

**THE RECOGNITION AND ENFORCEMENT OF JUDGMENTS AND
ORDERS AND THE SERVICE OF PROCESS WITHIN THE COMMONWEALTH**

A PROGRESS REPORT

Memorandum by the Commonwealth Secretariat

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Introduction

1. It was at the Meeting of Commonwealth Law Ministers in 1973 that Ministers first considered intra-Commonwealth legal relations in the field of execution of judgments. The particular aspect of the topic for consideration was the enforcement of maintenance orders but Ministers recognised that the whole field was one of growing importance to individuals and commercial organisations within the Commonwealth and deserved more general study.

2. As a result of discussions at the 1973 Meeting, the Secretariat commissioned Professor J. D. McClean and Professor K. W. Patchett to prepare a report examining the subject in detail. The two Professors produced a Preliminary Report for the 1975 Meeting, limited to money-judgments, maintenance orders and arbitral awards. The report demonstrated the existence of a number of Commonwealth schemes for legal co-operation in the field. The existence of those schemes was itself evidence of the practical importance of the subject-matter, but the schemes had not been kept up to date, did not reflect developments in international thought, and for a variety of reasons did not provide the comprehensive coverage which was seen to be required.

3. The professors were invited to continue and complete their examination, and a full report was presented at the Winnipeg Meeting in 1977. It examined money-judgments, maintenance orders, arbitral awards, bankruptcy, dissolution and winding-up of corporate bodies, grants of administration and service of process. The report contained recommendations for the improvement of Commonwealth co-operation in these areas and drew attention to the need for legislation in Commonwealth countries to take account of work done by specialist bodies such as The Hague Conference on Private International Law and UNIDROIT. The report was warmly received by Ministers who invited the Secretariat to pursue the professors' recommendations. The purpose of this present Report is to indicate the progress that has already been made and to indicate possible lines for future action.

The Regional Meetings

4. Three Regional Meetings have been held to examine aspects of the topic. They were held at Basseterre, St. Kitts, in April 1978; at Apia, Western Samoa, in April 1979; and in Nairobi, Kenya, in January of this year. A full list of jurisdictions represented, in some cases by Ministers but more commonly at senior official level, will be found in **Appendix A**. All three Meetings demonstrated the

value of such regional meetings of lawyers concerned with the practical workings of legislation on particular topics, and as will be seen from what follows, the Meetings were extremely successful in advancing consideration of the matters under review. It was only possible in the limited time available to examine four principal topics: the service of process, grants of administration, maintenance orders, and money-judgments.

Service of Process Abroad

5. The Meetings examined the question of service of process abroad, recognising the critical importance of satisfactory facilities for such service to the growing volume of international litigation. The traditional reliance on service being effected by the plaintiff or his agent, entirely familiar in common law jurisdictions, is unacceptable in many of the civil law jurisdictions with which many Commonwealth countries now have growing trade links, and the importance of dealing satisfactorily with resulting problems was particularly stressed at the Nairobi Meeting (where many countries represented had civil law neighbours).

6. Within the Commonwealth, there are no arrangements for giving official assistance to litigants seeking to serve process abroad. The growing diversity of procedural rules within the Commonwealth, which does of course have jurisdictions influenced by civil law and Roman-Dutch traditions, creates a need for official assistance, and the Meetings recognised the strength of the case for its introduction. A simple and inexpensive system was desirable in the interests of litigants and state Treasuries.

7. If such a system were available within the Commonwealth, it would greatly facilitate arrangements with civil law countries, which commonly object to the service of process other than through official channels. It was therefore seen as highly desirable to find an approach compatible with the needs of Commonwealth and non-Commonwealth states.

8. The Meetings were aware that a number of Commonwealth member states were already parties to *The Hague Convention on Service Abroad of Process*. This was specifically designed, in the tradition of The Hague Conference, for use by common law and civil law countries alike. It was simple (involving little more than the sending of the process and related documents to a designated official in the receiving State, who arranged for service to take place and who certified in due course that this had been done) and, by avoiding the use of consular or diplomatic channels, inexpensive and speedy.

9. The conclusion of the Meetings was that accession by Commonwealth countries generally to this Convention was a most desirable step. The Convention would come to serve as a scheme for service in other Commonwealth countries and as a bridge between the Commonwealth and countries of different legal traditions.

10. Encouraged by the views expressed at the Basseterre Meeting, the Secretariat invited Professors McClean and Patchett to prepare detailed Explanatory Documentation on a number of the Conventions produced at The Hague. The first of these was produced last year and examines the Service Abroad Convention, as well as those on Evidence and Legalisation. The brochure contains detailed information on the procedure for accession to the Service Convention with draft Rules of Court. In view of the unanimity of opinion at the Regional Meetings, Ministers may feel that it would be timely for those Commonwealth countries which have not already done so to set in hand consideration of accession to the Convention.

11. The Meetings also considered whether it was desirable to remove one further procedural hurdle from the path of the plaintiff contemplating international litigation. The traditional Rules of Court governing service out of the jurisdiction not only prescribe the cases in which such service is permissible but also require the prior leave of the court before service may be effected. A number of jurisdictions have, in recent revisions of their procedural rules, removed the need for prior leave in at least some categories of case; safeguards are retained so that improper service is invalid and may lead to sanctions as to costs. While recognising that this was not a matter on which the need for uniformity was very strong, the Meetings generally considered that the point could usefully be considered when reviews of this area of law were contemplated.

Grants of Administration

12. The traditional mechanism, adopted in almost all the common law jurisdictions, for facilitating the administration of estates where assets are to be found in more than one country, is to permit an original grant of administration to be resealed in each jurisdiction in which the personal representative needs to exercise his authority.

13. The Surveys and the Working Meetings have suggested that the resealing system has proved to be a straightforward and effective mechanism which generally operates smoothly with the minimum of controversy and expense. There was widespread agreement in all the Regions that the scheme was fundamentally sound and that it should continue to provide the basis for future arrangements.

14. At the same time, some shortcomings and possible improvements have been made evident by the experience gained from the use of the scheme over the years of this century but especially in the post colonial era. The principal deficiencies—which have

been dealt with by statutory amendment in some Commonwealth countries, principally in Australia and Canada—are:

(i) *the coverage of the scheme*: in many instances the relevant legislation does not reflect the changed nature of the Commonwealth, since it continues to apply the scheme to jurisdictions referred to, either collectively or individually, in terminology of uncertain meaning or validity. The consequence of this and, in the case of those states which must extend the scheme by individual order, of limited numbers of such orders is that the scheme has less than Commonwealth-wide application. A further weakness is that in most cases there is no possibility of applying the scheme to non-Commonwealth States, even where grants of administration are made in forms and circumstances closely akin to those in Commonwealth States.

(ii) *procedural features*: recent versions of the legislation have introduced several improvements on the original model, in a number of cases remedying shortcomings which practice has revealed. These relate, for example, to the range of persons who may make applications, better safeguards for creditors and others interested in the administration and the responsibilities of those acting under a resealed grant on behalf of the personal representative.

(iii) *administration in civil law systems*: the original scheme applied not only to grants of probate and letters of administration but to instruments issued by courts of probate having like effect. In some jurisdictions, however, authority to collect and administer an estate is not given pursuant to a court order. The Commonwealth Scheme does not meet this case. The most striking example relates to those civil law systems (both within and outside the Commonwealth) under which an heir enters upon his inheritance by operation of law. Unless there has been judicial intervention in a contested or complicated case, there will be no formal authority which the heir could present to a common law court for resealing.

15. As a result of the Working Meetings, the following steps for improvement of existing arrangements seem to command support:

(i) the basic model used by the majority of Commonwealth countries could usefully be refurbished by

(a) giving it automatic Commonwealth-wide application;

(b) allowing its extension to non-Commonwealth countries in so far as they provide for the grant or issue of formal authority to administer estates through instruments which have equivalent effect to a grant of probate or letters of administration;

(c) introducing up-to-date procedural improvements into the statute;

(ii) the model Bill which has been discussed in various revisions by all the Meetings and attempts to meet all the requirements merits consideration

for adoption by Commonwealth Governments (see **Appendix B**);

(iii) consideration should be given by Commonwealth Governments to the possibility of accession to the *Convention concerning the International Administration of the Estates of Deceased Persons* prepared by the Hague Conference in 1973 but not yet in force. This Convention, which is principally concerned to deal with the needs of civil law heirs seeking authority to enter into their entitlement in common law countries, was not considered by the Working Meetings as a suitable replacement for the existing Commonwealth scheme where that was capable of being applied. It was, however, seen as a potential supplementary scheme to meet circumstances not covered by the Commonwealth arrangement. The implications and mechanism of accession would be a suitable matter upon which detailed advice could be given by the Secretariat.

Maintenance Orders

16. As already noted, the enforcement of maintenance orders was one of the first aspects of the present field to be recognised as in need of attention, partly because Law Ministers were aware of a good deal of legislative activity in the area and partly because of its importance in terms of human happiness.

17. Almost all Commonwealth countries were found to 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. The text of the Bill is given in **Appendix C**. 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.

Money Judgments

21. The substantial majority of Commonwealth States have in force legislation for the registration and enforcement of judgments from other sovereign states. This legislation is modelled upon United Kingdom statutes either of 1920 (which has application within the Commonwealth only) or of 1933 (which is capable of being applied also to foreign states). The intention of the draftsmen of the later Act was that it should displace the former. Whilst this has occurred in a significant number of cases, in many both Acts are found on the statute book, although one or other may not in fact be operative whilst in others the later scheme has never been introduced.

22. The Regional Meetings, in examining the Commonwealth schemes, were made aware, in this matter as in others, of certain basic shortcomings relating to the coverage of the schemes. Extension orders too frequently showed little evidence of a systematic application of the scheme to those jurisdictions with which there were the main geographical, trading or migratory links. Little recent activity to review or revise the coverage was evident in many cases. There was little evidence of any attempt in many countries to apply the arrangements to non-Commonwealth States, even where power to enter into them was given.

