

ARRANGEMENT OF SECTIONS.

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AN ACT TO MAKE FURTHER AND BETTER PROVISION FOR THE CONDUCT OF CERTAIN MATRIMONIAL PROCEEDINGS, THE LAW GOVERNING AFFILIATION, THE MAINTENANCE OF SPOUSES, CHILDREN, PARENTS AND OTHER PERSONS, THE MAKING AND ENFORCEMENT OF MAINTENANCE ORDERS AND AGREEMENTS AND FOR MATTERS INCIDENTAL THERETO OR CONNECTED THEREWITH.

PART I

Preliminary

Title.

1. This Act may be cited as the Maintenance Act.

MATRIMONIAL PROCEEDINGS.

Interpretation.

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

“Care Agency” means the Care Agency established under section 3 of the Care Agency Act 2009;

“child”, in relation to one or both of the parties to a marriage, includes an illegitimate or adopted child of that party or, as the case may be, of both parties, but does not include a child adopted by some other person or persons, and “parent”, in relation to any child, shall be construed accordingly; and “adopted” means adopted in pursuance of an adoption order made under the Adoption Act, or any enactment repealed by that Act;

“child of the family”, in relation to the parties to a marriage, mean—

- (a) any child of both parties; and
- (b) any other child of either party who has been accepted as one of the family by the other party;

“cohabitees” means a man and a woman not married to each other living together as man and wife: and “cohabitee” shall be construed accordingly;

“court” means the Supreme Court or the magistrates’ court, as the case may be;

“dependant” means a person–

- (a) who is under the age of eighteen years; or
- (b) who, having attained the age of eighteen but not of twenty-one years, is either receiving full time instruction at an educational establishment or undergoing training for a trade, profession or vocation in such circumstances that he is required to devote the whole of his time to that training for a period of not less than two years; or
- (c) whose earning capacity is impaired through illness or disability of mind or body and who has not attained the age of twenty-one years;

“Family Judge” means a judge of the Supreme Court as referred to in section 12A (2) of the Supreme Court Act and “Judge” shall be construed accordingly;

“interim order” means an order under section 9 and includes any order made by virtue of section it, varying or reviving an order under section 9;

“maintenance” includes education;

“matrimonial order” means an order under section 4 and includes any order made by virtue of section 12 varying or reviving an order made under section 4.

“matrimonial home” includes the permanent place of residence of cohabittees;

“Minister” means the Minister with responsibility for families and children.

Application of agreement under Part VIA of the Matrimonial Causes Act.

2A. Where the parties have entered into an agreement under Part VIA of the Matrimonial Causes Act the court shall apply the provisions of the Act but subject to the provisions of Part VIA of the Matrimonial Causes Act and nothing in this Act shall derogate from the provisions of that Part.

Applications under each Part to be separate.

2B. Where an application can be made under either Part IA or Part III that application must be made under Part IA only.

PART IA

Matrimonial Orders

Grounds of application for a matrimonial order.

3. Either party to a marriage may apply to the Family Judge for a matrimonial order under section 4 of this Act on the ground that the other party to the marriage—

- (a) has failed to provide reasonable maintenance for the applicant;
- (b) has failed to provide, or to make a proper contribution towards, reasonable maintenance for any child of the family;
- (c) has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent; or
- (d) has deserted the applicant.

Powers of court to make matrimonial orders.

4.(1) Where on an application for an order under this section the applicant satisfies the court of any ground mentioned in section 3, the court may, subject to the provisions of this Part, make any one or more of the following orders—

- (a) an order that the respondent shall make to the applicant such periodical payments, and for such term, as may be specified in the order;
- (b) an order that the respondent shall pay to the applicant such lump sum as may be so specified;
- (c) an order that the respondent shall make to the applicant for the benefit of a child of the family to whom the application relates, or to such a child, such periodical payments, and for such term, as may be so specified;
- (d) an order that the respondent shall pay to the applicant for the benefit of a child of the family to whom the application relates, or to such a child, such lump sum as may be so specified; or

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- (e) an order that the applicant be no longer bound to cohabit with the respondent (which provision while in force shall have effect in all respects as a decree of judicial separation under the Matrimonial Causes Act).

(2) Without prejudice to the generality of subsection (1)(b) or (d), an order under this section for the payment of a lump sum may be made for the purpose of enabling any liability or expenses reasonably incurred in maintaining the applicant, or any child of the family to whom the application relates, before the making of the order to be met.

