

MAINTENANCE ACT

Principal Act

Act. No. 1961-25	<i>Commencement</i>	1.1.1962
	<i>Assent</i>	21 .12.1961
Amending enactment	Relevant current provisions	Commencement date
Act. 1972-06	ss. 24(4), 30(2)	
1973-23		
1976-15	ss. 2, 5(1), 21(2), 30, 39, 48(1)	
1984-08	s. 65(2)	29.6.1984
1998-12	ss. 2-3, 4(1)(d), 5(1)(e), 6(1)-(2), 7(1)(b)(ii), (2), (5), (8), 10(1)(ii), 11(1)(a), 12, 13(1)(d)-(e), 15(3)(b), 16(3), 20(a), 27(2), 28, 31(1)(e), (2), 33(1)(d), 33A-33B, 34(b), 35(b), 36(b), 37(b), 38(1), 39(c), 40(c), 42(1), 44(1), 45A, 46(2), 47, 58(1), 67(1), 69 to 72	29.1.1998

Rules made under s.68 and other powers appear under the title Supreme Court.

English sources:

Domestic Proceedings and Magistrates' Courts Act 1978 (1978 Chapter 22)

ARRANGEMENT OF SECTIONS.

Section

1. Short title.

**PART I.
MATRIMONIAL PROCEEDINGS.**

2. Interpretation of Part 1.
3. Matrimonial proceedings in magistrates' court.
4. Jurisdiction of magistrates' court under Part I.
5. Order by magistrates' court in matrimonial proceedings.
6. Supplementary as provisions to supervision of child.
7. Special powers and duties with respect to children.
8. Refusal of order in cases more suitable for Supreme Court.
9. Interim order by magistrates' court or Supreme Court.
10. Suspension or cessation of orders.
11. Revocation revival and variation of orders.
12. Complaint for variation, etc., by or against person outside Gibraltar.
13. Parties to complaint for variation, etc.
14. Appeals under Part I.
15. Time limit for complaint on ground of adultery.
16. Enforcement, etc.

**PART II.
AFFILIATION PROCEEDINGS.**

17. Interpretation of Part II.
18. Commencement of affiliation proceedings.
19. Time for application for summons.
20. Jurisdiction under Part II.
21. Powers of court on hearing of complaint.
22. Persons entitled to payments under affiliation order.
23. Duration of orders.
24. Continuance of payments in certain cases.
25. Restriction on payments after child reaches sixteen.
26. Appeals under Part II.
27. Duty of putative father to notify change of address.
28. Misconduct by guardian of illegitimate child.

**PART III.
MAINTENANCE OF CHILDREN AND PARENTS.**

29. Part III to be in addition to other Parts.
30. Interpretation of Part III.

This version is out of date

31. Duty of man to maintain dependants.
32. Duty of married woman to maintain dependants.
33. Duty of unmarried woman to maintain dependants.
- 33A. Application for a maintenance order where a cohabitee fails to maintain cohabitee.
- 33B. Maintenance orders: penalty for breach.
34. Application for maintenance order where man fails to maintain child.
35. Application for maintenance order where married woman fails to maintain child.
36. Application for maintenance order where unmarried woman fails to maintain child.
37. Application for maintenance order where failure to maintain father or mother.
38. Jurisdiction of magistrates' court under Part III.
39. Amount of maintenance orders.
40. No maintenance order in certain cases.
41. Interim maintenance orders.
42. Revocation and variation of maintenance orders.
43. Domestic proceedings.
44. Complaint for variation, etc. by or against person outside Gibraltar.
45. Appeals under Part III.
- 45A. Registration of Maintenance Order.
46. Enforcement.
47. Offences.

PART IV. ENFORCEMENT OF ORDERS.

48. Interpretation of Part IV.
49. Powers of courts to make orders attaching earnings of defaulters under maintenance orders.
50. Powers of courts to make attachment of earnings orders in proceedings under other laws.
51. Restriction of issue of orders, etc., of commitment.
52. Variation and discharge, etc., of attachment of earnings orders.
53. Liabilities of persons to whom attachment of earnings orders are directed.
54. Powers of court to obtain statements of earnings, etc.
55. Power of court to determine whether payments are earnings.
56. Miscellaneous provisions as to payments under attachment of earnings orders.
57. Application of Part IV to earnings paid by the Crown, etc.
58. Offences.
59. Prohibition of committal more than once in respect of same arrears.
60. Powers of magistrates' court to review committals, etc.
61. Special provisions as to magistrates' court.

**PART V.
MAINTENANCE AGREEMENTS.**

- 62. Application of Part V.
- 63. Interpretation of Part V.
- 64. Validity of maintenance agreements.
- 65. Alteration of maintenance agreements.
- 66. Alteration of maintenance agreement after death of one party.

**PART VI.
MISCELLANEOUS.**

- 67. Offence of not maintaining oneself.
- 68. Rules.

**PART VII
SUPPLEMENTARY POWERS OF THE COURT**

- 69. Powers of court to make orders for the protection of a cohabitee or of a party to a marriage or a child of the family.
- 70. Supplementary provisions with respect to orders under section 69.
- 71. Powers of arrest for breach of section 69 order.
- 72. Jurisdiction of magistrates' court for breach of injunction.

**SCHEDULE
Payments under Attachment of Earnings Orders.**

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.

Short title.

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

**PART I.
MATRIMONIAL PROCEEDINGS.**

Interpretation of Part 1.

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

“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;

“dependant” means a person—

- (a) who is under the age of sixteen years; or
- (b) who, having attained the age of sixteen 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;

"drug addict" means a person (not being a person suffering from mental disorder within the meaning of the Mental Health Act) who, by reason of the habitual taking or using, otherwise than upon medical advice, of any drug to which any of the provisions of the Drugs (Misuse) Act for the time being applies-

- (a) is at times dangerous to himself or to others, or incapable of managing himself or his affairs; or
- (b) so conducts himself that it would not be reasonable to expect a spouse of ordinary sensibilities to continue to cohabit with him;

"habitual drunkard" means a person (not being a person suffering from mental disorder within the meaning of the Mental Health Act) who, by reason of habitual intemperate drinking of intoxicating liquor-

- (a) is at times dangerous to himself or to others, or incapable of managing himself or his affairs; or
- (b) so conducts himself that it would not be reasonable to expect a spouse of ordinary sensibilities to continue to cohabit with him;

"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 5 and includes any order made by virtue of section 11 varying or reviving an order under section 5.

"matrimonial home" includes the permanent place of residence of cohabittees;

"Minister" means the Minister with responsibility for social affairs.

Matrimonial proceedings in magistrates' court.

3. A married woman or a married man may apply by way of complaint to the magistrates' court for a matrimonial order against the other party to the marriage on any of the following causes of complaint arising during the subsistence of the marriage, that is to say, that the defendant –

- (a) has deserted the complainant; or
- (b) has been guilty of persistent cruelty to-
 - (i) the complainant; or
 - (ii) a minor child of the complainant; or
 - (iii) a minor child of the defendant who, at the time of the cruelty, was a child of the family; or
- (c) has been found guilty-
 - (i) on indictment, of any offence which involved an assault upon the complainant; or
 - (ii) by the magistrates' court, of an offence against the complainant under section 76, 94, 95 or 96 of the Criminal Offences Act, being, in the case of section 96, an offence for which the defendant has been sentenced to imprisonment for a term of not less than one month; or
 - (iii) of, or of an attempt to commit, an offence under any of sections 103 to 113, 115 to 129 or 138 to 142 of the Criminal Offences Act against a minor child of the complainant, or against a minor child of the defendant who, at the time of the commission of or attempt to commit the offence, was a child of the family; or
- (d) has committed adultery; or
- (e) while knowingly suffering from a venereal disease has insisted on, or has without the complainant being aware of the presence of that disease permitted, sexual intercourse between the complainant and the defendant; or
- (f) is for the time being an habitual drunkard or a drug addict; or
- (g) being the husband, has compelled the wife to submit herself to prostitution or has been guilty of such conduct as was likely to

result and has resulted in the wife's submitting herself to prostitution; or

- (h) being the husband, has wilfully neglected to provide reasonable maintenance for the wife or for any child of the family who is, or would but for that neglect have been, a dependant; or
- (i) being the wife, has wilfully neglected to provide, or to make a proper contribution towards, reasonable maintenance for the husband or for any child of the family who is, or would but for that neglect have been, a dependant, in a case where, by reason of the impairment of the husband's earning capacity through age, illness, or disability of mind or body, and having regard to any resources of the husband and the wife respectively which are, or should properly be made, available for the purpose, it is reasonable in all the circumstances to expect the wife so to provide or contribute.

Jurisdiction of magistrates' court under Part I.

4.(1) The magistrates' court shall have jurisdiction to hear a complaint under section 3-

- (a) if at the date of the making of the complaint either the complainant or the defendant is resident in Gibraltar; or
- (b) except in the case of a complaint by virtue of paragraph (c) of section 3, if the cause of complaint arose wholly or partly within Gibraltar; or
- (c) in the case of a complaint by virtue of paragraph (c), if the offence or attempt to which the complaint relates occurred within Gibraltar;
- (d) in the case of a complaint by virtue of section 3(h) the husband, and, in the case of a complaint by virtue of section 3(i), the wife, has assets in Gibraltar.

(2) The jurisdiction conferred on the magistrates' court by this Part shall be exercisable notwithstanding that any party to the proceedings is not domiciled in Gibraltar.

Order by magistrates' court in matrimonial proceedings.