23. Views were expressed at the Regional Meetings that reform in this area of law was unlikely to constitute a high priority in jurisdictions with relatively small economies and there were some fears that any improved facilities would be principally to the advantage of the Commonwealth countries with advanced economies. At the same time, it was apparent that there was widespread acceptance of the principle of providing international mechanisms which reduced the cost and delays which a creditor seeking to enforce his judgment abroad encounters and that in the longer term it would be advantageous to states with developing economies to have reciprocal arrangements at least with their main trading partners.

24. Those countries making regular use of the Commonwealth schemes were generally satisfied that they were uncomplicated in their operation and gave rise to few practical difficulties. There was also general support for the widening of the scheme to embrace other types of civil judgments in addition to money judgments, in particular judgments for the recovery of moveable property.

25. The Regional Meetings, therefore, favoured, as the immediate strategy, the following steps—

(a) confining the arrangements to a single scheme, and in particular the replacement of the 1933 scheme for that of 1920, especially in those jurisdictions where both statutes had already been enacted;

(b) in every case, the refurbishing of existing orders to ensure that up-to-date constitutional references to jurisdictions and their courts were in force;

(c) a review of those orders to determine whether extensions could be made in favour of jurisdictions with which the principal links of commerce and population obtained;

(d) an exchange of experience of negotiations with non-Commonwealth countries to determine the circumstances in which reciprocal arrangements had been effected and the action which must be taken in each instance to bring these about. It was apparent that the technique employed by the United Kingdom, that of negotiating formal international treaties, was not commonly employed by other Commonwealth countries which had found it possible to establish facilities by informal diplomatic correspondence.

26. The Regional Meetings, however, were made aware of the numerous international schemes in relation to enforcement of foreign judgments which were developing. In particular, attention was drawn to *The Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters*, the *Brussels (EEC) Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters*, and the current negotiations for a *UK/US Civil Judgments Convention*. It was fully recognised that these instruments represented major initiatives which could have a profound influence upon the future development of multilateral arrangements and therefore potentially upon the Commonwealth schemes. For it was apparent that these Conventions embodied features which were not fully consistent with those in the Commonwealth legislation.

27. In the latter respect, the later Working Meetings were particularly conscious that the future approach of the United Kingdom which will need to enact new legislation to meet the requirements of both the EEC Convention and the UK/US Convention could be influential. The Nairobi Meeting, in particular, suggested that the Law Ministers' Meeting might provide an opportunity for the United Kingdom Government, which was not represented at any of the Regional Meetings, to outline—

(a) whether the new bases for the assumption of jurisdiction in civil matters which will be necessary to fulfil the EEC Convention would also be applicable to proceedings in the UK which did not fall within that Convention, especially those which might affect residents or domiciliaries of Commonwealth countries;

(b) whether the 1933 legislation was to be amended to permit the US/UK Convention to be given effect under that statute or whether a further statute was envisaged to give municipal effect to the Convention;

(c) whether, especially if the 1933 Commonwealth schemes were to be so amended, it would in future be used primarily for non-Commonwealth arrangements whilst the rather less satisfactory 1920 scheme would remain the principal vehicle for the Commonwealth.

28. The Regional Meetings were generally of the view that as various international schemes grew,

there would be increasing demands to re-examine whether the Commonwealth schemes should attempt to reflect the emerging trends. For these new schemes extend the grounds upon which foreign judgments are to be recognised and enforced and introduce additional safeguards to protect the interests of both judgment creditors and debtors.

29. It was, however, apparent to all the Meetings that this aspect of judgments' enforcement more than those others reviewed by them gave rise to exceptionally demanding technical considerations which had still not been the subject of concluded international agreement. Accordingly, it was felt that—

(a) Commonwealth Governments need to keep these developments under constant and continuing review;

(b) developments to date should be the subject of analysis by an *ad hoc* Group of Commonwealth Experts with special expertise in this part of private international law;

(c) the Model Bill (see **Appendix D**), which attempts in statutory form to identify the kinds of issue to which this matter now gives rise, and possible solutions, should be made available both to Governments and to such an *ad hoc* Group to assist in such reviews and analysis.

30. It was generally conceded that any fundamental alterations to the Commonwealth schemes in respect of money-judgments either unilaterally or collectively would be premature given the extent of international activity currently taking place.

The Model Bills

31. The Regional Meetings have welcomed the preparation by the Professors of the model legislation on the matters under discussion. The Secretariat shares the view that this procedure is advantageous, both to the participants at technical meetings who can see precisely what are the legislative implications of the agenda items, and to jurisdictions which may wish to take legislative action but would be hindered by a lack of adequate legal drafting resources.

32. It is however stressed that the Model Bills have no greater status than that outlined above. They are presented with the recognition that considerable adaption will be required in particular jurisdictions, though in the hope that a measure of uniformity may be preserved.

Designation of Commonwealth Countries

33. In their Reports, Professors McClean and Patchett drew attention to the weaknesses found in a number of schemes for Commonwealth co-operation as a result of a failure by individual countries to take account of constitutional developments elsewhere. Some legislation giving effect to Commonwealth schemes still uses phrases such as "British pos-

sessions" or refers to countries by archaic titles such as "Gold Coast Colony" or "the Straits Settlements". Attention has been drawn in the Reports of the three Regional Meetings to the Commonwealth Countries Act 1977 of New Zealand, and participants at those Meetings welcomed, in general, the approach of that measure. At **Appendix E** there is presented a draft Bill based upon the New Zealand Act but in a form which it is thought will be more generally useful.

International Organisations in the Field

34. As a result of the discussions of the 1975 Law Ministers' Meeting, the Commonwealth Secretariat negotiated Observer status with The Hague Conference and with UNIDROIT. The value of such links has already proved itself. The Secretariat has been represented at two meetings of Special Commissions of The Hague Conference, and the Secretary-General of the Conference was a welcome participant at the Regional Meeting in Nairobi. A major Session of The Hague Conference, an event held every four years, will take place in October 1980, and is to discuss the international abduction of children (an item proposed by Canada); legal aid in international litigation; negotiable instruments; and other topics. Ministers may wish to comment on the development of such links, where the Secretariat can perform a function as agent for Commonwealth jurisdictions, monitoring and communicating the latest expert opinions on technical subjects in an economical and yet effective way. The preparation of a series of brochures examining the existing Hague Conventions from the point of view of Commonwealth jurisdictions, with model legislation, has already been mentioned.

Future work

35. It has not yet proved possible to take further a number of topics examined in the reports by Professors McClean and Patchett. Arbitral awards, bankruptcy and winding-up are such topics. An important area not yet examined is the whole question of the recognition of divorces and related orders, which would be a development of the work already done on maintenance orders, and which might also take account of the conclusions of studies on child custody aspects. Reference has already been made to the further work needed in the money-judgments area. Ministers may wish to comment on perceived priorities in the future work to be undertaken, in an area of legal co-operation of undoubted value to the people of the Commonwealth.

Appreciation

36. At previous Meetings, Ministers have commended the work of Professors McClean and

Patchett, and acknowledged the very real contribution they have made to initiatives aimed at improving Commonwealth arrangements and co-operation in this important and complex area of the law. The Professors' earlier Reports, and the Reports of the Regional Meetings, have been distributed throughout the Commonwealth, and beyond, to Governments, law reform agencies, libraries serving lawyers, and to practitioners themselves. Writing about the St. Kitts Report, a New Zealand reviewer had this to say—

The material in this Report is of an intensely practical nature, has been prepared to the best of research standards, and is presented clearly and well. It is of a range and degree of detail that will be appreciated by all conflicts lawyers and proceduralists and is wholeheartedly recommended to practitioners and academics with those interests.

37. An Australian reviewer of the same Report commented in these terms on the general approach of the Commonwealth to these developments—

The general approach of the Commonwealth is sensible. It is recognized that in some areas the community of interests and common legal heritage makes a separate Commonwealth scheme desirable. But there has been demonstrated a readiness to participate in broader international schemes, such as those devised by The Hague Conference, where suitable. This non-parochial and internationalist attitude stands in marked contrast to other regional groupings, particularly the European Economic Community, which have tended to look inward in these matters and have somewhat undermined the work of The Hague Conference and other international organizations. The Commonwealth can play a special role in the field of private international law, particularly for the smaller member States. On their own, such States may lack the resources of expertise to undertake studies into existing schemes and to evaluate new developments and to participate as individual members of international bodies active in the field.

38. This progress report once again reveals the deep debt owed by the Commonwealth Secretariat to the two Professors, and we are happy both to express our appreciation and to pay tribute to them for their scholarly and distinguished work.

APPENDIX A

CARIBBEAN REGIONAL MEETING

Basseterre, St. Kitts, 24–26 April 1978

List of Participants and Secretariat

Antigua	The Hon. Cosmas Phillips, Q.C. Attorney-General and Minister of Legal Affairs.
Barbados	Miss Yolande Bannister Chief Parliamentary Counsel. Mr. Colin A. Rocheford Registrar of the Supreme Court.
British Virgin Islands	Mr. Gerard St. C. Farara Legal Assistant.
Canada	Mr. F. J. E. Jordan Director, Constitutional, Administrative and International Law Section, Department of Justice, Ottawa.
Cayman Islands	Mr. David E. Ritch Crown Counsel.
Jamaica	The Hon. Mr. Justice O. D. Marsh Chief Parliamentary Counsel.
Guyana	Mr. Kenneth W. Barnwell Registrar of the Supreme Court.

St. Kitts-Nevis-Anguilla	The Hon. Lee L. Moore, M.P. Attorney-General and Minister of Legal Affairs. Mr. H. L. Browne Crown Counsel. Mr. K. A. Liburd Crown Counsel.
Trinidad and Tobago	Mr. Ivor Blackman Assistant Solicitor-General.
Turks and Caicos Islands	Mrs. Ena C. Woodstock, M.B.E. Magistrate.
Caricom Secretariat	Albert N. J. Matthew Assistant Legal Counsel.
Secretariat for Meeting	Professor J. D. McClean University of Sheffield, UK. Professor K. W. Patchett Caricorm Secretariat, Guyana. Mr. J. D. Pope Assistant Director, Legal Division, Commonwealth Secretariat. Mr. D. W. Sagar Special Adviser, (Legal) C.F.T.C. Mrs. Dorothy Hector, Miss Irene Harris and Miss Paulette Thompson, Basseterre, St. Kitts.

