



ANALYSIS

<p>Title</p> <ol style="list-style-type: none"> 1. Short Title 2. Court may make separation orders 3. Application by wife for maintenance order 4. Application by husband for maintenance order 5. Maintenance order against step-parent of child 6. Maintenance of child born outside marriage 7. Furniture not to be disposed of 8. Time limit on application for paternity order 9. Meaning of "maintenance agreement" 10. Registered maintenance agreement to operate as bar to order 11. Confirmation of provisional Commonwealth orders 12. Conversion of currency 13. Person to whom money payable under maintenance order 	<ol style="list-style-type: none"> 14. Order for maintenance where matrimonial proceedings pending 15. Maintenance order in favour of person in psychiatric hospital or institution 16. Apportionment of maintenance payments 17. Discharge, variation, or suspension of orders 18. Maintenance order to cease to have effect on making of maintenance order by Supreme Court 19. Warrant to collect and warrant of distress 20. Disobedience of maintenance order 21. Proof of default 22. Sittings of Court 23. Proceedings where defendant is absent from New Zealand or cannot be found 24. Maintenance agreements to bind parties 25. Enforceability of certain orders and agreements
--	--

1971, No. 59

An Act to amend the Domestic Proceedings Act 1968

[19 November 1971]

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—This Act may be cited as the Domestic Proceedings Amendment Act 1971, and shall be read together with and deemed part of the Domestic Proceedings Act 1968 (hereinafter referred to as the principal Act).

2. Court may make separation orders—Section 19 of the principal Act is hereby amended by repealing paragraph (a) of subsection (1), and substituting the following paragraph:

“(a) That there is a state of serious disharmony between the parties to the marriage of such a nature that it is unreasonable to require the parties to continue, or, as the case may be, to resume, cohabitation with each other, and that the parties are unlikely to be reconciled; or”.

3. Application by wife for maintenance order—Section 25 of the principal Act is hereby amended by adding, as subsection (2), the following subsection:

“(2) If a married woman is incapable of authorising an agent to make any such application,—

“(a) The manager of her estate under Part VII of the Mental Health Act 1969 or under the Aged and Infirm Persons Protection Act 1912 may make the application:

“(b) Where there is no such manager, her next friend may make the application.”

4. Application by husband for maintenance order—Section 31 of the principal Act is hereby amended by adding the following subsection:

“(3) If a married man is incapable of authorising an agent to make an application under subsection (1) of this section,—

“(a) The manager of his estate under Part VII of the Mental Health Act 1969 or under the Aged and Infirm Persons Protection Act 1912 may make the application:

“(b) Where there is no such manager, his next friend may make the application.”

5. Maintenance order against step-parent of child—(1) Section 36 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) The Court may, if it thinks fit, make a maintenance order for the maintenance of any child against the step-parent of the child, on application made by any person having the lawful care of the child or by a Child Welfare Officer, if the Court is satisfied that—

“(a) The parents of the child are dead or cannot be found or are incapable of providing proper maintenance for the child; and

“(b) The child has at any time lived with the step-parent as a member of the step-parent’s family.”

(2) Section 36 of the principal Act is hereby further amended by omitting from paragraph (a) of subsection (3) the words “parents including their”, and substituting the words “parents or, as the case may be, the step-parent, including their or his”.

6. Maintenance of child born outside marriage—

(1) Section 38 of the principal Act is hereby amended by inserting in paragraph (b) of subsection (1), after the words “the child”, the words “or a Court has appointed him a guardian of the child, or declared him to be a guardian of the child, by reason of his being the father of the child”.

(2) Section 38 of the principal Act is hereby further amended by inserting in subsection (1), after paragraph (c), the following paragraph:

“(ca) Pursuant to section 18 of the Births and Deaths Registration Act 1951, his name has at any time (whether before or after the commencement of this paragraph) been entered in the Register of Births as the father of the child; or”.

