



ANALYSIS

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1963, No. 63

An Act to amend the Destitute Persons Act 1910

[23 October 1963]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Destitute Persons Amendment Act 1963, and shall be read together with and deemed part of the Destitute Persons Act 1910 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the first day of January, nineteen hundred and sixty-four.

PART I

OVERSEAS MAINTENANCE

2. Interpretation—(1) In this Part of this Act, unless the context otherwise requires,—

“Certified copy”, in relation to an order of a Court, means a copy of the order certified by the proper officer of the Court to be a true copy:

“Commonwealth country” means a country that is a member of the Commonwealth of Nations; and includes every territory for whose international relations the Government of any such country is responsible; and also includes the Republic of Ireland as if that country were a member of the Commonwealth of Nations:

“Country” includes any State, territory, province, or other part of a country:

“Court” means, in relation to a Court in New Zealand, a Magistrate’s Court of civil jurisdiction:

“Defendant” means the person against whom a maintenance order (including a provisional maintenance order) has been made:

“Maintenance order” means a subsisting order (including an order in or consequent upon an affiliation order) for the periodical payment by any person of sums of money towards the maintenance of any person whom he is, according to the law in force in the place where the order is made, liable to maintain and, where the order has been varied, means the order so varied and all orders by which it has been varied.

(2) For the purposes of this Part of this Act, the Cook Islands shall be deemed to be a Commonwealth country not forming part of New Zealand.

Cf. 1921, No. 20, s. 2; 1959, No. 74, s. 2 (1)

Enforcement of Overseas Orders in New Zealand

3. Registration of Commonwealth orders—Where a maintenance order has been made against any person by any

Court in any Commonwealth country outside New Zealand, or where a maintenance order (other than an order in an affiliation order) made provisionally only against any person by any such Court has been confirmed in a Commonwealth country outside New Zealand, it may, in either case, whether the order was made or confirmed before or after the commencement of this Act, be registered in New Zealand by filing a certified copy thereof in the office of a Court in New Zealand in the prescribed manner.

Cf. 1921, No. 20, s. 3

4. Registration of order may be set aside—(1) The registration of an order under section 3 of this Act shall be set aside if the Court in which the order has been registered, whether before or after the commencement of this Act, is satisfied, on application by the defendant, that the order is not an order to which section 3 of this Act applies.

(2) In the case of an order made in or consequent upon an affiliation order, that registration may also be set aside if that Court is satisfied, on application by the defendant, that the defendant neither appeared in the proceedings in which the affiliation order was made nor was duly served with a summons to appear in those proceedings.

5. Confirmation of provisional Commonwealth orders—(1) This section shall apply—

- (a) To any maintenance order (other than an order in an affiliation order); and
- (b) To any order varying any maintenance order where that maintenance order has, whether before or after the commencement of this Act, been either registered or confirmed in New Zealand—

in any case where the maintenance order or the order varying the maintenance order, as the case may be, has been made provisionally only by a Court in any Commonwealth country outside New Zealand and has no effect unless and until confirmed elsewhere.

(2) Where a certified copy of any order to which this section applies, together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed, has been transmitted to the Secretary for Justice, those documents shall be sent to a Court for the hearing of proceedings for confirmation of the order.

(3) On receipt of such documents as aforesaid by a Court—

(a) Any Magistrate or Justice or any Registrar (not being a constable) may issue a summons to the defendant:

(b) Any Magistrate may issue a warrant to arrest the defendant and bring him before a Court in any case where the defendant's address is unknown or where a summons has been issued but cannot be served because the defendant cannot be found.

(4) At the hearing it shall be open for the defendant to raise any defence which he might have raised in the original proceedings had he been present, but no other defence, and the statement from the Court which made the provisional order stating the grounds on which the making of the order might have been opposed shall be conclusive evidence that those grounds are grounds on which objection may be taken:

Provided that where the provisional order is consequent upon an affiliation order it shall be a defence that the defendant neither appeared in the proceedings in which the affiliation order was made nor was duly served with a summons to appear in those proceedings.

(5) If the defendant appears at the hearing and it appears to the Court to be necessary for the purpose of any defence to remit the case to the Court which made the provisional order for the taking of any further evidence, the Court of hearing may so remit the case, and may adjourn the proceedings for the purpose.