5.(1) Subject to the provisions of this section and of section 7, on hearing a complaint under section 3 by either of the parties to a marriage the court

This version is out of date

may make an order containing any one or more of the following provisions, namely-

- (a) a provision that the complainant be no longer bound to cohabit with the defendant (which provision while in force shall have effect in all respects as a decree of judicial separation);
- (b) a provision that the husband shall pay to the wife such weekly or other periodical sum as the court considers reasonable in all the circumstances of the case;
- (c) where, by reason of the impairment of the husband's earning capacity through age, illness, or disability of mind or body it appears to the court reasonable in all the circumstances so to order, a provision that the wife shall pay to the husband such weekly or other periodical sum as the court considers reasonable in all the circumstances of the case;
- (d) a provision for the legal custody of any child of the family who is under the age of sixteen years;
- (e) if, in the case of any child committed by the order to the legal custody of any person, it appears to the court that there are exceptional circumstances making it desirable that the child should be under the supervision of an independent person, a provision that the child be under the supervision of a probation officer or such other person as the Minister may see fit to appoint;
- (f) a provision for access to any child of the family by either of the parties or by any other person who is a parent of that child, in a case where the child is committed by the order to the legal custody of a person other than that party or parent;
- (g) a provision for the making by the defendant or by the complainant or by each of them, for the maintenance of any child of the family, of payments by way of a weekly or other periodical sum as the court thinks reasonable having regard to the means of the parties, being-
 - (i) if and for so long as the child is under the age of sixteen years, payments to any person to whom the legal custody of the child is for the time being committed by the order, or by any other order made by a court in Gibraltar and for the time being in force;

- (ii) if it appears to the court that the child is, or will be, or if such payments were made would be, a dependant though over the age of sixteen years, and that it is expedient that such payments should be made in respect of that child while such a dependant, payments to such person (who may be the child) as may be specified in the order, for such period during which the child is over the age of sixteen years but under the age of twenty-one years as may be so specified.

(2) Where, on a complaint under section 3, the court makes a matrimonial order on the ground that the defendant is for the time being an habitual drunkard or a drug addict, and the order contains such a provision as is mentioned in paragraph (a) of subsection(1) of this section, then, if in all the circumstances, and after giving each party to the proceedings an opportunity of making representations, the court thinks it proper so to do, the court may include in that order –

- (a) if the complainant is the husband, a provision such as is mentioned in paragraph (b) of subsection (1) of this section; or
- (b) if the complainant is the wife, a provision such as is mentioned in paragraph (c) of subsection (1) of this section,

but save as aforesaid neither paragraph (b) nor (c) shall authorize the court to require any payment such as is therein mentioned to be made by the complainant.

(3) The court hearing a complaint under section 3 shall not make a matrimonial order containing a provision such as is mentioned in paragraph (a), (b) or (c) of subsection (1) of this section –

- (a) on the ground that the defendant has committed an act of adultery, unless the court is satisfied that the complainant has not condoned or connived at, or by wilful neglect or misconduct condoned to, that act of adultery; or
- (b) where the complainant is proved to have committed an act of adultery during the subsistence of the marriage unless the court is satisfied that the defendant has condoned or connived at, or by wilful neglect or misconduct condoned to, that act of adultery.

(4) The court shall not make an order containing such a provision as is mentioned in paragraph (d) of subsection (1) of this section in respect of any

child with respect to whose custody an order made by a court in Gibraltar is for the time being in force.

(5) In considering whether any, and if so what, provision should be included in a matrimonial order by virtue of paragraph (g) of subsection (1) of this section for payments by one of the parties in respect of a child who is not a child of that party, the court shall have regard to the extent, any, to which that party had, on or after the acceptance of the child as one of the family, assumed responsibility for the child's maintenance, and to the liability of any person other than a party to the marriage to maintain the child.

Supplementary as provisions to supervision of child.

6.(1) Where a matrimonial order provides for a child to be under the supervision of a probation officer or such other person as the Minister may see fit to appoint under section 5(1)(e), that officer shall be selected in like manner as if the order were a probation order.

(2) Any provision of a matrimonial order that a child be under the supervision of a probation officer or such other person as the Minister may see fit to appoint under section 5(1)(e) shall cease to have effect as respects any child when the child attains the age of sixteen years.

Special powers and duties with respect to children.

7.(1) Where the court has begun to hear a complaint -

- (a) under section 3; or
- (b) for the variation of a matrimonial order-
 - (i) by the revocation, addition or alteration of provision for the legal custody of a child; or
 - (ii) by the revocation of a provision that a child be under the supervision of a probation officer or such other person as the Minister may see fit to appoint under section 5(1)(e); or
- (c) for the revocation of a matrimonial order consisting of or including any such provision as aforesaid,

then, whether or not the court makes the order for which the complaint is made, but subject to subsections (4) and (5) of section 5 and subsection (6) of this section, the court may make a matrimonial order containing, or, as

the case may be, vary the matrimonial order so that it contains, any provision such as is mentioned in paragraphs (d) to (g) of subsection (1) of section 4 which, after giving each party to the proceedings an opportunity of making representations, the court thinks proper in all the circumstances; and the court shall not dismiss or make its final order on any complaint in a case where the powers conferred on the court by this subsection are or may be exercisable until it has decided whether or not, and if so how, those powers should be exercised.

(2) Where, on hearing such a complaint or a complaint for the variation of a matrimonial order by the revocation, addition or alteration of provision for access to a child, the court, after it has made any decision which falls to be made on the complaint with respect to any provision such as is mentioned in paragraphs (a) to (c) of subsection (1) of section 5, is of the opinion that it has not sufficient information to make the decision required by subsection (1) of this section or, as the case may be, to make a decision as to access to the child, the court may call for a report, either oral or in writing, by a probation officer or such other person as the Minister may see fit to appoint under section 5(1)(e) with respect to such matters as the court may specify, being matters appearing to the court to be relevant to that decision.

(3) Any statement which is or purports to be a report in pursuance of subsection (2) shall be made, or if in writing be read aloud, before the court at a hearing of the complaint, and immediately after it has been so made or read aloud the court shall ask whether any party to the proceedings who is present or represented by a barrister or solicitor at the hearing objects to anything contained therein; and where objection is made—

- (a) the court shall require the officer by whom the statement was or purported to be made to give evidence on oath with respect to the matters referred to therein; and
- (b) any party to the proceedings may give or call evidence with respect to any matter referred to in the statement or in any evidence given by the officer.

(4) Subject to subsection (5), the court may take account of any statement made or read aloud under subsection (3) and of any evidence given under paragraph (a) of sub section (3), so far as that statement or evidence relates to the matters specified by the court under subsection (2), notwithstanding any law relating to the admissibility of evidence.

(5) A report in pursuance of subsection (2) shall not include anything said by either of the parties to a marriage in the course of an interview which took place with, or in the presence of, a probation officer or such other person as the Minister may see fit to appoint under section 5(1)(e) with a

view to the reconciliation of those parties, unless both parties have consented to its inclusion; and if anything so said is included without the consent of both those parties as part of any statement made or read aloud under subsection (3), then, unless both those parties agree otherwise, that part of the statement shall, for the purposes of the giving of evidence under subsection (3) and for the purposes of subsection (4) be deemed not to be contained in the statement.

(6) On the hearing of a complaint under section 3 in the case of which there is a child of the family who is not a child of both parties, other than a child with respect to whose custody an order made by a court in Gibraltar is for the time being in force-

- (a) subsections (1) and (3) of this section shall have effect as if any person who, though not a party to the proceedings, is a parent of that child and who is present or represented by a barrister or solicitor at the hearing were a party to the proceedings; and
- (b) if any such person is not so present or represented, the court shall not make a matrimonial order on the complaint unless it is proved to the satisfaction of the court, on oath or in such other manner as may be prescribed, that such steps have been taken as may be prescribed with a view to giving notice to that person of the making of the complaint and of the time and place appointed for the hearing:

Provided that nothing in paragraph (b) shall require notice to be given to any person as the father of an illegitimate child unless that person has been adjudged by a court to be the father of that child.

(7) Where for the purposes of this section the court adjourns the hearing of any complaint, then, subject to section 39(2) of the Magistrates' Court Act (which requires adequate notice of the time and place of the resumption of the hearing to be given to the parties), the court may resume the hearing at the time and place appointed notwithstanding the absence of both or all of the parties.

(8) In any proceedings in which the powers conferred on the court by subsection (1) of this section are or may be exercisable, the question whether or not, and if so how, those powers should be exercised shall be exempted from the issues arising in the proceedings which, under the proviso to section 48(1) of the Magistrates' Court Act, must be determined by the court before the court may direct a probation officer or such other person as the Minister may see fit to appoint under section 5(1)(e) to make to the court under that section a report on the means of the parties.

Refusal of order in cases more suitable for Supreme Court.

8. Where on hearing any complaint under section 3 the magistrates' court is of the opinion that any of the matters in question between the parties would be more conveniently dealt with by the Supreme Court, the magistrates' court may refuse to make a matrimonial order on the complaint, and no appeal shall lie from that refusal; but if in any proceedings in the Supreme Court relating to or comprising the same subject matter as that complaint the Supreme Court so orders, the complaint shall be re-heard and determined by the magistrates' court.

Interim order by magistrates' court or Supreme Court.

9.(1) Where in the case of any complaint made to the magistrates' court under section 3 –

- (a) the magistrates' court, at any time before making its final order on the complaint, adjourns the hearing of the complaint for any period exceeding one week; or
- (b) the magistrates' court refuses by virtue of section 8 to make a matrimonial order on the complaint; or
- (c) after such a refusal by the magistrates' court, or on an appeal under section 14 from, or from the refusal of, a matrimonial order on the complaint, the Supreme Court by virtue of section 8 or 14 orders that the complaint shall be re-heard by the magistrates' court,

then, in a case falling within paragraph (a) or (b) of this subsection the magistrates' court, or in a case falling within paragraph (c) thereof the Supreme Court, may make an order under this section (in this Part referred to as an "interim order").

(2) An interim order may contain–

- (a) any such provision as is mentioned in paragraph (b), (c) or (g) of section 5(1) : and
- (b) where by reason of special circumstances the court thinks it proper, but subject to section 4(4), any provision such as is mentioned in paragraph (d) or (f) of that subsection,

and for the purposes of paragraph (a) of this subsection the reference in subparagraph (i) of paragraph (g) of section 4(1) to any person to whom the legal custody of a child is for the time being committed by an order shall be

This version is out of date

construed as including a reference to any person, being one of the parties or a parent of the child, who for the time being has the care of the child; and an appeal against an interim order shall not lie if the appeal relates only to such a provision of the order as is mentioned in paragraph (a) of this subsection.