Matters to which the court is to have regard in exercising its powers under section 4.

5.(1) Where an application is made for an order under section 4, it shall be the duty of the court, in deciding whether to exercise its powers under that section and, if so, in what manner, to have regard to all the circumstances of the case, first consideration being given to the welfare of any child of the family who has not attained the age of eighteen.

(2) As regards the exercise of its powers under subsection (1)(a) or (b) of section 4, the court shall in particular have regard to the following matters—

- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (c) the standard of living enjoyed by the parties to the marriage before the occurrence of the conduct which is alleged as the ground of the application;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) any physical or mental disability of either of the parties to the marriage;
- (f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family,

including any contribution by looking after the home or caring for the family;

- (g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it.

(3) As regards the exercise of its power under subsection (1)(c) or (d) of section 4, the court shall in particular have regard to the following matters—

- (a) the financial needs of the child;
- (b) the income, earning capacity (if any), property and other financial resources of the child;
- (c) any physical or mental disability of the child;
- (d) the standard of living enjoyed by the family before the occurrence of the conduct which is alleged as the ground of the application;
- (e) the manner in which the child was being and in which the parties to the marriage expected him to be educated or trained;
- (f) the matters mentioned in relation to the parties to the marriage in paragraphs (a) and (b) of subsection (2).

(4) As regards the exercise of its power under section 4 in favour of a child of the family who is not the child of the respondent, the court shall also have regard—

- (a) to whether the respondent has assumed any responsibility for the child's maintenance and, if he did, to the extent to which, and the basis on which, he assumed that responsibility and to the length of time during which he discharged that responsibility;
- (b) to whether in assuming and discharging that responsibility the respondent did so knowing that the child was not his own child;
- (c) to the liability of any other person to maintain the child.

Duration of orders for financial provision for a party to a marriage.

6.(1) The term to be specified in any order made under section 4(1)(a) shall be such term as the court thinks fit except that the term shall not begin

earlier than the date of the making of the application for the order and shall not extend beyond the death of either of the parties to the marriage.

(2) Where an order is made under section 4(1)(a) and the marriage of the parties affected by the order is subsequently dissolved or annulled but the order continues in force, the order shall, notwithstanding anything in it, cease to have effect on the remarriage of the party in whose favour it was made, except in relation to any arrears due under the order on the date of the remarriage.

Age limit on making orders for financial provision for children and duration of such orders.

7.(1) Subject to subsection (3), no order shall be made under section 4(1)(c) or (d) in favour of a person who has attained the age of eighteen.

(2) The term to be specified in an order made under section 4(1)(c) in favour of a child may begin with the date of the making of an application for the order in question or any later date but—

- (a) shall not in the first instance extend beyond the date of the birthday of the child next following his attaining the upper limit of the compulsory school age unless the court considers that in the circumstances of the case the welfare of the child requires that it should extend to a later date; and
- (b) shall not in any event, subject to subsection (3), extend beyond the date of the child's eighteenth birthday.

(3) The court—

- (a) may make an order under section 4(1)(c) or (d) in favour of a child who has attained the age of eighteen; and
- (b) may include in an order made under section 4(1)(c) in relation to a child who has not attained that age a provision for extending beyond the date when the child will attain that age the term for which by virtue of the order any payments are to be made to or for the benefit of that child,

if it appears to the court—

- (i) that the child is, or will be, or if such an order or provision were made would be, receiving instruction at an educational establishment or undergoing training for a

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trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or

- (ii) that there are special circumstances which justify the making of the order or provision.

(4) Any order made under section 4(1)(c) in favour of a child shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.

Orders for payments which have been agreed by the parties.

8.(1) Either party to a marriage may apply to the Family Judge for an order under this section on the ground that either the party making the application or the other party to the marriage has agreed to make such financial provision as may be specified in the application and, subject to subsection (3), the court on such an application may, if—

- (a) it is satisfied that the applicant or the respondent, as the case may be, has agreed to make that provision; and
- (b) it has no reason to think that it would be contrary to the interests of justice to exercise its powers hereunder,

order that the applicant or the respondent shall make the financial provision specified in the application.