PACIFIC REGIONAL MEETING

Apia, Western Samoa, 18–23 April 1979

List of Participants and Secretariat

Australia	Mr. F. J. Mahony, OBE Deputy Secretary, Attorney-General's Department. Mr. T. Parslow, ED, QC Solicitor-General for State of Queensland. Mr. D. R. L. Boucher Principal Legal Officer, Attorney-General's Department.
Cook Islands	Mr. Michael C. Mitchell Advocate General.
Fiji	Mr. W. M. McGregor First Parliamentary Counsel.
Hong Kong	Mr. Jeremy F. Matthews Deputy Legal Draftsman. Mr. P. G. O'Dea Assistant Registrar, Supreme Court.
Malaysia	En. Fong Seng Yee Head of Civil Section, Attorney-General's Chambers.

New Zealand	Mr. R. G. Montagu Chief Legal Adviser, Department of Justice. Mr. P. D. Kennedy Second Secretary, New Zealand High Commission, Apia. Mr. W. K. Dewes Legal Adviser, Department of Justice.
Niue	Mr. Solomona Kalauni Secretary for Justice.
Papua New Guinea	The Hon. Mrs. Nahau Rooney, MP, Minister for Justice. Mr. Cas P. Mundran Executive Officer. Mr. B. B. Sakora Assistant Secretary for Justice.
Singapore	Tan Teow Yeow Senior State Counsel, Attorney-General's Chambers. Gwee Hak Theng Attorney-General's Chambers.
Solomon Islands	Mr. Frank O. Kabui Assistant Attorney-General.
Tonga	Mr. Laki Niu Assistant Crown Solicitor.
Tuvalu	Mr. J. F. Wilson Attorney-General.
Western Samoa	Mr. Neroni Slade Attorney-General. Mr. Clarence Nelson Attorney-General's Chambers.
Secretariat for Meeting	Professor David McClean University of Sheffield, UK. Professor Keith Patchett University of Wales, UK. Mr. J. D. Pope Assistant Director, Legal Division, Commonwealth Secretariat.

AFRICA/ASIA REGIONAL MEETING

Nairobi, Kenya, 9–14 January 1980

List of Participants and Secretariat

Bangladesh	Mr. Nur-Uz-Zaman Choudhury Deputy Secretary, Ministry of Law and Parliamentary Affairs.
Cyprus	Mr. Frixos Michaelides Director-General, Ministry of Justice.

The Gambia	Mr. A. N. M. O. Darboe Legal Draftsman, Attorney-General's Office.
Ghana	Mr. K. A. Amoo-Adare Chief State Attorney, Attorney-General's Department.
Kenya	Mr. D. J. Coward Registrar-General. Mr. R. Rose First Parliamentary Counsel.
Lesotho	Mr. R. Kali Director of Public Prosecutions Ministry of Justice. Mr. B. K. Molai Senior Resident Magistrate Ministry of Justice.
Malaŵi	Mr. Green Munlo State Advocate, Ministry of Justice.
Nigeria	Mrs. Tinuade Oyekunle Assistant Director, International and Comparative Law Division, Ministry of Justice.
Seychelles	Mr. Rajan Dhanjee State Counsel, Department of Legal Affairs.
Sierra Leone	Mr. V. V. Thomas State Counsel, State Law Office.
Sri Lanka	Miss M. BarrKumaraKulasinghe Senior Assistant Secretary, Ministry of Justice.
Swaziland	Mr. A. Nithianandan Acting Attorney-General.
Tanzania	Mr. D. S. Meela Deputy Attorney-General, Attorney-General's Chambers. Mr. Louis Chua Chief Resident Magistrate.
Uganda	Mr. Tom Ogwal Acting Director of Civil Affairs, Ministry of Justice. Mr. A. Ochwo Deputy Registrar, High Court of Uganda Mr. P. C. R. Kabatsi Senior State Attorney, Ministry of Justice. Miss Dora J. Kabito Personal Secretary, Ministry of Justice.

Zambia	Mr. M. S. Kampumpa Senior State Advocate, Ministry of Legal Affairs.
Observer	Dr. Georges A. L. Droz Secretary General of the Hague Conference on Private International Law, The Hague.
Secretariat for Meeting	Professor David McClean Commonwealth Secretariat Consultant. Professor Keith Patchett Commonwealth Secretariat Consultant. Mr. R. C. Nzerem Assistant Director, Legal Division, Commonwealth Secretariat.

APPENDIX B

DRAFT MODEL BILL

entitled

GRANTS OF ADMINISTRATION (RESEALING) ACT, 198–

[Revised 1 February, 1980]

An Act to make new provisions for the resealing in _____ of probates and letters of administration and instruments having similar effect granted outside _____ ; to repeal the [Probates (Resealing) Act] and for matters incidental thereto.

- Short title 1. This Act may be cited as Probates and Letters of Administration (Resealing) Act, 197– .
- Interpretation 2. (1) For the purpose of this Act, the expression—
- “court” includes any competent authority, by whatever name it is designated, having jurisdiction to make a grant of administration;
- “grant of administration” means a probate or letters of administration or any instrument having, within the jurisdiction where it was made, the effect of appointing or authorising a person (in this Act referred to as “the grantee”) to collect and administer any part of the estate of a deceased person and otherwise having in that jurisdiction an effect equivalent to that given, under the law of _____ , to a probate or letters of administration;
- “personal representative” means the executor, original or by representation, or administrator for the time being, of a deceased person and includes any public official or any corporation named in the probate or letters of administration as executor or administrator as the case may be;
- [“Registrar” means the Registrar of the Supreme Court;]
- “reseal” means reseal with the seal of the Supreme Court.
- (2) Any references in this Act to the making of a grant of administration shall include any process of issuing by or filing with a court by which an instrument is given an effect equivalent to that of a grant of probate or of letters of administration.
- (3) This Act shall apply in relation to grants of administration granted before or after the passing of this Act.

Applications
for Resealing

3. (1) Where a grant of probate or letters of administration of the estate of any deceased person has been made by a court in any part of the Commonwealth or in any other country, an application may be made under this section for the resealing of the grant of administration.

(2) An application under this section shall be made to the Registrar and may be made by—

(a) a personal representative or the grantee, as the case may be; or

(b) a person authorised by power of attorney given by any such personal representative or grantee; or

(c) a legal practitioner registered in _____ acting on behalf of any such personal representative or grantee or of a person referred to in paragraph (b).

(3) Not less than twenty-one days before making an application under this section, the person intending to make it shall cause to be published in a newspaper or newspapers circulating in _____ and approved for the purpose of this section by the Registrar an advertisement which—

(a) gives notice that the person named in the advertisement intends to make an application under this section;

(b) states the name and the last address of the deceased person;

(c) requires any person wishing to oppose the resealing of the grant letters of administration to lodge a caveat with the Registrar by a date specified in the advertisement which shall be a date not less than twenty-one days after the date of the publication of the advertisement.

(4) An applicant under this section shall produce to the Registrar—

(a) the grant of administration or an exemplification thereof or a duplicate thereof sealed with the seal of the court by which the grant was made or a copy of any of the foregoing certified as a correct copy by or under the authority of that court;

(b) where the document produced under paragraph (a) does not include a copy of the will, a copy of the will, verified by or under the authority of that court;

(c) an affidavit stating that an advertisement has been duly published pursuant to subsection (3);

(d) where the applicant is a person referred to in subsection (2)(b), the power of attorney authorising him to make the application and an affidavit stating that the power has not been revoked;

(e) [an Inland Revenue certificate affidavit] as if the application were one for the making of a grant of administration by the Supreme Court; and

(f) such evidence, if any, as the Registrar thinks fit as to the domicile of the deceased person,

and shall deposit with the Registrar a copy of the grant of administration.

Caveats

4. (1) Any person who wishes to oppose the resealing of a grant of administration shall, by the date specified in the advertisement published pursuant to section 3(3), lodge a caveat against the sealing.

(2) a caveat under subsection (1) shall have the same effect and shall be dealt with in the same manner as if it were a caveat against the making of a grant of probate or letters of administration by the Supreme Court.

(3) The Registrar shall not, without an order of the Supreme Court, proceed with an application under section 3 if a caveat has been lodged under this section.

Resealing of
grants of
administration

5. (1) Subject to this section, where an application has been duly made under section 3 and the date specified in the advertisement published pursuant to section 3(3) has passed and no caveat has been lodged under section 4 or any caveat so lodged has not been sustained, the Registrar may, if he is satisfied that—

(a) such estate duties, if any, have been paid as would have been payable if the grant of administration had been made by the Supreme Court;

(b) security has been given in a sum sufficient in amount to cover the property in _____ to which the grant of administration relates and in relation to which the deceased died intestate, cause the grant of administration to be resealed.

(2) It is not necessary for security to be given under subsection (1)(b) in the case of a grant of administration which was made to any public official outside _____ .

(3) Where it appears that a deceased person was not, at the time of his death, domiciled within the jurisdiction of the court by which the grant was made, probate or letters of administration in respect of his estate may not be resealed, unless the grant is such as the Supreme Court would have had jurisdiction to make.

(4) The Registrar may, if he thinks fit, on the application of any creditor require, before resealing, that adequate security be given for the payment of debts or claims due from the estate to creditors residing in _____

(5) The Registrar—

(a) may, if he thinks fit, at any time before resealing refer an application under section 3 to the Supreme Court; and

(b) shall make sure such a reference if so requested in writing by the applicant at any time before resealing or within twenty-one days after he has refused to reseat,

and where an application is so referred, the grant of administration may not be resealed except in accordance with an order of the Supreme Court.

Effects of resealing

6. (1) A grant of administration resealed under section 5(1) shall have like force and effect and the same operation in _____ , and such part of his estate as in _____ shall be subject to the same liabilities and obligations, as if the probate or letters of administration had been granted by the Supreme Court.