(3) Without prejudice to sections 10, 11 and 14, an interim order in connection with any complain shall cease to be in force on whichever of the following dates occurs first, that is to say—

- (a) the dale, if any, specified for the purpose in the interim order;
- (b) the dale of the expiration of the period of three months beginning with the dale of-
 - (i) the making of the interim order: or
 - (ii) if the interim order is one of two or more such orders made with respect to the same complaint by virtue of the same paragraph of subsection (1) of this section, the making of the first of those interim orders;
- (c) the date of the making of a final order on, or the dismissal of, the complaint by the magistrates' court.

(4) An interim order made by the Supreme Court under this section on ordering that a complaint be re-heard by the magistrates' court shall, for the purposes of its enforcement and for the purposes of section 11, be treated as if it were an order of the magistrates' court and not of the Supreme Court.

(5) The powers conferred on the Supreme Court by this section shall be without prejudice to the powers of the Supreme Court on an appeal under section 14 from the refusal of an interim order by the magistrates' court.

Suspension or cessation of orders.

10.(1) Where a matrimonial order or interim order is made while the parties to the marriage in question are cohabiting—

- (a) the order shall not be enforceable and no liability shall accrue thereunder until they have ceased to cohabit; and
- (b) if in the case of a matrimonial order they continue to cohabit for the period of three months beginning with the date of the making of the order, the order shall cease to have effect at the expiration of that period:

Provided that, unless the court in making the order directs otherwise, this subsection shall not apply to any provision of the order-

- (i) committing a child to the legal custody of a person other than one of the parties, or for access to that child by either of the parties or by any other person who is a parent of the child: or
- (ii) providing for a child to be under the supervision of a probation officer or such other person as the Minister may see fit to appoint under section 5(1)(e); or
- (iii) for the making by either or each of the parties to a person other than one of the parties of payments for the maintenance of a child

(2) Without prejudice to section 11, any provision of a matrimonial order or interim order other than such a provision as is referred to in the proviso to subsection (1) of this section shall cease to have effect upon the parties to the marriage in question resuming cohabitation.

(3) Where after the making by the magistrates' court of-

- (a) a matrimonial order consisting of or including a provision such as is mentioned in paragraph (b), (c) or (g) of section 5(1):or
- (b) an interim order,

proceedings between, and relating to the marriage of, the parties to the proceedings in which that order was made have been commenced in the Supreme Court, the Supreme Court may, if it thinks fit, direct that the said provision or, as the case may be, the interim order shall cease to have effect on such date as the Supreme Court may specify.

Revocation revival and variation of orders.

11.(1) Subject to section 7 of this Act, section 42 of the Magistrates' Court Act (which provides for the revocation, revival or variation, by order on complaint, of an order of the magistrates' court for the periodical payment of money) and the proviso to section 44(1) of the Magistrates' Court Act (which relates to costs on the hearing of such a complaint) shall apply for the purpose of the revocation, revival or variation of any matrimonial or interim order as if that order were an order for the periodical payment of money, whether or not it is in fact such an order; and a complaint for such purpose may be heard whatever the time at which it is made; and for the avoidance of doubt it is hereby declared that for the purpose of this Part the

This version is out of date

expression "variation" in relation to any order includes the addition to that order of any provision authorized by this Part to be included in such an order:

Provided that, without prejudice to the powers and duties of the court under section 7, nothing in this section shall authorize the making of a complaint-

- (a) for the variation of an order by the addition of a provision that a child be under the supervision of a probation officer or such other person as the Minister may see fit to appoint under section 5(1)(e); or
- (b) for the revival of any such provision which has ceased to be in force.

(2) Where on a complaint for the revocation of a matrimonial order it is proved that the parties to the marriage in question have resumed cohabitation or that the party on whose complaint the order was made has during the subsistence of the marriage committed an act of adultery, the court shall revoke the order:

Provided that-

- (a) the court shall not be bound by reason of such a resumption of cohabitation to revoke any provision of the order such as is mentioned in the proviso to section 10(1);
- (b) the court shall not revoke the order by reason of such an act of adultery as aforesaid-
 - (i) except at the request of the person who was the defendant to the proceedings in which the order was made: or
 - (ii) if the court is of the opinion that that person has condoned or connived at, or by wilful neglect or misconduct condoned to, that act of adultery,

and shall not be bound by reason of that act of adultery to revoke any provision of the order included therein by virtue of paragraphs (d) to (g) of section 5(1).

(3) The court before which there fall to be heard any proceedings for the variation of a provision for the payment of money contained in a matrimonial order or interim order may, if it thinks fit, order that those

proceedings and any other proceedings being heard therewith shall be treated for the purposes of the Magistrates' Court Act as domestic proceedings; and that Act shall thereupon have effect accordingly notwithstanding anything in section 45 thereof: and no appeal shall lie from, or from the refusal of, an order under this subsection.

Complaint for variation, etc., by or against person outside Gibraltar.

12.(1) Any jurisdiction conferred on a court by virtue of section 11 is exercisable notwithstanding that the proceedings are brought by or against a person not residing or having assets in Gibraltar:

Provided that a matrimonial order shall not be varied by the addition of such a provision as is mentioned in paragraph (a) of section 5(1) if the defendant to the complaint for the variation resides outside Gibraltar.

(2) Where at the time and place appointed for the hearing of a complaint by virtue of section 11, the defendant does not appear but—

- (a) the court is satisfied that there is reason to believe that the defendant has been outside Gibraltar during the whole of the period beginning one month before the making of the complaint and ending with the date of the hearing: and
- (b) it is proved to the satisfaction of the court, on oath, or in such other manner as may be prescribed, that such steps have been taken as may be prescribed with a view to giving notice to the defendant of the making of the complaint and of the time and place aforesaid,

the court may, if it thinks it reasonable in all the circumstances so to do, proceed to hear and determine the complaint at the time and place appointed for the hearing or for any adjourned hearing in like manner as if the defendant had appeared at that time and place.

(3) Where a complaint for the revocation or variation of any provision for the making of payments by the complainant to the defendant is heard by virtue of subsection (2) in the absence of the defendant, and the court is satisfied that there is reason to believe that during the period of six months immediately preceding the making of the complaint the defendant was continuously outside Gibraltar or was not in Gibraltar on more than thirty days, then, if in all the circumstances, and having regard to any communication to the court in writing purporting to be from the defendant, the court thinks it reasonable so to do, the court may make the order for which the complaint is made or make such variation in that provision by way of reducing the amount of the payments as the court thinks fit.

(4) For the purposes of the hearing by virtue of subsection (2), in the absence of the defendant, of a complaint for the revocation or variation of a matrimonial order under which payments fall to be made by the complainant to the defendant through the clerk of the magistrates' court, a certificate in writing by that clerk dated not earlier than ten days before the date of the hearing and stating that, during the period mentioned in paragraph (a) of subsection (2) (or so much thereof as precedes the date of the certificate) or, as the case may be, during the period mentioned in subsection (3)-

- (a) every payment made under the order has been forwarded by the clerk to an address outside Gibraltar; and
- (b) the defendant has not, to the knowledge of the clerk, been in Gibraltar at any time or, in the case of the period mentioned in subsection (3), on more than thirty days,

shall be sufficient evidence that there is reason to believe as mentioned in paragraph (a) or subsection (2) or, as the case may be, in subsection (3).

(5) Nothing in this section shall be construed as authorizing the making of an order by virtue of section 11 against a person residing outside Gibraltar for the inclusion in a matrimonial or interim order of any provision requiring payments to be made by that person exceeding in amount those, if any, required to be made by him under the order sought to be varied, unless the order by virtue of section 11 is made at a hearing at which either that person appears or the requirements of section 36(3) of the Magistrates' Court Act with respect to proof of service of summons or appearance on a previous occasion are satisfied in respect of that person.

Parties to complaint for variation, etc.

13.(1) A complaint by virtue of section 11 for the revocation, revival or variation of a matrimonial order or interim order may be made in the following cases by the following persons in addition to the parties to the marriage in question, that is to say-

- (a) where a child of the family is not a child of both the parties to the marriage, a complaint relating to any provision with respect to the child such as is mentioned in paragraph (d) or (f) of section 5(1) may be made by any person who, though not one of the parties to the marriage, is a parent of the child;
- (b) a complaint relating to payments under the order such as are mentioned in paragraph (g) of section 5(1) may be made by any person to whom such payments fall, or upon the making of the order for which the complaint is made would fall, to be made;

- (c) where under the order a child is for the time being committed to the legal custody of some person other than one of the parents, a complaint relating to any provision with respect to the child such as is mentioned paragraph (d) or (f) may be made by any person to whose legal custody the child is committed by the order or who seeks the legal custody of the child by the complaint;
- (d) where under the order a child is for the time being under the supervision of a probation officer, the probation officer or such other person as the Minister may see fit to appoint under section 5(1)(e) may make a complaint relating to any provision with respect to the child such as is mentioned in paragraphs (d), (f) and (g);
- (e) a complaint for the variation or revocation of a provision of the order that a child be under the supervision of a probation officer may be made by that probation officer, or such other person as the Minister may see fit to appoint under section 5(1)(e) may be made by that person, or by any person to whose legal custody the child is for the time being committed by the order or who by the same complaint also seeks the legal custody of the child.

(2) Provision may be made by rules as to what persons shall be made defendants to any such complaint; and where in the case of any such complaint there are two or more defendants, the powers of the court under section 44(1) of the Magistrates' Court Act shall be deemed to include power, whatever adjudication the court makes on the complaint, to order any of the parties to pay the whole or part of the costs of all or any of the other parties.

Appeals under Part I.

14.(1) Subject to section 8, section 9(2) and section 11(3), an appeal shall lie to the Supreme Court from, and from the refusal or revocation of, or a refusal to revoke, a matrimonial order or interim order by the magistrates' court.

