

this Part for the maintenance of the spouse or child, or a sufficient reason for the discharge, suspension or variation of an order under that Division for the maintenance of the spouse or child.

(3) Where a husband and wife are parties to an agreement for separation whether oral or in writing or constituted by conduct, the refusal by one party to the marriage, without reasonable justification, to comply with a request made *bona fide* by the other party to resume cohabitation shall for the purposes of this Part as from the date of the refusal constitute unlawful desertion on the part of the party so refusing.

(4) For the purposes of subsection (3) of this section, "reasonable justification" means reasonable justification in all the circumstances, including the conduct of the other party since the marriage, whether that conduct took place before or after the agreement for separation.

140. Upon the hearing of a complaint under this Part with respect to an illegitimate child the evidence of a woman that the defendant is the father of her illegitimate child or that she is pregnant by the defendant (not being her husband) shall not be accepted without corroboration in a material particular except in the following cases—

Evidence of mother as to paternity of illegitimate child, etc., not to be accepted without corroboration except in certain cases.

(a) where the defendant is present in court during the hearing of the complaint and does not give evidence on oath denying that he is the father of the child or that she is pregnant by him;

and

(b) where the defendant is not present in court during the hearing of the complaint and the court is satisfied that he was duly served personally with a summons to attend the court,

and in either case the court may, subject to this Act in its discretion accept the uncorroborated evidence of the woman as sufficient evidence of the fact that the defendant is the father of the child or that she is pregnant by him.

141. Upon the hearing of a complaint under this Part by one party to a marriage against the other party to the marriage, the person making the complaint shall—

Proof of marriage.

(a) produce direct evidence of the marriage with the person against whom the complaint is made;

or

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- (b) give evidence on oath of the time, place and circumstances of the marriage.

Evidentiary effect of allegations in complaint.

142. Upon the hearing of any complaint made by or on behalf of the Minister, the Director-General or an officer of the Department an allegation in the complaint—

- (a) that the person complained against is a near relative of a child and liable to maintain the child;
- (b) that the person complained against is able to contribute to the maintenance of the child;
- (c) that any sum has been expended upon, or is due or owing for, or in respect of, the maintenance of a child;
- (d) that a child is a legitimate child;

or

(e) that a child is under the care and control of the Minister, shall be deemed to be proved in the absence of proof to the contrary.

DIVISION V

DIVISION V—PROVISIONS RELATING TO THE DISCHARGE, SUSPENSION, VARIATION AND REVIVAL OF ORDERS

Application of Division.

143. This Division shall apply and have effect subject to any other provision of this Act relating to the discharge, suspension or variation of any order made under this Part.

General power to discharge, suspend or vary order.

144. (1) Upon application made by an officer of the Department or by or on behalf of a person in whose favour or against whom an order (including an order as varied) has been made or is deemed to have been made (being an order of a kind provided for in this Part), a court of summary jurisdiction may, subject to this Division, at any time make an order discharging the order, suspending the order in whole or in part until a specified day or until further order, or varying the order.

(2) An application under subsection (1) of this section shall be heard by a court at the place where the order, the subject of the application, was made—

- (a) unless the parties to the application consent to the hearing of the application by a court sitting at another place;

or

- (b) unless the hearing of the application is adjourned, upon the application of either party, to a court sitting at another place.

(3) An order shall not be discharged, suspended or varied under this Division unless the court is satisfied—

- (a) that the order or, if the order has been varied, the original order or any order varying the original order was obtained by fraud or upon the basis of the existence of a marriage that did not in fact exist;
- (b) that the means of the person for whose benefit the order was made or the means and ability to pay of the person against whom the order was made have so altered as to justify the discharge, suspension or variation of the order;
- (c) that new facts or circumstances have arisen that have not previously been disclosed to a court in any proceedings in connection with the order and that by reason of those facts or circumstances it is reasonable to discharge, vary or suspend the order;

or

- (d) that facts or circumstances were in existence at the time of the making of the order or, if the order has been varied, the original order or any order varying the original order, that have not previously been disclosed to a court in any proceedings in connection with the order and that were not and could not by the exercise of reasonable diligence have previously been known to the party by whom or on whose behalf the discharge, suspension or variation of the order is presently sought and that by reason of those facts or circumstances it is reasonable to discharge, vary or suspend the order.