(2) Without prejudice to subsection (1), the personal representative or grantee, where the application is made by him or is made under section 3(2)(c) on his behalf or the person duly authorised under section 3(2)(b), where the application is made by him or is made under section 3(2)(c) on his behalf, shall, after the resealing, be deemed to be, for all purposes, the personal representative of the deceased person in respect of such of his estate as is in _____ , and, subject to section 7, shall perform the same duties and be subject to the same liabilities as if he was personal representative under a probate or letters of administration granted by the Supreme Court.

Duties of person authorised by personal representative, etc.

7. (1) A person duly authorised under section 3(2)(b) who is deemed to be a personal representative by virtue of section 6(2) shall, after satisfying or providing for the debts or claims due from the estate of all persons residing in _____ or whose debts or claims he has had notice, pay over or transfer the balance of the estate in _____ to the personal representative named in the grant or the grantee, as the case may be or as such personal representative or grantee may, by power of attorney, direct.

(2) Any such person referred to in subsection (1) shall duly account to the personal representative or grantee, as the case may be, for his administration of the estate in _____

Rules of court

8. Rules of court may be made for regulating the practice and procedure, including fees and costs, on or incidental to an application under this Act for resealing a grant of administration.

Repeals

9. The [Probates (Resealing) Act] is hereby repealed.

Commencement

10. This Act shall come into force on such date as the [Head of State] shall, by order, designate.

APPENDIX C

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 this Part 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 Common-
wealth 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 or of Part IV, 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 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> <ul style="list-style-type: none"> (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 (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>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> <ul style="list-style-type: none"> (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 (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>(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> <ul style="list-style-type: none"> (a) may do so by a provisional order; and (b) shall do so by a provisional order where it proposes to increase the rate of payments under the order unless either— <ul style="list-style-type: none"> (i) both the payer and the payee under the order appear in the proceedings; or (ii) the applicant appears and the appropriate process has been duly served on the other party. <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

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 Convention countries

31. 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.

ORDERS MADE BY COURTS IN []

Transmission of a maintenance order made in [] for registration in a Hague Convention 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	<p>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.</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 section 42, a certificate of arrears sent to the court or 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 section 42 shall be payable in accordance with the order as from the date on which the order was made.</p> <p>(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.</p>
Cancellation transfer and transmission of orders registered under section 34	<p>38.(1) This section applies to a maintenance order registered in a court in [] by virtue of section 34.</p> <p>(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.</p> <p>(3) In its application to the orders to which this section applies, section 15 shall be amended by the omission of subsection (2)(b).</p> <p>(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).</p>

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	<p>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.</p> <p>(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.</p>
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 party in whose favour it was made, 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.

NOTES ON THE DRAFT MODEL BILL FOR A MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) ACT 198–

This Draft Bill was prepared in the light of the views expressed at the Working Meeting at Basseterre, St. Kitts in April 1978 and has been revised following discussion at the subsequent Working Meeting at Apia, Western Samoa, in April 1979. It is largely based upon the Maintenance Orders (Reciprocal Enforcement) Act 1972 of the United Kingdom, itself an expanded and improved version of legislation dating from 1920 and enacted in almost all Commonwealth territories; the most important changes were the inclusion of affiliation orders in the class of maintenance orders which could be dealt with under the Commonwealth scheme, and the making of provision for Commonwealth countries' accession to the United Nations' Maintenance Convention.

The St. Kitts' meeting expressed itself in favour of a further major change, the ending of the formal requirement of reciprocity as the basis of arrangements between Commonwealth countries, following in this respect the lead given by New Zealand and Western Samoa legislation. This new principle is fully reflected in the Draft Bill which also includes a number of other features which have been found of value in various Commonwealth countries in their own revisions of the basic scheme.

The draft clauses in Part IV were prepared for the Nairobi meeting. In ratifying the Hague Convention, the U.K. made use of a statutory instrument made under a provision corresponding to clause 22 of the draft Bill. This was a long and complex document, of some 35 printed pages, and departed in a number of ways from the text of the Convention. It seemed preferable to produce draft Clauses for inclusion, if required, in the Bill.

More detailed points are referred to in the brief notes on individual clauses which follow.

Clause 1 (short title). In the absence of a requirement of reciprocity this seems the most appropriate title.

Clause 2 (interpretation) contains definitions of terms. The definition of "Commonwealth country" is based on that in s.61(1) of the Domestic Proceedings Act 1968 (New Zealand); note the inclusion of dependent territories, which may not feature in the definition of "Commonwealth" contained in general interpretation Acts. Clause 2(2) provides for the severance of those parts of orders dealing with maintenance from other parts dealing, for example, with non-Cohabitation. The possible inclusion of orders for lump sum payments is mentioned in Working Paper 9.

PART I

Clauses 3 to 8 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. Clause 3(2) is based in part upon the Australian Family Law Regulations 1975, reg. 145(1). The special features of this provision, not found in the other models, are (i) the power given to the Registrar to act on his own motion; and (ii) provision for cases in which the payer is "proceeding to" but not yet "residing in" a Commonwealth country. Both features were commended by the St. Kitts' meeting. That meeting also asked for a model Request for Registration; a draft has been prepared for inclusion in a Schedule of Forms to be scheduled to the relevant Rules of Court made under the Act; it simplifies the drafting of this Clause. Clause 3(4) preserves the jurisdiction of the court which made the order to enforce, vary or revoke it. The Clause applies to orders made by any court, superior or inferior.

Here and elsewhere reference is made to functions of the Minister for Foreign Affairs; it would of course be possible to substitute another officer (e.g. the Registrar of the Supreme Court) in respect

of certain functions or to leave the officer to be prescribed in Rules.

Clause 4 (provisional orders for confirmation in a Commonwealth country) is based in part upon the Australian Family Law Regulations 1975, reg. 147(1) in that it makes reference to a person “proceeding to” a Commonwealth country. Clause 4(2) refers to the Request for Confirmation Form, another innovation. In some jurisdictions it may be necessary to include provisions corresponding to section 3(3) of the U.K. Act, which circumvents 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, excluding the possible reference of a case from an inferior to a superior court.

Clause 5 (effect of confirmation in a Commonwealth country of a provisional order) states the legal position after confirmation of a provisional order, and preserves the jurisdiction to enforce, vary or revoke it, subject to clause 7.

Clause 6 (further proceedings in respect of a provisional order) deals with the situation where a provisional order has been sent to a Commonwealth country but the courts there do not immediately confirm it. Most legislation provides that the court making the provisional order may on receiving more evidence revoke it; clause 6(2)(b) enables a fresh provisional order to be made, a procedure expressly authorised in the Australian Family Law Regulations, reg. 147(5). Requests for Confirmation of such orders, and of provisional orders made under sections 7 and 13, are sent directly to the foreign court concerned; a simpler Form can therefore be used in such cases—see Form 3 of the Schedule of Forms.

Clause 7 (variation and revocation of orders) deals with the variation or revocation of orders by the courts of the country which made them and which is now enacting the legislation.

Clause 8 (confirmation of provisional orders affecting orders made in the country enacting the legislation) deals with the corresponding case where orders are varied or revoked not in the country of origin but by a provisional order made in a Commonwealth country. The draft Bill contains no provisions corresponding to section 5(7)(8) of the U.K. Act, which spell out matters in great detail; no such provisions were felt necessary in earlier legislation.

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

Clause 9 deals with the registration of a final maintenance order (i.e. not a provisional order unless that has been confirmed in a third country) originating in another Commonwealth country. The draft Bill contains no provision corresponding to section 6(2) of the U.K. Act (Minister to act only if it appears that the payer is resident in the country); cf. Clause 16.

Clause 10 (setting aside registration) enables the registration of an order under Clause 9 to be set aside if it is discovered that the order is not one to

which that Clause applies. The case is not dealt with in most legislative models; the Clause is based on s.63 of the Domestic Proceedings Act 1968 (New Zealand). It has *not* been thought desirable to provide that the registration of the order shall be valid up to the date on which it is set aside.

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. The draft Bill contains provisions to the same effect as those in section 7 of the U.K. Act but re-ordered to follow the usual order of events. The drafting is influenced in places by section 64 of the Domestic Proceedings Act 1968 (New Zealand).

Clause 12 (enforcement of orders registered under Part I) is likely to need expansion to meet the needs of particular jurisdictions. It is desirable to apply to registered orders general statutory provisions governing the enforcement of maintenance orders, the accrual of arrears and the remission of sums due; and to place the payer under a registered order under an obligation to give notice of any change of address to the registrar, with a specified penalty for failure without reasonable cause to give such notice.

Clause 13 (variation and revocation of orders registered under Part I) deals with the variation and revocation of registered orders by the court in which they are registered. The Clause is a re-ordered version of part of section 9 of the U.K. Act; no changes of substance have been made, except for the reference to the prescribed Form for the Request for Confirmation.

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 its country of origin (or possibly in a third Commonwealth country). So far as variation is concerned this Clause is also based on section 9 of the U.K. Act; the case of provisional orders of revocation is not dealt with in that model; the draftsman of the U.K. Act thought such a provision was unnecessary, but seems to have overlooked the possible use of provisional revocation orders, a possibility catered for in the Australian Family Law Regulations 1975, reg. 154(1)(a)(ii).

Clause 15 (cancellation of registration) deals with the procedure on the cancellation of a registered order. Clause 15(4)(5)(6) and appropriate cross-references in Clause 15(3) and 15(7) will be omitted if the country enacting the legislation is not divided into geographical areas for internal jurisdictional purposes.

Clause 16 (transmission of certain orders by the Minister) deals with the procedure in a number of types of cases in which the payer is not residing in the country enacting the legislation.

Clause 17 deals with rights of appeal. Clause 17(2) is based upon section 73(9) of the Domestic Proceedings Act 1968 of New Zealand. It makes clear what

is probably implicit in the other legislation that an appeal lies against a *refusal* to make a provisional order; and it also gives a right of appeal against the revocation of a provisional order on reconsideration under Clause 6. There is no right of appeal against the setting aside of the registration of an order under Clause 10.

Clause 18 (obtaining of evidence) enables courts in the country enacting the legislation to obtain evidence for the purposes of proceedings in another Commonwealth country. The draft Bill contains no provisions concerning the issue of process to compel a witness to attend, to pay expenses to witnesses who are not parties, or for the appointment of examiners. In any jurisdiction the general provisions on such matters can be applied as appropriate.