(6) If at the hearing (whether following an adjournment or otherwise) the defendant does not appear, or on appearing fails to satisfy the Court that the order ought not to be confirmed, the Court may confirm the order either without modification or with such modification as it deems just. An order which has been confirmed with modifications shall for all the purposes of this Act have effect in the form in which it is confirmed.

(7) The Court confirming any maintenance order to which paragraph (a) of subsection (1) of this section applies may also, in its discretion, if it is satisfied that the defendant is of sufficient ability, at the same time order the defendant to pay, at such time or times and in such manner as the Court thinks fit, any sum not exceeding fifty pounds on account of the maintenance of the person or persons in whose favour the provisional order was made between the date of the making of that order and its confirmation. An order made under this subsection shall be a maintenance order for the purposes of the principal Act.

Cf. 1921, No. 20, s. 5

6. Confirmation of provisional orders affecting New Zealand maintenance orders—(1) This section applies to any order that has been made provisionally only by a Court in any Commonwealth country outside New Zealand, and has no effect unless and until confirmed in New Zealand, cancelling, varying, or suspending a maintenance order made in New Zealand and registered or confirmed in that Commonwealth country.

(2) Where a certified copy of any order to which this section applies, together with the depositions of witnesses, has been transmitted to the Secretary for Justice, those documents shall be sent to a Court for the hearing of proceedings for confirmation of the order.

(3) On receipt of those documents as aforesaid by a Court summonses shall be issued to such persons as the Magistrate directs.

(4) If any person summoned under subsection (3) of this section appears at the hearing and it appears to the Court to be necessary to remit the case to the Court which made the provisional order for the taking of any further evidence, the Court of hearing may so remit the case, and may adjourn the proceedings for the purpose.

(5) Subject to subsection (6) of this section, if at the hearing (whether following an adjournment or otherwise) none of the persons summoned under subsection (3) of this section appear, or if those who do appear fail to satisfy the Court that the order ought not to be confirmed, the Court may confirm the order either without modification or with such modification as it deems just. An order which has been confirmed with modifications shall for all the purposes of this Act have effect in the form in which it is confirmed.

(6) No order shall be confirmed under subsection (5) of this section unless the Court is satisfied that an order similar to the order as confirmed could have been made in New Zealand under the principal Act.

(7) Every order confirmed under subsection (5) of this section shall have effect for all the purposes of New Zealand law as if it had been made under the principal Act.

7. Rehearing and appeal in respect of confirmation of order—The provisions of sections 38 and 77 of the principal Act (which relate to rehearings and appeals) shall apply to the confirmation of any order or the refusal to confirm any order under section 5 or section 6 of this Act as if the confirmation or the refusal were an order made on a complaint under

the principal Act or the dismissal of such a complaint respectively.

Cf. 1921, No. 20, s. 5 (6)

8. Effect of registration or confirmation of overseas order in New Zealand—(1) Any order which has been registered in New Zealand, and any order (including an order of variation) which has been confirmed in New Zealand (other than an order confirmed under section 6 of this Act), shall remain an order of the Court of the country in which the order was made.

(2) Notwithstanding the provisions of subsection (1) of this section, every such order while it remains in force shall be enforceable as if made under the principal Act and the provisions of Part VIII of that Act shall apply to the defendant under any such order.

Cf. 1921, No. 20, ss. 3, 5 (6)

9. Variation in New Zealand of order registered or confirmed here—(1) Where a maintenance order has been either registered or confirmed in New Zealand, whether before or after the commencement of this Act, any Court may at any time, on the complaint on oath of any person, make an order under section 39 of the principal Act or under section 7 of the Destitute Persons Amendment Act 1951 cancelling, varying, or suspending the operation of the maintenance order for the purposes of New Zealand law; or for the purposes of New Zealand law remitting, wholly or in part, any arrears due under the maintenance order:

Provided that where it appears to the Court that the order that it proposes to make is one which, if made provisionally, may be confirmed under the law of the country in which the maintenance order was made, the Court may instead of making the proposed order make a provisional order that shall have no effect unless and until confirmed by a competent Court in that country and the provisions of subsections (5) to (9) of section 14 of this Act shall apply accordingly, except that instead of being accompanied by a statement of the grounds on which the order might have been opposed the certified copy of the order shall be accompanied by a statement of the grounds on which the provisional order has been made.

(2) Where any person makes a complaint under subsection (1) of this section, in respect of a maintenance order

registered in New Zealand, on the ground set out in paragraph (c) of subsection (1) of section 39 of the principal Act, the complaint shall be dealt with as if the maintenance order had been made under the principal Act on the date when it was made outside New Zealand.

