



LAWS OF MALAYSIA

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Act 356

MARRIED WOMEN AND CHILDREN (ENFORCEMENT OF MAINTENANCE) ACT 1968

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**MARRIED WOMEN AND CHILDREN
(ENFORCEMENT OF MAINTENANCE)
ACT 1968**

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LAWS OF MALAYSIA**Act 356****MARRIED WOMEN AND CHILDREN
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LAWS OF MALAYSIA**Act 356****MARRIED WOMEN AND CHILDREN
(ENFORCEMENT OF MAINTENANCE)
ACT 1968**

An Act to provide for the enforcement of maintenance orders.

[21 March 1968]

BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

Citation

1. This Act may be cited as the Married Women and Children (Enforcement of Maintenance) Act 1968.

Application

2. This Act shall apply to the States of Peninsular Malaysia only.

Interpretation

3. In this Act, unless the context otherwise requires—

“attachment of earnings order” means an order made under section 4;

“the court” means the court competent to make a maintenance order;

“defendant”, in relation to a maintenance order or a related attachment of earnings order, means the person liable to make payments under the maintenance order;

“earnings”, in relation to a defendant, means any sums payable to him—

- (a) by way of wages or salary, including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary by the person paying the wages or salary or payable under a contract of service;
- (b) by way of pension, including gratuity and an annuity in respect of past services, whether or not the services were rendered to the person paying the annuity, and including periodical payments by way of compensation for the loss, abolition or relinquishment, or any diminution in the emoluments, of any office or employment;

“employer” means a person by whom, as a principal and not as a servant or agent, earnings fall to be paid to a defendant, and references to payment of earnings shall be construed accordingly;

“maintenance order” means—

- (a) an order made under section 3 of the Married Women and Children (Maintenance) Act 1950 [Act 263];
- (b) an order for the payment of periodical sums by way of maintenance or alimony to a wife or for the benefit of any child under the Law Reform (Marriage and Divorce) Act 1976 [Act 164];
- (c) a maintenance order confirmed by the court under the Maintenance Orders (Facilities for Enforcement) Act 1949 [Act 34]; and
- (d) where this Act are made applicable by virtue of an authorization under section 14 to or in respect of a maintenance order made by a Syariah Court shall include such order.

Power of court to make an attachment of earnings order

4. (1) Notwithstanding any written law to the contrary, the court may, upon application by the person for whose maintenance the order is made or the guardian of such person, make an attachment of earnings order, if the court considers it just so to make.

(2) An application for an attachment of earnings order may be made in the proceedings in which a maintenance order is applied for or in any subsequent proceedings.

Nature of attachment of earnings order

5. (1) An attachment of earnings order shall require the person to whom the order in question is directed, being a person appearing to the court to be the defendant's employer, to make out of the earnings falling to be paid to the defendant payments in satisfaction of the order.

(2) The amount to be prescribed in an attachment of earnings order shall be such sum as to the court shall seem reasonable after taking into account the resources and needs of the defendant and the needs of persons for whom he must or reasonably should provide.

(3) An attachment of earnings order shall contain, so far as they are known to the court making the order, such particulars as may be prescribed for the purpose of enabling the defendant to be identified by the person to whom the order is directed.

(4) An attachment of earnings order or any variation thereof shall not come into force until the expiration of seven days from the date when a copy of the order is served on the person to whom the order is directed.

(5) An attachment of earnings order shall designate the officer to whom the payments under the order are to be made.

Effect of attachment of earnings order

6. (1) When an attachment of earnings order is made, all other proceedings for the enforcement of the related maintenance order begun before the making of the attachment of earnings order shall be suspended.

(2) The court by which an attachment of earnings order has been made may, if it thinks fit, on the application of the defendant or a person entitled to receive payments under the related maintenance order, make an order discharging or varying the attachment of earnings order.

(3) An attachment of earnings order shall cease to have effect—

(a) upon the issue of a warrant directing that the amount due under the related maintenance order shall be levied in the manner provided by law for levying fines;

(b) upon the making of an order sentencing the defendant to imprisonment for failure to comply with the related maintenance order; and

(c) upon the rescission of the related maintenance order,

and where an attachment of earnings order ceases to have effect as aforesaid the court making such order shall give notice of the cessation to the person to whom the order was directed.

