

**LAWS OF BRUNEI**

**CHAPTER 190**  
**MARRIED WOMEN**

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**REVISED EDITION 2014**

**CHAPTER 190**

**MARRIED WOMEN**

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## MARRIED WOMEN ACT

### **An Act to provide for the rights of married women and to provide for matters incidental thereto**

*Commencement: 1st August 1999*

#### PART I

#### PRELIMINARY

##### **Citation.**

1. This Act may be cited as the Married Women Act.

##### **Non-application.**

2. This Act shall not apply in any matter if any of the parties professes the Islamic religion.

##### **Interpretation.**

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

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

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

(a) by way of wages or salary, including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary by the person paying the wages or salary or payable under a contract of service;

(b) by way of pension, including 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 an employee or agent, earnings fall to be paid to a defendant, and references to payment of earnings shall be construed accordingly;

“maintenance order” means —

(a) an order for the payment of a monthly allowance made or deemed to be made by a court under this Act;

(b) an order for the payment of periodical sums by way of maintenance or alimony to a wife or for the benefit of any child under any other law; and

(c) a maintenance order registered or confirmed by the court under the Maintenance Orders Reciprocal Enforcement Act (Chapter 175).

## PART II

### RIGHTS AND DUTIES OF HUSBAND AND WIFE

#### **Rights and duties.**

4. (1) Upon the solemnisation of marriage, the husband and the wife shall be mutually bound to cooperate with each other in safeguarding the interests of the union and in caring and providing for the children.

(2) The husband and the wife shall have the right separately to engage in any trade or profession or in social activities.

(3) The wife shall have the right to use her own surname and name separately.

(4) The husband and the wife shall have equal rights in the running of the matrimonial household.

#### **Abolition of wife’s dependent domicile.**

5. (1) Subject to subsection (2), the domicile of a married woman shall, instead of being the same as her husband’s by virtue only of marriage, be ascertained by reference to the same factors as in the case of any other individual capable of having an independent domicile.

(2) Where immediately before 1st August 1999, being the date of commencement of this Act, a woman was married and then had her husband's domicile by dependence, she is to be treated as retaining that domicile (as a domicile of choice, if it is not also her domicile of origin) unless it is changed by acquisition or revival of another domicile either on or after that date.

### **Capacity of married woman.**

6. Subject to the provisions of this Act, a married woman shall —

(a) be capable of acquiring, holding and disposing of, any property;

(b) be capable of rendering herself, and being rendered, liable in respect of any tort, contract, debt or obligation;

(c) be capable of suing and being sued in her own name either in tort or in contract or otherwise and shall be entitled to all remedies and redress for all purposes; and

(d) be subject to the law relating to bankruptcy and to the enforcement of judgments and orders,

in all respects as if she were a *feme sole*.

### **Property of married woman.**

7. (1) Subject to provisions of this Act, all property which —

(a) immediately before 1st August 1999, being the date of commencement of this Act, was the property (including the separate property) of a married woman or held for her separate use in equity;

(b) belongs at the time of her marriage to a woman married after 1st August 1999, being the date of commencement of this Act; or

(c) after 1st August 1999, being the date of commencement of this Act, is acquired by or devolves upon a married woman,

shall belong to her in all respects as if she were a *feme sole* and may be disposed of accordingly.

(2) Nothing in subsection (1) shall —

(a) be construed as affecting adversely the right of any married woman to any property which she had immediately before 1st August 1999, being the date of commencement of this Act; or

(b) interfere with or render inoperative any valid restriction upon anticipation or alienation attached to the enjoyment of any property by virtue of any provision contained in any written law in force immediately before 1st August 1999, being the date of commencement of this Act, or in any instrument executed before that date.

(3) Any instrument executed on or after 1st August 1999, being the date of commencement of this Act, shall in so far as it purports to attach to the enjoyment of any property by a woman any restriction upon anticipation or alienation which could not have been attached to the enjoyment of that property by a man, be void.

