

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
2010-11	ss. 1-2, 2A-2B, 3-16, 16A-16C, 17, 18(1)-(2), 19(1)-(2), 20, (b), 21(1), (2)(a), (aa), (3), 22(2)-(3), 23-26, 28-29, 30, (2), 31(1)-(2), 32-33, 33A, 33B(1)-(3), 34(a)-(b), 35-38, 39(a)-(c), 40(a)-(c), 41-45, 45A(1)- (5), 46-47, 48(1)(a), (ii)-(iv), 46, 57, 62, 64, 65(1)-(2), 66(1), 68(a), 69(1)-(7), (8)(a)-(b), (10), 70(1)- (2), 71(1), (5), 72-75	6.5.2010
LN. 2010/150	ss. 49(1), 49(3)(b)-(c), 53(2), (b), (3), 56(3), 76-83, Sch. 1, 2	30.9.2010

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

Implementing:

Regulation (EC) No. 4/2009

English sources:

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

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

PART I

Preliminary

Title.

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

MATRIMONIAL PROCEEDINGS.

Interpretation.

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

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

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and “adopted” means adopted in pursuance of an adoption order made under the Adoption Act, or any enactment repealed by that Act;

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

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

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

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

“dependant” means a person–

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

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

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

“maintenance” includes education;

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

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

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

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

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

Applications under each Part to be separate.

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

PART IA

Matrimonial Orders

Grounds of application for a matrimonial order.

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

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

Powers of court to make matrimonial orders.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The court—

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

if it appears to the court—

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

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

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

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

Orders for payments which have been agreed by the parties.

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

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

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

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

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

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

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

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

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

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

but is of the opinion—

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

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

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

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

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

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

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

Powers of court where parties are living apart by agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Interim orders.

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

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

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

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

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

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

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

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

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

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

Variation and revocation of orders for periodical payments.

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

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

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

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

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

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

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

(7) Where–

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

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- (b) the order requires payments specified in it to be made to or for the benefit of more than one child without apportioning those payments between them,

the court may, in exercise of its powers under this section to vary or revoke the order, direct that the variation or revocation shall take effect from the date on which any order took effect or any later date.

(8) In exercising the powers conferred by this section the court shall, so far as it appears to the court just to do so, give effect to any agreement which has been reached between the parties in relation to the application and, if there is no such agreement or if the court decides not to give effect to the agreement, the court shall have regard to all the circumstances of the case, first consideration being given to the welfare of a child of the family who has not attained the age of eighteen, and the circumstances of the case shall include any change in any of the matters to which the court was required to have regard when making the order to which the application relates or, in the case of an application for the variation or revocation of an order made under section 8 or on an appeal under section 16A, to which the court would have been required to have regard if that order had been made under section 4.

(9) An application under this section may be made—

- (a) where it is for the variation or revocation of an order under section 4, 8, 9 or 11 for periodical payments, by either party to the marriage in question; and
- (b) where it is for the variation of an order under section 4(1)(c), 8 or 9 for periodical payments to or in respect of a child, also by the child himself, if he has attained the age of sixteen.

Revival of orders for periodical payments.

13.(1) Where an order made by the Family Judge under this Part for the making of periodical payments to or in respect of a child (other than an interim order) ceases to have effect—

- (a) on the date on which the child attains the age of eighteen; or
- (b) at any time after that date but before or on the date on which he attains the age of eighteen,

the child may apply to the Family Judge for an order for its revival.

(2) If on such an application it appears to the Judge that—

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

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

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

Variation of instalments of lump sum.

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

Effect on certain orders of parties living together.

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

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

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they are not living with each other at that date, they subsequently resume living with each other.

(3) Any order made under section 9, and any interim order made on an application for an order under that section, shall cease to have effect if the parties to the marriage resume living with each other.

(4) Where an order made under this Part ceases to have effect by virtue of subsection (1) or (3) or by virtue of a direction given under subsection (2), the Family Judge may, on an application made by either party to the marriage, make an order declaring that the first mentioned order ceased to have effect from such date as the court may specify.

Reconciliation.