(2) In this section “financial provision” means the provision mentioned in any one or more of the following paragraphs—

- (a) the making of periodical payments by one party to the other;
- (b) the payment of a lump sum by one party to the other;
- (c) the making of periodical payments by one party to a child of the family or to the other party for the benefit of such a child;
- (d) the payment by one party of a lump sum to a child of the family or to the other party for the benefit of such a child,

and any reference in this section to the financial provision specified in an application made under subsection (1) or specified by the court under subsection (5) is a reference to the type of provision specified in the application or by the court to the amount so specified as the amount of any payment to be made under it and, in the case of periodical payments, to the term so specified as the term for which the payments are to be made.

(3) Where the financial provision specified in an application under subsection (1) includes or consists of provision in respect of a child of the family, the court shall not make an order under that subsection unless it considers that the provision which the applicant or the respondent has agreed to make in respect of that child provides for, or makes a proper contribution towards, the financial needs of the child.

(4) A party to a marriage who has applied for an order under section 4 shall not be precluded at any time before the determination of that application from applying for an order under this section; but if an order is made under this section on the application of either party and either of them has also made an application for an order under section 4, the application made for the order under section 4 shall be treated as if it had been withdrawn.

(5) Where on an application under subsection (1) the court decides—

- (a) that it would be contrary to the interests of justice to make an order for the making of the financial provision specified in the application; or
- (b) that any financial provision which the applicant or the respondent, has agreed to make in respect of a child of the family does not provide for, or make a proper contribution towards, the financial needs of that child,

but is of the opinion—

- (i) that it would not be contrary to the interests of justice to make an order for the making of some other financial provision specified by the court, and
- (ii) that, in so far as that other financial provision contains any provision for a child of the family, it provides for, or makes a proper contribution towards, the financial needs of that child,

then if both the parties agree, the court may order that the applicant or the respondent, as the case may be, shall make that other financial provision.

(6) Subject to subsection (8), the provisions of section 6 shall apply in relation to an order under this section which requires periodical payments to be made to a party to a marriage for his own benefit as they apply in relation to an order under section 4(1)(a).

(7) Subject to subsection (8), the provisions of section 7 shall apply in relation to an order under this section for the making of financial provision in respect of a child of the family as they apply in relation to an order under section 4(1)(c) or (d).

(8) Where the court makes an order under this section which contains provision for the making of periodical payments and, by virtue of subsection (4), an application for an order under section 4 is treated as if it had been withdrawn, then the term which may be specified as the term for which the payments are to be made may begin with the date of the making of the application for the order under section 4 or any later date.

(9) Where the respondent is not present or represented by counsel at the hearing of an application for an order under subsection (1), the court shall not make an order under this section unless there is produced to the court such evidence as may be prescribed by rules of court of—

- (a) the consent of the respondent to the making of the order;
- (b) the financial resources of the respondent; and
- (c) in a case where the financial provision specified in the application includes or consists of provision in respect of a child of the family to be made by the applicant to the respondent for the benefit of the child or to the child, the financial resources of the child.

Powers of court where parties are living apart by agreement.

9.(1) Where the parties to a marriage have been living apart for a continuous period exceeding three months, neither party having deserted the other, and one of the parties has been making periodical payments for the benefit of the other party or of a child of the family, that other party may apply to the Family Judge for an order under this section, and any application made under this subsection shall specify the aggregate amount of the payments so made during the period of three months immediately preceding the date of the making of the application.

(2) Where on an application for an order under this section the court is satisfied that the respondent has made the payments specified in the application, the court may, subject to the provisions of this Part, make—

- (a) an order that the respondent shall make to the applicant such periodical payments, and for such term, as may be specified in the order; or

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- (b) an order that the respondent shall make to the applicant for the benefit of a child of the family to whom the application relates, or to such a child, such periodical payments, and for such term, as may be so specified.

(3) The court in the exercise of its powers under this section—

- (a) shall not require the respondent to make payments which exceed in aggregate during any period of three months the aggregate amount paid by him for the benefit of the applicant or a child of the family during the period of three months immediately preceding the date of the making of the application;
- (b) shall not require the respondent to make payments to or for the benefit of any person which exceed in amount the payments which the court considers that it would have required the respondent to make to or for the benefit of that person on an application under section 4 of this Act; and
- (c) shall not require payments to be made to or for the benefit of a child of the family who is not a child of the respondent unless the court considers that it would have made an order in favour of that child on an application under section 4 of this Act.

