

STATE OF SABAH

MAINTENANCE ORDINANCE 1959 (Sabah No. 7 of 1959)

ARRANGEMENT OF SECTIONS

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LIST OF AMENDMENTS

<i>Ordinance/Enactment No.</i>	<i>Sections amended</i>	<i>Effective date of amendment</i>
6/1961	15	29-04-1961
Act 91, s. 5 (1) (a)	13 (1)	16-09-1963
Act 160	3 (2), 11, 13 (2)	29-08-1975
Act A 606	13 (1)	01-01-1985
Act A 885	13 (1)	24-06-1994

An Ordinance to provide for the maintenance of wives and children.

[1st August, 1959.]

ENACTED BY the Governor of the Colony of North Borneo with the advice and consent of the Legislative Council as follows:

Short title and commencement.

1. This Ordinance may be cited as the Maintenance Ordinance, 1959, and shall come into operation on such date as the Governor may, by notification in the *Gazette*,* appoint.

Interpretation.

2. In this Ordinance unless the context otherwise requires-

“child” includes legitimate or illegitimate child who is unable to maintain itself;

“Court” means the Court of a Magistrate of the First Class.

Power of Court to make order for maintenance of wives and children.

3. (1) If any person having sufficient means neglects or refuses to maintain or contribute to the maintenance of his wife or any legitimate child unable to maintain itself, a Court upon due proof thereof may order such person to make a monthly allowance to any person named therein for the maintenance of his wife or such child as aforesaid in proportion to the means of such person as to the Court seems reasonable.

(2) If any person having sufficient means neglects or refuses to maintain or contribute to maintain his illegitimate child unable to maintain itself, a Court upon due proof thereof may order such person to make such monthly allowance not exceeding fifty ringgit in the whole as to the Court seems reasonable.

(3) Such allowance shall be payable from the date of the order or, if so ordered, from the date of the application for maintenance:

* In force 1st August, 1959—see G.N.S. 74/1959.

Provided that the Court may, for special reasons which shall be recorded and having regard to the means of the parties, order the payment of a lump sum by way of arrears in respect of any prior period but not exceeding twelve times the amount of any allowance ordered under subsection (1) or (2).

Power to order interim payments where application for maintenance is adjourned.

4. (1) Where, on the hearing of an application for an order of maintenance, the application is adjourned for any period exceeding one week, the Court may order that the husband or father as the case may be, shall pay to any person named therein a weekly sum until the final determination of the case:

Provided that the order directing such payment shall not remain in operation for more than three months from the date on which it was made.

(2) Any such order shall be enforced in like manner as if it were a final order of the Court.

Warrant on neglect to pay.

5. If any person so ordered fails without sufficient cause to comply with any such order under this Ordinance, the Court 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, and may sentence him to imprisonment for a term not exceeding one month for each month's allowance remaining unpaid:

Provided that if any person against whom an order has been made for the maintenance of his wife offers to maintain his wife on condition of her living with him and his wife refuses to live with him, the Court may consider any grounds of refusal stated by such wife and may make or enforce the order aforesaid notwithstanding such offer if satisfied that such person is living in adultery, or that he has habitually treated his wife with cruelty.

Cases in which wife is not entitled to allowance.

6. No wife shall be entitled to receive an allowance from her husband under this Ordinance if she is living in adultery, or if without any sufficient reason she refuses to live with

her husband.

Rescission and variation of order.

7. On the application of any person receiving or ordered to pay a monthly allowance under the provisions of section 3 and on proof of a change in the circumstances of the parties or any of them or for other good cause being shown to the satisfaction of the Court, the Court may rescind the said order or may vary it as it deems fit.

Magistrate may refuse an order where High Court proceeding more convenient.