(4) For the purposes of this section relating to restrictions upon anticipation or alienation —

(a) an instrument attaching such a restriction as aforesaid, executed on or after 1st August 1999, being the date of commencement of this Act, in pursuance of an obligation imposed before that date to attach such a restriction, shall be deemed to have been executed before that date;

(b) a provision contained in an instrument made in exercise of a special power of appointment shall be deemed to be contained in that instrument only and not in the instrument by which the power was created; and

(c) the will of any testator who dies after 1st August 1999, being the date of commencement of this Act, shall (notwithstanding the actual date of the execution thereof) be deemed to have been executed after that date.

**Loans by wife to husband.**

8. Any money or other estate of the wife, lent or entrusted by her to her husband for the purpose of any trade or business carried on by him or otherwise, shall be treated as assets of her husband's estate in case of his bankruptcy under reservation of the wife's claim to a dividend as a creditor for the amount or value of such money or other estate after, but not before, all claims of the other creditors of the husband for valuable consideration in money or money's worth have been satisfied.

**Money and property derived from housekeeping allowance.**

9. If any question arises as to the right of a husband or wife to money derived from any allowance made by the husband for the expenses of the matrimonial home or for similar purposes, or to any property acquired out of that money, the money or property shall, in the absence of any agreement between them to the contrary, be treated as belonging to the husband and the wife in equal shares.

**Gifts by husband to wife.**

10. Nothing in this Part shall give validity, as against creditors of the husband, to —

(a) any gift by a husband to his wife of any property which, after such gift, continues to be in the order and disposition or reputed ownership of the husband; or

(b) any deposit or other investment of moneys of the husband made by or in the name of his wife in fraud of his creditors but any moneys so deposited or invested may be followed as if this Act had not been passed.

**Remedies of married woman.**

11. (1) Every married woman shall have in her own name against all persons whomsoever, including her husband, the same civil remedies and also, subject as regards her husband to subsection (3), the same remedies and redress by way of criminal proceedings for the protection and security of her own property as if that property belonged to her as a *feme sole*.

(2) In any charge or other proceedings under this section, it shall be sufficient to allege that property to be her property.

(3) No criminal proceedings shall be taken against a husband or wife while they are living together as to or concerning any property claimed by her or him respectively nor while they are living apart as to or concerning any act done by the husband or wife while they were living together concerning property claimed by the wife or husband respectively unless that property has been wrongly taken by the husband or wife when leaving or deserting or about to leave or desert the wife or husband respectively.

(4) In any action or proceedings by a woman or by a next friend on her behalf, the court before which that action or proceedings is pending shall have jurisdiction by judgment or order to order payment of the costs of the opposite party out of property which is subject to a restraint on anticipation, and may enforce such payment by the appointment of a receiver and the sale of the property or otherwise as is just.

#### **Wife's antenuptial debts and liabilities.**

12. (1) A woman after her marriage shall continue to be liable for all debts contracted and all contracts entered into or wrongs committed by her before her marriage, including any sums for which she is liable as a contributory, either before or after she has been placed on the list of contributories under and by virtue of the Companies Act (Chapter 39).

(2) A woman referred to in subsection (1) may be sued for any such debt and for any liability in damages or otherwise under any such contract or in respect of any such wrong.

#### **Actions in tort between husband and wife.**

13. (1) Subject to this section, each of the parties to a marriage shall have the like right of action in tort against the other as if they were not married.

(2) Where an action in tort is brought by one of the parties to a marriage against the other during the subsistence of the marriage, the court may stay the action if it appears that —

(a) no substantial benefit would accrue to either party from the continuation of the proceedings; or

(b) the question or questions in issue could more conveniently be disposed of on an application made under section 14,

and without prejudice to paragraph (b) the court may, in such an action, either exercise any power which could be exercised on an application under section 14, or give such directions as it thinks fit for the disposal under that section of any question arising in the proceedings.

### **Property disputes between husband and wife.**

14. (1) In any question between husband and wife as to the title to or possession of property, either party may apply by summons or otherwise in a summary way to a Judge of the Supreme Court, who may make such order with respect to the property in dispute and as to the costs of and consequent on the application as he thinks fit, or may direct the application to stand over, and any inquiry touching the matters in question to be made in such manner as he thinks fit.

(2) Any order made under this section shall be subject to appeal in the same way as an order made by a Judge in an action pending in the High Court.

(3) The Judge may, if either party so requires, hear any such application in his chambers.

