

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3,023 of 29th January, 1998



I ASSENT,
RICHARD LUCE,
GOVERNOR.

29th January, 1998.



GIBRALTAR

No. 12 of 1998

AN ORDINANCE to amend the Maintenance Ordinance.

ENACTED by the Legislature of Gibraltar.

Title.

1. This Ordinance may be cited as the Maintenance Ordinance (Amendment) Ordinance, 1998.

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Amendments to the Maintenance Ordinance

2.(1) The Maintenance Ordinance shall be amended according to the provisions of this section.

(2) Section 2 shall be amended by inserting in the appropriate place the following definitions -

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

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

“Minister” means the Minister with responsibility for social affairs.”

(3) Section 3 is amended by substituting for the words "an order under this Part" the words "a matrimonial order".

(4) Section 4 is amended in sub-section (1) by -

(a) omitting the fullstop at the end of paragraph (c) and substituting therefor a semi-colon;

(b) inserting after paragraph (c) the following new paragraph -

"(d) in the case of a complaint by virtue of section 3(h) the husband, and, in the case of a complaint by virtue of section 3(i), the wife, has assets in Gibraltar."

(5) Section 5 is amended in sub-section (1)(e) by inserting after the words "probation officer" the words "or such other person as the Minister may see fit to appoint".

(6) Section 6 is amended -

(a) in sub-section (1) by inserting after the words “probation officer” the words “or such other person as the Minister may see fit to appoint under section 5(1)(e)”;

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- (b) in sub-section (2) by inserting after the words “probation officer” the words “or such other person as the Minister may see fit to appoint under section 5(1)(e)”.

(7) Section 7 is amended -

- (a) in sub-section (1)(b)(ii) by inserting after the words “probation officer” the words “or such other person as the Minister may see fit to appoint under section 5(1)(e)”.
- (b) in sub-section (2) by inserting after the words “probation officer” the words “or such other person as the Minister may see fit to appoint under section 5(1)(e)”.
- (c) in sub-section (5) by inserting after the words “probation officer” the words “or such other person as the Minister may see fit to appoint under section 5(1)(e)”.
- (d) in sub-section (8) by inserting after the words “probation officer” the words “or such other person as the Minister may see fit to appoint under section 5(1)(e)”.

(8) Section 10 is amended in sub-section (1)(ii) by inserting after the words “probation officer” the words “or such other person as the Minister may see fit to appoint under section 5(1)(e)”.

(9) Section 11 is amended in sub-section (1)(a) by inserting after the words “probation officer” the words “or such other person as the Minister may see fit to appoint under section 5(1)(e)”.

(10) Section 12 is amended by substituting for the words "residing outside" the words "not residing or having assets in".

(11) Section 13(1) is amended -

- (a) in paragraph (d) by inserting after the words "probation officer, the probation officer" the words “or such other person as the Minister may see fit to appoint under section 5(1)(e)”.

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- (b) in paragraph (e) by inserting after the words "probation officer may be made by that officer," the words "or such other person as the Minister may see fit to appoint under section 5(1)(e) may be made by that person,".

(12) Section 15 is amended in sub-section (3) (b) by omitting the words "Captain of the Port or an officer of the Ministry of Transport" and substituting therefor the words "person responsible for the relevant register of British ships".

(13) Section 16 is amended in sub-section (3) by substituting for the expression "of £5" the expression "at level 1 on the standard scale".

(14) Section 20 is amended by substituting for paragraph (a) the following paragraph -

"(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".

(15) Section 27 is amended in sub-section (2) by substituting for the expression "of £5" the expression "at level 1 on the standard scale".

(16) Section 28 is amended by substituting for the expression "of £25" the expression "at level 2 on the standard scale".

(17) Section 31 is amended -

- (a) in sub-section (1) by inserting after paragraph (d) the following paragraph -

“(e) his cohabitee.”

- (b) in sub-section (2) by omitting everything after the words "reasonable maintenance under" and substituting therefor the words "sub-section (1)(e) unless he has an obligation under paragraph (b) or (c) of that subsection."

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(17A) Section 33 shall be amended in subsection (1) by inserting after paragraph “(c)” the following paragraph -

“(d) her cohabitee, if he is unable by reason of old age or mental or physical disability to maintain himself.”.

(18) The following sections shall be inserted after section 33 -

“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 33(1)(d) then, without prejudice to the right of any such person to apply for a matrimonial order under Part I -

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

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

Maintenance orders: penalty for breach.

33B.(1) any case where -

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

the person for whose benefit the payments are required to be made may make a complaint (hereinafter in this section referred to as “the complainant”) to a justice of the peace giving details of the failure to comply.

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

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(3) On the hearing of the complaint, and, without prejudice to any order made, the magistrates' court may order the debtor to pay the complainant a sum not exceeding £5000.

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

(5) In this section "debtor" means a person who is the subject of an order by the magistrates' court to pay maintenance to another."