(4) An order provided for under this Part that is in force may be discharged or varied from any past or future day or may be suspended from any past or future day or in respect of any past or future period.

(5) An order that has ceased to have effect may be discharged or varied from any past day or may be suspended from any past day or in respect of any past period.

(6) The fact that the defendant is in default in complying with an order shall not preclude the discharge, suspension or variation of that order.

145. (1) Any justice, on the complaint of a near relative liable upon an order for the maintenance of a child made under this Part, may summon all or any of the persons alleged in the complaint to be near relatives of the child named in the order to appear before a court of summary jurisdiction at a time and place to be appointed in the summons, and shall give notice thereof to the Director-General.

Variation of
order against
near relative
of child.

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(2) At the time and place so appointed, or at any adjourned hearing of the complaint, the court may make further inquiry as to the relationship to the child of the complainant and the persons summoned and as to their respective financial capacity to maintain or contribute to the maintenance of the child, and may make such order as appears just—

(a) increasing, reducing, or varying the periodical sum to be thereafter paid by the complainant;

(b) suspending for a specified time, or annulling, the previous order;

or

(c) directing that the persons so summoned, or any one or more of them, shall thereafter pay for or contribute towards the maintenance of the child,

or may make such other order not inconsistent with the provisions of this Act as appears just.

(3) Subsection (2) of this section shall not authorize any court of summary jurisdiction to annul an adjudication that any person is the father of an illegitimate child.

Effect of
suspension
order.

146. (1) Where an order provided for under this Part is suspended until a specified day, the order, unless earlier revived pursuant to this Division shall without any further or other order revive and again take effect upon the specified day.

(2) Where an order is suspended until further order, it shall not again take effect unless and until an order reviving it is made under this Division.

(3) Subject to subsection (4) of this section, the fact that an order provided for under this Part is suspended shall not prevent the enforcement of the order so far as it relates to any period before the day as from which the suspension took or takes effect.

(4) Where an order provided for under this Part is suspended, the court may order that the whole or any part of any moneys owing under the order as at the day from which the suspension took or takes effect shall not be recoverable under this Act during the period of the suspension.

Plural births.

147. Where an order under this Part for the maintenance of an illegitimate child is made before the birth of the child and two or more children are born, an application may be made under this Part for variation of the order to provide for the maintenance of the additional child or children.

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to revive
suspended
order.

148. (1) Where an order under this Part has been made and has been suspended under this Division until a specified day or until further order, a court of summary jurisdiction may, upon application made by an officer of the department or by or on behalf of any person for whose benefit the order was made, make an order reviving the suspended order in whole or in part, with or without variation, as the court thinks fit.

(2) An application under subsection (1) of this section shall be heard by a court at the place where the suspending order was made unless—

(a) the parties to the application consent to the hearing of the application by a court sitting at another place;

or

(b) the hearing of the application is adjourned, upon the application of either party, to a court sitting at another place.

(3) A suspended order may be revived from any past day or any future day (not being a day subsequent to the expiration of the period of the suspension) specified in the reviving order and shall from that day have and (where necessary) be deemed to have effect accordingly.

(4) Where the court revives an order from a past day it may direct that payment in respect of any period before the date of the reviving order be made in one sum or by such instalments as the court specifies in the reviving order.

DIVISION VI—PROCEDURAL

DIVISION VI

149. (1) Where a complaint is made under this Act and unless express provision is otherwise made by this Act, a justice—

Complaints.