(4) An application may be made under this section by either of the parties to a marriage notwithstanding that their marriage has been dissolved or annulled so long as the application is made within the period of 3 years beginning with the date on which the marriage was dissolved or annulled; and references in this section to a husband or a wife shall be construed accordingly.

### **Married woman as executrix or trustee.**

15. A married woman who is —

(a) an executrix or administratrix, alone or jointly with any other person or persons, of the estate of any deceased person; or

(b) a trustee alone or jointly as aforesaid of property subject to any trust,

may sue or be sued, and may transfer or join in transferring any movable or immovable property belonging to the estate or trust without her husband as if she were a *feme sole*.

**Settlement.**

16. (1) Nothing in this Part shall —

(a) interfere with or affect any settlement or agreement for a settlement made or to be made, whether before or after marriage, respecting the property of any married woman; or

(b) interfere with or render inoperative any restriction against anticipation at present attached or to be hereafter attached to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement, will or other instrument.

(2) No restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property, to be made or entered into by herself, shall have any validity against debts contracted by her before marriage, and no settlement or agreement for a settlement shall have any greater force or validity against creditors of that woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors.

**Legal representative of married woman.**

17. For the purposes of this Part, the legal personal representative of any married woman shall, in respect of her estate, have the same rights and liabilities as she would have, and be subject to the same jurisdiction as she would be, if she were living.

**Liability for breach of trust.**

18. The provisions of this Part as to liabilities of married women shall extend to all liabilities by reason of any breach of trust or devastavit committed by any married woman being a trustee or executrix or administratrix either before or after her marriage, and her husband shall not be subject to those liabilities unless he has acted or intermeddled in the trust or administration.

## PART IIA

[S 63/2010]

## PROTECTION OF FAMILY

**Interpretation of this Part.**

**18A.** (1) In this Part, unless the context otherwise requires —

“court” means a Court of a Magistrate;

“domestic violence” means the commission of any of the following acts —

(a) wilfully or knowingly causing, or attempting to cause, a family member in fear of hurt;

(b) causing hurt to a family member by such act which is known or ought to have been known would result in hurt;

(c) compelling the family member by force or threat to engage in any conduct or act from which he has a right to abstain;

(d) wrongfully confining or restraining a family member against his will;

(e) continual harassment with intent to cause distress, annoyance or humiliation, or knowing that it is likely to cause distress, annoyance or humiliation, to a family member; or

(f) causing destruction, damage or loss to property of a family member or causing financial loss to a family member;

“enforcement officer” means a police officer or any person appointed in writing by the Director of Community Development;

“expedited order” means an order made under section 18C(1);

“family member”, in relation to a person, means —

(a) a spouse or former spouse of that person;

(b) a child of that person and their descendants, including an adopted child and a step-child;

(c) the father or mother of that person;

(d) a father-in-law or mother-in-law of that person;

(e) a brother or sister of that person;

(f) a grandfather or grandmother of that person or any of their ascendants whether on the side of the father or mother of that person; or

(g) any relative or other person who in the opinion of the court should, in the circumstances, be regarded as a member of the family of that person;

“incapacitated adult” means an adult who is wholly or partially incapacitated or infirm, by reason of physical or mental disability, ill-health or old age;

“place of protection” means any place or institution —

(a) declared as such under section 18K(1);

(b) maintained or managed by any agency or voluntary organisation approved by the Minister of Culture, Youth and Sports for the purposes of this Part; or

(c) suitable whereby the owner, occupier or manager is willing to receive the victim;

“protected person” means a person who is protected under a protection order or an expedited order;

“protection order” means an order made under section 18B(1);

“relative” means a person who is related through the full-blood or half-blood, or through marriage, fostering or adoption, including *de facto* adoption;

“shared residence” means the premises at which the parties are, or have been, living together as members of the same household;

“victim” means a victim of domestic violence.

(2) Nothing in this Part shall derogate from the provisions of the Penal Code (Chapter 22) or of any other written law.

### **Protection order.**

**18B.** (1) The court may, upon being satisfied that domestic violence has been committed or is likely to be committed by any person against a family member and that it is necessary for the protection of that family member,

make a protection order restraining that person from committing domestic violence against that family member.