(4) Where on an application under this section the court considers that the orders which it has the power to make under this section—

- (a) would not provide reasonable maintenance for the applicant; or
- (b) if the application relates to a child of the family, would not provide, or make a proper contribution towards reasonable maintenance for that child,

the court shall refuse to make an order under this section, but the court may treat the application as if it were an application for an order under section 4.

(5) The provisions of section 5 shall apply in relation to an application for an order under this section as they apply in relation to an application for an order under section 4 subject to the modification that for the reference in subsection (2)(c) of section 5 to the occurrence of the conduct which is alleged as the ground of the application there shall be substituted a reference to the living apart of the parties to the marriage.

(6) The provisions of section 6 shall apply in relation to an order under this section which requires periodical payments to be made to the applicant

for his own benefit as they apply in relation to an order under section 4(1)(a).

(7) The provisions of section 7 shall apply in relation to an order under this section for the making of periodical payments in respect of a child of the family as they apply in relation to an order under section 4(1)(c).

Restrictions on making of orders under this Act: welfare of children.

10. Where an application is made by a party to a marriage for an order under section 4, 8 or 9, then, if there is a child of the family who is under the age of eighteen, the court shall not dismiss or make a final order on the application until it has decided whether to exercise any of its powers under the Children Act 2009 with respect to the child.

Interim orders.

11.(1) Where an application is made for an order under section 4, 8 or 9, the Family Judge, at any time before making a final order on, or dismissing, the application, may make an interim order which requires the respondent to make to the applicant or to any child of the family who is under the age of eighteen, or to the applicant for the benefit of such a child, such periodical payments as the court thinks reasonable.

(2) An interim order may provide for payments to be made from such date as the Judge may specify, except that the date shall not be earlier than the date of the making of the application for an order under section 4, 8 or 9; and where such an order made by the Court of Appeal on an appeal under section 16A provides for payments to be made from a date earlier than the date of the making of the order, the interim order may provide that payments made by the respondent under an order made by the Family Judge shall, to such extent and in such manner as may be provided by the interim order, be treated as having been paid on account of any payment provided for by the interim order.

(3) Where an application is made for an order under section 8 by the party to the marriage who has agreed to make the financial provision specified in the application—

- (a) subsection (1) shall apply as if the reference to the respondent were a reference to the applicant and the references to the applicant were references to the respondent; and
- (b) subsection (2) shall apply accordingly.

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(4) Subject to subsection (5), an interim order made on an application for an order under section 4, 8 or 9 shall cease to have effect on whichever of the following dates occurs first–

- (a) the date, if any, specified for the purpose in the interim order;
- (b) the date of the expiration of the period of three months beginning with the date of the making of the interim order;
- (c) the date on which the court either makes a final order on or dismisses the application.

(5) Where an interim order made under subsection (1) would, but for this subsection, cease to have effect by virtue of subsection (4)(a) or (b), the Family Judge may by order provide that the interim order shall continue in force for a further period, and any order continued in force under this subsection shall cease to have effect on whichever of the following dates occurs first–

- (a) the date, if any, specified for the purpose in the order made under this subsection;
- (b) the date of the expiration of the period of three months beginning with the date of the making of the order under this subsection or, if more than one order has been made under this subsection with respect to the application, beginning with the date of the making of the first of those orders;
- (c) the date on which the court either makes a final order on, or dismisses, the application.

(6) Not more than one interim order may be made with respect to any application for an order under section 4, 8 or 9, but without prejudice to the powers of the court under this section on any further such application.

(7) No appeal shall lie from the making of or refusal to make, the variation of or refusal to vary, or the revocation of or refusal to revoke, an interim order.

Variation and revocation of orders for periodical payments.

12.(1) Where the Family Judge has made an order under section 4(1)(a) or (c) for the making of periodical payments, the Judge may, on an application made under this section, vary or revoke that order and also may make an order under section 4(1)(b) or (d).

(2) Where the Family Judge has made an order under section 8 for the making of periodical payments by a party to a marriage, the Judge may, on an application made under this section, vary or revoke that order and also may make an order for the payment of a lump sum by that party either—

- (a) to the other party to the marriage; or
- (b) to a child of the family or to that other party for the benefit of that child.

(3) Where the Family Judge has made an order under section 9 for the making of periodical payments, the Judge may, on an application made under this section, vary or revoke that order.

(4) Where the Family Judge has made an interim order under section 11, the Judge may, on an application made under this section, vary or revoke that order, except that the Judge shall not by virtue of this subsection extend the period for which the order is in force.