(3) Where on the hearing of any complaint under subsection (1) of this section it appears to the Court to be necessary to remit the case to the Court which made the maintenance order for the purpose of taking any further evidence the Court may so remit the case and adjourn the proceedings for the purpose.

(4) For the purposes of the hearing of any complaint under subsection (1) of this section the evidence of any person beyond New Zealand may be taken on commission in accordance with regulations made under this Act.

(5) Where a maintenance order has been either registered or confirmed in New Zealand, whether before or after the commencement of this Act, and at any time thereafter the person in whose favour the order was made and the defendant are resident in New Zealand any Court may, on the complaint on oath of any person, make an order under section 39 of the principal Act substituting a new order for the registered or confirmed order.

(6) Any order under subsection (5) of this section may be made in any case where the Court considers it just, whether or not there would be jurisdiction to make an order by reason of paragraph (c) of subsection (1) of the said section 39.

(7) On any complaint under this section a summons shall be issued to such person or persons as the Court directs.

Cf. 1921, No. 20, s. 5 (5)

10. Proof of documents signed by officers of Court—(1) For the purposes of this Part of this Act any document purporting to be signed by any Judge, Magistrate, or officer of a Court in any Commonwealth country outside New Zealand shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it; and the officer of a Court by whom a document purports to be signed shall, until the contrary is proved, be deemed to have been the proper officer of the Court to sign the document.

(2) Every document purporting to be signed, certified, or verified by any of the persons mentioned in subsection (1) of this section shall be admitted in evidence in proceedings under

this Part of this Act if it appears to be relevant to those proceedings.

Cf. 1921, No. 20, s. 6

11. Depositions to be evidence—Depositions taken for the purposes of this Part of this Act in a Court in any Commonwealth country outside New Zealand may be received in evidence in proceedings under this Part of this Act.

Cf. 1921, No. 20, s. 7

12. Extension of application of certain provisions of Act—The Governor-General may from time to time, by Order in Council, declare that the provisions of sections 3 to 11 of this Act, or any of the provisions of those sections, shall apply to orders made, whether before or after the commencement of this Act, in any country specified in the Order as if they were orders made in a Commonwealth country.

Provision for Enforcement of Foreign Orders

13. Registration of foreign orders—(1) For the purposes of this section the expression “maintenance order” does not include any order in or consequent upon an affiliation order.

(2) The Governor-General may by Order in Council apply the provisions of this section to maintenance orders made in any country (not being a Commonwealth country) specified in the Order.

(3) Where a maintenance order to which this section applies has been made against any person by any Court or judicial officer (whether before or after the commencement of this Act), it may be registered in New Zealand by filing a certified copy thereof in the office of a Court in New Zealand in the prescribed manner.

(4) Where a maintenance order is registered under this section the Registrar of the Court in which it is registered shall cause notice of the registration in the prescribed form to be served on the defendant.

(5) The Court in which the order is registered shall, on application by the defendant, set aside the registration if the Court is satisfied—

- (a) That the order is not an order to which this section applies; or
- (b) That if the parties were domiciled and resident in New Zealand at the time when the application is heard the Court would not make an order requiring

the defendant to contribute to the maintenance of the person in whose favour the order was made (whether or not such an order might have been made at the date when the registered order was made).

(6) Any order which has been registered in New Zealand under this section shall be enforceable as if made under the principal Act, and the provisions of Part VIII of that Act shall apply to the defendant under any such order.

(7) For the purposes of this section the provisions of section 9 (except subsection (3)) and section 10 of this Act shall apply to maintenance orders and documents which originated in any country specified for the time being in an Order in Council made under subsection (2) of this section as if they were maintenance orders and documents which originated in a Commonwealth country.

(8) In any proceedings taken under this section (including proceedings for the cancellation, variation, or suspension of any order, or for the remission of arrears), the evidence of any person beyond New Zealand may be taken on commission in accordance with regulations made under this Act.

(9) Where any Order in Council under this section is revoked, the Governor-General may provide in the Order in Council by which it is revoked that all maintenance orders then registered under this section pursuant to the revoked Order shall be deemed to be registered under section 3 of this Act so long as an Order which applies to orders made in the country in which they were made is in force under section 12 of this Act, and that all matters and proceedings commenced while the Order under this section was in force and pending or in progress at the time of its revocation may be continued, completed, and enforced under section 4 and sections 8 to 11 of this Act so long as an Order which applies to orders made in that country is in force under section 12 of this Act.