(2) Subject to subsection (3) of this section, any order of the Supreme Court on an appeal under this section shall for the purposes of the enforcement of the order and for the purposes of section 11 be treated as if it were an order of the magistrates' court and not of the Supreme Court.

This version is out of date

(3) Subsection (2) of this section shall not apply to an order directing that a complaint shall be re-heard by the magistrates' court or, without prejudice to the provisions of section 9(4), to an order to which section 8(4) applies.

Time limit for complaint on ground of adultery.

15.(1) A complaint under section 3 on the ground of the commission of an act of adultery by the defendant may be heard if it is made within six months of the date when that act of adultery first became known to the complainant.

(2) Such a complaint shall not be dismissed by reason only that it was not made within the six months allowed by subsection (1) if the court is satisfied that the complainant-

- (a) during the said six months or any part thereof was serving outside Gibraltar in Her Majesty's forces, or as the master or a member of the crew of a British ship or of a ship for the time being chartered on behalf of Her Majesty; and
- (b) on the date of the making of the complaint, had not been in Gibraltar for a continuous period of three months since the date of his return to Gibraltar after the expiration of the said six months or, if he was in Gibraltar at the expiration of those six months, the date of his last return to Gibraltar during those six months.

(3) For the purposes of subsection (2)-

- (a) a certificate purporting to be signed by an officer of Her Majesty's Forces that the complainant during any period or periods was serving outside Gibraltar in Her Majesty's naval, military or air forces. as the case may be; and
- (b) a certificate purporting to be signed by the person responsible for the relevant register of British ships that the complainant during any period or periods was serving outside Gibraltar as the master or a member of the crew of a British ship or of a ship for the time being chartered on behalf of Her Majesty,

shall be evidence of the facts so certified and that the complainant was not in Gibraltar during any such period or periods

Enforcement, etc.

16.(1) Without prejudice to section 41 of the Magistrates' Court Act (which relates to the power of the court to direct payments to be made through the clerk of the magistrates' court), the court making an order by virtue of this Part for payment of a periodical sum by one person to another may direct that it shall be paid to some third party on that other person's behalf instead of directly to that other person; and, for the purposes of any order made by virtue of this Part, section 41 shall have effect as if, in subsection (2) thereof, for the words "the applicant for the order" there were substituted the words "the person to whom the payments under the order fall to be made".

(2) Where an order made by virtue of this Part contains a provision committing a child to the legal custody of any person a copy of the order may be served on any other person in whose actual custody the child for the time being is; and thereupon that provision may, without prejudice to any other remedy which may be available, be enforced under section 43(3) of the Magistrates' Court Act as if it were an order of the court requiring that other person to give up the child to the person to whom the legal custody of the child is committed.

(3) A person for the time being under an obligation to make payments under any order made in proceedings brought by virtue of this Part shall give notice to such persons, if any, as may be specified in the order of any change of address; and a person who without reasonable excuse fails to comply with this subsection is guilty of an offence and is liable on summary conviction to a fine at level 1 on the standard scale.

PART II. AFFILIATION PROCEEDINGS.

Interpretation of Part II.

17. In this Part, unless the context otherwise requires—

“affiliation order” means an order made on a complaint under section 18.

Commencement of affiliation proceedings.

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

(2) An application under section 18 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) A complaint under section 18, where the complainant 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 a complaint 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. A complaint under section 18—

- (a) may be made if—
 - (i) the mother of the child is resident in Gibraltar; or
 - (ii) the man alleged to be the father of the child is resident in or has assets in Gibraltar; and
- (b) if made before the birth of the child, shall be substantiated on oath.

Powers of court on hearing of complaint.

21.(1) On the hearing of complaint under section 18 the court shall hear the evidence of the mother (notwithstanding any consent or admission on the part of the defendant) and such other evidence as she may produce, and shall also hear any evidence tendered by or on behalf of the defendant.

(2) If the evidence of the mother is corroborated in some material particular by other evidence to the court's satisfaction, the court may adjudge the defendant to be the putative father of the child and may also, if it thinks fit in all the circumstances of the case, proceed to make against him an order for the payment by him of –

- (a) such weekly or other periodical sum for the maintenance and education of the child as the court thinks reasonable having regard to the defendant's means;
- (b) the expenses incidental to the birth of the child; and
- (c) if the child has died before the making of the order, the child's funeral expenses.

(3) Where a complaint under section 18 is made before or within two months after the birth of the child, any weekly sum ordered to be paid under paragraph (a) of subsection (2) of this section may, if the court thinks fit, be calculated from the date of the birth.

Persons entitled to payments under affiliation order.

22.(1) Subject to the provisions of this section, the person entitled to any payments to be made under an affiliation order shall be the child's mother, and the order shall make provision accordingly.

(2) An affiliation order may, on the application of a person other than the child's mother who for the time being has the custody of the child, either legally or by any arrangement approved by the court, be made or varied by the magistrates' court so as to entitle that person to any payments to be made under the order.

(3) Where an affiliation order for the time being provides for the child's mother to be entitled to any payments to be made under the order the payments shall be due under the order in respect of such time and so long as she is living and of sound mind and is not in prison, and if the mother has died, or is suffering from mental disorder or is in prison, the magistrates' court may by order from time to time appoint some person (with his consent) to have the custody of the child; and a person appointed as

This version is out of date

guardian under this subsection shall be entitled to any payments to be made under the affiliation order and may make application for the recovery of any payments due thereunder in the same manner as the mother might have done.

The magistrates' court may revoke an appointment made under this subsection and appoint another person thereunder in place of the person formerly appointed.

(4) An affiliation order shall, in any case where payments to be made thereunder are not ordered to be made to the clerk of the magistrates' court under section 41 of the Magistrates' Court Act, provide for the payments to be made to the person for the time being entitled thereto in accordance with the provisions of this Part.

Duration of orders.

23. Subject to the provisions of this Part, an affiliation order shall not, except for the purpose of recovering money previously due under the order, be of any force or validity after the child has attained the age of sixteen years or has died.

Continuance of payments in certain cases.

24.(1) The power under section 42 of the Magistrates' Court Act to vary or revive an affiliation order shall, notwithstanding anything in section 23, include power to vary or revive it in accordance with the provisions of this section and section 25.

(2) If, on the application of the child's mother, it appears to the court that the child is or will be engaged in a course of education or training after attaining the age of sixteen years, and that it is expedient for that purpose for payments to be made under the order after the child attains that age. Then, subject to subsection (3) of this section and section 25, the court may by order direct that payments shall be so made for such period, not exceeding two years from the date of the order, as may be specified in the order.

(3) Subject to section 25, the period specified in an order made by virtue of the provisions of this section may from time to time be extended by a subsequent order so made, but shall not in any case extend beyond the date when the child attains the age of twenty-one.

(4) Where a child in respect of whom an affiliation order has been made has attained the age of eighteen and his mother is dead, of unsound mind or in prison-

- (a) any application for an order under subsection (2) or (3) directing that payments shall be made under the affiliation order for any period after he has attained that age may be made by the child himself; and
- (b) the child himself shall be the person entitled to any payments directed by an order under this section to be so made for any such period.

Restriction on payments after child reaches sixteen.

25.(1) Notwithstanding anything in section 24 or in any order made by virtue of that section, an affiliation order shall not operate, after the child has attained the age of sixteen,-

- (a) so as to require payments thereunder to be made either-
 - (i) in respect of any period during which the child is detained in prison; or
 - (ii) subject to subsection (2) of this section, in respect of any period during which there is in force an order under the Criminal Procedure Act committing the child to the care of a fit person:
- (b) so as to entitle any person other than the child's mother to the payments.

(2) Sub-paragraph (ii) of paragraph (a) of subsection (1) of this section shall not apply to any part of such a period as is therein mentioned during which the child is permitted to reside with his mother.

(3) Any reference in this section or section 24 to a child's mother shall be taken as including a reference to any person for the time being having the custody of the child either legally or by any arrangement approved by the court, except that it shall not be taken as referring to a person to whose care the child is committed under the Criminal Procedure Act.

Appeals under Part II.

26. An appeal shall lie to the Supreme Court from the making of an order under this Part, or from any refusal by the magistrates' court to make such an order, or from the revocation, revival or variation by the magistrates' court of such an order.

Duty of putative father to notify change of address.

27.(1) A person against whom an affiliation order has been made—

This version is out of date

- (a) shall, if he changes his address and he is required to make any payment under the order to the clerk of the magistrates' court, give notice of the change to the clerk of that court;
- (b) shall, in a case where paragraph (a) of this subsection does not apply and he is required under the order to make any payments (including payments of costs) to any person, give notice of any change of address to such person (if any) as may be specified in the order.

(2) A person who fails without reasonable excuse to give a notice which he is required by this section to give is guilty of an offence and is liable on summary conviction to a fine at level 1 on the standard scale.

Misconduct by guardian of illegitimate child.

28. A person appointed under section 22(3) to have custody of an illegitimate child, who—

- (a) misapplies any money paid by the putative father for the child's support, or
- (b) withholds proper nourishment from, or otherwise abuses or maltreats, the child,

is guilty of an offence and is liable on summary conviction to a fine at level 2 on the standard scale.

PART III. MAINTENANCE OF CHILDREN AND PARENTS.

Part III to be in addition to other Parts.

29. The provisions of this Parts shall apply in addition, and without prejudice, to the other provisions of this Act.

Interpretation of Part III.

30.(1) In this Part, unless the context otherwise requires,—

“child” includes an illegitimate child, an adopted child or a step-child;

“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.

(2) Nothing in sections 31, 32 or 33 shall be construed as enabling an order for custody to be made in respect of a child who has attained the age of eighteen years

Duty of man to maintain dependants.

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

- (a) his wife;
- (b) his children under the age of sixteen years;
- (c) his children over the age of sixteen 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; and
- (d) his father and mother if, by reason of old age or mental or physical disability, they are unable to maintain themselves.
- (e) his cohabitee.

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

Duty of married woman to maintain dependants.