16.(1) Where an application is made for an order under section 4 the court, before deciding whether to exercise its powers under that section, shall consider whether there is any possibility of reconciliation between the parties to the marriage in question; and if at any stage of the proceedings on that application it appears to the court that there is a reasonable possibility of such a reconciliation, the court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect a reconciliation.

(2) Where the court adjourns any proceedings under subsection (1), it may request an officer of the Care Agency or any other person to attempt to effect a reconciliation between the parties to the marriage, and where any such request is made, that officer or other person shall report in writing to the court whether the attempt has been successful or not, but shall not include in that report any other information.

Appeals under Part IA.

16A.(1) Where the Family Judge makes or refuses to make, varies or refuses to vary, revokes or refuses to revoke an order (other than an interim order) under this Part, an appeal shall lie to the Court of Appeal.

(2) On an appeal under this section the Court of Appeal shall have power to make such orders as may be necessary to give effect to its determination of the appeal, including such incidental or consequential orders as appear to the court to be just, and, in the case of an appeal from a decision of the Family Judge made on an application for or in respect of an order for the making of periodical payments, the Court of Appeal may order that its determination of the appeal shall have effect from such date as the court thinks fit, not being earlier than the date of the making of the application to the Family Judge or, in a case where there was made to the Family Judge an application for an order under section 4 and an application under section 8

and the term of the periodical payments was or might have been ordered to begin on the date of the making of the application for an order under section 4, the date of the making of that application.

(3) Without prejudice to the generality of subsection (2), where, on an appeal under this section in respect of an order of the Family Judge requiring any person to make periodical payments, the Court of Appeal reduces the amount of those payments or discharges the order, the Court of Appeal shall have power to order the person entitled to payments under the order of the Family Judge to pay to the person liable to make payments under that order such sum in respect of payments already made in compliance with the order as the Court of Appeal thinks fit and, if any arrears are due under the order of the Family Judge, the Court of Appeal may remit the payment of those arrears or any part thereof.

(4) Any order of the Court of Appeal made on an appeal under this section (other than an order directing that an application shall be reheard by the Family Judge) shall for the purposes of the enforcement of the order and for the purposes of section 12 be treated as if it were an order of the Family Judge from which the appeal was brought and not of the Court of Appeal.

Enforcement etc of orders for payment of money.

16B.(1) An order for the payment of money made by the Family Judge under this Part shall be enforceable as a maintenance order by the magistrates' court and the Judge may order that an order for payment of maintenance made under this Part may, on application by the party in whose favour the order is made, be enforced by the magistrates' court in accordance with Part V of the Magistrates' Court Act.

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

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

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

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

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

Orders for repayment in certain cases of sums paid after cessation of order by reason of remarriage.

16C.(1) Where—

- (a) an order made under section 4(1)(a), 8 or 9 has, by virtue of section 6(2), ceased to have effect by reason of the remarriage of the party in whose favour it was made; and
- (b) the person liable to make payments under the order made payments in accordance with it in respect of a period after the date of that remarriage in the mistaken belief that the order was still subsisting,

no proceedings in respect of a cause of action arising out of the circumstances mentioned in paragraphs (a) and (b) shall be maintainable by the person so liable but on an application made under this section the court may exercise the powers conferred on it by subsection (2).

(2) The court may order the respondent to an application made under this section to pay to the applicant a sum equal to the amount of the payments made in respect of the period mentioned in subsection (1)(b) or, if it appears to the court that it would be unjust to make that order, it may either order the respondent to pay to the applicant such lesser sum as it thinks fit or dismiss the application.

(3) An application under this section may be made by the person liable to make payments under the order made under section 4(1)(a), 8 or 9 or his personal representatives and may be made against the person entitled to payments under that order or his personal representatives.

(4) An order under this section for the payment of any sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.