7. Furniture not to be disposed of—Section 43 of the principal Act is hereby amended by inserting in subsection (1), after the words “no party”, the words “knowing that the proceedings are pending”.

8. Time limit on application for paternity order—

(1) Section 48 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsections:

“(2) If the defendant has contributed to or made provision for the maintenance of the child, or has since the birth of the child lived with the mother as man and wife, an application for a paternity order may, subject to subsection (3) of this section, be made at any time after the expiration of the period prescribed by subsection (1) of this section if the defendant has done any of the things mentioned within 2 years immediately preceding the making of the application.

“(2A) Notwithstanding anything in subsection (2) of this

section, if the defendant has admitted paternity of the child, expressly or by implication, an application for a paternity order may be made at any time.”

(2) Section 48 of the principal Act is hereby further amended by omitting from subsection (1) the words “subsection (2)”, and substituting the words “subsections (2) and (2A)”.

9. Meaning of “maintenance agreement”—(1) Section 54 of the principal Act is hereby amended by inserting in subsection (1), after paragraph (b), the following paragraph:

“(ba) Any written agreement made between the mother of a child and a man acknowledging himself to be the father of the child, and providing for the periodical payment by the man of sums of money towards the maintenance of the mother, where the mother is a person to whom—

“(i) He is not married; and

“(ii) He has never been married, or to whom he has been married but the marriage was dissolved before the conception of the child; or”.

(2) Section 55 of the principal Act is hereby amended by adding to subsection (2) the following proviso:

“Provided that in the case of a maintenance agreement within the meaning of paragraph (ba) of subsection (1) of section 54 of this Act proceedings shall not be taken under this Act for its enforcement in respect of any money payable under the agreement in respect of any period after the expiration of 5 years from the birth of the child.”

10. Registered maintenance agreement to operate as bar to order—Section 57 of the principal Act is hereby amended by inserting, before the words “shall be made”, the words “for the maintenance of any person in respect of whom maintenance is payable under the agreement”.

11. Confirmation of provisional Commonwealth orders—Section 64 of the principal Act is hereby amended by omitting from subsection (7) the words “one hundred dollars”, and substituting the expression “\$200”.

12. Conversion of currency—(1) Section 75 of the principal Act is hereby amended by inserting in subsection (1), after the words “the date”, the words “of registration or, as the case may be, confirmation”.

(2) This section shall apply only with respect to maintenance orders registered or confirmed on or after the date of the passing of this Act and to variations registered or confirmed on or after that date of maintenance orders registered or confirmed before that date.

13. Person to whom money payable under maintenance order—(1) Section 78 of the principal Act is hereby amended by inserting in subsection (1), after the words “specified in the order”, the words “or to a Maintenance Officer at the place specified in the order”.

(2) Section 84 of the principal Act is hereby amended—

(a) By inserting, after the words “Magistrate’s Court” where they first occur, the words “or to a Maintenance Officer”:

(b) By inserting in subsection (1), after the words “specified in the order”, the words “or to a Maintenance Officer at a place other than that specified in the order”.

14. Order for maintenance where matrimonial proceedings pending—Section 80 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsection:

“(3) A maintenance order, so far as it provides for the payment of maintenance in respect of any person, shall—

“(a) Be deemed to be suspended while there is in force an interim order for maintenance relating to the same parties and providing for the payment of maintenance in respect of the same person; and

“(b) Be deemed to be discharged by a final order for maintenance relating to the same parties and providing for the payment of maintenance in respect of the same person.”

15. Maintenance order in favour of person in psychiatric hospital or institution—The principal Act is hereby further amended by repealing section 82, and substituting the following section:

“82. Where a maintenance order is made for the payment of a periodical sum in favour of a person who at the date of the making of the order is receiving care and treatment in a hospital within the meaning of the Mental Health Act 1969, the order may, if the Court thinks fit, provide for the payment of a periodical sum in respect of periods while that person is

receiving care and treatment in such a hospital and a different periodical sum in respect of periods when that person is not receiving care and treatment in such a hospital.”

