



Tuvalu

**MAINTENANCE (MISCELLANEOUS
PROVISIONS) ORDINANCE**

**12 of 1921, 6 of 1929, (Cap. 5 of 1952), 3 of 1959, L.N.
16/72, 3 of 1972, (Cap. 4 of 1973), 7 of 1973, (Cap. 96 of
1973)**



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12 of 1921, 6 of 1929, (Cap. 5 of 1952), 3 of 1959, L.N. 16/72, 3 of 1972, (Cap. 4 of 1973), 7 of 1973, (Cap. 96 of 1973)

**AN ORDINANCE TO PROVIDE FOR THE MAINTENANCE OF
NEGLECTED PERSONS IN TUVALU AND TO FACILITATE THE
ENFORCEMENT IN TUVALU OF MAINTENANCE ORDERS MADE
IN ENGLAND, IRELAND AND CERTAIN BRITISH POSSESSIONS**

ENACTED BY THE PARLIAMENT OF TUVALU

Commencement Parts I and III [13th December 1921]

Commencement Part II [1st November 1973]

PART I - PRELIMINARY

1 Short title

This Ordinance may be cited as the Maintenance (Miscellaneous Provisions) Ordinance.

PART II - MAINTENANCE ORDERS OF NEGLECTED PERSON

2 Interpretation of Part II

In this Part –

“**maintenance declaration**” means a declaration under section 3;

“**maintenance enforcement order**” means an order under section 4;

“**order**” means a maintenance declaration, a maintenance enforcement order or an order under section 6.

3 Power of court to make a maintenance declaration

- (1) A court may on application by or on behalf of any person make a declaration that another person or other persons shall be liable to maintain that person where it is satisfied that there is a legal or customary obligation to do so.
- (2) Before making a maintenance declaration the court shall make a full enquiry into all the circumstances and in particular shall take into consideration —
 - (a) the age of the person for whose benefit the application is made; and
 - (b) the personal circumstances of every person concerned in the application.
- (3) In the performance of the duty imposed on it by subsection (2) the court shall call for any evidence or report it may in the interests of justice consider necessary.

4 Power of court to make a maintenance enforcement order

- (1) An application to a court may be made by or on behalf of any person for whose benefit a maintenance declaration has been made (hereinafter referred to as the applicant) for an order under this Ordinance against any person who by virtue of that declaration is liable to maintain him (hereinafter referred to as the defendant) on the ground that the defendant has wilfully neglected to provide or to make proper contribution towards reasonable maintenance for the applicant.

- (2) On an application under this section the court shall have regard to all the circumstances and in particular to the resources of the defendant and may order —
- (a) payment by the defendant to the applicant or to any other person on the applicant's behalf or to the court of such sums of money as the court considers reasonable at such times as the court may direct;
 - (b) provision by the defendant for the applicant of such shelter and care as the court may direct;
 - (c) any reasonable combination of the matters specified in paragraphs (a) and (b):

Provided that where in the case of a maintenance enforcement order of an island court the defendant is resident outside the ordinary limits of that court's jurisdiction the order shall not have effect until it has been confirmed by a magistrate upon his being satisfied that it is just to do so after review by him of the proceedings in accordance with the provisions of section 37 of the Island Courts Ordinance.

Cap. 46.

- (3) Payment of any sum of money due under a maintenance enforcement order may be enforced as if judgment for the payment of that amount to the applicant had been given against the defendant by any magistrate's court or island court.

5 Penalties for failure to comply with maintenance enforcement order

- (1) Without prejudice to section 4(3) any person who wilfully fails to comply with a maintenance enforcement order shall be liable to a fine of \$50 and to imprisonment for 6 months.
- (2) Any failure to comply with a maintenance enforcement order shall be deemed to be wilful unless the contrary is proved.
- (3) Conviction of an offence under this section shall not affect any existing obligations under a maintenance enforcement order.
- (4) Conviction or acquittal of an offence under this section shall in no way operate as bar to a prosecution for an offence under section 226 of the penal code.

Cap. 63

6 Powers of court to discharge and vary orders

- (1) A court may at any time on application by any person make an order discharging or varying a maintenance declaration or a maintenance enforcement order or remitting any payments then due thereunder.
- (2) Before making an order under this section the court shall perform the duties imposed on it by section 3 or 4 as the case may be so that in every case the order of the court shall be and shall continue to be reasonable and fair in all the circumstances.