Duty of defendant and employer to comply with attachment of earnings order

7. (1) A person to whom an attachment of earnings order is directed shall, notwithstanding anything in any other written law but subject to this Act, comply with the order or, if the order is subsequently varied under section 6, with the order as so varied.

(2) Where on any occasion on which earnings fall to be paid to a defendant there are in force two or more attachment of earnings orders relating to those earnings, then, for the purpose of complying with this Act the employer shall—

(a) deal with those orders according to the respective dates on which they came into force disregarding any later order until all earlier orders have been dealt with; and

(b) deal with any later order as if the earnings to which it relates were the residue of the defendant's earnings after the making of any payment under this Act in pursuance of any earlier order.

(3) An employer who, in pursuance of an attachment of earnings order, makes a payment under this Act shall give to the defendant a statement in writing specifying the amount of that payment.

(4) Where the person to whom an attachment of earnings order is directed has, during the period of one month immediately preceding the day on which the order is served on him, on no occasion been the defendant's employer, he shall forthwith give notice in writing to that effect in the prescribed form to the court.

Additional powers of court in attachment of earnings order proceedings

8. (1) Where proceedings relating to an attachment of earnings order are brought in any court, the court may, either before or at the hearing—

- (a) order the defendant to give to the court, within such period as may be specified by the order, a statement signed by him of—
 - (i) the name and address of his employer, or of each of his employers if he has more than one;
 - (ii) such particulars as to the defendant's earnings as may be so specified;
 - (iii) such prescribed particulars as may be so specified for the purpose of enabling the defendant to be identified by an employer of his; and
- (b) order any person appearing to the court to be an employer of the defendant to give to the court, within such period as may be specified by the order, a statement signed by him or on his behalf of such particulars as may be specified by the order, of all earnings of the defendant which fell to be paid by that person during such period as may be so specified.

(2) A document purporting to be such a statement as is mentioned in subsection (1) shall, in any such proceedings as are so mentioned, be received in evidence and be deemed to be such a statement without further proof unless the contrary is shown.

Power of court to determine what are earnings

9. (1) The court by which an attachment of earnings order has been made shall, on the application of the person to whom the order is directed or of the defendant or of the person in whose favour the order was made, determine whether payments to the defendant of a particular class or description specified by the application are earnings for the purposes of that order; and the person to whom the order is directed shall be entitled to give effect to any determination for the time being in force under this subsection.

(2) A person to whom an attachment of earnings order is directed who makes an application under subsection (1) shall not incur any liability for failing to comply with the order as regards any payments of the class or description specified by the application which are made by him to the defendant while the application, or any appeal in consequence thereof, is pending:

Provided that this subsection shall not apply to such payments if the said person subsequently withdraws the application or, as the case may be, abandons the appeal.

Payment of money under attachment of earnings order

10. (1) The court to whom an employer pays any sum in pursuance of an attachment of earnings order shall pay that sum to such person entitled to receive payments under the related maintenance order as is specified by the attachment of earnings order.

(2) Any sums received by virtue of an attachment of earnings order by the court shall be deemed to be payments made by the defendant, so as to discharge first any sums for the time being due and unpaid under the related maintenance order (a sum due at an earlier date being discharged before a sum due at a later date) and secondly any costs incurred in proceedings relating to the maintenance order which were payable by the defendant when the attachment of earnings order was made or last varied.

Where earnings paid by Government or out of Consolidated Fund

11. (1) In relation to earnings falling to be paid by the Government or out of the Consolidated Fund the earnings shall be treated as falling to be paid by the chief officer for the time being of the department, office or other body concerned.

(2) If any question arises, in connection with any proceedings relating to an attachment of earnings order, as to what department, office or other body is concerned for the purposes of this section, or as to who for those purposes is the chief officer thereof, that question shall be referred to and determined by the Minister of Finance but the Minister of Finance shall not be under any obligation to consider a reference under this subsection unless it is made by a court.

(3) A document purporting to set out a determination of the Minister of Finance under subsection (2) and to be signed by an official of the Ministry of Finance shall, in any such proceedings as are mentioned in that subsection, be admissible in evidence and deemed to contain an accurate statement of such a determination unless the contrary is shown.