32. It shall be the duty of every married woman having separate property to provide reasonable maintenance for—

- (a) her husband, if he is unable by reason of old age or mental or physical disability to maintain himself;
- (b) her children under the age of sixteen years;
- (c) her children over the age of sixteen and under the age of twenty-one years if such children are unable for any reason to

This version is out of date

maintain themselves or are undergoing education or training;
and

- (d) her father and mother, if, by reason of old age or mental or physical disability, they are unable to maintain themselves

Duty of unmarried woman to maintain dependants.

33.(1) It shall be the duty of every unmarried woman to provide reasonable maintenance for-

- (a) her children under the age of sixteen years;
- (b) her children over the age of sixteen 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;
and
- (c) her father and mother, if, by reason of old age or mental or physical disability, they are unable to maintain themselves.
- (d) her cohabitee, if he is unable by reason of old age or mental or physical disability to maintain himself.

(2) In this section "unmarried woman" includes a widow and a woman whose marriage has been dissolved or annulled.

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)(d) then, without prejudice to the right of any such person to apply for a matrimonial order under Part I—

- (a) that person; and
- (b) the person appointed by the Minister from time to time for the purposes of this section,

may apply by way of complaint to the magistrates' court for a maintenance order against him.

Maintenance orders: penalty for breach.

33B.(1) 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 a complaint (hereinafter in this section referred to as “the complainant”) to a justice of the peace giving details of the failure to comply.

(2) If the justice of the peace is satisfied that the nature of the alleged failure to comply may be such as to justify the relevant court in exercising its power under subsection (3) below, he shall issue a summons directed to the debtor requiring him to appear before the magistrates’ court to answer the complaint.

(3) On the hearing of the complaint, and, without prejudice to any order made, the magistrates’ court may order the debtor to pay the complainant 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 magistrates’ court to pay maintenance to another.

Application for maintenance order where man fails to maintain child.

34. Where a man fails to provide reasonable maintenance for any child whom he is liable to maintain under paragraph (b) or (c) of section 31(1), then, without prejudice to the right of the wife of such man to apply for a matrimonial order under Part I,—

- (a) any person having legal custody of such child; and
- (b) person appointed by the Minister from time to time for the purposes of this section,

may apply by way of complaint to the magistrates’ court for a maintenance order against him.

Application for maintenance order where married woman fails to maintain child.

35. Where a married woman fails to provide reasonable maintenance for any child whom she is liable to maintain under paragraph (b) or (c) of section 32, then, without prejudice to the right of her husband to apply for a matrimonial order under Part 1.-

- (a) any person having legal custody of the child; and
- (b) person appointed by the Minister from time to time for the purposes of this section,

may apply by way of complaint to the magistrates' court for a maintenance order against her.

Application for maintenance order where unmarried woman fails to maintain child.

36. Where an unmarried woman fails to provide reasonable maintenance for any child whom she is liable to maintain under paragraph (a) or (b) of section 33(1) then, without prejudice to her right to apply for an affiliation order under Part II,-

- (a) any person having legal custody of the child; and
- (b) person appointed by the Minister from time to time for the purposes of this section,

may apply by way of complaint to the magistrates' court for a maintenance order against her.

Application for maintenance order where failure to maintain father or mother.

37. Where any man, married woman or unmarried woman fails to provide reasonable maintenance for any father or mother whom he to maintain or she is liable to maintain under paragraph (d) of section 31(1) , paragraph (d) of section 32 or paragraph (c) of section 33(1)-

- (a) the father or mother of such person; and
- (b) person appointed by the Minister from time to time for the purposes of this section,

may apply by way of complaint to the magistrates' court for a maintenance order against him.

Jurisdiction of magistrates' court under Part III.

38.(1) The magistrates' court shall have jurisdiction to hear a complaint under section 33A, 34, 35, 36 or 37 if at the date of the making of the complaint either the defendant is resident or has assets in Gibraltar or the person for whose benefit a maintenance order is sought is resident in Gibraltar.

(2) The jurisdiction conferred upon the magistrates' court by this Part shall be exercisable notwithstanding that any party to the proceedings is not domiciled in Gibraltar.

Amount of maintenance orders.

39. On hearing a complaint under this Part by any person who may apply for a maintenance order hereunder, the magistrates' court may make a maintenance order containing provision—

- (a) that the defendant shall pay to the complainant such weekly or other periodical sum as the court considers reasonable in all the circumstances of the case for the maintenance of each child;
- (b) that the defendant shall pay to the complainant such weekly or other periodical sum as the court considers reasonable in all the circumstances of the case for the maintenance of a father or a mother;
- (c) subject to section 31(2) that the defendant shall pay to the complainant such weekly or other periodical sum as the court considers reasonable in all the circumstances of the case for the maintenance of a wife.

No maintenance order in certain cases.

40. No maintenance order shall be made by the court under this Part if there is in force, at the date of the hearing of the complaint,—

- (a) where the complaint is made under section 34 or 35, a matrimonial order under Part I in respect of the same child;
- (b) where the complaint is made under section 36, an affiliation order under Part II in respect of the same child;
- (c) where the complaint is made under section 33A, a matrimonial order under Part I.

Interim maintenance orders.

41.(1) Where in the case of any complaint made to the magistrates' court under this Part-

- (a) the magistrates' court, at any time before making its final order on the complaint, adjourns the hearing of the complaint for any period exceeding one week; or
- (b) on an appeal under section 45 from, or from the refusal of, a maintenance order on the complaint, the Supreme Court orders that the complaint shall be reheard by the magistrates' court,

then, the magistrates' court, in a case falling within paragraph (a), or the Supreme Court, in a case falling under paragraph (b) may make an interim maintenance order.

(2) An interim maintenance order may contain any such provision as is mentioned in section 39.

(3) Without prejudice to sections 42 and 45 an interim maintenance order in connection with any complaint shall cease to be in force on whichever of the following dates first occurs, that is to say,—

- (a) the date, if any, specified for the purpose in the interim maintenance order;
- (b) the date of the expiration of the period of three months beginning with the date of—
 - (i) the making of the interim maintenance order: or
 - (ii) if the interim maintenance order is one of two or more such orders made with respect to the same complaint by virtue of the same paragraph of subsection (1) of this section, the making of the first of those interim maintenance orders; or
- (c) the date of the making of a final order on, or the dismissal of, the complaint by the magistrates' court.

(4) An interim maintenance order made by the Supreme Court under subsection (1) on ordering that a complaint shall be reheard by the magistrates' court, shall, for the purposes of its enforcement and for the purposes of section 42, be treated as if it were an order of the magistrates' court and not of the Supreme Court.

(5) The powers conferred upon the Supreme Court by this section shall be without prejudice to the powers of the Supreme Court on an appeal under section 45 from the refusal of an interim maintenance order by the magistrates' court.

Revocation and variation of maintenance orders.

42.(1) Section 42 of the Magistrates' Court Act (which provides for the revocation, renewal or variation by order on complaint of an order of the magistrates' court for the periodical payment of money) and the proviso to section 44(1) of that Act (which relates to costs on the hearing of such a complaint) shall apply for the purpose of the revocation, renewal or variation of any maintenance order or interim maintenance order.

(2) A complaint by virtue of this section for the revocation, renewal or variation of a maintenance order or interim maintenance order may be made by any person who may apply for a maintenance order under section 33A, 34, 35, 36 or 37, as the case may be.

Domestic proceedings.

43. The magistrates' court may, if it thinks fit, order that any proceedings for the variation of any maintenance order or interim maintenance order and any other proceedings being heard therewith, shall be treated for the purposes of the Magistrates' Court Act as domestic proceedings: and that Act shall thereupon have effect accordingly notwithstanding anything in section 45 thereof; and no appeal shall from, or from the refusal of, an order under this subsection.

Complaint for variation, etc. by or against person outside Gibraltar.

44.(1) Any jurisdiction conferred on the magistrates' court by section 42 shall be exercisable notwithstanding that the proceedings are brought by or against a person not residing or having assets in Gibraltar.

(2) Where, at the time and place appointed for the hearing of a complaint by virtue of section 42, the defendant does not appear but-

- (a) the court is satisfied that there is reason to believe that the defendant has been outside Gibraltar during the whole of the period beginning one month before the making of the complaint and ending with the date of the hearing; and
- (b) it is proved to the satisfaction of the court, on oath, or in such other manner as may be prescribed, that such steps have been

This version is out of date

taken as may be prescribed with a view to giving notice to the defendant of the time and place aforesaid,

the court may, if it thinks it reasonable in all the circumstances so to do, proceed to hear and determine the complaint at the time and place appointed for the hearing or for any adjourned hearing in like manner as if the defendant had appeared at that time and place.

(3) Where a complaint for the revocation or variation of any maintenance order or interim maintenance order is heard by virtue of subsection (2) in the absence of the defendant, and the court is satisfied that there is reason to believe that during the period of six months immediately preceding the making of the complaint the defendant was continuously outside Gibraltar or was not in Gibraltar on more than thirty days, then, if in all the circumstances, and having regard to any communication to the court in writing purporting to be from the defendant, the court thinks it reasonable so to do, the court may make the order for which the complaint is made or make such variation in that provision by way of reducing the amount of the payments as the court thinks fit.

(4) For the purposes of the hearing by virtue of subsection (2), in the absence of the defendant, of a complaint for the revocation or variation of a maintenance order under which payments fall to be made by the complainant to the defendant through the clerk of the magistrates' court, a certificate in writing by that clerk dated not earlier than ten days before the date of the hearing and stating that, during the period mentioned in paragraph (a) of subsection (2) (or so much thereof as precedes the date of the certificate) or, as the case may be, during the period mentioned in subsection (3)-

- (a) every payment made under the order has been forwarded by the clerk to an address outside Gibraltar; and
- (b) the defendant has not to the knowledge of the clerk been in Gibraltar at any time, or in the case of the period mentioned in subsection (3) on more than thirty days.

shall be sufficient evidence that there is reason to believe as mentioned in paragraph (a) of subsection (2) or as the case may be, in subsection (3).