(5) The designated officer for the court to whom any payments under an order made under section 4(1)(a), 8 or 9 are required to be made, and the collecting officer under an attachment of earnings order made to secure payments under the first mentioned order, shall not be liable—

- (a) in the case of the designated officer, for any act done by him in pursuance of the first mentioned order after the date on which that order ceased to have effect by reason of the remarriage of the person entitled to payments under it; and
- (b) in the case of the collecting officer, for any act done by him after that date in accordance with any enactment or rule of court specifying how payments made to him in compliance with the attachment of earnings order are to be dealt with,

if, the act was one which he would have been under a duty to do had the first mentioned order not ceased to have effect by reason of the remarriage and the act was done before notice in writing of the fact that the person so entitled had remarried was given to him by or on behalf of that person, the person liable to make payments under the first mentioned order or the personal representatives of either of those persons.

(6) In this section—

“collecting officer”, in relation to an attachment of earnings order, means the Registrar of the Supreme Court or the clerk of the magistrates’ court to whom a person makes payments in compliance with the order; and

“designated officer” means the clerk of the magistrates’ court or any other officer as designated by the Family Judge.

PART II. AFFILIATION PROCEEDINGS.

Interpretation of Part II.

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

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

Commencement of affiliation proceedings.

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

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

Time for application for summons.

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

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

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

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

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

Jurisdiction under Part II.

20. An application under section 18—

- (a) may be made if—

- (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) shall be substantiated on oath.

Powers of court on hearing the application.

21.(1) On the hearing of the application 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—

- (a) an order that the defendant shall make to the applicant for the benefit of the child to whom the application relates, such periodical payments, and for such term, as may be so specified;
- (aa) an order that the defendant shall pay to the applicant for the benefit of the child to whom the application relates, such lump sum as may be so specified; or
- (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 an application 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 be made or varied by the Family Judge, on the application of a person other than the child's mother who for the time

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being has obtained a residence order in respect of the child 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 Family Judge may by order from time to time appoint some person guardian under the Children Act 2009 and such a person 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 Family Judge 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 and continuance of affiliation orders.

23.(1) Subject to subsection (3), no affiliation order for periodical payments shall be made in favour of a child who has attained the age of eighteen.

(2) The term to be specified for periodical payments in the affiliation order in favour of the child may begin with the date of the making of an application for the order in question or any later date but—

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

(3) Subsection (1), and paragraph (b) of subsection (2), shall not apply in the case of a child, if it appears to the court that—

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- (a) the child is, or will be, or if an order were made without complying with either or both of those provisions would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or
- (b) there are special circumstances which justify the making of an order without complying with either or both of those provisions.

(4) Any periodical payments order in favour of a child shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order, except in relation to any arrears due under the order on the date of the death.

(5) 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 this section 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.

24. *Repealed.*

Restriction on payments after the child reaches eighteen.

25. Subject to sections 22 and 23, an affiliation order shall not operate, after the child has attained the age of eighteen so as to—

- (a) require payments under the order to be made in respect of any period during which the child is detained in prison; or
- (b) entitle any person other than the child's mother to the payments.

Duty of the court to consider appropriate relief under the Children Act 2009.

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26. In dealing with a case under this Part, the Family Judge shall have a duty to consider the relevant provisions of the Children Act 2009 in order to provide appropriate relief available under that Act.

Duty of putative father to notify change of address.

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

- (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(2) or (3) to have the residence or guardianship 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 4 on the standard scale.

PART III. MAINTENANCE OF CHILDREN AND PARENTS.

29. *Repealed.*

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;

“spouse” means—

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

(2) *Deleted*

Duty of person to maintain dependants.

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

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

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

32. *Repealed*

33. *Repealed*

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

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

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

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

Maintenance orders: penalty for breach.

33B.(1) In any case where—

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

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

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

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

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

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

Application for maintenance order where a person fails to maintain child.

34. Where a person fails to provide reasonable maintenance for any child whom he is liable to maintain under paragraph (b) or (c) of section 31(1), then—

- (a) any person having parental responsibility under the Children Act 2009 in respect of that child; or
- (b) the Care Agency; or
- (c) the child himself,

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

35. *Repealed*

36. *Repealed*

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

37. Where any person fails to provide reasonable maintenance for that person's father or mother whom that person is liable to maintain under paragraph (d) of section 31(1)—

- (a) the father or mother of such person; and
- (b) the Care Agency, if the father or the mother is in the care of the Care Agency,

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

38. *Repealed*

Amount of maintenance orders.