(5) The power of the Judge under this section to vary an order for the making of periodical payments shall include power to suspend any provision thereof temporarily and to revive any provision so suspended.

(6) An order made by virtue of this section which varies an order for the making of periodical payments may provide that the payments so varied shall be made from such a date as the court may specify, except that, subject to subsection (7), the date shall not be earlier than the date of the making of the application under this section.

(7) Where—

- (a) there is in force an order (“the order”)—
 - (i) under section 4(1)(c),
 - (ii) under section 8(1) making provision of a kind mentioned in paragraph (c) of section 8(2) (regardless of whether it makes provision of any other kind mentioned in that paragraph),
 - (iii) under section 9(2)(b), or
 - (iv) which is an interim order under which the payments are to be made to a child or to the applicant for the benefit of a child; and

- (a) the child is, will be or (if an order were made under this subsection) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not while in gainful employment; or
- (b) there are special circumstances which justify the making of an order under this subsection,

the Judge may by order revive the order referred to in subsection (1) from such date as he may specify, not being earlier than the date of the making of the application.

(3) Any order revived under this section may be varied or revoked under section 12 in the same way as it could have been varied or revoked had it continued in being.

Variation of instalments of lump sum.

14. Where the court orders that a lump sum required to be paid under this Part shall be paid by instalments, the court, on an application made by either the person liable to pay or the person entitled to receive that sum, shall have power to vary that order by varying the number of instalments payable, the amount of any instalment payable and the date on which any instalment becomes payable.

Effect on certain orders of parties living together.

15.(1) Where periodical payments are required to be made to one of the parties to a marriage (whether for his own benefit or for the benefit of a child of the family) by an order made under section 4, or 8 or by an interim order made under section 11 (otherwise than on an application under section 9), the order shall be enforceable notwithstanding that the parties to the marriage are living with each other at the date of the making of the order or that, although they are not living with each other at that date, they subsequently resume living with each other; but the order shall cease to have effect if after that date the parties continue to live with each other, or resume living with each other, for a continuous period exceeding six months.

(2) Where an order under section 4 or 8, or an interim order under section 11 (otherwise than on an application under section 9) which requires periodical payments to be made to a child of the family, then, unless the court otherwise directs, the order shall continue to have effect and be enforceable notwithstanding that the parties to the marriage in question are living with each other at the date of the making of the order or that, although

18.(1) A single woman who is with child, or who has been delivered of an illegitimate child, may apply to the Family Judge for a summons to be served on the man alleged by her to be the father of the child.

(2) An application under this section may be made by a woman who was a single woman at the date of the birth of the child whether or not she is a single woman at the time of the application and the reference to a single woman in this section shall be construed accordingly.

Time for application for summons.

19.(1) An application under section 18, where the applicant has been delivered of an illegitimate child, may be made—

- (a) at any time within twelve months from the child's birth; or
- (b) at any subsequent time, upon proof that the man alleged to be the father of the child has within the twelve months next after the birth paid money for its maintenance; or
- (c) at any time within the twelve months next after the man's return to Gibraltar, upon proof that he ceased to reside in Gibraltar within the twelve months next after the birth.

(2) A single woman who has been delivered of a child may, upon proof that—

- (a) before the birth she was a party to a marriage which would have been valid but for provisions of any law making it void on account of her, or the other party to the marriage, being under the age at which she, or the other party, might legally contract a marriage; and
- (b) the other party had access to her within twelve months before the birth,

make at any time an application under section 18 against that party, notwithstanding that he may not within the twelve months next after the birth have paid money for the child's maintenance.

Jurisdiction under Part II.

20. An application under section 18—

- (a) may be made if—

“interim maintenance order” means an order under section 41 and includes any order made by virtue of section 42 varying or reviving an order under section 41;

“maintenance” includes education;

“maintenance order” means an order under section 39 and includes any order made by virtue of section 42 varying or reviving an order under section 39;

“spouse” means–

- (a) the wife of a man; or
- (b) the husband of a woman.

(2) *Deleted*

Duty of person to maintain dependants.

31.(1) It shall be the duty of every person to provide reasonable maintenance for–

- (a) his spouse;
- (b) his children under the age of eighteen years;
- (c) his children over the age of eighteen and under the age of twenty-one years if such children are unable for any reason to maintain themselves or are undergoing education or training;
- (d) his father and mother if, by reason of old age or menial or physical disability, they are unable to maintain themselves.
- (e) his cohabitee; and
- (f) his cohabitee if that person is unable by reason of old age or mental or physical disability to maintain himself or herself.