Clause 19 (remission of case to a court in a Commonwealth country) enables courts to seek evidence from an overseas court. Clause 19(2), based on Australian Family Law Regulations 1975, reg. 146(8), enables an interim order to be made for the period of delay entailed, a feature welcomed at the Apia Meeting.

Clause 20 (conversion of currency) is a simplified version of section 16 of the U.K. Act. There is no provision corresponding to s.16(1) of that Act which provides that payments due under a registered order shall be paid in a prescribed manner. In some jurisdictions generally applicable statute law can be applied; but there appears to be no need for the provision given the wide scope of the rule-making power (cf. Clause 34). In some jurisdictions, it may be desired to limit Clause 20(2) to the appropriate Central or Reserve Bank.

Clause 21 (orders in foreign language) is in the form recommended by the Canadian Commissioners on Uniform Laws, and exemplified by section 15 of the Reciprocal Enforcement of Maintenance Orders Act 1968 (Saskatchewan).

PART II

Clause 22 (extension of Part I to non-Commonwealth countries) enables Part I to be applied with modifications to politically foreign countries. It is based upon section 71 of the Domestic Proceedings Act 1968 (New Zealand). No express requirement of reciprocity is included; but it will no doubt be usual in practice.

PART III

Clause 23 provides for the designation of convention countries for the purposes of Part III.

Clause 24 (application by person in the country enacting the legislation for recovery of maintenance in a convention country) sets out the procedure for “exported” applications under the convention.

Clause 25 (application by a person in convention country for recovery of maintenance in the country enacting the legislation) deals with the converse, “importing”, situation. Clause 25(4)(5) will be omitted in any jurisdiction not divided into geographical areas for internal jurisdictional pur-

poses. It is desirable to insert, as appropriate in each jurisdiction, a provision applying the generally-applicable law as to maintenance or affiliation cases to applications under this Bill: cf. sections 28 and 30 of the U.K. Act.

Clause 26 (transfer or return of orders). In a jurisdiction not divided into geographical areas for purposes of internal jurisdictional rules, only a variant of Clause 26(1) is required. The suggested procedure is slightly simpler than that adopted in the U.K. Act, s.32.

Clause 27 (enforcement of orders); Clause 27(2)(3) are inappropriate in countries not divided into geographical areas for internal jurisdictional purposes. An alternative approach, adopted in Fiji, is to apply generally-applicable enforcement provisions to cases under Part III.

Clause 28 (variation and revocation of orders) is necessitated so far as variation is concerned by article 8 of the convention. The U.K. provision corresponding to Clause 28(2) is limited to variation, presumably on the basis that this is all the convention requires; following discussion at the Apia meeting, it has been widened to include revocation.

Clause 29 (obtaining of evidence for purposes of proceedings in the enacting country) deals with the requests for evidence addressed to courts in convention countries.

Clause 30 (taking of evidence at request of court in a convention country) deals with the converse case. The note to Clause 18 as to compelling attendance, expenses, etc., applies equally to this Clause.

PART IV

Clause 31 provides for the designation of Hague Convention countries.

Clause 32 (transmission of a maintenance order) deals with the “export” of orders. The United Kingdom instrument is restricted to cases of habitual residence (i.e. those falling within clause 32(1)(a) but the present draft makes full use of the wide scope of the Convention. The complexity of U.K. nationality law no doubt explains part of the omission in the U.K. instrument. Cf. art. 7 of the Convention.

Clause 33 (variation and revocation of orders) makes similar provision for the variation or revocation of orders made under section 32 the Convention applies to “modifications” of earlier orders (see art. 2 (second para.)).

Clause 34 (registration of maintenance order made in Hague Convention country) deals with the “import” of orders made in Hague Convention countries. It will be noted that the decision as to registration is made in the first instance by the registrar but appeal lies to the court to secure the setting aside of registration (*clause 35*) and against a refusal to register (*clause 36*). Clause 34 contains, in sub-section (4), provisions corresponding to arts. 7, 8 and 9 of the Convention; the last words of paragraph (iv) “in that matter” follow the text of the Convention, not the U.K. provision which

at this point substitutes “to make the order”. Sub-section (5) corresponds to art. 5. The U.K. provision corresponding to sub-section (5)(d) ends “under this Part of this Act”, but it is believed that a wider scope accords with the intention of the authors of the Convention (see the official Report by M. Verwilghen). Sub-section (6) corresponds to art. 6. No provision in the draft Clause corresponds to art. 4(2) by expressly excluding foreign orders still subject to ordinary forms of review in the State of origin; this follows the U.K. instrument, but may need re-consideration.

Clause 37 (enforcement of registered orders) corresponds to clause 12; the provisions as to arrears reflect arts. 11 and 24 of the Convention.

Clause 38 applies clauses 15 and 16, mutatis mutandis, to orders falling under this Part.

Clauses 39 to 41 make procedural provision corresponding to clauses in the other Parts, dealing with evidence and exchange rates.

PART V

Clause 42 provides that a provisional order made under Clause 4 shall cease to have effect on remarriage. It is not included in Part I as it does not strictly relate to enforcement.

Clause 43 (admissibility of evidence obtained abroad) is a provision essential to the working of the Act, making the various certificates and statements admissible in evidence. In some jurisdictions, however, sufficiently broad provisions may be contained in an Evidence Act; in such a case this Clause could, of course, be omitted.

Clause 44 (order, etc. need not be proved) dispenses with the need to prove strictly copies of court orders and the signatures and seals they bear. The point in the note to Clause 43 about general Evidence Act provisions is relevant to this Clause also.

Clause 45 (Rules of court) is in general terms; in this respect the Canadian and Singapore precedent 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, of course, need modification to meet the requirements of particular jurisdictions.

Clause 48 (commencement). The provision for the appointment of different days for different provisions or for different purposes is particularly important because of the differing nature of the provisions in Parts I, III and IV. Part I is an improved version of a familiar scheme operating within the Commonwealth; Parts III and IV introduce new sets of procedures involving politically foreign States.

VARIANT FORMS OF THE BILL

A. Any jurisdiction not willing or unable to accede to *either* of the Conventions referred to in the Bill, could enact the Bill with the following modifications:

In clause 2(1) omit the entries relating to “competent court in a Hague Convention country”, “convention country”, “court in a Hague Convention country”, “Hague Convention”, “registered order”, “registering court” and “related documents”.

For the definition of “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;

After clause 2(1) insert a new clause 2(2), renumbering existing 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).

In clause 3(1) omit the words “or an order made by a provision of Part III or of Part IV”

Omit Parts III and IV

In clause 43(1)(a) omit the words “a convention country, a Hague Convention country”.

In clause 44(a) omit the words “a Hague Convention country”.

B. Any jurisdiction wishing to accede to the Hague Convention but not the U.N. Convention could enact the Bill with the following modifications:

In clause 2(1) omit the entries relating to “convention country”, “registered order”, “registering court” and “related documents”

In clause 3(1) omit the words “or of Part IV”

Omit Part III

Renumber Part IV as Part III, etc.

In clause 43(1)(a) omit the words “a convention country”.

C. Any jurisdiction wishing to accede to the U.N. Convention but not the Hague Convention could enact the Bill with the following modifications:

In clause 2(1) omit the entries relating to “competent court in a Hague Convention country”, “court in a Hague Convention country” and “Hague Convention”.

Also in clause 2(1) substitute the definition of “maintenance order” set out at A above; and insert the new clause 2(2) there set out.

In clause 3(1) omit the words “or of Part IV”.

Omit Part IV.

In clause 43(1)(a) omit the words “a Hague Convention country”

In clause 44(a) omit the words “a Hague Convention country”.

APPENDIX D

DRAFT MODEL BILL

entitled

FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) ACT, 198–

[Revised 12 February, 1980]

A Bill for an Act to make new provision in [] for the enforcement of judgments given in countries outside [] which accord reciprocal treatment to judgments given in [] and for other purposes in connection therewith.

BE IT ENACTED etc.

Short title 1. This Act may be cited as the Foreign Judgments (Reciprocal Enforcement) Act, 198–.

Interpretation 2.(1) For the purposes of this Act, the expression—

“anti-trust law” means any provision of any law or any rule of law, commonly known as anti-trust law and includes any such provision or rule having as its purpose or dominant purpose the preservation of competition between business enterprises of any description or the prohibition or regulation of agreements, arrangements or practices designed to restrain or restrict competition in the carrying on of business of any description;

“appeal” means any proceedings by way of application for the discharge or setting aside of a judgment or for a new trial or a stay of execution;

“country” includes a state, province or part of a country or any territory for whose international relations a country is responsible.

“country of the original court” means the country in which the original court is situated or in relation to which that court has jurisdiction;

“designated anti-trust law” means an anti-trust law which has been designated by the [Minister] under section 15;

“designated court” means—

(a) any superior court of a reciprocating country which is a Commonwealth country;

(b) any superior court of any other reciprocating country which is specified in an order made under section 13(2);

(c) any subordinate court of any reciprocating country which is specified in an order made under section 13(1) or (3);

“judgment” means any such judgment, order or award as is referred to in paragraphs (a) to (f) of section 3(1);

“judgment creditor” means the person in whose favour a judgment was given and includes any person in whom the rights under the judgment have become vested by succession, assignment or otherwise;

“judgment debtor” means the person against whom a judgment was given and includes any person against whom the judgment is enforceable under the law of the country of the original court;

“judgments given by the superior courts in []” and “judgments given by subordinate courts in []” includes, as the case may be, judgments given in any court on appeal against any such judgments;

“multiple damages” means an amount payable under a judgment which has been arrived at by multiplying by any factor a sum assessed as compensation for loss or damage sustained by a person in whose favour the judgment was given;

“original court”, in relation to any judgment to which this Act applies, means the court by which the judgment was given and includes any arbitrator or arbitral tribunal by which an arbitral award to which this Act applies was given;

“personal service” means actual delivery of the process to the person to be served therewith, whether effected inside or outside the country in which the process was issued;

[“prescribed” means prescribed by rules of court;]

“reciprocating country” means a country designated for the purposes of this Act by the [Head of State] under section 11(1);

[“registering court”, in relation to a judgment to which this Act applies, means the court to which an application to register the judgment is made;]

“registration” means registration under this Act and the expressions “register”, “registered” and “registrable” shall be construed accordingly;

“subordinate courts in []” means—
[];

“superior courts in []” means—
[].