7 Venue

- (1) Subject to the provisions of this section —
 - (a) an application under section 3 shall be made to a court within the ordinary limits of whose jurisdiction the person for whose benefit the application is made normally resides;
 - (b) an application under section 4 or 6 shall be made to the court by whom an order was last made.
- (2) A magistrate on being satisfied that it is in the interests of justice to do so may in any case give leave for an application under this Part to be made to a court, within or without the limits of his jurisdiction, other than that prescribed by subsection (1) and shall specify the court.
- (3) On leave being granted by a magistrate under subsection (2) the record or a copy of the record of any previous proceedings shall be forthwith transmitted by the court in which those proceedings took place to the court specified by the magistrate.

8 Jurisdiction of courts under Part II

Notwithstanding any other law to the contrary but subject to sections 4 and 7 every court shall for the purpose of proceedings under this Part exercise jurisdiction throughout Tuvalu.

9 Power to make regulations

Without prejudice to any powers conferred by other laws to make rules of court or regulations governing magistrates' courts or island courts the Minister may with the approval of the Chief Justice make regulations for those courts in respect of proceedings under this Part —

- (a) regulating the practice and procedure;

- (b) regulating the forms to be used and all matters connected therewith;
- (c) regulating the receipt of moneys paid to a court under a maintenance enforcement order and the payment of such moneys out of court to persons entitled thereto;
- (d) prescribing rules of evidence to be observed;
- (e) generally for the better carrying into effect of the provisions, objects and intentions of this Part.

PART III - ENFORCEMENT OF CERTAIN MAINTENANCE ORDERS MADE OUTSIDE TUVALU

10 Interpretation of Part III

For the purposes of this Part —

“**maintenance order**” means an order other than an order for 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;

“**dependants**” means such persons as a person against whom a maintenance order is made is liable to maintain according to the law in force in the place where such maintenance order is made;

“**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;

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

11 Enforcement of maintenance orders made in England or Ireland

Where a maintenance order has, whether before or after the commencement of this Part, been made against any person by any court in England or Ireland and a certified copy of the order has been transmitted by the Secretary of State to the Minister, the Minister shall send a copy of the order to an appropriate court 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 this Part, 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 the court shall have power to enforce the order accordingly.

12 Transmission of maintenance orders made in Tuvalu

Where the court has, whether before or after the commencement of this Part, made a maintenance order against any person and it is proved to the court that the person is resident in England or Ireland the court shall send to the Minister for transmission to the Secretary of State a certified copy of the order.

13 Power to make provisional orders of maintenance against persons resident in England or Ireland

- (1) Where an application is made to the court for a maintenance order against any person and it is proved that that person is resident in England or 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 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 Minister, for transmission to the 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 Ireland for confirmation and the order has by that court been remitted to the court for the purpose of taking further evidence, the court shall, after giving the prescribed notice, proceed to take evidence in like manner and subject to the like conditions as the evidence in support of the original application; and 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 Minister 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 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 Minister for transmission to the 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.

14 Power of the court to confirm maintenance order made in England or Ireland

- (1) Where a maintenance order has been made by a court in England or Ireland and the order is provisional only and has no effect unless and until confirmed by the court, 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 Minister, and it appears to the Minister that the person against whom the order was made is resident in Tuvalu, the Minister may send the said documents to the prescribed officer of the court 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 on such person.
- (2) A summons so issued may be served in the same manner as if it had been originally issued by the court.
- (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.

15 Power of Minister to make rules for facilitating communications between courts

The Minister may make rules as to the manner in which a case can be remitted by a court authorised to confirm a provisional order to the court which made the provisional order, and generally for facilitating communications between such courts.

16 Mode of enforcing order

- (1) Where an order has been registered or confirmed under this Part the court and its officers shall take all such steps for enforcing the order as may be necessary.
- (2) Every such order shall be enforceable in like manner as if the order were for the payment of a civil debt:

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

17 Proof of documents signed by officers of court

Any document purporting to be signed by a judge or officer of a court in England or 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.

18 Deposition to be evidence

Depositions taken in a court in England or Ireland for the purposes of this Part may be received in evidence in proceedings before the court under this Part.

19 Procedure

All proceedings under this Part shall be deemed to be civil proceedings and the rules relating to civil cases shall apply with such adaptations as may be necessary.

20 Power to extend Part III to certain other British possessions

- (1) Where the Minister 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 the courts in Tuvalu, the Minister may by order extend this Part to such possession or territory, and this Part shall thereupon apply in respect of such possession or territory as though the references to England or Ireland were references to such possession or territory and the references to the Secretary of State were references to the Governor of such possession or territory.
- (2) In this section the references to the Governor of any such possession or territory includes references to an administrator or other officer administering the government of any such possession or territory and to such other officer as such Governor, administrator or officer administering the government may appoint.

ENDNOTES**Table of Legislation History**

Legislation	Year and No	Commencement

Table of Renumbered Provisions

Original	Current

Table of Endnote References