(a) may issue a summons addressed to the defendant commanding him to attend the court upon the hearing of the complaint;

or

(b) if satisfied by oath that the whereabouts of the defendant is unknown to the complainant, or that the defendant has moved or is about to move out of the State or to a distant part of the State, may issue a warrant for the apprehension of the defendant and for his being brought before a court pursuant to this Act.

(2) Two or more complaints made against a defendant by a complainant, whether on the complainant's own behalf, on behalf of other persons or both on the complainant's own behalf and on the behalf of other persons, may be joined in the one form of complaint.

(3) Where two or more complaints are joined in the one form of complaint—

(a) one summons or warrant may be issued in respect of those complaints;

(b) those complaints shall, unless the court otherwise orders, be heard and determined by the court at the same time;

and

(c) the court may make one order in respect of those complaints but the order shall be deemed to be a separate order in respect of each of the complaints in respect of which it was made.

(4) Where complaints—

(a) for maintenance of a child are made by the same complainant against the father and the mother or the adoptive father and adoptive mother of that child;

or

(b) for the maintenance of an illegitimate child are made by the same complainant against a person alleged to be the father of that child as well as against the mother of that child,

the complaints may, if the court thinks fit, be heard and determined by the court at the same time.

**Complaints
against father
of illegitimate
child.**

150. No complaint under this Part against the father or alleged father of an illegitimate child shall be made except—

(a) by or on behalf of the mother of the child in relation to whom the complaint is made;

(b) by or on behalf of the child itself;

or

(c) by an officer of the Department.

151. Except as otherwise provided by this Act, an order made by a court under this Act directing the payment of moneys may direct that—

Orders may direct mode of payment.

(a) the moneys be paid to the Director-General or to some other person at a place specified in the order;

or

(b) the moneys payable under the order be paid in a lump sum, or periodically or by instalments in accordance with the direction of the court, or partly in a lump sum and partly periodically or by instalments in accordance with the direction of the court.

152. (1) If a defendant to whom a summons has been issued does not appear in accordance with the summons or on any day to which the hearing of the summons is adjourned, the court, upon proof of the service of the summons, may issue a warrant for the apprehension of the defendant and for his being brought before the court, or may proceed with the hearing of the complaint in the absence of the defendant.

Non-appearance of defendant.

(2) Where a warrant has been issued for the apprehension of the defendant (whether in the first instance or upon the defendant failing to appear in accordance with a summons) and the court is satisfied that after strict inquiry and search the defendant cannot be found, the court may proceed to hear the complaint in the absence of the defendant.

(3) The inquiry and search made for the defendant for the purposes of this section may be proved by evidence given orally or by the affidavit of the person or persons who made the inquiry and search.

153. (1) Where the court proceeds pursuant to the provisions of this Division to make an order against the defendant in his absence, the defendant may, within twenty-eight days after the order comes to his knowledge, make application to the court that made the order to set aside the order and to re-hear the matter of the complaint in respect of which the order was made.

Court may set aside order made in the absence of the defendant.

(2) Notice in writing of intention to make any such application shall be lodged with the clerk of the court and a copy thereof shall be served on the complainant either personally or by registered

post a reasonable time in the circumstances before the day specified in the notice for the making of the application.

(3) Upon proof of service of the notice the court may, if it thinks it just in the circumstances of the case so to do, set aside the order made in the absence of the defendant on such terms as to costs as it thinks fit and may proceed to hear and determine the matter of the complaint or, in the absence of the complainant, may adjourn the matter of the application to some other time or place and may direct such notice as the court thinks fit of the adjourned hearing to be given to the complainant.

Court may
require
defendant to
state his
employer, etc.

154. (1) In any proceedings in which maintenance is sought, or in which the enforcement of an order for maintenance is sought, the court may—

(a) direct the defendant to attend before the court at a time fixed by the court to be examined concerning his means and ability to comply with the order;

(b) direct the defendant to state to the court or to furnish to the court within any time fixed by the court a statement signed by the defendant setting out—

(i) the name and address of his employer or, if he has more than one employer, of each of his employers;

(ii) particulars as to the defendant's earnings;

and

(iii) such other particulars as the court thinks necessary for the enforcement of the order;

or

(c) direct any person who appears to the court to be indebted to the defendant or to be the employer of the defendant to give to the court, within any time fixed by the court, a statement signed by him or on his behalf containing such particulars as are specified in the direction of his indebtedness to the defendant or of all the earnings of the defendant that became payable by that person during a specified period.