(5) Nothing in this section shall be construed as authorizing the making of an order by virtue of section 42 against a person residing outside Gibraltar for the inclusion in a maintenance order or interim maintenance order of any provision requiring payments to be made by that person exceeding in amount those, if any, required to be made by him under the order sought to be varied, unless the order by virtue of section 42 is made at

a hearing at which either that person appears or the requirements of section 36(3) of the Magistrates' Court Act, with respect to proof of service of summons or appearance on a previous occasion are satisfied in respect of that person.

Appeals under Part III.

45.(1) Subject to section 43, an appeal shall lie to the Supreme Court from, and from the refusal or revocation of or refusal to revoke, a maintenance order or interim maintenance order by the magistrates' court.

(2) Subject to subsection (3), any order of the Supreme Court on an appeal under this section shall for the purposes of enforcement of the order and for the purposes of section 42, be treated as if it were an order of the magistrates' court and not of the Supreme Court.

(3) Subsection (2) shall not apply to an order directing that a complaint shall be reheard by the magistrates court or, without prejudice to the provisions of section 41 (4), to an order to which section 41(4) applies.

Registration of Maintenance Order

45A.(1) Where a maintenance order (as defined in section 48(1)) is made by a court, other than the magistrates' court, a person entitled to receive payments under such an order may apply to the Supreme Court for an order ("a Registration Order") that the maintenance order be registered in the magistrates' court.

(2) Where the clerk of the magistrates' court receives a certified copy of a Registration Order he shall cause that order to be registered in the magistrates' court and the provisions of this Act and section 41 of the Magistrates' Court Act shall apply in respect of a maintenance order so registered from the date of registration as if it was a maintenance order made by the magistrates' court under this Act.

Provided that—

- (a) the rate of payment specified by a maintenance order registered under this section shall not be varied by the magistrates' court so as to exceed the rate of payment specified by the maintenance order; and
- (b) if it appears to the magistrates' court to which a complaint seeking a variation of the maintenance order is made, that it is for any reason appropriate to remit the complaint to the Supreme Court, the magistrates' court shall so remit the

This version is out of date

complaint and the Supreme Court shall deal with the complaint as if it were an application to the Supreme Court to vary the maintenance order

- (3) Where—
- (a) a person entitled to receive payments under a maintenance order registered under this section desires the registration to be cancelled, he may give notice;
 - (b) the Supreme Court varies or discharges a maintenance order registered under this section, the Supreme Court, if it thinks fit, may give notice; and
 - (c) the Supreme Court discharges a maintenance order registered in the magistrates' court and it appears to the Supreme Court, whether by reason of the remission of arrears by that court or otherwise, that no arrears under the order remained to be recovered, the Supreme Court 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 magistrates' court.

(5) On the cancellation of the registration in the magistrates' court, any order made by the Supreme Court 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.

46.(1) Without prejudice to section 41 of the Magistrates' Court Act (which relates to the power of the court to direct payments to be made through the clerk of the magistrates' court), the court making an order by virtue of this Part for the payments of a periodical sum by one person to another may direct that it shall be paid to some third party on that other person's behalf instead of directly to that other person: and, for the purpose of any order made by virtue of this Part, section 41 shall have effect as if, in subsection (2) thereof, the words "the applicant for the order" there were substituted the words "the person to whom the payments under the order fall to be made".

(2) A person for the time being under an obligation to make payments under any order made in proceedings brought by virtue of this Part shall give notice to such persons, if any, may be specified in the order of any change of address; and a person who without reasonable excuse fails to comply with this subsection is guilty of an offence and is liable on summary conviction to a fine at level 1 on the standard scale.

Offences.

47. A person who is liable to provide reasonable maintenance for any other person under the provisions of section 31, 32 or 33 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 2 on the standard scale.

PART IV. ENFORCEMENT OF ORDERS.

Interpretation of Part IV.

48. (1) In this Part, unless the context otherwise requires,—

"attachment of earnings order" has the meaning assigned to it by section 49(1);

This version is out of date

“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 (other than excepted 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 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;

“excepted sums” means—

- (a) sums payable by any public department of the government of any territory other than the United Kingdom and Gibraltar;
- (b) pay or allowances payable to the defendant as a member of Her Majesty’s forces;
- (c) pensions, allowances or benefits payable under the Social Security (Employment Injuries Insurance) Act, the Social Security (Family Allowances) Act, the Social Security (Insurance) Act or the Social Security (Non-Contributory Benefits and Unemployment Insurance) Act;
- (d) pensions or allowances payable to the defendant in respect of his disablement or disability; and
- (e) wages payable to the defendant as a seaman or apprentice, other than wages payable to him as a seaman or apprentice of a fishing boat;

“maintenance” includes education;

“maintenance order” mean—

- (a) an order for alimony, maintenance or other payments made by the a court in Gibraltar under this Act or under—
 - (i) any law governing divorce or matrimonial causes;
 - (ii) any law governing the guardianship of minors;
 - (iii) section 269 of the Criminal Procedure Act;
- (b) an order registered in a court in Gibraltar under the Maintenance Orders (Reciprocal Enforcement) Act, or an order confirmed by such a court under that Act,

and includes any such order which has been discharged if any arrears are recoverable thereunder;

“proper officer”, in relation to the magistrates’ court, means the clerk of the court.

(2) Any reference in this Part to a person entitled to receive payments under a maintenance order is a reference to a person entitled to receive such payments either directly or through another person or for transmission to another person.

(3) Any reference in this Part to proceedings relating to an order includes a reference to proceedings in which the order may be made.

(4) Any reference in this Part to costs incurred in proceedings relating to a maintenance order shall be construed, in the case of a maintenance order made by the Supreme Court, as a reference to such costs as are included in an order for costs relating solely to that maintenance order.

Powers of courts to make orders attaching earnings of defaulters under maintenance orders.

49.(1) If, on the application of a person entitled to receive payments under a maintenance order, it appears to a court by which payment of any arrears under the order is enforceable—

- (a) that, at the time when the application was made, there was due under the order and unpaid an amount equal to not less than two of the payments required by the order; and
- (b) that the defendant is a person to whom earnings fall to be paid,

then, subject to subsection (2), the court may, if it thinks fit, by an order or orders require the person to whom the order in question is directed, being a person appearing to the court to be the defendant's employer in respect of those earnings or a part thereof, to make out of those earnings or that part thereof payments in accordance with the Schedule; and any such order is in this Part referred to as an "attachment of earnings order".

(2) The court shall not make an attachment of earnings order if it appears to the court that the failure of the defendant to make payments in accordance with the maintenance order in question was not due to his wilful refusal or culpable neglect.

(3) An attachment of earnings order shall—

- (a) specify the normal deduction rate, that is to say, the rate at which, after taking into account any right or liability of the defendant to deduct income tax from payments made under the related maintenance order, the court making or varying the attachment of earnings order thinks it reasonable that the earnings to which that order relates should be applied from time to time in satisfying the requirements of the maintenance order, not exceeding the rate appearing to that court to be necessary for the purpose of—
 - (i) securing payment of the sums falling due from time to time under the maintenance order; and
 - (ii) securing payment within a reasonable period of any sums already due and unpaid under the maintenance order and any costs incurred in proceedings relating to the maintenance order which are payable by the defendant;
- (b) specify the protected earnings rate, that is to say, the rate below which, having regard to the resources and needs of the defendant and the needs of persons for whom he must or reasonably may provide, the court thinks it reasonable that the relevant earnings within the meaning of the Schedule should not be reduced by a payment made in pursuance of the attachment of earnings order;
- (c) designate the officer to whom any payment under the Schedule is to be made, being—
 - (i) if the order is made by the Supreme Court, the Registrar;

(ii) if the order is made by the magistrates' court, the clerk of that court; and

(d) 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 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.

Powers of courts to make attachment of earnings orders in proceedings under other laws.

50. Without prejudice to the powers to make attachment of earnings orders conferred by section 49, where proceedings are brought—

- (a) in a court under section 5 of the Debtors Act, 1869 (which authorizes the committal to prison of persons refusing or neglecting to pay certain debts which they have had the means to pay) in respect of a default in making payments under a maintenance order; or
- (b) under the Magistrates' Court Act to enforce the payment of any sum ordered to be paid by a maintenance order,

and it appears to the court that, at the date when the proceedings were begun, such an amount as is mentioned in paragraph (a) of section 49(1) was due under the maintenance order and unpaid and that the defendant is a person to whom earnings fall to be paid, then, subject to section 49(2), the court may, if it thinks fit, make an attachment of earnings order instead of making any other order to enforce the making of payments under the maintenance order.

Restriction of issue of orders, etc., of commitment.

51. Where an attachment of earnings order is made, no order or warrant of commitment shall be issued in consequence of any proceedings for the enforcement of the related maintenance order begun before the making of the attachment of earnings order.

Variation and discharge, etc., of attachment of earnings orders.

52.(1) 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

This version is out of date

to receive payments under the related maintenance order, make an order discharging or varying the attachment of earnings order.

- (2) An attachment of earnings order shall cease to have effect—
 - (a) upon the making of an order of commitment or the issue of a warrant of commitment for the enforcement of the related maintenance order, or upon the exercise for that purpose of the power conferred on the magistrates' court by section 54(2) of the Magistrates' Court Act to postpone the issue of such a warrant;
 - (b) upon the discharge of the related maintenance order,

and where an attachment of earnings order ceases to have effect as aforesaid the proper officer of the court shall give notice of the cessation to the person to whom the order was directed:

Provided that where the related maintenance order is discharged as mentioned in paragraph (b) and it appears to the court discharging the order that arrears thereunder will remain to be recovered after the discharge, the court may, if it thinks fit, direct that this subsection shall not apply.

(3) Where notice is given to a court in pursuance of section 53(4), the court shall discharge the attachment of earnings order to which the notice relates.