16. Apportionment of maintenance payments—The principal Act is hereby further amended by inserting, after section 84, the following section:

“84A. Where any person by whom maintenance is payable under 2 or more maintenance orders makes any payment of part only of the total amount for the time being payable under those orders and does not specify the manner in which the amount of the payment is to be apportioned to the amounts payable under the several orders, the amount of the payment shall be deemed to have been apportioned in the proportions that the amounts payable under the several orders bear to the total amount payable under all those orders.”

17. Discharge, variation, or suspension of orders—(1) Section 85 of the principal Act is hereby amended by repealing subsections (2) and (3), and substituting the following subsections:

“(2) The Court may from time to time—

“(a) Vary or extend any maintenance order in such manner as the Court thinks fit; or

“(b) Temporarily suspend any such order as to the whole or any part of the money ordered to be paid; or

“(c) Discharge any such order and substitute in its place a new order, whether of the same kind or not,—

if the Court is of the opinion that since the making of the order, or, as the case may be, the last variation of the order, the circumstances have so changed that the order ought to be varied, extended, or suspended, or, as the case may be, discharged and a new order substituted.

“(3) The Court may from time to time make an order—

“(a) Varying or extending any maintenance agreement registered under Part VII of this Act; or

“(b) Cancelling any such agreement; or

“(c) Cancelling any such agreement and making a maintenance order in its place; or

“(d) Temporarily suspending any such agreement as to the whole or part of the money payable thereunder,—

if the Court is of the opinion that at the date of the agreement, or, as the case may be, the date of the last agreed variation, its provisions were unfair or unreasonable, or that

since the date of the agreement, or, as the case may be, the date of the last variation of the agreement, the circumstances have so changed that the agreement ought to be varied, extended, cancelled, or suspended, or, as the case may be, that it ought to be cancelled and a maintenance order made in its place.”

(2) Section 85 of the principal Act is hereby further amended by inserting in subsection (6), after the words “maintenance agreement”, the words “or suspend on such terms and conditions as it thinks fit the payment of the whole or part of any such arrears”.

18. Maintenance order to cease to have effect on making of maintenance order by Supreme Court—Section 88 of the principal Act is hereby amended by inserting, after the word “shall”, the words “so far as it provides for the payment of maintenance in respect of any person for whose maintenance provision is made in the final order”.

19. Warrant to collect and warrant of distress—(1) Section 93 of the principal Act is hereby amended by adding the following subsection:

“(3) The provisions of subsection (7) of section 88 of the Summary Proceedings Act 1957 shall not apply in any case where, pursuant to subsection (5) of that section (as applied by subsection (2) of this section), a Magistrate directs that no warrant be issued in respect of any amount in arrear and unpaid under a maintenance order, or withdraws any warrant, or issues a warrant for a sum less than the amount due.”

(2) Rule 61 of the Domestic Proceedings Rules 1969 is hereby consequentially revoked.

20. Disobedience of maintenance order—(1) Section 107 of the principal Act is hereby amended as from its commencement by inserting, after subsection (1), the following subsections:

“(1A) Notwithstanding anything in the Summary Proceedings Act 1957, any information for an offence against this section may include more than 1 such offence alleged to have been committed by the defendant, and any conviction, order, summons, warrant, certificate, or other process may relate to more than 1 offence accordingly.

“(1B) Notwithstanding anything in the Summary Proceedings Act 1957, where more than 1 maintenance order has been

made against the same defendant on the same date and in the same Court, all such orders in respect of which default is alleged may, in the discretion of the informant, be treated as a single order for all the purposes of this section and for all purposes connected therewith, including the issue of a certificate of default.”

(2) Section 107 of the principal Act is hereby further amended by inserting in subsection (6), after the word “remitting”, the words “or suspending”.