(2) If the defendant fails to comply with the direction, the court may, upon proof that the direction was served personally upon the defendant, or that the direction was duly posted to the defendant

at his last address of which the court has notice. issue a warrant for the apprehension of the defendant.

(3) A document purporting to be a statement referred to in subsection (1) of this section shall be admissible in evidence in any proceedings under this Act relating to maintenance.

(4) Every person who—

(a) without reasonable cause or excuse refuses or fails to comply with a direction under this section that is applicable to him;

or

(b) in any statement made or notice furnished to a court pursuant to the provisions of this section, makes a statement that he knows to be false or misleading in a material particular or does not believe on reasonable grounds to be true,

shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

DIVISION VII—ENFORCEMENT OF ORDERS AND SUPPLEMENTARY DIVISION VII
PROVISIONS

*Subdivision 1—Attachment of Property, Caveats, Warrants,
Disobedience of Orders, Etc.*

155. Where proceedings have been commenced by complaint under this Act in which—

Attachment of
property of
persons against
whom order is
sought.

(a) an order for maintenance;

(b) an order for the enforcement of an order for maintenance;

or

(c) an order for the recovery of moneys in repayment of the cost of assistance provided by the Director-General under this Act,

is, or will be sought, notice may be given to—

(d) any banker or other person having, or supposed to have, the care, custody, or control of any money or property, belonging or payable to any person complained against;

or

(e) any person against whom the person complained against has any civil or statutory right to the payment of money,

not to pay or part with the possession of that money or property until the complaint has been heard and determined, and the money and property shall thereby become and be attached in the hands of

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the person having the care, custody, or control thereof, who shall be compellable to give evidence on the hearing of the complaint as to all matters relating to or concerning the money or property.

Order for
delivery of
attached
property.

156. (1) The court hearing any complaint, upon the making of which notice has been given to any such banker or other person under this Subdivision may, by order, direct that the money or property attached, or such portion thereof as it orders, be paid or handed over to the Director-General, or to the person entitled to receive the money under a maintenance order.

(2) The person having the care, custody, or control of the money or property attached shall pay or hand it over accordingly, and shall be thereby discharged from all liability to the owner thereof, or any person claiming under him in respect of the money or property so paid or handed over, and, except as to such portion of the money or property attached as the court may, within one month from the service of the notice of attachment, order to be so paid or handed over, the attachment shall be determined.

Attachment
may be pleaded.

157. (1) Any person who has received any notice attaching money or property in his care, custody, or control may, before the hearing of the complaint, after giving notice in writing of the application to the person by whom notice was given apply to a court of summary jurisdiction for an order setting aside the notice with respect to the whole or any part of the property or money subject to the notice.

(2) Any such person may plead the notice in bar to any action, suit, or other proceeding that may be instituted against him for the recovery of any such money or property by the owner or any person claiming under him.

Liability of
persons
contravening
order.

158. Any person who, after receipt of a notice attaching money or property in his care, custody or control—

(a) pays or hands over any such money or property otherwise
than in accordance with the order made by the court;

or

(b) neglects or refuses to comply with the order made,

shall be personally liable to pay to the Director-General or the payee mentioned in the maintenance order the amount of money or an amount equal to the value of the property ordered to be paid or handed over, and such an amount may be recovered before a court in a summary way.

Collection by
police of
moneys due to
Director-
General.

159. (1) Subject to the provisions of a maintenance order, any member of the police force shall, when so directed in writing signed by the Director-General and countersigned by the Commissioner of Police, demand, collect, and receive from any person all sums of money due to the Director-General for which that person is liable under any maintenance order.