New Zealand Orders for Enforcement Overseas

14. Provisional orders for confirmation overseas—(1) On any complaint in New Zealand for a maintenance order (other than an order in an affiliation order) against any person who is proved to be resident in a country outside New Zealand or who is proved to have left New Zealand with the intention of residing in a country outside New Zealand, the Court may, in the absence of that person, if after hearing the evidence it is satisfied of the truth of the complaint, make a

provisional order which shall have no effect unless and until confirmed by a competent Court in a place outside New Zealand.

(2) Where a Court in New Zealand has notice that a maintenance order made in New Zealand has been registered in a country outside New Zealand and it appears that the defendant is not resident in New Zealand, the Court may, in any case where it has ground to make an order varying the maintenance order, make instead a provisional order which shall have no effect unless and until confirmed by a competent Court in a place outside New Zealand.

(3) No provisional order shall be made under this section unless—

(a) It appears to the Court that the order is one which may be confirmed under the law of the country in which the defendant resides or intends to reside; and

(b) The order could have been made as a final order if a summons had been duly served on the defendant and he had failed to appear at the hearing.

(4) Notwithstanding that an agreement has been registered under section 47B of the principal Act (as inserted by section 4 of the Destitute Persons Amendment Act 1955) a provisional order may be made under this section, unless it appears to the Court that there is provision in the country in which the defendant resides to enable the agreement to be enforced as an order. Where any such provisional order is confirmed the registration of the agreement under the said section 47B shall be deemed to be cancelled.

(5) The evidence of any witness who is examined on any complaint under this section shall be put into writing, and the deposition shall be read over to and signed by him.

(6) Where an order is made under this section the Court shall send to the Secretary for Justice, for transmission to the country in which the defendant resides, the depositions so taken and a certified copy of the order together with a statement of the grounds on which the making of the order might have been opposed if the defendant had been duly served with a summons and had appeared at the hearing, and also such information as the Court possesses for facilitating the identification of the defendant and ascertaining his whereabouts.

(7) Where any order under this section has been remitted by the Court before which it has come for confirmation to the Court which made the order for the purpose of taking further evidence, the last-mentioned Court or any other Court

may proceed to take the evidence in the same manner and subject to the same conditions as the evidence in support of the original complaint was taken.

(8) If on the hearing of such evidence it appears to the Court that the provisional order ought not to have been made or that a different provisional order should have been made, the Court may rescind the provisional order or may discharge the provisional order and make a fresh provisional order in its stead respectively. Except where the Court rescinds the order, the depositions shall be dealt with in the same manner as the original depositions.

(9) The provisions of section 77 of the principal Act (which relates to appeals) shall apply to the refusal to make a provisional order under this section or the rescission of such an order under subsection (8) of this section.

(10) Nothing in this section shall restrict the authority of a Magistrate to make an order under section 73 of the principal Act in any case where the defendant is absent from New Zealand.

Cf. 1921, No. 20, s. 4 (1)–(5), (7), (8)

15. Effect in New Zealand of confirmation overseas of provisional order—(1) On the confirmation of an order made under section 14 of this Act, the order shall, in the form in which it is confirmed, for all the purposes of New Zealand law, become an order of the Court which made the provisional order as if the order had been made under the principal Act.

(2) Every order of variation made in New Zealand relating to any such confirmed maintenance order shall be provisional only and of no effect unless and until confirmed in the same manner as the original order:

Provided that this subsection shall not apply—

- (a) Where the defendant is residing in New Zealand at the time of the variation; or
- (b) Where the order of variation is only an order remitting arrears.

(3) The provisions of subsections (5) to (9) of section 14 of this Act shall apply to every provisional order of variation made in New Zealand.

(4) A certified copy of any order cancelling or suspending the original order or varying it, where the only variation is the remission of arrears, shall be sent by the Court to the Secretary for Justice for transmission to the country in which the original order was confirmed.

Cf. 1921, No. 20, s. 4 (6)

16. Conversion of currency—(1) Where the sum or sums ordered to be paid under a maintenance order which is registered or confirmed in New Zealand under this Part of this Act are expressed in a currency other than the currency of New Zealand, the order shall be registered or confirmed, as the case may require, as if it were an order for the payment of such sum or sums in the currency of New Zealand as, on the basis of the rate of exchange prevailing at the date of the order of the original Court, is equivalent to the sum or sums so ordered to be paid.