(2) Nothing in this section shall impose upon a person an obligation to provide reasonable maintenance under sub-section 1(e) unless that person has an obligation under paragraph (b) or (c) of that subsection.

32. *Repealed*

33. *Repealed*

Application for a maintenance order where a cohabitee fails to maintain cohabitee.

33A. Where a cohabitee fails to provide reasonable maintenance for any cohabitee under section 31(1)(e) or 31(1)(f) then—

- (a) that person; and
- (b) the Care Agency, if that person is in the care of the Care Agency.

may apply to the Family Judge for a maintenance order against him.

Maintenance orders: penalty for breach.

33B.(1) In any case where—

- (a) payments under a maintenance order are required to be made, and
- (b) the debtor fails, on or after the date of commencement of this section, to comply with the order,

the person for whose benefit the payments are required to be made may make an application to the Family Judge giving details of the failure to comply.

(2) If the Judge is satisfied that the nature of the alleged failure to comply may be such as to justify exercising his power under subsection (3) below, he shall issue a summons directed to the debtor requiring him to appear before him to answer the application.

(3) On the hearing of the application, and, without prejudice to any order made, the Family Judge may order the debtor to pay the applicant a sum not exceeding £5000.

(4) Any sum ordered to be paid under subsection (3) above shall for the purposes of this Act be treated as adjudged to be paid by a conviction of a magistrates' court.

(5) In this section “debtor” means a person who is the subject of an order by the Family Judge to pay maintenance to another.

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- (b) the Family Judge varies or discharges a maintenance order registered under this section, the Family Judge, if it thinks fit, may give notice; and
- (c) the Family Judge discharges a maintenance order registered in the magistrates’ court and it appears to the Family Judge, whether by reason of the remission of arrears by the Judge or otherwise, that no arrears under the order remained to be recovered, the Family Judge shall give notice,

and notice under this subsection shall be given to the magistrates’ court.

- (4) Where notice is given under subsection (3) -
 - (a) proceedings for the enforcement of the maintenance order registered in the magistrates’ court shall be commenced before the cancellation of the registration and no process or the enforcement of the order shall be issued in consequence of any such proceedings begun before the giving of the notice;
 - (b) any warrant of commitment issued for the enforcement of the maintenance order shall cease to have effect when the person in possession of the warrant is informed of the giving of the notice, unless the defendant has then already been detained in pursuance of the warrant; and
 - (c) the magistrates’ court shall cancel the registration on being satisfied that-
 - (i) no process for the enforcement of the maintenance order registered in the magistrates’ court issued before the giving of the notice remains in force; and
 - (ii) no proceedings for the variation of the order are pending in the Supreme Court.

(5) On the cancellation of the registration in the magistrates’ court, any order made by the Family Judge under section 49 shall continue to have effect.

(6) In this section “certified copy” in relation to an order in the Supreme Court means a copy certified by the proper officer of the court to be a true copy of the order or of the official record thereof.

Enforcement of orders made under Part III.

46.(1) An order for the payment of maintenance made by the Family Judge under this Part shall be enforceable by the magistrates' court and the Judge may order that an order for payment of maintenance made under this Part may, on application by the party in whose favour the order is made, be enforced by the magistrates' court in accordance with Part V of the Magistrates' Court Act.

(2) The Family Judge making an order under this Part for the making of a periodical payment by one person to another may direct that it shall be made to some third party on that other person's behalf instead of directly to that other person.

(3) Any person for the time being under an obligation to make payments in pursuance of any order for the payment of money made under this Part shall give notice of any change of address to such person, if any, as may be specified in the order; and any person who without reasonable excuse fails to give such a notice shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(4) A person shall not be entitled to enforce through the Supreme Court the payment of any arrears due under an order made by virtue of this Part without the leave of that court if those arrears became due more than twelve months before proceedings to enforce the payment of them are begun.

(5) The Family Judge when hearing an application for the grant of leave under subsection (4) may refuse leave, or may grant leave subject to such restrictions and conditions (including conditions as to the allowing of time for payment or the making of payment by instalments) as he thinks proper, or may remit the payment of such arrears or any part thereof.