(4) Where at any time it appears to the Registrar, designated in pursuance of section 49(3)(c) by an attachment of earnings order made by the Supreme Court, that—

- (a) the aggregate of the payments made for the purposes of the related maintenance order by the defendant (whether under the attachment of earnings order or otherwise) exceeds the aggregate of the payments required up to that time by the maintenance order; and
- (b) the normal deduction rate specified by the attachment of earnings order (or where two or more such orders are in force in relation to the maintenance order, the aggregate of the normal deduction rates specified by those orders) exceeds the rate of payments required by the maintenance order; and
- (c) no proceedings for the variation or discharge of the attachment of earnings order are pending,

the Registrar shall give the prescribed notice to the person to whom he is required to pay sums received under the attachment of earnings order and to the defendant, and the court which made that order—

- (i) shall make the appropriate variation order unless the defendant requests the court in the prescribed manner and before the expiration of the prescribed period to proceed under the following paragraph and the court decides to proceed thereunder;
- (ii) 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.

In this subsection and subsection (5) “the appropriate variation order” means an order varying the attachment of earnings order in question by reducing the normal deduction rate specified thereby so as to secure that that rate (or, in the case mentioned in paragraph (b) of this subsection, the aggregate of the rates therein mentioned) is the same as the rate of payment required by the maintenance order or is such lower rate as the court thinks fit having regard to the amount of the excess mentioned in paragraph (a) of this subsection.

(5) Where at any time it appears to the clerk of the magistrates’ court, designated by an attachment of earnings order made by the magistrates’ court, that the conditions specified in paragraph (a) to (c) of subsection (4) are satisfied, the clerk shall make an application to the magistrates’ court for the appropriate variation order, and the court—

- (a) shall grant the application unless the defendant appears at the hearing thereof and requests the court to proceed under the following paragraph and the court decides to proceed thereunder;
- (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

This version is out of date

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.

Powers of court to obtain statements of earnings, etc.

54.(1) Where proceedings relating to an attachment of earnings order are brought in any court, the court may, either before or at the hearing and, in the case of proceedings brought in the magistrates' court, any justice of the peace may, before 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—

This version is out of date

- (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; and
 - (iii) such prescribed particulars as may be so specified for the purpose of enabling the defendant to be identified by any employer of his;
- (b) order any person appearing to the court or justice 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 whether payments are earnings.

55.(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 respects 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 as respects such payments if the said person subsequently withdraws the application or, as the case may be, abandons the appeal.

Miscellaneous provisions as to payments under attachment of earnings orders.

This version is out of date

56.(1) The officer to whom an employer pays any sum in pursuance of an attachment of earnings order shall pay that sum in accordance with rules 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 such person shall be deemed to be payments made by the defendant, with such deductions (if any) in respect of income tax as he is entitled or required to make, 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.

(3) On any occasion on which an employer makes a payment under the Schedule in respect of a defendant, the employer may, notwithstanding anything in any other law, retain for his own use out of any balance of the defendants' earnings remaining after the making of that payment the sum of three pence or, if on that occasion the employer makes such payments in pursuance of two or more attachment of earnings orders relating to the defendant, the sum of three pence in respect of each such payment.

Application of Part IV to earnings paid by the Crown, etc.

57.(1) In relation to earnings falling to be paid by the Crown or a Government department or out of the public revenue of the United Kingdom or out of the Consolidated Fund, this Part shall have effect subject to the following modifications, that is to say—

- (a) the earnings shall be treated as falling to be paid by the head or senior officer in Gibraltar for the time being of the department, office or other body concerned; and
- (b) section 58 shall not apply except in relation to a failure by the defendant to comply with an order under section 54.

(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 head or senior officer thereof, that question shall be referred to and determined by the Deputy Governor, who 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 Deputy Governor under subsection (2) and to be signed by him shall, in any such proceedings as are mentioned in subsection (2), be admissible in evidence

and deemed to contain an accurate statement of such a determination unless the contrary is shown.

Offences.

58.(1) A person who—

- (a) fails to comply with subsection (1) or subsection (4) of section 53 or an order of the magistrates' court or justice of the peace under section 54; or
- (b) gives such a notice as is mentioned in subsection (4) of section 53, or a statement in pursuance of such an order as aforesaid, which 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,

is, subject to subsection (2) of this section, guilty of an offence and is liable on summary conviction to a fine at level 1 on the standard scale and in the case of a second or subsequent conviction (being, in the case of a failure to comply with section 53(1), a second or subsequent conviction relating to the same attachment of earnings order) to a fine at level 2 on the standard scale.

(2) It shall be a defence for a person charged with failing to comply with section 53(1) to prove that he took all reasonable steps to comply with the attachment of earnings order to which the failure relates.

Prohibition of committal more than once in respect of same arrears.

59. Where a defendant has been imprisoned or otherwise detained under an order or warrant of commitment issued in respect of his failure to pay a sum due under a maintenance order, then, notwithstanding anything in this Part, no such order or warrant (other than a warrant of which the issue has been postponed under paragraph (it) of section 60(5)) shall thereafter be issued in respect of that sum or any part thereof.

Powers of magistrates' court to review committals, etc.

60.(1) Where, for the purpose of enforcing a maintenance order, the magistrates' court has exercised its power under section 54(2) of the Magistrates' Court Act or this section to postpone the issue of a warrant of commitment and under the terms of the postponement the warrant falls to be issued, then—

This version is out of date

- (a) the warrant shall not be issued except in pursuance of subsection (2) or paragraph (a) of subsection (3) of this section; and
- (b) the clerk of the magistrates' court shall give notice to the defendant stating that if the defendant considers there are grounds for not issuing the warrant he may make an application to the court in the prescribed manner requesting that the warrant shall not be issued and stating those grounds.

(2) If no such application is received by the clerk of the magistrates' court within the prescribed period, any justice of the peace may issue the warrant of commitment at any time after the expiration of that period; and if such an application is so received any such justice may, after considering the statements contained in the application—

- (a) if he is opinion that the application should be further considered, refer it to the court;
- (b) if he is not of that opinion, issue the warrant forthwith,

and when an application is referred to the court under this subsection, the clerk of the magistrates' court shall give to the defendant 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.

(3) On considering an application referred to it under subsection (2) the court shall, unless in pursuance of subsection (6) it remits the whole of the sum in respect of which the warrant could otherwise be issued, either—

- (a) issue the warrant; or
- (b) further postpone the issue thereof until such time and on such conditions, if any, as the court thinks just; or
- (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 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;
- (ii) the person by whom the request was made shall have the same liabilities for all the costs properly incurred in or about any proceedings taken in pursuance of the request as if the proceedings had been taken by that person,

and for the purposes of paragraph (ii) any application made by the clerk as required by section 52(5) shall be deemed to be made on the request of the person in whose favour the attachment of earnings order in question was made.

(2) An application to the magistrates' court for an attachment of earnings order, or an order discharging or varying an attachment of earnings order, shall be made by complaint.

(3) It is hereby declared that the magistrates' court has jurisdiction to hear a complaint by or against a person residing outside Gibraltar for the discharge or variation of an attachment of earnings order made by the magistrates' court; and where such a complaint is made against a person residing outside Gibraltar, then, if such person resides outside Gibraltar and does not appear at the time and place appointed for the hearing of the complaint but it is proved to the satisfaction of the court, on oath or in such other manner as may be prescribed, that the complainant has taken such steps as may be prescribed to give to such person notice of the complaint and of the time and place aforesaid, the court may, if it thinks it reasonable in all circumstances to do so, proceed to hear and determine the complaint at the time and place appointed for the hearing or for any adjourned hearing in like manner as if such person had then appeared.

(4) For the purposes of section 34 of the Magistrates' Court Act (which provides for the issue of a summons directed to the person against whom an order may be made in pursuance of a complaint)–

- (a) the power to make an order in pursuance of a complaint by the defendant for the discharge or variation of an attachment of earnings order shall be deemed to be a power to make an order against the person in whose favour the attachment of earnings order was made; and
- (b) the power to make an attachment of earnings order, or an order discharging or varying an attachment of earnings order, in pursuance of a complaint by any other person (including a complaint in proceedings to which paragraph (b) of section 50 applies) shall be deemed to be a power to make an order against the defendant.

(5) Where the court referred to in section 55 (1) is the magistrates' court, subsection (1) of section 28 of the Magistrates' Court Act (which relates to the attendance of witnesses) shall apply, as if section 55(1) required an application thereunder to be made by complaint; and on making a determination under that subsection the court may in its discretion make such order as it thinks just and reasonable as to the payment by any of the persons mentioned in that subsection of the whole or any part of the costs of the determination, and costs ordered to be paid under this subsection shall–

- (i) in the case of costs to be paid by the defendant to the person in whose favour the attachment of earnings order

This version is out of date

in question is made, be deemed to be a sum due under the related maintenance order; and

(ii) in any other case, be enforceable as a civil debt.

(6) A complaint for an attachment of earnings order may be heard notwithstanding that the complaint was not made within the six months allowed by section 65 of the Magistrates' Court Act.

(7) For the avoidance of doubt it is hereby declared that a complaint may be made to enforce payment of a sum due and unpaid under a maintenance order notwithstanding that a previous complaint has been made in respect of that sum or a part thereof and whether or not an order was made in pursuance of the previous complaint.

PART V. MAINTENANCE AGREEMENTS.

Application of Part V.

62. This Part applies to any agreement in writing made, whether before or after the commencement of this Act, between the parties to a marriage for the purposes of their living separately, being—

- (a) an agreement containing financial arrangements, whether made during the continuance or after the dissolution or annulment of the marriage; or
- (b) a separation agreement which contains no financial arrangements in a case where no other agreement in writing between the same parties contains such arrangements.

Interpretation of Part V.

63. In this Part, unless the context otherwise requires,—

“financial arrangements” means provisions governing the rights and liabilities towards one another when living separately of the parties to a marriage (including a marriage which has been dissolved or annulled) in respect of the making or securing of payments or the disposition or use of any property, including such rights and liabilities with respect to the maintenance or education of any child, whether or not a child of the marriage;

“child of the marriage” includes any child of both parties to the marriage, whether or not born in lawful wedlock, and any child adopted by both parties to the marriage.

Validity of maintenance agreements.