8. If in the opinion of the Court 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 direct that the proceedings be transferred to the High Court and in such case there shall be no appeal from the decision of the Court:

Provided always that the High Court or a judge thereof shall have power by order in any such proceedings or in any proceeding in the High Court relating to or comprising the same subject matter as the application so refused as aforesaid, or any part thereof, to direct the Magistrate to hear or rehear and determine the same.

Evidence to be taken in presence of husband or father.

9. (1) All evidence under this Ordinance shall be taken in the presence of the husband or father, as the case may be:

Provided that if the Court is satisfied that he is wilfully avoiding service, or wilfully neglects to attend the Court, the Court may proceed to hear and determine the case *ex-parte* but any order so made may be set aside for good cause shown, on application made within three months from the date thereof.

(2) The person against whom an order of maintenance has been applied for or made may be proceeded against in any district where he resides or is or where he last resided with his wife, or, as the case may be, the mother of the illegitimate child.

Order enforceable in any district.

10. A copy of the order of maintenance shall be given to the person for whose maintenance it is made, or to the guardian of such person or the person who is to receive payment, and payment shall be enforced by any Magistrate in any district where the person to whom the order is addressed may be found, on production of the copy of the order, and on the Magistrate being satisfied as to the identity of the parties and the non-payment of the sum claimed.

Notice of change of address.

11. Any person liable to make payments under an order under this Ordinance shall give notice to the person specified in the order who is to receive payment of any change of address, and any person failing to give such notice without reasonable excuse shall be liable on conviction to a fine of two hundred and fifty ringgit.

Jurisdiction of High Court.

12. The High Court shall have the jurisdiction and powers which belong to and are exercisable by any Court under this Ordinance:

Provided that on any application made to the High Court such Court shall have the powers conferred by the proviso to section 8.

Appeal.

13. (1) Subject to the provisions of this section an appeal shall lie from any order or the refusal of any order under this Ordinance to the High Court or the Federal Court as the case may be in exercise of appellate civil jurisdiction.

(2) There shall be no appeal on the ground that the amount of any monthly allowance ordered to be paid by any Court under this Ordinance is excessive or insufficient unless such allowance so ordered exceeds the sum of fifty ringgit per month or unless the Court in fixing the amount of such monthly allowance shall have misdirected itself on a matter of law.

(3) All appeals brought under this section to the High Court may, if such Court so orders, be by way of rehearing.

(4) The procedure, forms and fees in respect of all appeals shall be such as apply to civil appeals from the original Court.

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

Procedure.

14. (1) Notwithstanding the civil nature thereof all applications to a Court under this Ordinance shall be made and heard substantially in the same manner and in accordance with the same procedure as applications for maintenance under the provisions of section 335 of the Criminal Procedure Code* [Cap. 30 Revised Edition.] were made and heard by such Court immediately before the coming into force of this Ordinance.

(2) Rules of court regulating the practice and procedure for hearings and appeals not inconsistent with the provisions of this Ordinance and providing for forms and fees in connection therewith may be made-

(a) by the Rules Committee appointed under the Courts of Judicature Act, 1964 [Act 91.], in relation to practice and procedure in the High Court; and

(b) by the Subordinate Courts Rules Committee appointed under the Subordinate Courts Rules Act, 1955 [Act 55.], in relation to practice and procedure in the Subordinate Courts,

and any such rules may provide that subsection (1) shall cease to apply to all or any proceedings under this Ordinance.

* Cap. 30 was repealed and replaced by Ordinance No. 4 of 1959. Ordinance No. 4 of 1959 was later repealed by Act A324 which extended to Sabah F.M.S. Cap. 6.

Effect of repeal of parts of Cap. 30.

15. It is hereby declared that any reference in this Ordinance or any other written law to Chapter XXXIII of the Criminal Procedure Code* shall be construed as a reference to the appropriate provision of this Ordinance.

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* Cap. 30 was repealed and replaced by Ordinance No. 4 of 1959. Ordinance No. 4 of 1959 was later repealed by Act A324 which extended to Sabah F.M.S. Cap. 6.