(6) An application for the grant of leave under subsection (4) shall be made in such manner as may be prescribed by rules of court.

Offences.

47. A person who is liable to provide reasonable maintenance for any other person under the provisions of section 31 and who wilfully fails or neglects to provide such reasonable maintenance for such other person is guilty of an offence and is liable on summary conviction to imprisonment for three months and to a fine at level 4 on the standard scale.

PART IV. ENFORCEMENT OF ORDERS.

Interpretation of Part IV.

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- (b) if the court decides to proceed under this paragraph, shall make an order either discharging the attachment of earnings order or varying that order in such manner as the court thinks fit.

(6) An order varying an attachment of earnings order shall not come into force until the expiration of seven days from the date when a copy of the first-mentioned order is served on the person to whom the attachment of earnings order is directed; and where an attachment of earnings order ceases to have effect under subsection (2), or is discharged otherwise than under subsection (3), the said person shall not incur any liability in consequence of his treating the order as still in force at any time before the expiration of seven days from the date when the notice required by subsection (2) or, as the case may be, a copy of the discharging order is served on him.

Liabilities of persons to whom attachment of earnings orders are directed.

53.(1) A person to whom an attachment of earnings order is directed shall, notwithstanding anything in any other law but subject to the provisions of this Part, comply with the order or, if the order is subsequently varied under section 52, 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 the Schedule, the employer shall–

- (a) deal with those orders according to the respective dates on which they came into force, disregarding any later order until any earlier order has been dealt with;
- (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 the Schedule in pursuance of any earlier order.

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

(4) A person to whom an attachment of earnings order is directed who, at the time when a copy of the order is served on him or at any time thereafter, has on no occasion during the period of four weeks immediately preceding that time been the defendant's employer shall forthwith give notice in writing in the prescribed form to the court which made the order.

- (c) if in consequence of any change in the circumstances of the defendant the court considers it appropriate so to do, order that the warrant shall not be issued in any event.

(4) A defendant who is for the time being imprisoned or otherwise detained under a warrant of commitment issued by the magistrates' court for the purpose of enforcing a maintenance order, and who is not detained otherwise than for the enforcement of such an order, may make an application to the court in the prescribed manner requesting that the warrant shall be cancelled and stating the grounds of the application; and thereupon any justice of the peace may, after considering the statements contained in the application—

- (a) if he is of opinion that the application should be further considered, refer it to the court;
- (b) if he is not of that opinion, refuse the application, and when an application is referred to the court under this subsection, the clerk of the magistrates' court shall give to the person in charge of the prison or other place in which the defendant is detained and the person in whose favour the maintenance order in question was made notice of the time and place appointed for the consideration of the application by the court.

(5) On considering an application referred to it under subsection (4), the court shall, unless in pursuance of subsection (6) it remits the whole of the sum in respect of which the warrant was issued or such part thereof as remains to be paid, either—

- (a) refuse the application; or
- (b) if the court is satisfied that the defendant is unable to pay, or to make any payment or further payment towards, the sum aforesaid and if it is of opinion that in all circumstances of the case the defendant ought not to continue to be detained under the warrant, order that the warrant shall cease to have effect when the person in charge of the prison or other place aforesaid is informed of the making of the order,

and where the court makes an order under paragraph (b), it may if it thinks fit also—

- (i) if a term of imprisonment in respect of the sum aforesaid or such part thereof as remains to be paid, being a term not exceeding so much of the term of the previous warrant as, after taking into account any reduction

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thereof by virtue of subsection (6), remained to be served at the date of the order; and

- (ii) postpone the issue of a warrant for the commitment of the defendant for that term until such time and on such conditions, if any, as the court thinks just.

(6) On considering an application under this section in respect of a warrant or a postponed warrant, the court may remit the whole or any part of the sum due under the order; and where the court remits the sum or part of the sum in respect of which the warrant was issued or the postponed warrant could have been issued, section 56 of the Magistrates' Court Act (which provides that on payment of the sum for which imprisonment has been ordered by the magistrates' court the order shall cease to have effect and that on payment of part of that sum the period of detention shall be reduced proportionately) shall apply as if payment of that sum or part had been made as therein mentioned.

(7) Where notice of the time and place appointed for the consideration of an application is required by this section to be given to the defendant or the person in whose favour the maintenance order in question was made and the defendant or, as the case may be, that person does not appear at that time and place, the court may proceed with the consideration of the application in his absence.