64. If an agreement to which this Part applies includes a provision purporting to restrict any right to apply to a court for an order containing financial arrangements, that provision shall be void but any other financial arrangements contained in the agreement shall not thereby be rendered void or unenforceable but, unless void or unenforceable for any other reason, and subject to section 65, shall be binding on the parties to the agreement:

Provided that—

- (a) where the party chargeable under the agreement has died before the 1st day of January 1962—
 - (i) this section shall not apply to that agreement unless there remain undistributed at that date assets of that party’s estate (apart from any property in which he had only a life interest) representing not less than four-fifths of the value of that estate for probate after providing for the discharge of the funeral, testamentary and administrative expenses, debts and liabilities payable thereout (other than any liability arising by virtue of this section); and
 - (ii) nothing in this section shall render liable to recovery, or impose any liability upon the personal representatives of that party in respect of, any part of that party’s estate which has been distributed before that date;
- (b) no right or liability shall attach by virtue of this section in respect of any sum payable under the agreement in respect of a period falling before the 1st day of January 1962.

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 or, subject to subsection (2), the magistrates’ 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

This version is out of date

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) The magistrates' court shall not entertain any application under subsection (1) of this section unless both the parties to the agreement are resident in Gibraltar, and shall not have power to make any order on such an application except -

- (a) in a case where the agreement includes no provision for periodical payments by either of the parties, an order inserting provision for the making by one of the parties of periodical payments -
 - (i) for the maintenance of the other party of such sums as the court considers reasonable in all the circumstances of the case;
 - (ii) for the maintenance of any child of the marriage, of such sums as the court thinks reasonable having regard to the means of the parties;
- (b) in a case where the agreement includes provision for the making by one of the parties of periodical payments an order increasing, reducing or terminating any of those payments.

(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 date when representation in regard to the deceased's estate is first taken out or, with the permission of the court, at any time thereafter before the administration and distribution of the estate is completed, make to the Supreme Court any application for an order under section 65 which the surviving party might have made immediately before the death; and, if any alteration in the agreement is made by the court on such an application, the like consequences shall ensue as if that alteration had been made immediately before the death by agreement between the parties and for valuable consideration.

(2) The provisions of this section shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiration of the said period of six months on the ground that they ought to have taken into account the possibility that the court might permit an application by virtue of this section after that period, but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order under this Part.

(3) In considering under subsection (1) the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account, and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

(4) For the purposes of any law relating to the discretion of the court as to the persons to whom administration is to be granted, a person by whom an application under this Part is proposed to be made by virtue of this section shall be deemed to be a person interested in the deceased's estate.

**PART VII.
MISCELLANEOUS.**

Offence of not maintaining oneself.

This version is out of date

67.(1) A person who refuses or neglects to maintain himself and in consequence of his refusal or neglect is given assistance under any law or scheme for the payment of assistance to unemployed persons, is guilty of an offence and is liable on summary conviction to imprisonment for three months and to a fine at level 2 on the standard scale.

(2) For the purposes of this section a person shall not be deemed to refuse or neglect to maintain himself by reason only of anything done or omitted to be done in furtherance of a trade dispute.

Rules.

68. The Chief Justice may make rules –

- (a) prescribing the manner of, and the practice and procedure to be followed in, appeals to the Supreme Court under this Act;
- (b) prescribing anything which may be prescribed;
- (c) generally for the better carrying out of the purposes and provisions of this Act.

PART VII SUPPLEMENTARY POWERS OF THE COURT

Powers of court to make orders for the protection of a cohabitee or of a party to a marriage or a child of the family.

69.(1) A cohabitee or either party to a marriage may make a complaint to the magistrates' court for an order under this section.

(2) Where on a complaint for an order under this section the court is satisfied that the defendant has used, or threatened to use, violence against the person of the complainant or a child of the family and that it is necessary for the protection of the complainant or a child of the family that an order should be made under this subsection the court may make one or both of the following orders, that is to say–

- (a) an order that the defendant shall not use, or threaten to use, violence against the person of the applicant;
- (b) an order that the defendant shall not use, or threaten to use, violence against the person of a child of the family.

(3) Where on a complaint for an order under this section, the court is satisfied–

- (a) that the defendant has used violence against the person of the complainant or a child of the family, or
- (b) that the defendant has threatened to use violence against the person of the complainant or a child of the family and has used violence against some other person, or
- (c) that the defendant has in contravention of an order made under subsection (2), threatened to use violence against the person of the complainant or a child of the family,

and that the complainant or a child of the family is in danger of being physically injured by the defendant (or would be in such danger if the complainant or child were to enter the matrimonial home), the court 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 court may, if it thinks fit, make a further order requiring the defendant to permit the complainant to enter and remain in the matrimonial home,

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

(6) Where on a complaint for an order under this section the court is satisfied that there is imminent danger of physical injury to the complainant or child of the family, the court 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 complaint, 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) The power of the court to make, by virtue of sub-section (6), an expedited order under sub-section (2) may be exercised by a single Justice of the Peace.

This version is out of date

(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; or
- (b) the date of the commencement of the hearing, in accordance with the provisions of the Magistrates' Court Act of the complaint for an order under this section.

(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 case of an expedited order to sub-section (8), may be made for such term as may be so specified.

(10) The court, in making an order under paragraphs (a) or (b) of sub-section (2), may include provision that the defendant shall not incite or assist any other person to use, or threaten to use, violence against the person of the complainant or, as the case may be, the child of the family.

Supplementary provisions with respect to orders under section 69.

70.(1) The magistrates' court shall, on an application made by a cohabitee or either party of the marriage in question, have power by order to vary or revoke any order made under section 69.

(2) Rules may be made for the purpose of prescribing the method of giving effect to the provision of section 69 and any such rules may in particular, but without prejudice to the generality of this subsection, make provision for the hearing without delay of any complaint for an order under sub-section (3) of that section.

(3) The expiry by virtue of section 69 (8) of an expedited order shall not prejudice the making of a further expedited order under that section.

(4) Except so far as the exercise by the defendant of a right to occupy the matrimonial home is suspended or restricted by virtue of an order made under section 69 (3), an order made under that section shall not affect any estate or interest in the matrimonial home of the defendant or any other person, and for the purposes of this section, "person" shall include the Crown.

Powers of arrest for breach of section 69 order.

71.(1) Where the magistrates' court makes an order under section 69 which provides that the defendant—

- (a) shall not use violence against the person of the complainant, or
- (b) shall not use violence against a child of the family, or
- (c) shall not enter the matrimonial home,

the court may, if it is satisfied that the defendant has physically injured the complainant or a child of the family and considers that he is likely to do so again, attach a power of arrest to the order.

(2) Where, by virtue of sub-section (1), a power of arrest is attached to an order, a police officer may arrest without warrant a person whom he has reasonable cause of suspecting of being in breach of any such provision of the order as is mentioned in paragraphs (a), (b) or (c) of sub-section (1) by reason of that person's use of violence or, as the case may be, his entry into the matrimonial home.

(3) Where a power of arrest is attached to an order under sub-section (1) and the defendant is arrested under sub-section (2)—

- (a) he shall be brought before a Justice of the Peace within a period of 24 hours beginning at the time of his arrest, and
- (b) the Justice of the Peace before whom he is brought may remand him.

(4) In reckoning for the purposes of sub-section (3) any period of 24 hours, no account shall be taken of Christmas Day, Good Friday or any Sunday or bank holiday.

(5) Where a court has made an order under section 69 but has not attached to the order a power of arrest under sub-section (1), then, if at any time the complainant for that order considers that the other party to the marriage in question has disobeyed the order, he may apply for the issue of a warrant for the arrest of that other party to a Justice of the Peace, but a Justice of the Peace shall not issue a warrant on such an application unless—

- (a) the application is substantiated on oath, and
- (b) the justice has reasonable grounds for believing that the other party to the marriage had disobeyed that order.

This version is out of date

(6) The magistrates' court before whom any person is brought to by virtue of a warrant issued under sub-section (5), may remand him.

Jurisdiction of magistrates' court for breach of injunction.

72. Any person who is in breach of an injunction or other order of the court to which this Act applies and for the breach of which no specific penalty is provided, shall be liable for imprisonment for a period not exceeding 6 months or to a fine at level 3 on the standard scale, or to both.

Refusal of order by the magistrates' court in cases more suitable for Supreme Court.

73. Where on hearing any application under any provisions of this Act, the magistrates' court is of the opinion that any of the matters in question between the parties would be more conveniently dealt with by the Family

SCHEDULE

Sections 49, 53 and 56.

PAYMENTS UNDER ATTACHMENT OF EARNINGS ORDERS.

1. The provisions of this Schedule shall have effect in respect of each occasion (in this Schedule referred to as a “pay-day”) on which any earnings to which an attachment of earnings order relates fall to be paid.

2. In this Schedule, the following expressions have the following meanings respectively –

“normal deduction” and “protected earnings”, in relation to any pay-day, mean the amount which would represent a payment at the normal deduction rate specified by the order or, as the case may be, at the protected earnings rate so specified in respect of the period between the pay-day in question and either the last preceding pay-day or, where there is no last preceding pay-day, the date last before the pay-day in question on which the employer became the defendant’s employer;

“relevant earnings”, in relation to any pay-day, means the amount of the earnings aforesaid falling to be paid on the pay-day in question after the deduction from those earnings of any amount falling to be deducted therefrom by the employer by way of income tax or of contributions under the Social Security (Employment Injuries Insurance) Act, the Social Security (Insurance) Act, or of lawful deductions under any law, or in pursuance of a request in writing by the defendant, requiring or authorizing deductions to be made for the purposes of a Superannuation scheme.

3. If the relevant earnings exceed the sum of –

- (a) the protected earnings; and
- (b) so much of any amount by which the relevant earnings falling to be paid on any previous pay-day fell short of the protected earnings for the purposes of that pay-day or has not been made good by virtue of this sub-paragraph on any other previous pay-day,

the employer shall, so far as that excess permits, pay to the officer designated for the purpose in the order –

This version is out of date

- (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