(2) References in this Act to a judgment of a designated court include references to an award in arbitration proceedings as is referred to in section 3(1)(g).

(3) A certificate issued in a reciprocating country with respect to an award in arbitration proceedings in circumstances of the kind mentioned in section 17(3)(b) constitutes a certificate for the purposes of section 5(4)(a).

Judgments to which the Act applies

3.(1) Subject to subsections (2) and (3), this Act applies with respect to—

(a) any judgment or order of a designated court in any civil proceedings whereby a sum of money is made payable, including an order for the payment of a lump sum as financial provision for, or maintenance of, a spouse or a former or reputed spouse or any child or any other person who is or was a dependant of another;

(b) any judgment or order of a designated court in any civil proceedings under which movable property is ordered to be delivered to any person, including any order for the delivery of movable property as part of a scheme for the provision for, or maintenance of, a spouse or a former or reputed spouse or any child or any other person who is or was a dependant of another;

(c) any judgment or order of a designated court in any criminal proceedings for the payment of a sum of money in respect of compensation or damage to an injured person or for the delivery of movable property by way of restitution to such a person;

(d) any judgment given in any court on appeal against any judgment or order of a designated court referred to in paragraph (a) to (c);

(e) any judgment of a designated superior court for the costs of an appeal from any subordinate court, whether or not a designated court; and

(f) any award in arbitration proceedings, if the award has, under the law in force in the country where it was made, become enforceable in the same manner as a judgment given by a designated court in that country.

(2) This Act applies to a judgment referred to in subsection (1) only if it is final and conclusive as between the parties thereto but a judgment is deemed to be final and conclusive notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the courts of the country of the original court.

(3) This Act does not apply to—

- (a) any judgment whereby a sum of money is payable or any item of movable property is deliverable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty;
- (b) any judgment to the extent to which it provides for the payment of a sum of money by way of exemplary or punitive or multiple damages;
- (c) any judgment based upon a designated anti-trust law;
- (d) any order for the periodical payment of money as financial provision for, or maintenance of, a spouse or a former or reputed spouse or any child or any other person who is or was a dependant of the person against whom the order was made;
- (e) any judgment, other than a judgment referred to in paragraph (a) or (b) of subsection (1), in any matrimonial cause or matter, or determining rights in property arising out of a matrimonial relationship, whereby any sum of money is payable or item of movable property deliverable;
- (f) any judgment in any proceedings in connection with the custody or guardianship of children;
- (g) any judgment in proceedings concerning the administration of the property or affairs of a person who is incompetent or incapable of managing and administering his property and affairs;
- (h) any judgment in any matter of succession to, or administration of, estates of deceased persons whereby any sum of money is payable or any item of movable property deliverable;
- (i) any judgment in any matter of social security or public assistance whereby a sum of money is payable by [or to] a public authority or fund;
- (j) any judgment in bankruptcy proceedings or in proceedings for the winding-up or re-organisation of any corporation or in proceedings for judicial arrangements, compositions or like matters;
- (k) any judgment in proceedings relating to damage, death or injury caused by occurrences involving nuclear matter or the emission of ionising radiation; or
- (l) any judgment of a superior court on appeal from a subordinate court which is not a designated court, other than a judgment referred to in subsection (1)(e) or from any tribunal, other than an award referred to in subsection (1)(f).

(4) This Act applies with respect to judgments given before or after the commencement of this Act.

Jurisdiction

4.(1) In any proceedings in which it is necessary for the purposes of this Act to determine whether a court of another country had jurisdiction to adjudicate upon any cause of action, such court shall, subject to subsection (2), be deemed to have had such jurisdiction, where—

- (a) the judgment debtor, being the defendant in the original court, [argued the merits of the matter in dispute without contesting the jurisdiction of that court;] [voluntarily entered an appearance before that court;]
- (b) the judgment debtor was plaintiff, or counterclaimed, in the proceedings in the original court;
- (c) the judgment debtor, being the defendant in the original court, had, before the commencement of the proceedings, agreed, otherwise than in pursuance of some statutory requirement, in writing or by an oral agreement confirmed in writing, to submit, in respect of the subject matter of the proceedings or in respect of disputes of the kind which were the subject matter of the proceedings, to the jurisdiction of the original court or of any other court of the country of the original court;
- (d) the judgment debtor, being the defendant in the original court, was, at the time when the proceedings were instituted, [habitually] resident in the country of the court or, not being a natural person, had its place of incorporation or its principal place of business in that country, or, if unincorporated, had its headquarters there;
- (e) the judgment debtor, being the defendant in the original court, had an office or place of business in, or, not being a natural person, had a branch (other than a sub-

sidiary corporation) in, the country of that court and the proceedings in that court were in respect of a transaction effected, or an occurrence arising from business carried out, by, through or at that office, place or branch;

(f) the judgment debtor, being the defendant in the original court, was conducting business [on a continuing basis] within the country of the original court (otherwise than through a subsidiary corporation), had appointed an agent there to receive service of process in respect of such business and the proceedings in that court were in respect of a transaction effected in connection with, or of an occurrence arising from, such business;

(g) in the case of a claim arising out of a contract, the obligation which was the subject of the proceedings was or was to be wholly or mainly performed in the country of the original court;

(h) in the case of a judgment given in an action *in rem* or any other action to determine rights of ownership, use or possession in immovable property or tangible movable property, the property in question was, at the institution of the proceedings in the original court, situated in the country of that court; or

(i) in the case of an action to recover damages for physical injury to the person, or the death, of any person or for damage to tangible property, the circumstances giving rise to the injury, death or damage substantially occurred in the country of the original court or, as the case may be, the injury or damage was suffered in that country.

(2) A court shall not be deemed to have jurisdiction under subsection (1) where—

(a) by reason of the subject matter of the proceedings, exclusive jurisdiction thereto was, under the rules of private international law of [], vested in the courts or authorities of a country other than that of the original court;

(b) except in the case[s] mentioned in subsection (1)[(a) and] (b), the bringing of the proceedings in the original court was contrary to—

(i) an agreement to which the dispute related; or

(ii) a [trust] instrument, in respect of which the proceedings were instituted,

under which the dispute, or the proceedings, as the case may be, were to be settled otherwise than by proceedings in the courts of the country of the original court or which gave exclusive jurisdiction to a court or authority, other than the original court;

[(c) the judgment debtor, being the defendant in the original court [argued the merits of the matter in dispute] [entered an appearance for the purpose of contesting the jurisdiction of that court or] for the purpose of protecting, or obtaining the release of, property seized in, or threatened with seizure as a result of, the proceedings;]

(d) the judgment debtor was a person who under the rules of public international law was entitled to immunity from the jurisdiction of the courts of the country of the original court and did not enter an appearance otherwise than for the purpose of contesting the jurisdiction of that court.

(3) Any finding of fact made (expressly or by implication) by the original court in the proceedings in which the judgment was given and on the basis of which jurisdiction was assumed in those proceedings shall—

(a) if the judgment debtor entered an appearance in those proceedings and did not contest the jurisdiction of the original court, be conclusive evidence of the fact found; and

(b) in any other case be sufficient proof of that fact unless the contrary is shown.

Application

5.(1) Where a judgment to which this Act applies has been given in a designated court, the judgment creditor may apply to the [Supreme Court] to have that judgment registered within six years of the date of the judgment or, where there have been proceedings by way of appeal against the judgment, of the date of the last judgment in the proceedings.

(2) An application may be made under subsection (1) *ex parte* in any case in which the judgment debtor—

(a) was personally served with process in the original action; or

(b) though not personally served, entered an appearance in the original court otherwise than for the purpose of contesting the jurisdiction of that court or of protecting, or

obtaining the release of, property seized in or threatened with seizure as a result of the proceedings.

and in which, under the law in force in the country of the original court, the time within which an appeal may be made against the judgment has expired and no appeal is pending or an appeal has been heard and disposed of.

(3) Where an application is made under subsection (1) *ex parte*, the court hearing such application, instead of allowing the application, may direct a [summons] to be issued but if no such direction is given, notice of the registration of the judgment made on such an application shall be served upon the judgment debtor by personal service.

(4) An application for registration of a judgment under subsection (1) shall—

(a) be accompanied by a certificate in the form set out in the Schedule or to like effect issued from the original court under its seal and signed by a judge or registrar thereof or by an affidavit to like effect;

(b) have attached thereto the judgment or the exemplification or a certified or duly authenticated copy thereof and, where the judgment is not in the [] language, a translation thereof in that language certified by a notary public or the registrar of the original court or authenticated by affidavit;

(c) be accompanied by an affidavit stating—

(i) that, at the date of application, the judgment has not been satisfied or, as the case may be, the sums or items of movable property, as the case may be, in respect of which the judgment remains unsatisfied;

(ii) that, at the date of application, the judgment can be enforced by execution in the country of the original court;

(iii) where, by virtue of section 6(5), the judgment may be registered only in respect of certain of its provisions, the provisions in respect of which it is sought to register the judgment;

(d) be accompanied by such other evidence as may be prescribed.

(5) Where the application for registration is in respect of a judgment given by a Superior Court of a Commonwealth country and is accompanied by an affidavit, and not a certificate, of the kind referred to in subsection (4)(a), it shall also be accompanied by a certificate under the seal, and signed by a judge or registrar of the original court, certifying that the court is a superior court in that country.

Registration

6.(1) Where, on an application under section 5(1), the [Supreme Court] is satisfied as to the proof of matters required by this Act and any rules of court, it shall, subject to this Act, order the judgment to be registered.

(2) An order shall not be registered under subsection (1) if it appears to the [Supreme Court] that—

(a) it has been wholly satisfied; or

(b) it could not be enforced by execution in the country of the original court.

(3) If it appears to the [Supreme Court] that the judgment has been partly satisfied, the judgment may be registered under subsection (1) only in respect of the sums or the items of movable property, as the case may be, remaining payable or deliverable.