(2) An application under this Part may be made by —

(a) the family member concerned;

(b) an enforcement officer; or

(c) in the case of a child or an incapacitated adult, a guardian, a relative or the person responsible for the care of that child or incapacitated adult, or by any person appointed by the Director of Community Development.

(3) A protection order may be made subject to such exceptions or conditions as may be specified in the order and for such period as may be specified therein.

(4) The court, in making a protection order, may include a provision that the person against whom the order is made shall not incite or assist any other person to commit domestic violence against the protected person.

(5) A protection order may, where the court is satisfied that it is necessary for the protection of the protected person, provide for such orders as it thinks fit, having regard to all the circumstances of the case, including any one or more of the following orders —

(a) granting the right of exclusive occupation to the protected person of the shared residence or any specified part of the shared residence by excluding the person against whom the order is made from the shared residence or specified part thereof, regardless of whether the shared residence is solely owned or leased by the person against whom the order is made or jointly owned or leased by the parties;

(b) prohibiting or restraining the person against whom the order is made from —

(i) entering the protected person's place of residence, shared residence or alternative residence;

(ii) entering the protected person's place of employment, school or other institution; or

(iii) making personal contact with the protected person other than in the presence of an enforcement officer or such other person as may be specified or described in the order;

(c) requiring the person against whom the order is made to permit the protected person to enter —

(i) the shared residence; or

(ii) the residence of the person against whom the order is made,

accompanied by any enforcement officer for the purpose of collecting the protected person's personal belongings;

(d) specifying the circumstances in which the person against whom the order is made may be permitted to communicate with the protected person;

(e) requiring the person against whom the order is made to permit the protected person to have the continued use of a vehicle which has previously been ordinarily used by the protected person;

(f) requiring the person against whom the order is made, the protected person, both of them or their children to attend counselling provided by such person as the Director of Community Development may approve or as the court may direct;

(g) requiring the person against whom the order is made to pay compensation under section 18E to the protected person in respect of any injuries, destruction, damage or loss as it considers just and reasonable;

(h) placing the protected person in any suitable place of protection for the safety of the protected person,

and giving such directions as are necessary for or incidental to the proper carrying into effect of any such orders.

(6) Except so far as the exercise by the person against whom a protection order is made of a right to the shared residence is suspended, restricted, prohibited or restrained by virtue of an order made under subsection (5), such order shall not affect any title or interest that the person against whom the order is made or any other person might have in that residence.

(7) Except so far as the exercise by the person against whom a protection order is made under subsection (5), such order shall not affect a right to maintenance or any other right to which the protected person is entitled under the Act.

### **Expedited order.**

**18C.** (1) Where, upon an application for a protection order under section 18B, the court is satisfied that domestic violence has been or is being committed that requires an expedited protection, the court may make an expedited order notwithstanding that —

(a) the summons has not been served on the respondent or has not been served on the respondent within a reasonable time before the hearing of the application; or

(b) the summons requires the respondent to appear at some time or place.

(2) An expedited order shall not take effect until the date on which notice of the making of the order is served on the respondent or, if the court has specified a later date as the date on which the order is to take effect, that later date.

(3) An expedited date shall cease to have effect on whichever of the following dates occurs first —

(a) the date of the expiration of a period of 28 days beginning with the date of the making of the order; or

(b) the date of commencement of the hearing of the application for an order under this section.

(4) Notwithstanding subsection (3), the court may extend the duration of the expedited order.

**Provisions with respect to protection orders and expedited orders.**

**18D.** (1) Where the court is satisfied that the person against whom a protection order or expedited order is made is likely to commit domestic violence to the protected person, the court may attach a power of arrest to such protection order or expedited order.

(2) If a power of arrest is attached by virtue of subsection (1), a police officer may arrest without warrant the person against whom the order is made when he has reasonable cause to believe that he is in breach of a protection order, an expedited order or an order made under sections 18B(5)(a) or (b), by reason of that person's use of violence or of his entry into any place prohibited under the order.

(3) Where a power of arrest is attached to a protection order or an expedited order and the person against whom such order is made is arrested under subsection (2) —

(a) he shall be brought to court within 48 hours of his arrest; and

(b) he shall not be released within that period except on the direction of the court, but nothing in this subsection shall authorise his continued detention under this paragraph after the expiry of that period.