(2) For the purposes of this section a written certificate purporting to be signed by an officer of any bank in New Zealand or of the Reserve Bank of New Zealand that a specified rate of exchange prevailed between currencies on a specified day and that at such rate a specified sum in one currency is equivalent to a specified sum in terms of the currency of New Zealand shall be sufficient evidence of the rate of exchange so prevailing and of the equivalent sums in terms of the respective currencies.

17. Certificate of Registrar or like officer—In any proceedings under or for the purposes of this Part of this Act a certificate purporting to be signed by the Registrar of a Court or any like officer of a country in which a maintenance order is being enforced stating that a specified amount has been paid into Court or to that Registrar or officer under a maintenance order shall be evidence until the contrary is proved of the facts stated therein.

18. Regulations—(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) For facilitating communications between Courts in New Zealand and Courts in countries outside New Zealand for the purpose of the confirmation of provisional orders pursuant to this Part of this Act:
- (b) Prescribing for the purposes of sections 9 and 13 of this Act the procedure for the taking on commission of the evidence of witnesses who are beyond New Zealand:
- (c) Prescribing such forms as may be necessary for the purposes of this Part of this Act:
- (d) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Part of this Act and for the due administration thereof.

(2) All regulations made under this Part of this Act shall be laid before Parliament.

Cf. 1921, No. 20, s. 10

19. Repeals and savings—(1) The enactments specified in the Schedule to this Act are hereby repealed.

(2) All matters and proceedings commenced under any such enactments and pending or in progress at the commencement of this Act may be continued, completed, and enforced under this Part of this Act.

PART II

MISCELLANEOUS AMENDMENTS

20. Interpretation—Section 2 of the principal Act is hereby amended by omitting from the definition of the term “public institution” the words “A public lunatic asylum under the Lunatics Act 1908;”.

21. Jurisdiction under this Part of this Act—The principal Act is hereby amended by repealing section 7, and substituting the following section:

“7. Any complaint or order may be made under this Part of this Act if, when the complaint is made, the destitute person or the near relative against whom the order is sought is resident or is domiciled in New Zealand.”

22. Jurisdiction under this Part of this Act—The principal Act is hereby amended by repealing section 25, and substituting the following section:

“25. Any complaint or order may be made under this Part of this Act if, when the complaint is made, the husband or wife against whom or in whose favour the order is sought is resident or is domiciled in New Zealand.”

23. Jurisdiction under this Part of this Act—The principal Act is hereby amended by repealing section 28, and substituting the following section:

“28. Any complaint or order may be made under this Part of this Act if, when the complaint is made, the parent or child is resident or is domiciled in New Zealand.”

24. Charging orders on life insurance policies in satisfaction of maintenance orders—The principal Act is hereby amended by inserting, after section 44, the following section:

“44A. The authority conferred on any Magistrate by section 44 of this Act to make a charging order on any property of a defendant for the purpose of satisfying a maintenance order made against that defendant shall apply and be deemed at all times to have applied with respect to policies of life insurance, notwithstanding the provisions of sections 65 and 66 of the Life Insurance Act 1908 (providing for the protection of certain classes of such policies).”

Cf. 1921, No. 20, s. 8

25. Registration and enforcement of maintenance agreements between husband and wife—Section 47B of the principal Act (as inserted by section 4 of the Destitute Persons Amendment Act 1955) is hereby amended by adding to subsection (2) the following proviso:

“Provided that where any person makes a complaint under section 39 of this Act in respect of any such registered agreement on the ground set out in paragraph (c) of subsection (1) of that section, the complaint shall be dealt with as if the agreement were a maintenance order made under this Act on the date when the agreement was entered into.”

SCHEDULE

Section 19 (1)

ENACTMENTS REPEALED

- 1910, No. 38—The Destitute Persons Act 1910: Section 80. (1957 Reprint, Vol. 4, p. 93.)
 1921, No. 20—The Maintenance Orders (Facilities for Enforcement) Act 1921. (1957 Reprint, Vol. 4, p. 98.)
 1926, No. 10—The Destitute Persons Amendment Act 1926: Subsection (11) of section 9. (1957 Reprint, Vol. 4, p. 104.)
 1959, No. 74—The Maintenance Orders (Facilities for Enforcement) Amendment Act 1959.

This Act is administered in the Department of Justice.