39. On hearing an application under this Part by any person who may apply for a maintenance order the Family Judge may make a maintenance order containing provision—

- (a) that the defendant shall make to the applicant for the maintenance of a child to whom the application relates, or to such a child, such periodical payments, and for such term, as may be so specified in that order;

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- (b) that the defendant shall pay to the applicant for the maintenance of a child to whom the application relates, or to such a child, such lump sum as may be so specified in that order; or
- (c) that the defendant shall pay to the applicant such periodical payments, and for such term or such lump sum as may be so specified in that order for the maintenance of a father or a mother.

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 application,—

- (a) where the application is made under section 34, a matrimonial order under Part IA in respect of the same child or an affiliation order under Part III in respect of the same child;
- (b) *deleted*
- (c) where the application is made under section 33A, a matrimonial order under Part IA.

Interim maintenance orders.

41.(1) Where an application is made for a maintenance order, the Family Judge shall, at any time before making a final order on, or dismissing, the application, may make an interim maintenance order which requires the defendant to make to the applicant or to any child who is under the age of eighteen, or to the applicant for the benefit of such a child, such periodical payments as the Judge thinks reasonable.

(2) An interim order may provide for payments to be made from such date as the Judge may specify, except that the date shall not be earlier than the date of the making of the application for maintenance order; and where such an order made by the Court of Appeal on an appeal under section 45 provides for payments to be made from a date earlier than the date of the making of the order, the interim maintenance order may provide that payments made by the respondent under an order made by the Family Judge shall, to such extent and in such manner as may be provided by the interim maintenance order, be treated as having been paid on account of any payment provided for by the interim maintenance order.

(3) Subject to subsection (4), an interim maintenance order made on an application for maintenance order shall cease to have effect on whichever of the following dates occurs first—

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

(4) Where an interim maintenance order made under subsection (1) would, but for this subsection, cease to have effect by virtue of subsection (3)(a) or (b), the Family Judge may by order provide that the interim maintenance order shall continue in force for a further period, and any order continued in force under this subsection shall cease to have effect on whichever of the following dates occurs first—

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

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

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

Variation and revocation of orders for periodical payments.

42.(1) Where the Family Judge has made an order under section 39 for the making of periodical payments, the Judge may, on an application made under this section, vary or revoke that order.

(2) Where Family Judge has made an interim maintenance order under section 41, the Judge may, on an application made under this section, vary or revoke that order, except that the Judge shall not by virtue of this subsection extend the period for which the order is in force.

(3) An order made by virtue of this section which varies an order for the making of periodical payments may, if the payments as so varied shall be made from such date as the court may specify, except that, subject to subsection (4), the date shall not be earlier than the date of the making of the application under this section.

(4) In exercising the powers conferred by this section the court shall, so far as it appears to the court just to do so, give effect to any agreement which has been reached between the parties in relation to the application and, if there is no such agreement or if the court decides not to give effect to the agreement, the court shall have regard to all the circumstances of the case, first consideration being given to the welfare of the child who has not attained the age of eighteen, and the circumstances of the case shall include any change in any of the matters to which the court was required to have regard when making the order to which the application relates.

(5) An application under this section may be made by any person who may apply for a maintenance order under this Part.

43. *Repealed*

44. *Repealed*

Appeals under Part III.

45.(1) Where the Family Judge makes or refuses to make, varies or refuses to vary, revokes or refuses to revoke an order (other than an interim maintenance order) under this Part, an appeal shall lie to the Court of Appeal.

(2) On an appeal under this section the Court of Appeal may make such orders as may be necessary to give effect to its determination of the appeal, including such incidental or consequential orders as appear to the court to be just, and, in the case of an appeal from a decision of the Family Judge made on an application for or in respect of an order for the making of periodical payments, the Court of Appeal may order that its determination of the appeal shall have effect from such date as the court thinks fit, not being earlier than the date of the making of the application to the Family Judge.