(4) Where a judgment for the payment of a sum of money is satisfied in part by payment in a currency other than the currency of [], the extent to which the registered judgment has been satisfied shall, for the purposes of subsection (3), be calculated on the basis of the rate of exchange prevailing at the date or dates of payment of the relevant sum or sums.

(5) Where a judgment is not in all respects a judgment which may be registered under this Act but provisions of the judgment could, if they alone constituted the judgment of the original court, be so registered, the court may, if it thinks proper, register those provisions of the judgment.

(6) Subject to section 5(2), a judgment may be registered under this Act notwithstanding that a right of appeal exists, or an appeal has been instituted, against the judgment.

Currency in which judgments payable	<p>7.(1) Where the sums payable under a judgment which is to be registered under this Act are expressed in a currency other than the currency of [], the judgment may be registered as a judgment for such a sum payable in such sums in the currency of [] as are equivalent thereto on the basis of the rate of exchange prevailing at the time of registration.</p> <p>(2) For the purposes of this Act, 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 rate and that at such rate a specified sum in the currency of [] is equivalent to a specified sum in another specified currency is evidence of the rate of exchange so prevailing on that date and of the equivalent sums in terms of the respective currencies.</p>
Effect of registration of judgments	<p>8.(1) Subject to this Act, a registered judgment shall, for the purposes of execution, be of the same force and effect as a judgment of the [Supreme Court] entered at the date of registration, its execution shall be subject to the control of the Court and proceedings may be taken thereon as if it were such a judgment.</p> <p>(2) Subject to this Act, where a judgment for the payment of any monetary sum is registered, the following sums may be recovered upon the registered judgment—</p> <p style="padding-left: 40px;">(a) the amount remaining payable under the judgment, including interest and any costs awarded to the judgment creditor, at the date of registration;</p> <p style="padding-left: 40px;">(b) interest from the date of registration on such an amount, excluding such interest [and costs] referred to in paragraph (a), calculated at the rate applicable to a judgment of the [Supreme Court], and</p> <p style="padding-left: 40px;">(c) any reasonable costs awarded by the [Supreme Court] in respect of registration, including the costs of obtaining any certificate or an exemplification or copy of a judgment or a translation thereof, for the purposes of section 5(4).</p> <p>(3) Subject to this Act, where a judgment for the delivery of movable property is registered, the following sums may also be recovered upon the registered judgment—</p> <p style="padding-left: 40px;">(a) any costs awarded to the judgment creditor remaining payable at the date of registration;</p> <p style="padding-left: 40px;">(b) any reasonable costs awarded by the [Supreme Court] in respect of registration, including the costs of obtaining any certificate or an exemplification or copy of a judgment or a translation thereof, for the purposes of section 5(4).</p> <p>(4) Unless the [Supreme Court] otherwise orders, execution upon a registered judgment shall be stayed—</p> <p style="padding-left: 40px;">(a) in the case of an application made <i>ex parte</i>, until the expiration of fourteen days from the date on which the judgment debtor is served with notice of registration under section 5(3) or such extended period as the court may order; or</p> <p style="padding-left: 40px;">(b) where an application that the registration be set aside is made under section 10 or section 11, until the application is finally determined.</p>
Garnishee orders	<p>9.(1) At the time of, or at any time subsequent to, making an application for registration under section 5, the applicant may apply, <i>ex parte</i>, to the [Supreme Court] for an order that all debts, obligations and liabilities due or accruing due to the judgment debtor from such person as may be named in the application (in this section referred to as the “garnishee”) be attached.</p> <p>(2) The [Supreme Court] upon an application under subsection (1) may, upon the production of such further evidence as it may require and if it deems it proper, order the garnishee to pay to the judgment creditor the amount of the debts, liabilities or obligations due or accruing due to the judgment debtor from the garnishee or so much thereof as is sufficient to satisfy the registered judgment and the costs of the proceedings pursuant to this section.</p> <p>(3) Subject to this section, the rules of court with respect to the attachment of debts due to judgment debtors apply to proceedings pursuant to this section.</p>
Setting aside	<p>10.(1) Where a judgment has been registered under this Act, an application may be made by the judgment debtor that the judgment be set aside on any of the grounds set out in sub-</p>

section (2) and (3) and if the [Supreme Court] is satisfied that any of those grounds has been established, it shall set aside the registration of the judgment.

(2) The grounds upon which a registered judgment may be set aside are that—

- (a) the judgment is not a judgment to which this Act applies;
- (b) the judgment was registered in contravention of this Act;
- (c) the courts of the country of the original court had no jurisdiction to adjudicate upon the cause of action upon which the judgment was given;
- (d) the jurisdiction of the original court was based upon an agreement by the judgment debtor to submit to the jurisdiction of that court, which is invalid under the rules of private international law of [];
- (e) the cause of action upon which the judgment was given had at the date of that judgment been the subject of a final and conclusive judgment of a court having jurisdiction to adjudicate upon that cause of action;
- (f) the matter in relation to which the judgment was given had, subsequent to the date of that judgment, and as a result of proceedings instituted prior to the institution of the proceedings in the original court, become the subject of a final and conclusive judgment of a court in [] which is irreconcilable with the judgment of the original court;
- (g) the judgment debtor, being the defendant in the original proceedings,
 - (i) was not duly served with the process of the original court; or
 - (ii) notwithstanding that he was duly served in conformity with the law of the country of that court, did not receive notice of those proceedings in sufficient time to enable him to defend the proceedings; and
 - (iii) did not enter an appearance or entered an appearance only for the purpose of contesting the jurisdiction of that court [and did not argue the merits of the matter in dispute];
- (h) the judgment was obtained by fraud, other than fraud which was, or could have been, put in issue by the judgment debtor in the proceedings in the original court or an appeal therefrom;
- (i) there are provisions of the law of [] which, by virtue of the rules of private international law of [], would have been applicable, notwithstanding any choice of another system of law by the judgment creditor and the judgment debtor, had the proceedings been brought in the [Supreme Court], and the judgment disregards those provisions in some material respect;
- (j) it was necessary for the original court, in order to give its judgment, to decide a question relating to any matter specified in paragraphs (c) to (k) of section 3(3) and such decision is different from that which the [Supreme Court], having applied the rules of private international law of [] to that question, would have reached;
- (k) the judgment is one which recognised or enforces another judgment;
- (l) the judgment has been taken on appeal, and reversed or discharged or otherwise set aside, in a court of the country of the original court;
- (m) the judgment debtor is a person who, under the rules of public international law, is entitled to immunity from the jurisdiction of the [Supreme Court];
- (n) the rights under the judgment are not vested in the person by whom the application for registration was made;
- (o) the enforcement of the judgment would be manifestly contrary to public policy in [].

(3) An application may be made under subsection (1) to set aside the judgment to the extent that its enforcement would require payment of sums in excess of monetary limits upon liability imposed by any statute of [] which applies under the rules of private international law of [].

(4) Where the [Supreme Court] is satisfied, on an application made by a judgment debtor, that the sums, including costs, awarded under a registered judgment are substantially in

excess of those which would have been awarded by the [Supreme Court] on the basis of the findings of law and fact made by the original court, had the assessment of those sums been made in proceedings before the [Supreme Court], the [Supreme Court] may set aside the judgment to the extent of that excess.

Effect of
appeals etc.

11.(1) An application may be made by the judgment debtor to set aside the registration of a judgment on the ground that—

- (a) an appeal is pending against that judgment; or
- (b) he is entitled and intends to appeal against that judgment; or
- (c) the matter in relation to which the judgment was given is the same as that in respect of which proceedings, instituted prior to the institution of the proceedings in the original court, are pending in a court in [].

(2) Where the [Supreme Court] is satisfied that the grounds specified in subsection (1)(a) or (b) are established, the [Supreme Court] may, if it thinks fit and on such terms as it thinks just, set aside the registration or adjourn the application to set aside the registration until after the expiration of such period as appears to the [Supreme Court] to be reasonably sufficient to enable the applicant to take the necessary steps to have the appeal disposed of by a competent tribunal.

(3) Where the [Supreme Court] is satisfied that the grounds specified in subsection (1)(c) are established, the [Supreme Court] may, if it thinks fit and on such terms as it thinks just, set aside the registration or adjourn the application until the expiration of such period as appears to the [Supreme Court] to be reasonably sufficient to enable the proceedings, and any appeal therefrom to a competent tribunal, to be disposed of.

Effect of
setting aside in
certain cases

12.(1) Where the registration of a judgment is set aside

- (a) under section 11; or
- (b) solely for the reason that the judgment was not at the date of application for registration enforceable by execution in the country of the original court;

the setting aside of the registration does not prejudice a further application to register the judgment when the appeal or the proceedings have been disposed of or if and when the judgment becomes enforceable by execution in that country, as the case may be.

(2) Where the registration of a judgment is set aside solely for the reason that the judgment was registered for the whole sum payable, or all the items deliverable, thereunder, notwithstanding that it had at the date of the application for registration already been partly satisfied, the [Supreme Court] shall, on the application of the judgment creditor, order the judgment to be registered for the amount remaining payable, or items remaining deliverable, as the case may be, at that date.

Extension
of Act

13.(1) Where the [Head of State] is satisfied that provisions which are substantially reciprocal will be or have been made by a country outside [] for the enforcement therein of judgments given by the superior courts in [], he may, by order, declare that country to be a reciprocating country for the purposes of this Act and that this Act applies with respect to judgments given by the superior courts of that country.

(2) An order made under subsection (1) shall, where the reciprocating country is not a Commonwealth country, specify the courts which are deemed to be the superior courts of that country for the purposes of this Act.

(3) The [Head of State] may in any order made under subsection (1), or by an order amending such order, declare that this Act applies with respect to judgments of the subordinate courts of the reciprocating country and such order shall specify the courts in that country which are deemed to be subordinate courts for the purposes of this Act.

(4) The [Head of State] may, by order, revoke or amend any order made under subsection (1) and where any order is so revoked, and no new order is made, the country with respect to which the order was made thereupon ceases to be a reciprocating country for the purposes of this Act.

(5) An order made under this section shall be published in the [Official Gazette].

