

**DRAFT MAINTENANCE ORDERS (ENFORCEMENT) (JERSEY)
LAW 199**

**Lodged au Greffe on 11th August 1998
by the Legislation Committee**



STATES OF JERSEY

STATES GREFFE

175

1998

P.176

Price code: B

Report

At present, a maintenance order does not carry with it any automatic right to effect an arrest on wages if the payer defaults in the payment of maintenance. The recipient spouse must instead sue in the Petty Debts Court or the Royal Court in the normal way to recover the debt. Only after judgment has been taken may the debt be enforced in the usual way. Moreover this procedure has to be repeated each time there is a default. The need for repeated proceedings inevitably leads to cost and delay and, indeed, hardship for the recipient and/or any children in respect of whom maintenance is payable. This is true also of orders for maintenance made as a result of proceedings in the Royal Court for an affiliation order. These are known in Jersey law as actions for *pension alimentaire*.

The Legislation Committee has considered various ways in which the procedure for recovery of sums due under these various types of maintenance order might be expedited in the interests of the recipient and/or the children for whose benefit they have been made. The first possibility was to amend the law so that maintenance orders automatically would confer a right for the Viscount, in the event of default in payment of maintenance, automatically to effect an arrest of wages. Consideration has to be given, however, to the position of the conscientious payer of maintenance whose default may simply be a genuine error or, indeed, the error of a third party such as a bank failing to make a timely payment under a standing order. The Committee has therefore considered a second possibility along the following lines which the draft Law would implement -

1. Maintenance orders should issue in their present form without an automatic authority to arrest wages in default of payment.
2. However, upon a first default, the payee, instead of issuing an ordinary summons for recovery of the debt, should be able to apply to -
 - (a) the Judge of the Petty Debts Court; or
 - (b) the Bailiff,

in Chambers for an *ordre provisoire*, (i.e. an order to distrain forthwith upon the assets of the debtor) which would issue in the same way as for certain civil debts where there is a risk that funds will be dissipated. However, this Law will go further and make it possible to authorize an immediate provisional arrest of the wages of the person in default.

3. The action *pour confirmer l'arrêt* (i.e. to place the provisional order on a permanent footing) would then be instituted before the Court itself as it is under the existing procedure for an *ordre provisoire*. However, the Court would then have jurisdiction to make the arrest of wages a permanent feature of the original maintenance order. If the Court were to attach to the original maintenance order an authority to arrest wages, the recipient would be protected for the future and would be relieved of the requirement to institute further proceedings on each and every occasion that the payer fell into arrears.

The intention thus is to afford the conscientious payer of maintenance a fair opportunity to continue paying maintenance without the threat of an immediate arrest of wages in the event of a default in payment which may be a *bona fide* mistake or not even the fault of the payer. However, the proposal would enable the recipient, immediately there was a culpable failure to pay maintenance, to apply *ex parte* (i.e. without having to summons the payer) so that a provisional order (*ordre provisoire*) could be made authorizing the Viscount to take immediate action. That provisional order would have to be brought back to the Court for confirmation as outlined above. The Court would then have a discretion, depending upon the explanation offered by the payer, to make the arrest of wages a permanent feature of the maintenance order itself. This would mean that the payee would not have to go back repeatedly to the Court (or to the Bailiff or the Judge of the Petty Debts Court) but would automatically be able to rely upon the authority of the Viscount to arrest wages without further legal process.

The Committee believes that such procedures not only would operate as an incentive to separated or former spouses or ex partners to honour

their obligations to pay maintenance, but would also provide the proper recipients with a swifter means of recourse against those who persistently flout such obligations and neglect to pay proper levels of maintenance, not only to the immediate recipient, but also for the benefit of their own children for whom they, rather than the State, have primary responsibility.

Explanatory Note

The purpose of the draft Law is to expedite the procedure for the arrest of wages upon default in payment of the amount due under a maintenance order, either of the Family Division of the Royal Court or of the Petty Debts Court, or made by the Royal Court in the course of affiliation proceedings.