(8) A notice required by this section to be given by the clerk of the magistrates' court to any person shall be deemed to be given to that person if it is sent by registered post addressed to him at his last known address, notwithstanding that the notice is returned as undelivered or is for any other reason not received by that person.

Special provisions as to magistrates' court.

61.(1) Notwithstanding anything in this Part, where the clerk of the magistrates' court is entitled to receive payments under a maintenance order for transmission to another person, the clerk shall not apply for an attachment of earnings order, or (except as required by section 52(5)) an order discharging or varying an attachment of earnings order, in respect of those payments, unless he is requested in writing to do so by a person entitled to receive the payments through him; and where the clerk is requested as aforesaid—

- (i) he shall comply with the request unless it appears to him unreasonable in the circumstances to do so;

Alteration of maintenance agreements.

65.(1) Where an agreement to which this Part applies is for the time being subsisting and the parties thereto are for the time being either both domiciled or both resident in Gibraltar, and on an application by either party the Supreme Court is satisfied either—

- (a) that by reason of a change in the circumstances in the light of which any financial arrangements contained in the agreement were made or, as the case may be, financial arrangements were omitted therefrom, the agreement should be altered so as to make different, or, as the case may be, so as to contain, financial arrangements; or
- (b) that the agreement does not contain proper financial arrangements with respect to any child of the marriage,

the court may by order make such alterations in the agreement by varying or revoking any financial arrangements contained therein or by inserting financial arrangements for the benefit of one of the parties to the agreement or of a child of the marriage as may appear to the court to be just having regard to all the circumstances or, as the case may be, as may appear to the court to be just in all the circumstances in order to secure that the agreement contains proper financial arrangements with respect to any child of the marriage; and the agreement shall have effect thereafter as if any alteration made by the order had been made by agreement between the parties and for valuable consideration:

Provided that this subsection shall not apply to an agreement made more than six months after the dissolution or annulment of the marriage.

(2) *Deleted*

(3) For the avoidance of doubt it is hereby declared that nothing in this Part affects any power of the court before which any proceedings between the parties to an agreement to which this Part applies are brought under any other law to make an order containing financial arrangements or any right of either party to apply for such an order in such proceedings.

Alteration of maintenance agreement after death of one Party.

66.(1) Where an agreement to which this Part applies provides for the continuation of payments thereunder after the death of one of the parties and that party dies after the 1st day of January 1962 domiciled in Gibraltar, the surviving party may at any time before the expiration of six months from the

and that the applicant or a child of the family is in danger of being physically injured by the defendant (or would be in such danger if the applicant or child were to enter the matrimonial home), the Judge may make an order requiring the defendant to leave the matrimonial home, or an order prohibiting the defendant from entering the matrimonial home or both.

(4) Where the Judge makes an order under sub-section (3), the Judge may, if it thinks fit, make a further order requiring the defendant to permit the applicant to enter and remain in the matrimonial home,

(5) Where on an application for an order under this section the Judge considers that it is essential that the application should be heard without delay, the Judge may hear the application notwithstanding that the proceedings on the application cannot be heard and determined as domestic proceedings.

(6) Where on an application for an order under this section the Judge is satisfied that there is imminent danger of physical injury to the applicant or child of the family, the Judge may make an order under sub-section (2) notwithstanding—

- (a) that the summons has not been served on the defendant or has not been served on the defendant within a reasonable time before the hearing of the application, or
- (b) that the summons requires the defendant to appear at some other time or place, and any order made by virtue of this sub-section is in this section and in section 70 referred to as an “expedited order”.

(7) *Deleted*

(8) An expedited order shall not take effect until the date on which notice of the making of the order is served on the defendant in such manner as may be prescribed or, if the court specifies a later date as the date on which the order is to take effect, that later date, and an expedited order shall cease to have effect on whichever of the following dates occurs first, that is to say—

- (a) the date of the expiration of the period of 28 days beginning with the date of the making of the order.
- (b) *Deleted*

(9) An order made under this section may be made subject to such exceptions or conditions as may be specified in the order and, subject in the

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(3) In this section, “this Act” means the Maintenance (Amendment) Act 2010.

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- (i) the normal deduction; and
- (ii) so much of the normal deduction for any previous pay-day as was not paid on that pay-day and has not been paid by virtue of this sub-paragraph on any other previous pay-day