Special provision with respect to non-Commonwealth countries.	14. The [Head of State] may, in order to give effect to an agreement between [] and any country, other than a Commonwealth country, in relation to the enforcement of judgments, make, in the order declaring that country a reciprocating country, provision for such exceptions, adaptations and modifications to this Act or rules of court as are specified in the order and such provision shall have effect accordingly.
Special provision with respect to anti-trust judgments	15.(1) Where the [Minister] is satisfied that the recognition and enforcement of judgments based upon an anti-trust law of any country outside [] would be detrimental to, or adversely affect, the trading interests of persons carrying on business of any description in [] or of persons, not being natural persons, having a place of incorporation or a principal place of business, or if unincorporated, having headquarters there, he may make an order designating such anti-trust law for the purposes of this Act. (2) An order made under subsection (1) is subject to an affirmative resolution.
Rules of court	16. Rules of court may be made prescribing any matters necessary or expedient for the purposes of this Act and, without prejudice to the generality of the foregoing, those rules may— (a) make provision empowering the [Supreme Court] to require any person applying for registration of a judgment to give security for costs; (b) regulate the manner in which a judgment debtor is to be served with a notice of the registration of a judgment; (c) prescribe the manner in which any questions arising under this Act are to be determined; (d) prescribe any matter which under this Act is to be prescribed; and (e) prescribe any fees, including the fees of [legal practitioners] in [], for the purposes of this Act.
Certificates	17.(1) Subject to this section, where a judgment under which a sum of money is payable or item of movable property is deliverable has been entered in a superior or subordinate court in [] against any person and the judgment creditor wishes to enforce the judgment in any reciprocating country, the court shall, on the application of the judgment creditor and on payment of the prescribed fee, issue to him— (a) a certified copy of the judgment; and (b) a certificate, in the form set out in the Schedule, or to like effect, containing such particulars as are therein mentioned with respect to the proceedings, including the cause of action and the rate of interest, if any, payable on any sum payable and where the judgment was given in a superior court and the judgment creditor wishes to enforce the judgment in a Commonwealth country, certifying that the court in which the judgment was given is a superior court in []. (2) An application under subsection (1) shall not be made with respect to a judgment— (a) under which a sum of money is payable or any movable property is deliverable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty; or (b) the execution of which is stayed for any period pending an appeal or for any other reason, until the expiration of that period. (3) In the case of an award in arbitration proceedings, (a) the certified copy of the judgment shall be issued by the arbitrator or chairman of the arbitration tribunal, as the case may be; (b) the certificate referred to in subsection (1)(b) shall, with such modifications as circumstances dictate, be issued by the [Supreme Court] and such certificate shall state that the award is enforceable as a judgment of the [Supreme Court] under the law of [].
Exclusion of certain proceedings	18.(1) No proceedings, other than proceedings by way of registration of a judgment or by way of execution of a judgment so registered, may be entertained by any court in [] which are brought by a judgment creditor— (a) to recover any sum of moneys payable or any item of movable property deliverable under a judgment to which this Act applies and which is registrable; or

(b) upon an original cause of action to recover from a judgment debtor any sum of money or movable property in respect of which there has been given on the same cause of action a judgment to which this Act applies and which is registrable.

(2) No proceedings may be entertained by any court in [] which are brought by a judgment debtor for the recovery of any sum payable under a judgment of a court outside []—

(a) to the extent to which it is a judgment for exemplary, punitive or multiple damages; or

(b) being a judgment based upon a designated anti-trust law which is given after the date upon which the designation of that law under section 15 comes into effect.

Recognition of certain foreign judgments.

19.(1) Subject to this section, any judgment of a designated court shall be recognised in any court in [] as conclusive between the parties thereto, as to the matter adjudicated upon, in all proceedings, (no matter by which of the parties in the designated court they are instituted) on the same cause of action and may be relied upon by way of defence or counter-claim in any such proceedings.

(2) This section shall not apply in the case of any judgment which—

(a) has been registered and the registration thereof has been set aside on some ground other than—

(i) that a sum of money was not payable under the judgment; or

(ii) that the judgment had been wholly or partly satisfied; or

(iii) that, at the date of the application, the judgment could not be enforced by execution in the country of the original court, or

(b) has not been registered but it is shown that any such registration would have been set aside on an application for that purpose on some ground other than those specified in paragraph (a)(i) to (iii).

(3) Nothing in this section shall be taken to prevent any court in [] recognising any judgment as conclusive of any matter of law or fact decided therein under any other statutory provision in that regard or if that judgment would have been so recognised before the passing of this Act, but no such recognition shall be accorded, if it is sought in proceedings in respect of a different cause of action from that on which the judgment was given, until after the expiration of such period as appears to the court to be reasonably sufficient to enable any appeal in respect of the judgment to be instituted and disposed of by a competent tribunal; and the court may, if it thinks fit and on such terms as it thinks just, adjourn the proceedings until such time.

(4) For the purposes of this section, the expression “judgment” means—

(a) any judgment to which this Act applies whether or not it is registrable and, if registrable, whether or not it is registered; and

(b) any other judgment or order given in any civil proceedings which is final and conclusive between the parties,

and the expression “final and conclusive” has the meaning assigned to it by section 3(2).

Repeal and transitional provisions

20.(1) The [] is hereby repealed.

(2) Any judgment registered in the [Supreme Court] under the [] before the commencement of this Act shall be deemed to have been registered under this Act and anything done in relation thereto under that Act or any rules of court or other provisions applicable to that Act shall be deemed to have been done under this Act or the corresponding rules of court or other provisions applicable to this Act.

(3) Any application for registration of a judgment under the [] which is pending at the date of commencement of this Act shall be deemed to have been made under this Act.

Commencement

21. This Act shall come into force on a date to be fixed by the [Head of State] by [proclamation] [order].

SCHEDULE
Certificate

(Section 17)

It is hereby certified that there has been duly entered in the records of the Court of _____ at _____ before the Honourable [a Justice] of that Court, a judgment in an action [proceedings] numbered as No. _____

Between _____

(Plaintiff(s)) [giving name
business &
address]

And _____

Defendant(s) [giving name
business &
address]

It is also certified that—

(1) the [originating process] was issued on the _____ day of _____ 19____ and proof was furnished to this court that it was served on the defendant by

- (a) personal service;
- (b) substituted service;
- (c) other form of service [which is to be stated]

(2) the defendant made an appearance personally/by a lawyer [if merely to contest jurisdiction, this should be stated]

—OR—

the defendant made no appearance

(3) no defence was entered and judgment was allowed by [proof, default or order]

—OR—

a defence was entered and judgment was allowed at the trial.

(4) the grounds relied upon to establish the jurisdiction of the court in the action [proceedings] were:

(5) judgment was given on the _____ day of _____ 19____

(6) (a) There is a right of appeal to [_____]/no right of appeal;

(b) an appeal has been heard and dismissed; or

(c) an appeal has been instituted and is pending and a stay of execution has not been granted; or

(d) no appeal has been instituted and the time for appeal has expired/has not expired;

(7) the particulars of the judgment are as follows—

Claim allowed:

Costs to judgment:

Subsequent costs:

Interest due at [date]:

Extent to which judgment satisfied at [date]:

Balance or items remaining due at [date] including costs and interest:

[Details of debt or items subject to judgment to be inserted]

(8) The Court of _____ is/is not a Superior Court in [_____].

Certified by _____

(name)
(office)

SEAL

on this _____ day of _____ 19____

APPENDIX E
DRAFT MODEL BILL
entitled
COMMONWEALTH COUNTRIES ACT 198–

An Act to enable membership of the Commonwealth to be more easily ascertained [and to provide for the continued operation of the law of [] in relation to certain Commonwealth countries].

BE IT ENACTED etc.

- | | |
|---|---|
| Short title | 1. This Act may be cited as the Commonwealth Countries Act 198–. |
| Membership of Commonwealth | 2.(1) A certificate signed by the [Minister for Foreign Affairs] that on a date specified in the certificate a specified country was or was not a Commonwealth country, or that a specified territory was or was not one for whose international relations a specified Commonwealth country was responsible, shall be conclusive evidence in any proceedings before any court of the matters stated in the certificate.

(2) If no certificate pursuant to subsection (1) is produced relating to it, the fact that a country is specified in the Schedule to this Act shall be conclusive evidence in any proceedings before any court that that country is a Commonwealth country, and the fact that a country is not so specified shall be conclusive evidence that it is not a Commonwealth country.

(3) The [Head of State] may from time to time by [Order] amend the Schedule by adding to it the names of countries that have become Commonwealth countries or deleting from it the names of countries that have ceased to be Commonwealth countries.

(4) An [Order] pursuant to subsection (3) shall take effect from a date specified therein, whether that date is before on or after the date of the making of the [Order]. |
| Amendment of [Interpretation] Act 19– | 3. The [Interpretation] Act 19– is amended by inserting the following definition:
<p style="margin-left: 40px;">“‘Commonwealth country’ means a country that is an independent sovereign member of the Commonwealth.”</p> |
| [Operation of law of [] with respect to certain Commonwealth countries | 4. All law of [], whether being a rule of law or a provision of an Act of Parliament or of any other instrument or enactment whatsoever, which applies in relation to a Commonwealth country shall on that Commonwealth country becoming a republic continue to have the same operation, until provision to the contrary is made by the authority having power to alter that law, as if that Commonwealth country had not become a republic.] |

SCHEDULE

(Section 2)

COUNTRIES SPECIFIED AS COMMONWEALTH COUNTRIES
(subject to any certificate under section 2(1))

Australia	Grenada	Nauru	Sri Lanka
The Bahamas	Guyana	New Zealand	Swaziland
Bangladesh	India	Nigeria	Tanzania
Barbados	Jamaica	Papua New Guinea	Tonga
Botswana	Kenya	St Lucia	Trinidad and Tobago
Canada	Kiribati	St Vincent and the Grenadines	Tuvalu
Cyprus	Lesotho	Seychelles	Uganda
Dominica	Malaŵi	Sierra Leone	United Kingdom
Fiji	Malaysia	Singapore	Western Samoa
The Gambia	Malta	Solomon Islands	Zambia
Ghana	Mauritius		