Under Article 2 of the draft Law -

- (a) if payment is not made in terms of the maintenance order, the person in whose favour it has been granted may apply *ex parte* to the Bailiff, or the Judge of the Petty Debts Court, for an *ordre provisoire* which will issue in the normal way except that it will authorize an immediate arrest of wages;
- (b) the action *pour voir confirmation de l'arrêt* will then be instituted as at present, with the refinement that the Court, when disposing of that action, may, if it thinks fit, make the arrest of wages a permanent feature of the original maintenance order;
- (c) the discretion in (b) above will apply equally where proceedings for recovery of arrears have been brought by ordinary summons as opposed to proceedings by way of *ordre provisoire*.

**MAINTENANCE ORDERS (ENFORCEMENT)
(JERSEY) LAW 199**

A LAW to make additional provision for the enforcement of maintenance orders, sanctioned by Order of Her Majesty in Council of the

(Registered on the day of 199)

STATES OF JERSEY

The day of 199

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law -

ARTICLE 1

Interpretation

(1) In this Law, unless the context otherwise requires -

“maintenance order” means an order for the payment of a sum, or periodic sums, of money made -

(a) by the Royal Court -

(i) under Article 29, 30A, 31 or 32 of the Matrimonial Causes (Jersey) Law 1949,¹ or

¹ Tome VII, pages 594-596, Volume 1979-1981, page 4, Volume 1982-1983, page 156, Volume 1986-1987, page 21, Volume 1994-1995, page 612 and Volume 1996-1997, pages 316 and 317.

(ii) for *pension alimentaire* in proceedings for an affiliation order; or

(b) by the Petty Debts Court under Article 2, 3, 6, 6A or 8 of the Separation and Maintenance Orders (Jersey) Law 1953,²

and “maintenance” shall be construed accordingly;

“wages” has the same meaning as in the Payment of Wages (Jersey) Law 1962.³

(2) Unless the context otherwise requires, where this Law refers to an enactment, the reference is to that enactment as amended from time to time, and includes a reference to that enactment as extended or applied by or under another enactment including any other provision of that enactment.

ARTICLE 2

Enforcement of maintenance orders

(1) If a person (hereinafter referred to as “the payer”) fails to comply with a maintenance order, the person for whose benefit that order was made (hereinafter referred to as “the recipient”) may proceed for recovery of any sum due under that order in accordance with the following provisions of this Article.

(2) The recipient may apply *ex parte* to the Bailiff or, as the case may be, to the Judge of the Petty Debts Court, for an *ordre provisoire* to distrain upon the movables (*biens-meubles*) of the payer and to make a provisional arrest of his wages.

(3) An application under paragraph (2) of this Article shall be supported by an affidavit setting out the terms of the maintenance order and the circumstances of the alleged failure of the payer to comply therewith.

² Tome VIII, pages 200, 201, 203 and 204.

³ Volume 1961-1962, page 485, Volume 1975-1978, page 259, Volume 1982-1983, page 7 and Volume 1998-1999, page 303.

(4) The recipient shall, as soon as may be after the issue of the *ordre provisoire* summons the payer to appear before the Royal Court, or, as the case may be, the Petty Debts Court, to witness confirmation of the distraint or arrest or both, as the case may be.

(5) Upon the hearing of a summons issued in accordance with paragraph (4) of this Article, the Court may confirm or discharge the distraint or arrest or both and, upon the application of the recipient, the Court may, if it thinks fit, order that the maintenance order shall have effect as if it authorized an arrest to be made on the wages of the payer in such amount as the Court thinks just.

(6) The Court shall have the same powers upon the return of a summons issued other than in reliance upon the provisions of this Law for the recovery of arrears of maintenance as it has under paragraph (5) of this Article.

ARTICLE 3

Short title

This Law may be cited as the Maintenance Orders (Enforcement) (Jersey) Law 199 .