21. Proof of default—(1) The principal Act is hereby further amended by inserting, after section 108, the following section:

“108A. Where an information is laid for an offence against section 107 of this Act, the following provisions of this section shall apply, subject to any rules of procedure made under this Act:

“(a) Any Registrar of Social Security (including any Deputy Registrar or Assistant Registrar of Social Security) or the Registrar of any Magistrate’s Court, on being satisfied that money due under the maintenance order referred to in the information has remained unpaid for 14 days (or, as the case may require, for 7 days), shall endorse on the information a certificate stating—

“(i) The amount so payable, the date on which it became due, and the fact that it has remained unpaid for 14 days (or, as the case may require, for 7 days); and

“(ii) The total amount unpaid under the maintenance order and the date to which such arrears have accrued:

“(b) The certificate endorsed on the information shall, in the absence of proof to the contrary, be sufficient evidence of the statements contained therein and of the existence and terms of the maintenance order, and it shall not be necessary for the informant to appear or be represented at the hearing of the information.”

(2) Section 108 of the principal Act is hereby amended by repealing subsection (2).

22. Sittings of Court—Section 111 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsection:

“(3) Notwithstanding anything in subsection (2) of this section,—

“(a) Where—

“(i) Proceedings under the Guardianship Act 1968; or

“(ii) Proceedings under that Act and proceedings under the Matrimonial Property Act 1963—
are heard together with proceedings under this Act, then, unless the Court otherwise directs, the whole of the proceedings shall be heard in private:

“(b) Subject to paragraph (a) of this subsection, where proceedings under the Matrimonial Property Act 1963 are heard together with proceedings under this Act, the whole of the proceedings shall be heard in private if any party to the proceedings so requests:

“(c) Subject to paragraph (a) of this subsection, where proceedings under the Matrimonial Property Act 1963 are heard together with any proceedings under this Act, and no party to the proceedings requests that they be heard in private, the provisions of subsection (2) of this section shall, unless the Court otherwise determines, apply as if the whole of the proceedings were proceedings under this Act.”

23. Proceedings where defendant is absent from New Zealand or cannot be found—Section 119 of the principal Act is hereby amended by omitting from paragraph (b) of subsection (1) the words “any matter”, and substituting the words “any manner”.

24. Maintenance agreements to bind parties—Section 125 of the principal Act is hereby amended by inserting in subsection (1), after the words “party to the agreement”, the words “for the payment of maintenance in respect of any person for whose maintenance provision is made in the agreement”.

25. Enforceability of certain orders and agreements—
(1) Notwithstanding anything in the principal Act or in any enactment repealed by the principal Act,—

(a) An order for maintenance made, or an agreement for maintenance registered, under the principal Act or

any such repealed enactment before the commencement of this section shall not in any proceedings under the principal Act be held to be invalid or unenforceable by reason only of the fact that it makes provision for the maintenance of more than one person and does not apportion among those persons the total periodical sum payable; and

- (b) Every such order or agreement shall be deemed to have been a valid maintenance order, or, as the case may be, a properly registered maintenance agreement from the date of its making or registration unless its making or registration was invalid or defective on some other ground.

(2) Any person liable to pay maintenance under any such order or agreement as aforesaid may at any time apply to the Court for an apportionment of the total periodical sum among all the persons to whom or for whose benefit maintenance is payable under the order or agreement, and the Court may, if it thinks fit, apportion the total periodical sum accordingly in such amounts as it thinks proper. The order or agreement shall thereupon have effect as so amended.

(3) Notwithstanding that there has been no change of circumstances, every application under subsection (2) of this section shall proceed as if it were an application for variation under section 85 of the principal Act, and the provisions of that section and of any rules of practice and procedure made under the principal Act shall have effect in relation to any such application, as far as applicable and with the necessary modifications.

This Act is administered in the Department of Justice.
