and it is proved to that court that the person against whom the order was made is resident in some part of His Majesty's dominions outside the United Kingdom to which this Act extends, the court shall send to the Secretary of State for transmission to the governor of that part of His Majesty's dominions a certified copy of the order.

### **Power to make Provisional Orders of Maintenance against persons resident in His Majesty's dominions outside the United Kingdom**

**3. (1)** Where an application is made to a court of summary jurisdiction in England or Ireland for a maintenance order against any person, and it is proved that that person is resident in a part of His Majesty's dominions outside the United Kingdom to which this Act extends, the court may, in the absence of that person, if after hearing the evidence it is satisfied of the justice of the application, make any such order as it might have made if a summons had been duly served on that person and he had failed to appear at the hearing, but in such case the order shall be provisional only, and shall have no effect unless and until confirmed by a competent court in such part of His Majesty's dominions as aforesaid.

**(2)** The evidence of any witness who is examined on any such application shall be put into writing, and such deposition shall be read over to and signed by him.

**(3)** Where such an order is made, the court shall send to the Secretary of State for transmission to the governor of the part of His Majesty's dominions in which the person against whom the order is made is alleged to reside the depositions so taken and a certified copy of the order, together with a statement of 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 such information as the court possesses for facilitating the identification of that person, and ascertaining his whereabouts.

**(4)** Where any such provisional order has come before a court in a part of His Majesty's dominions outside the United Kingdom to which this Act extends for confirmation, and the order has by that court been remitted to the court of summary jurisdiction which made the order for the purpose of taking further evidence, that court or any other court of summary jurisdiction sitting and acting for the same place shall, after giving the prescribed notice, proceed to take the evidence in like manner and subject to the like conditions as the evidence in support of the original application.

If upon the hearing of such evidence it appears to the court that the order ought not to have been made, the court may rescind the order, but in any other case the depositions shall be sent to the Secretary of State and dealt with in like manner as the original depositions.

**(5)** The confirmation of an order made under this section shall not effect any power of a court of summary jurisdiction to vary or rescind that order: Provided that, on the making of a varying or rescinding order the court shall send a certified copy thereof to the Secretary of State for transmission to the governor of the part of His Majesty's dominions in which the original order was confirmed and that in the case of an order varying the original order the order shall not have any effect unless and until confirmed in like manner as the original order.

(6) The applicant shall have the same right of appeal, if any, against a refusal to make a provisional order as he 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.

### **Power of Court of Summary Jurisdiction to confirm Maintenance Order made out of the United Kingdom**

4. (1) Where a maintenance order has been made by a court in a part of His Majesty's dominions outside the United Kingdom to which this Act extends, and the order is provisional only and has no effect unless and until confirmed by a court of summary jurisdiction in England or Ireland, and a certified copy of the order, together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed has been transmitted to the Secretary of State, and it appears to the Secretary of State that the person against whom the order was made is resident in England or Ireland, the Secretary of State may send the said documents to the prescribed officer of a court of summary jurisdiction, with a requisition that a summons be issued calling upon the person to show cause why that order should not be confirmed, and upon receipt of such documents and requisition the court shall issue such a summons and cause it to be served upon such person.

(2) A summons so issued may be served in England or Ireland in the same manner as if it had been originally issued or subsequently endorsed by a court of summary jurisdiction having jurisdiction in the place where the person happens to be.

(3) At the hearing it shall be open to the person on whom the summons was served to raise any defence which he might have raised in the original proceedings had he been a party thereto, but no other defence, and 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 was made had been a party to the proceedings shall be conclusive evidence that those grounds are grounds on which objection may be taken.

(4) If at the hearing the person served with the summons does not appear or, on appearing, fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order either without modification or with such modifications as to the court after hearing the evidence may seem just.

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

(6) Where a provisional order has been confirmed under this section, it may be varied or rescinded in like manner as if it had originally been made by the confirming court and where on an application for rescission or

variation the court is satisfied that it is necessary to remit the case to the court which made the order for the purpose of taking any further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

(7) Where an order has been so confirmed, the person bound thereby shall have the same right of appeal, if any, against the confirmation of the order as he would have had against the making of the order had the order been an order made by the court confirming the order.

### **Power of Secretary of State to make Regulations for facilitating communications between Courts**

5. The Secretary of State may make regulations as to the manner in which a case can be remitted by a court authorized to confirm a provisional order to the court which made the provisional order, and generally for facilitating communications between such courts.

### **Mode of enforcing orders**

6. (1) A court of summary jurisdiction in which an order has been registered under this Act or by which an order has been confirmed under this Act, and the officers of such court, shall take all such steps for enforcing the order as may be prescribed.