(4) Where a person against whom a protection order or an expedited order has been made contravenes such order, the court may, in addition to any penalty provided under subsection (5), make any one or more of the orders under section 18B(5), to commence from such date as is specified in such latter order or orders.

(5) Any person who wilfully contravenes a protection order, an expedited order or an order made under section 18B(5) is guilty of an offence and liable on conviction to a fine not exceeding \$2,000, imprisonment for a term not exceeding 6 months or both and, in the case of a second or subsequent offence, to a fine not exceeding \$5,000, imprisonment for a term not exceeding one year or both.

(6) The court shall, on application made by the applicant or the person against whom a protection order or an expedited order is made, have power by order to vary, suspend or revoke any such order.

(7) The expiry by virtue of section 18C(3) of an expedited order shall not prejudice the making of a further expedited order under that section.

### **Compensation.**

**18E.** (1) Where a victim of domestic violence suffers personal injuries, destruction or damage to property, loss of property or financial loss as a result of the domestic violence, the court may award such compensation in respect of such injuries, destruction, damage or loss as it considers just and reasonable.

(2) The court may take into account —

(a) the pain and suffering of the victim, and the nature and extent of the physical or mental injury suffered;

(b) the cost of medical treatment for any such injury;

(c) any loss of earnings arising from any such injury;

(d) the amount or value of the property destroyed, damaged or lost;

(e) necessary and reasonable expenses incurred by or on behalf of the victim when he is compelled to separate or be separated from the defendant due to the domestic violence, such as —

(i) lodging expenses to be contributed to a place of protection;

(ii) transport and moving expenses;

(iii) the expenses required in setting up a separate household which, subject to subsection (3), may include amounts representing such housing loan payments or rental payments or part thereof, in respect of the shared residence or alternative residence, for such period as the court considers appropriate.

(3) In considering any expenses that may be taken into account under subsection (2)(e)(iii), the court may also take into account —

(a) the financial position of the victim as well as that of the defendant;

(b) maintenance to be paid or any other obligatory expenses to be made or contributed by the defendant that arises from the relationship that exists between the parties;

(c) the possibility of other proceedings being taken between the parties and the matter being more appropriately dealt with under other provisions of the Act or any other written law relating to the financial provision of spouses or former spouses and other dependants.

### **Jurisdiction of High Court.**

**18F.** The High Court shall have the jurisdiction and powers which belong to and are exercisable by a Court of a Magistrate under this Part and Part III.

### **Procedure.**

**18G.** (1) All applications to a Court of a Magistrate under this Part and Part III shall be made and heard in the same manner and in accordance with the same procedure as applications for summonses are made and heard by the Court of a Magistrate under the provisions of the Criminal Procedure Code (Chapter 7) and shall be deemed to be complaints for the purposes of that Code.

(2) The Chief Justice may make rules for the purpose of giving effect to sections 18B and 18C 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 section 18B(5)(a).

(3) A court before which any application is heard may make such order as to costs as it thinks just and reasonable.

### **Power of arrest.**

**18H.** (1) Where a police officer believes on reasonable grounds that domestic violence has been committed or is likely to be committed by any person against a family member and that it is necessary for the protection of the family member for the person to be detained until a protection order or expedited order is obtained, the officer may without warrant, arrest such person and every person so arrested shall be taken to a police station.

(2) Such person shall thereafter be dealt with under section 33 of the Criminal Procedure Code (Chapter 7).

**Information on offences involving domestic violence.**

**18I.** (1) Any person who has reason to believe that an offence involving domestic violence is being or has been committed may give information in respect thereof to an enforcement officer.

(2) No person who gives any such information in good faith shall incur any liability for defamation or otherwise in respect of the giving of such information.

**Duties of enforcement officer.**

**18J.** (1) The duties of an enforcement officer include —

(a) assisting a victim to file a complaint regarding the domestic violence;

(b) providing or arranging transportation for the victim to an alternative residence or to a place of protection if such transportation is required;

(c) providing or arranging transportation for the victim to the nearest hospital or medical facility for treatment of injuries if such treatment is needed;

(d) explaining to the victim his rights to protection against domestic violence;

(e) accompanying the victim to his residence or previous residence to collect his personal belongings;

(f) such other duties as are necessary or expedient for giving effect to and carrying out the provisions of this Part.