(3) Without prejudice to the generality of subsection (2), where, on an appeal under this section in respect of an order of the Family Judge requiring any person to make periodical payments, the Court of Appeal reduces the amount of those payments or discharges the order, the Court of Appeal may order the person entitled to payments under the order of the Family Judge to pay to the person liable to make payments under that order such sum in respect of payments already made in compliance with the order as the Court of Appeal thinks fit and, if any arrears are due under the order of the Family Judge, the Court of Appeal may remit the payment of those arrears or any part thereof.

(4) Any order of the Court of Appeal made on an appeal under this section (other than an order directing that an application shall be reheard by the Family Judge) shall for the purposes of the enforcement of the order and for the purposes of section 42 be treated as if it were an order of the Family Judge from which the appeal was brought and not of the Court of Appeal.

Registration of Maintenance Order

45A.(1) Where a maintenance order (as defined in section 48(1)) is made by the Family Judge, a person entitled to receive payments under such an order may apply to the Family Judge 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.

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) *Deleted*
- (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;

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

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

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

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

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

Enforcement of orders made under Part III.

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

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

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

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

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

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

Offences.

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

PART IV. ENFORCEMENT OF ORDERS.

Interpretation of Part IV.

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

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

“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 maintenance or other payments of money made by the Family Judge under this Act or under–
 - (i) any law governing divorce or matrimonial causes;
 - (ii) any law governing the guardianship of children;
 - (iii) Part VII or XI of the Children Act 2009; or
 - (iv) the Matrimonial Causes 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 and in relation to the Supreme Court, the Registrar.

(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.

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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 Schedule 1; 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 Schedule 1 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 Schedule 1 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 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;

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

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

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

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

(2) Where on any occasion on which earnings fall to be paid to a defendant there are in force two or more attachment of earnings orders relating to those earnings, then, for the purpose of complying with Schedule 1, 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 Schedule 1 in pursuance of any earlier order.

(3) An employer who, in pursuance of an attachment of earnings order, makes a payment under Schedule 1 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—
 - (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

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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.

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 Schedule 1 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 defendant's 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 Chief Secretary, 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 Chief Secretary 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 in 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—

- (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

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

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

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

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

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

Special provisions as to magistrates' court.

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

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

- (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.

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(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 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, other than a financial agreement made under Part VIA of the Matrimonial Causes Act, that is made in writing, 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 by virtue of section 62 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 is satisfied either—

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

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

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

(2) *Deleted*

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

Alteration of maintenance agreement after death of one Party.

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

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 Family Judge 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.

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 Court of Appeal 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 an application to the Family Judge for an order under this section.

(2) Where on a application for an order under this section the Judge is satisfied that the defendant has used, or threatened to use, violence against the person of the applicant or a child of the family and that it is necessary for the protection of the applicant or a child of the family that an order should be made under this subsection he 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 an application for an order under this section, the Judge is satisfied–

- (a) that the defendant has used violence against the person of the applicant or a child of the family, or
- (b) that the defendant has threatened to use violence against the person of the applicant 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 applicant or a child of the family,

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

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

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

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

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

(7) *Deleted*

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

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

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

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

(10) The Judge, 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 applicant or, as the case may be, the child of the family.

Supplementary provisions with respect to orders under section 69.

70.(1) The Family Judge 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 application 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 Family Judge makes an order under section 69 which provides that the defendant—

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

the Judge may, if it is satisfied that the defendant has physically injured the applicant 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 the Family Judge 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 applicant 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.

(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 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.

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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 Judge, the magistrates' court may refuse to make an order on the application, and no appeal shall lie from that refusal; but if in any proceedings before the Family Judge relating to or comprising the same subject matter as that application the Judge so orders, the application shall be re-heard and determined by the magistrates' court.

Power to make Regulations.

74.(1) The Minister may by Regulations make provisions for carrying out the purposes of this Act.

(2) The Minister may by Regulations make provisions to give effect to any international measures in relation to maintenance obligations including European Community Regulations, International Conventions or Protocols that requires to be implemented in Gibraltar or to transpose any European Union Directives into the law of Gibraltar.