(19) Sections 34, 35, 36 and 37 are amended in their respective paragraphs (b) by substituting for the words "Director of Labour and Social Security" wherever they appear the words "person appointed by the Minister from time to time for the purposes of this section".

(20) Section 38 is amended in sub-section (1) by -

- (a) inserting after the word "section" the reference "33A,";
- (b) inserting after the word "defendant" the words "is resident or has assets in Gibraltar".

(21) Section 39 is amended -

- (a) in paragraph (b) by substituting for the final fullstop a semi-colon;
- (b) by inserting a new paragraph (c) as follows -
 - "(c) subject to section 31(2) that the defendant shall pay to the complainant such weekly or other periodical sum as the court considers reasonable in all the circumstances of the case for the maintenance of a wife."

(22) Section 40 is amended -

- (a) in paragraph (b) by substituting for the final full stop a semi-colon;

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(b) by inserting after paragraph (b) the following new paragraph -

"(c) where the complaint is made under section 33A, a matrimonial order under Part I."

(23) Section 42 is amended in subsection (2) by inserting after the word "section" and before the figure "34" the reference "33A,".

(24) Section 44 is amended in sub-section (1) by substituting for the words "residing outside" the words "not residing or having assets in".

(25) The following section shall be inserted after section 45 -

"Registration of Maintenance Order

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

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

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

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- (b) if it appears to the magistrates' court to which a complaint seeking a variation of the maintenance order is made, that it is for any reason appropriate to remit the complaint to the Supreme Court, the magistrates' court shall so remit the complaint and the Supreme Court shall deal with the complaint as if it were an application to the Supreme Court to vary the maintenance order.

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(3) Where -

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

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

(4) Where notice is given under subsection (3) -

- (a) proceedings for the enforcement of the maintenance order registered in the magistrates' court shall be commenced before the cancellation of the registration and no process or the enforcement of the order shall be issued in consequence of any such proceedings begun before the giving of the notice;
- (b) any warrant of commitment issued for the enforcement of the maintenance order shall cease to have effect when the person in possession of the warrant is informed of the giving of the notice, unless the defendant has then already been detained in pursuance of the warrant; and

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(c) the magistrates' court shall cancel the registration on being satisfied that -

- (i) no process for the enforcement of the maintenance order registered in the magistrates' court issued before the giving of the notice remains in force; and
- (ii) no proceedings for the variation of the order are pending in the magistrates' court.

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

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

(26) Section 46 is amended in subsection (2) by substituting for word and sum "of £5" the words and figure "at level 1 on the standard scale".

(27) Section 47 is amended by substituting for the word and figures "of £25" the words and figure "at level 2 on the standard scale".

(28) Section 58 is amended in subsection (1) -

- (a) by substituting for the word and sum "of £10" the words and figure "at level 1 on the standard scale";
- (b) by substituting for the word and sum "of £25" the words and figure "at level 2 on the standard scale".

(29) Section 67 is amended in subsection (1) by substituting for the word and sum "of £25" the words and figure "at level 2 on the standard scale".

(30) The following Part shall be inserted after Part VI -

“PART VII

SUPPLEMENTARY POWERS OF THE COURT

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

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

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

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

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

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

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

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

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

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

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

(a) that the summons has not been served on the defendant or has not been served on the defendant within a reasonable time before the hearing of the complaint, or

(b) that the summons requires the defendant to appear at some other time or place, and any order made by virtue of this sub-section is in this section and in section 70 referred to as an "expedited order".

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(7) The power of the court to make, by virtue of sub-section (6), an expedited order under sub-section (2) may be exercised by a single Justice of the Peace.

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

- (a) the date of the expiration of the period of 28 days beginning with the date of the making of the order; or
- (b) the date of the commencement of the hearing, in accordance with the provisions of the Magistrates' Court Ordinance of the complaint for an order under this section.

(9) An order made under this section may be made subject to such exceptions or conditions as may be specified in the order and, subject in the case of an expedited order to sub-section (8), may be made for such term as may be so specified.

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

Supplementary provisions with respect to orders under section 69.

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

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

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

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

Powers of arrest for breach of section 69 order.

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

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

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

(2) Where, by virtue of sub-section (1), a power of arrest is attached to an order, a police officer may arrest without warrant a person whom he has reasonable cause of suspecting of being in breach of any such provision of the order as is

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mentioned in paragraphs (a), (b) or (c) of sub-section (1) by reason of that person's use of violence or, as the case may be, his entry into the matrimonial home.

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

(a) he shall be brought before a Justice of the Peace within a period of 24 hours beginning at the time of his arrest, and

(b) the Justice of the Peace before whom he is brought may remand him.

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

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

(a) the application is substantiated on oath, and

(b) the justice has reasonable grounds for believing that the other party to the marriage had disobeyed that order.

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

Jurisdiction of magistrates' court for breach of injunction.

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72. Any person who is in breach of an injunction or other order of the court to which this Ordinance 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 level 3 on the standard scale, or to both.”.

Passed by the Gibraltar House of Assembly on the 19th day of January, 1998.

D J REYES,

Clerk to the Assembly

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