(2) An enforcement officer who is also police officer has the following additional duties —

(a) exercising the powers of arrest under this Part or under any other written law;

(b) removing or supervising the removal of a person excluded from a shared residence where the court has issued an order under section 18B(5)(a).

**Place of protection.**

**18K.** (1) The Minister of Culture, Youth and Sports may, by notification published in the *Gazette*, declare any place or institution to be a place of protection for the purposes of this Part.

(2) The Permanent Secretary to the Ministry of Culture, Youth and Sports may order the transfer of protected persons from one place of protection to another as and when the need arises.

**Power of Director to place victim in place of protection.**

**18L.** The Director of Community Development may, upon being satisfied that domestic violence has been or is being committed against a family member and that it is necessary for the protection of that family member, place that family member in a place of protection until application for a protection order or an expedited order can be made.

**Duties of Director.**

**18M.** The Director of Community Development shall be responsible for the reception, care, welfare and safety of any victim sent to a place of protection under this Part for the period for which the victim is in that place of protection.

## PART III

## MAINTENANCE OF WIVES AND CHILDREN

**Court may order maintenance.**

**19.** (1) Any married woman whose husband neglects or refuses to provide her reasonable maintenance may apply to a Court of a Magistrate and that court may, on due proof thereof, order the husband to pay a monthly allowance or a lump sum for her maintenance.

(2) If any person neglects or refuses to maintain his legitimate or illegitimate child, a Court of a Magistrate may, on due proof thereof, order that person to pay a monthly allowance or a lump sum for the maintenance of that child.

(3) The allowance referred to in subsections (1) and (2) shall be payable from such date as the court directs.

(4) The court, when ordering maintenance for a wife or child under this section, shall have regard to all the circumstances of the case including the following matters —

(a) the financial needs of the wife or child;

(b) the income, earning capacity (if any), property and other financial resources of the wife or child;

(c) any physical or mental disability of the wife or child; and

(d) the standard of living enjoyed by the applicant before the husband or father neglected or refused to provide reasonable maintenance for the wife or child.

(5) An application for the maintenance of a child under subsection (2) may be made by any person who is the guardian or has the actual custody of the child.

(6) The court shall have the same powers as are conferred by section 34 in respect of proceedings relating to an attachment of earnings order.

### **Duty to maintain child.**

**20.** (1) Where a person has accepted a child who is not his child as a member of his family, it shall be his duty to maintain that child while he remains a child, so far as the father or the mother of the child fails to do so, and the court may make such orders as may be necessary to ensure the welfare of the child:

Provided that the duty imposed by this subsection shall cease if the child is taken away by his father or mother.

(2) Any sums expended by a person maintaining that child shall be recoverable as a debt from the father or mother of the child.

### **Enforcement of maintenance order.**

**21.** (1) If any person fails to make one or more payments required to be made under a maintenance order, the court which made the order may for every breach of the order by warrant direct the amount due to be levied in the manner by law provided for levying fines imposed by a Court of a

Magistrate, or may sentence him to imprisonment for a term not exceeding one month for each month's allowance remaining unpaid.

(2) A maintenance order made by the High Court may be enforced by a Court of a Magistrate in accordance with subsection (1) as if that order had been made by the Court of a Magistrate, except that a Court of a Magistrate shall have no power to vary an order of the High Court.

### **Rescission and variation of order.**

**22.** (1) On the application of any person receiving or ordered to pay a monthly allowance under this Part and on proof of a change in the circumstances of that person, his wife or child, or for other good cause being shown to the satisfaction of the court, the court by which the order was made may rescind the order or may vary it as it thinks fit.

(2) Without prejudice to the extent of the discretion conferred upon the court by subsection (1), the court may, in considering any application made under this section, take into consideration any change in the general cost of living which may have occurred between the date of the making of the order sought to be varied and the date of the hearing of the application.

### **Power of Court of Magistrate to refuse order.**

**23.** If in the opinion of the Court of a Magistrate the matters in question between the parties or any of them would be more conveniently dealt with by the High Court, the court may refuse to make an order and in that case there shall be no appeal from its decision:

Provided that the High Court or a Judge thereof shall have power, by order, in any proceedings in the High Court relating to or comprising the same subject matter as the application refused as aforesaid or any part thereof, to direct the court to rehear or determine the same.