(2) Every such order shall be enforceable in like manner as if the order were for the payment of a civil debt recoverable summarily:

Provided that, if the order is of such a nature that if made by the court in which it is so registered, or by which it is so confirmed, it would be enforceable in like manner as an order of affiliation, the order shall be so enforceable.

(3) A warrant of distress or commitment issued by a court of summary jurisdiction for the purpose of enforcing any order so registered or confirmed may be executed in any part of the United Kingdom in the same manner as if the warrant had been originally issued or subsequently endorsed by a court of summary jurisdiction having jurisdiction in the place where the warrant is executed.

### **Application of Summary Jurisdiction Acts**

7. The Summary Jurisdiction Acts shall apply to proceedings before courts of summary jurisdiction under this Act in like manner as they apply to proceedings under those Acts, and the power of the Lord Chancellor to make rules under section twenty-nine of the Summary Jurisdiction Act, 1879, shall include power to make rules regulating the procedure of courts of summary jurisdiction under this Act.

### Proof of documents signed by officers of Court

8. Any document purporting to be signed by a judge or officer of a court outside the United Kingdom shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it, and the officer of a court by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of the court to sign the document.

### Depositions to be evidence

9. Depositions taken in a court in a part of His Majesty's dominions outside the United Kingdom to which this Act extends for the purposes of this Act may be received in evidence in proceedings before courts of summary jurisdiction under this Act.

### Interpretation

10. For the purposes of this Act, the expression "**maintenance order**" means an order other than an order of affiliation for the periodical payment of sums of money towards the maintenance of the wife, or other dependants of the person against whom the order is made, and the expression "**dependants**" means such persons as that person is, according to the law in force in the part of His Majesty's dominions in which the maintenance order was made, liable to maintain; the expression "**certified copy**" in relation to an order of a court means a copy of the order certified by the proper officer of the court to be a true copy, and the expression "**prescribed**" means prescribed by rules of court.

### Application to Ireland

11. In the application of this Act to Ireland the following modifications shall be made—

- (a) The Lord Chancellor of Ireland may make rules regulating the procedure of courts of summary jurisdiction under this Act, and other matters incidental thereto;
- (b) Orders intended to be registered or confirmed in Ireland shall be transmitted by the Secretary of State to the prescribed officer of a court in Ireland through the Lord Chancellor of Ireland;
- (c) The expression "**maintenance order**" includes an order or decree for the recovery or repayment of the cost of relief or maintenance made by virtue of the provisions of the Poor Relief (Ireland) Acts, 1839 to 1914.

**Extent of Act**

12. (1) Where His Majesty is satisfied that reciprocal provisions have been made by the legislature of any part of His Majesty's dominions outside the United Kingdom for the enforcement within that part of maintenance orders made by courts within England and Ireland, His Majesty may by Order in Council extend this Act to that part, and thereupon that part shall become a part of His Majesty's dominions to which this Act extends.<sup>1</sup>

(2) His Majesty may by Order in Council extend this Act to any British protectorate, and where so extended this Act shall apply as if any such protectorate was a part of His Majesty's dominions to which this Act extends.

**Short title**

13. This Act may be cited as the Maintenance Orders (Facilities for Enforcement) Act, 1920.

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<sup>1</sup> By Order in Council made 27 May 1921, the UK Act was extended to the Leeward Islands.

**MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) – SECTION 12**

*(O.I.C. 1921 No. 962)*

Where by the Maintenance Orders (Facilities for Enforcement) Act, 1920, provisions has been made for the enforcement in England and Ireland of maintenance orders made by a Court in any part of His Majesty's Dominions outside the United Kingdom to which the said Act extends:

And whereas by the said Act it is amongst other things provided that, where His Majesty is satisfied that reciprocal provisions have been made by the Legislature of any part of His Majesty's Dominions outside the United Kingdom for the enforcement within that part of maintenance orders made by Courts within England and Ireland, His Majesty may by Order in Council extend the said Act to that part, and thereupon that part shall become a part of His Majesty's Dominions to which the said Act extends:

And whereas His Majesty is satisfied that the Legislatures of the parts of His Majesty's Dominions outside the United Kingdom hereinafter mentioned have made reciprocal provisions for the enforcement within those parts of maintenance orders made by Courts with England and Ireland:

Now, therefore, His Majesty, by virtue and in exercise of the powers by the above recited Act in His Majesty vested, is please, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows—

The Maintenance Orders (Facilities for Enforcement) Act, 1920, shall apply to the parts of His Majesty's Dominions outside the United Kingdom hereunder mentioned—

Dominica  
Grenada  
Leeward Islands  
Mauritius.