Saving and transitional provisions.

75.(1) Notwithstanding any repeal or amendments made by this Act to the Maintenance Act, any—

- (a) complaint or application made to the magistrates' court;
- (b) order made by the magistrates' court or the Supreme Court on any such complaint or application, or any appeal;
- (c) matrimonial or affiliation proceedings commenced and continued in the magistrates' court; or
- (d) other proceedings commenced and continued in such court,

in accordance with the provisions of the Maintenance Act prior to the coming into operation of this Act, shall be deemed to have been validly made, commenced or continued, and an appeal against an order or judgement of the magistrates' court that is pending in the Supreme Court shall continue as if this Act has not been made.

(2) Upon coming into operation of this Act, any case, complaint, application or proceedings referred to in subsection (1) which has not been disposed of, the magistrates' court may if it appears to the court convenient to do so refer those matters forthwith to the Family Judge for hearing and disposal.

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

PART VIII
INTERNATIONAL MAINTENANCE OBLIGATIONS

Interpretation for Part VIII.

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

“Article” means an Article of Council Regulation (EC) No. 4/ 2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations;

“EC Regulation” means the Council Regulation (EC) No. 4/ 2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.

Central Authority.

77.(1) The Minister with responsibility for Justice—

- (a) is designated the Central Authority for the purposes of the EC Regulation; and
- (b) shall receive and transmit an application for a declaration of enforceability under Article 27 in Gibraltar.

(2) The Minister referred to in subsection (1) may by order designate the Registrar of the Supreme Court to carry out, on his behalf, such of the functions of the Central Authority as he shall specify.

Refusal or suspension of enforcement decision.

78.(1) The Magistrates’ Court shall have jurisdiction to determine—

- (a) the question of refusal or suspension of enforcement under Article 21; and
- (b) an application for a declaration of enforceability under Article 27.

(2) Where the Magistrates’ Court has determined by way of recognising a decision or declaring a decision as enforceable—

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- (a) it shall be of the same force and effect as if it had originally been made by the Magistrates' Court; and
 - (b) may be enforced in the same way as if the decision had been originally made by the Magistrates' Court.
- (3) In this section, "decision" means the "decision" defined by Article 2(1).

Review procedure.

79.(1) A defendant who fulfils the criteria laid down by Article 19.1 may apply to the Magistrates' Court for a review within the time limit set out by Article 19(2).

(2) The Magistrates' Court shall dispose of an application for a review in accordance with Article 19.

Appeals against the decision on the application for a declaration.

80.(1) Pursuant to Article 32, an appeal shall lie to the Supreme Court against the decision made by the court referred to in section 78.

(2) Subsection (1) shall be subject to Article 32(5).

Procedure on appeal.

81.(1) An appeal under this Part shall be dealt with by the Family Judge within the meaning of section 12A of the Supreme Court Act.

(2) An appeal under section 80 shall be made by way of case stated in accordance with section 62 of the Magistrates' Court Act.

(3) Section 64 of the Magistrates' Court Act shall have effect.

Language of translation.

82.(1) Where any document or a decision referred to in Articles 20, 28 and 40 has been made in any language other than English, a translation in English of that document or decision must be submitted in accordance with those Articles.

(2) For the purposes of Article 59, the accepted language for the Central Authority shall be English.

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Address and contact details of the Central Authority and the court in Gibraltar.

83.(1) The address and contact details of the Central Authority and the court in Gibraltar are provided in Schedule 2.

(2) The Government may change any contents of Schedule 2 by notice in the Gazette.

SCHEDULE 1

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 –

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

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SCHEDULE 2

1. Address and contact details of the Central Authority:

Minister for Justice
Government of Gibraltar
No. 6 Convent Place
Gibraltar.

Telephone: +350 20059267
Fax: +350 20059271
Email: moj@gibraltar.gov.gi

2. Address and contact details of the local court:

Clerk to the Magistrates' Court
120 Irish Town
Gibraltar.

Tel: + 350 20070471
Fax: + 350 20040483.