Penalties for non-compliance with attachment of earnings order and for giving false notice or statement

12. (1) Any person who—

- (a) fails to comply with subsection 7(1) or (4) or an order of a court under subsection 8(1); or
- (b) gives such a notice as is mentioned in subsection 7(4) or a statement in pursuance of an order of a court under subsection 8(1), which notice or statement he knows to be false in a material particular; or
- (c) recklessly gives such a notice or statement which is false in a material particular,

shall, subject to subsection (2) be liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand ringgit or to both.

(2) It shall be a defence for a person charged with failing to comply with subsection 7(1) to prove that he took all reasonable steps to comply with the attachment of earnings order to which the failure relates.

Order to make payment to court

13. (1) Where a defendant is a person whose income is derived from sources other than earnings, the court may on the application of the person for whose maintenance the maintenance order is made or on the application of the guardian of such person, make an order that any sum of money payable under the maintenance order be paid direct to the court on such day as the court may fix; and upon receipt of the payment of such sum the court will then pay the said sum to the person for whose maintenance the maintenance order is made or to the guardian of such person.

(2) If the defendant neglects or fails to comply with any order made by the court under subsection (1), the court making the order may call upon the defendant to show cause why he has neglected or failed to comply with the said order.

(3) If sufficient cause is not shown and the sum of money payable and due under the maintenance order is not paid, the court may proceed to recover the same by issuing a warrant for the attachment and the sale of the property belonging to the defendant.

(4) Except for a warrant of attachment issued by the High Court, a warrant for the attachment and the sale of the property belonging to a defendant under subsection (3) may be executed anywhere within Peninsular Malaysia, but if it is required to be executed outside the State in which it is issued, it shall be endorsed by a Magistrate of the First Class having jurisdiction in the State in which it is to be executed.

(5) If the sum of money so payable and due be not paid and cannot be recovered by such attachment and sale, the court may direct that the defendant shall suffer imprisonment for a term not exceeding one month for every such neglect or failure to comply with the order of the court made under subsection (1):

Provided that—

- (a) such imprisonment shall terminate whenever the amount so due and payable has been paid or recovered by the process of law;
- (b) notwithstanding any written law to the contrary the person for whose maintenance the maintenance order is made or the guardian of such person shall not be required to pay or to contribute towards the upkeep or maintenance of the defendant in prison, if he has been directed to be imprisoned under this subsection; and
- (c) notwithstanding imprisonment under this subsection the defendant shall not be absolved from the obligation to pay the said sum of money so due and payable in respect of which he has neglected or failed to make payment.

Application to States

14. It is hereby declared that in pursuance of Clause (1) of Article 76A of the Federal Constitution, the State legislatures in Peninsular Malaysia or any of them are hereby authorized to make laws

providing that this Act shall apply to or in respect of a maintenance order made by the Syariah Courts constituted by or under the enactments of the States.

Modification

15. Where one of the State legislatures of Peninsular Malaysia in pursuance of the authorization under section 14 by an Enactment applies this Act to or in respect of maintenance orders made by the Syariah Courts constituted under its Enactment, the provisions of this Act shall have effect with respect thereto subject to the following modifications, namely:

- (a) the expression “court” shall include a Syariah Court constituted by or under the Enactment of that State;
 - (b) the expression “maintenance order” shall include a maintenance order made by the aforesaid Syariah Court; and
 - (c) any order made or any warrant or any process issued by the aforesaid Syariah Court under this Act shall be as valid and effectual as if the same is made or issued by a Magistrate of the First Class in that State and may be executed within that State, but if it is required to be executed outside that State it shall be endorsed by a Magistrate of the First Class having jurisdiction in the State in which it is to be executed.
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ACT 1968**

LIST OF AMENDMENTS

Amending law	Short title	In force from
Act 160	Malaysian Currency (Ringgit) Act 1975	29-08-1975
Act A996	Interpretation (Amendment) Act 1997	24-07-1997

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(ENFORCEMENT OF MAINTENANCE)
ACT 1968****LIST OF SECTIONS AMENDED**

Section	Amending authority	In force from
2	Act A996	24-07-1997
12	Act 160	29-08-1975
13	Act A996	24-07-1997
14	Act A996	24-07-1997