### **Appeals.**

**24.** (1) Subject to the provisions of this Part, an appeal shall lie from any order or the refusal of any order by a Court of a Magistrate under this Part to the High Court exercising appellate civil jurisdiction under the provisions of the Supreme Court Act (Chapter 5).

(2) No appeal made under the provisions of this Part from any order shall operate as a stay of such order unless the High Court or the Court of a Magistrate so directs.

25. *(Repealed)*. *[S 63/2010]*
26. *(Repealed)*. *[S 63/2010]*
27. *(Repealed)*. *[S 63/2010]*
28. *(Repealed)*. *[S 63/2010]*
29. *(Repealed)*. *[S 63/2010]*

#### PART IV

#### ATTACHMENT OF EARNINGS

##### **Power to make an attachment of earnings order.**

30. (1) If any person fails to comply with any maintenance order, the court which made the order may for every breach of the order make an attachment of earnings order.

(2) The court shall not, except with the consent of the defendant, make an attachment of earnings order to secure payments in accordance with a maintenance order if it appears to it that the defendant's failure to comply with the maintenance order is not due to his wilful refusal or culpable neglect.

(3) A Court of a Magistrate may make an attachment of earnings order to secure payments that the defendant is required to make under a maintenance order made by the High Court.

**Nature of order.**

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

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

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

(4) An attachment of earnings order or any variation thereof shall not come into force until the expiration of 7 days from the date when a copy of the order is served on the person to whom the order is directed.

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

**Effect of order.**

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

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

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

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

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

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

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

### **Duty of defendant and employer to comply.**

**33.** (1) A person to whom an attachment of earnings order is directed shall, notwithstanding anything in any other written law but subject to the provisions of this Part, comply with the order or, if the order is subsequently varied under section 32 with the order as varied.

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

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

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

(3) An employer who, in pursuance of an attachment of earnings order, makes a payment under this Part, 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, has on no occasion during the period of one month immediately preceding that time been the defendant's employer shall forthwith give notice in writing to that effect in the prescribed form to the court which made the order.

**Additional powers of court.**

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

(a) order the defendant to give to the court, within such period as may be specified by the order, a statement signed by him of —

- (i) the name and address of his employer, or of each of his employers if he has more than one;
- (ii) such particulars as to the defendant's earnings as may be so specified; 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; and

(b) order any person appearing to the court to be an employer of the defendant to give to the court, within such period as may be specified by the order, a statement signed by him or on his behalf of such particulars as may be specified by the order of all earnings of the defendant which fell to be paid by that person during such period as may be so specified.

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

**Obligation to notify changes.**

35. While an attachment of earnings order is in force —

(a) the defendant shall notify in writing the court which made the order of every occasion on which he leaves any employment, or becomes employed or re-employed, not later (in each case) than 7 days from the date on which he did so;

(b) the defendant shall, on any occasion when he becomes employed or re-employed, include in his notification under paragraph (a) particulars of his earnings and anticipated earnings from the relevant employment; and

(c) any person who becomes the defendant's employer and knows that the order is in force and by what court it was made shall, within 7 days of his becoming the defendant's employer or of acquiring that knowledge (whichever is the later), notify that court in writing that he is the defendant's employer, and include in his notification a statement of the defendant's earnings and anticipated earnings.

### **Power of court to determine earnings.**

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

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

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

### **Payment of money under order.**

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

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

**Earnings paid by Government or out of Consolidated Fund.**

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

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

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

**Penalties.**

**39.** (1) Any person who —

(a) fails to comply with section 33(1) or (4) or an order of a court under section 34(1);

(b) gives such a notice as is mentioned in section 33(4) or a statement in pursuance of an order of a court under section 34(1), which notice or statement he knows to be false in a material particular; or

(c) recklessly gives such a notice or statement which is false in a material particular,

shall, subject to subsection (2), be guilty of an offence and liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding one year or both.

(2) It shall be a defence for a person charged with failing to comply with section 33(1) to prove that he took all reasonable steps to comply with the attachment of earnings order to which the failure relates.

## PART V

## GENERAL

**Rules.**

**40.** The Chief Justice may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make rules generally for the carrying out of the provisions of this Act.