

THE MAINTENANCE ACT

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SCHEDULE.

THE MAINTENANCE ACT

Act
30 of 2005.

[7th December, 2005.]

1. This Act may be cited as the Maintenance Act.

Short title.

PART I. *Preliminary*

2. In this Act—

Interpreta-
tion.

“cohabit” means to live together in a conjugal relationship outside marriage;

“Collecting Officer” means the Accountant appointed in each parish pursuant to section 41A(1)(b) of the Judicature (Resident Magistrates) Act;

“Court” means a Resident Magistrate, Judge or court referred to in section 3;

“dependant” means a person to whom another person has an obligation to provide support under this Act;

“maintenance order” means an order made under this Act for the maintenance of a dependant;

“minor” means a person under the age of eighteen years;

“respondent” means a person who, pursuant to this Act, has an obligation to maintain another person;

“single woman” or “single man”, used with reference to the definition of “spouse”, includes a widow or widower, respectively, or a divorcee;

“spouse” includes—

- (a) a single woman who, for a period of not less than five years, has cohabited with a single man as if she were in law his wife; and

- (b) a single man who, for a period of not less than five years, has cohabited with a single woman as if he were in law her husband.

Application
for main-
tenance order.

3.—(1) Subject to subsection (2), a person may apply to the Resident Magistrate's Court in the parish in which the person resides, or, as the case may be, to the Family Court for a maintenance order in accordance with the provisions of this Act.

(2) In any case where an application is made for the division of property under the Property (Rights of Spouses) Act, the Court hearing the proceedings under the Property (Rights of Spouses) Act may make a maintenance order in accordance with the provisions of this Act.

PART II. *Obligation of Spouses during Marriage or Cohabitation*

Obligation of
spouses to
maintain each
other.

4. Each spouse has an obligation, so far as he or she is capable, to maintain the other spouse to the extent that such maintenance is necessary to meet the reasonable needs of the other spouse, where the other spouse cannot practicably meet the whole or any part of those needs having regard to—

- (a) the circumstances specified in section 14 (4); and
- (b) any other circumstances which, in the opinion of the Court, the justice of the case requires to be taken into account.

Maintenance
order re
spouse.

5.—(1) A maintenance order for the support of a spouse shall—

- (a) contain such provisions as will ensure that the economic burden of child support is shared equitably;
- (b) make such provision as the Court considers fair with a view to assisting the spouse to become able to contribute to that spouse's own support.

(2) In determining the amount and duration of support to be given to a spouse under a maintenance order, the Court shall have regard to the following matters in addition to the matters specified in section 14(4)—

- (a) the length of time of the marriage or cohabitation;
- (b) the spouse's contribution to the relationship and the economic consequences of the relationship for the spouse;
- (c) the effect of the responsibilities assumed during the marriage or cohabitation on the spouse's earning capacity;
- (d) the spouse's needs, having regard to the accustomed standard of living during the marriage or cohabitation;
- (e) whether the spouse has undertaken the care of a child of eighteen years of age or over who is unable, by reason of illness, disability or other cause, to care for himself;
- (f) any housekeeping, child care or other domestic service performed by the spouse for the family, as if the spouse were devoting the time spent in performing that service in remunerative employment and were contributing the earnings to the family's support;
- (g) the effect of the spouse's child care responsibilities on the spouse's earnings and career development;
- (h) the terms of any order made or proposed to be made under the Property (Rights of Spouses) Act in relation to the property of the parties;
- (i) the eligibility of either spouse for a pension, allowance or benefit under any rule, enactment, superannuation fund or scheme, and the rate of that pension, allowance or benefit.

PART III. *Obligation of Parties on Termination of Cohabitation*

Maintenance after termination of cohabitation.

6.—(1) In the case of cohabiting parties and subject to the provisions of this section, after the termination of cohabitation each spouse has an obligation, so far as he or she is capable, to maintain the other spouse to the extent that such maintenance is necessary to meet the reasonable needs of the other spouse, where the other spouse cannot practicably meet the whole or any part of those needs having regard to—

- (a) the circumstances specified in section 14(4); and
- (b) any other circumstances which, in the opinion of the Court, the justice of the case requires to be taken into account.

(2) An application for maintenance upon the termination of cohabitation may be made within twelve months after such termination, and the Court may make a maintenance order in accordance with Part VI in respect of the application.

(3) Where a Court acts under subsection (2)—

- (a) the provisions of section 5 shall apply with the necessary modifications;
- (b) the Court shall, as far as practicable, make such orders as will finally determine the financial relationship of the parties and avoid further proceedings between them.

Effect of entering into new marriage or cohabitation.

7.—(1) A person shall not be liable to maintain another person under section 6 if the other person marries someone else or is cohabiting with someone else.

(2) In any case where subsection (1) applies, any order made under section 6 shall cease to have effect.

PART IV. *Obligation of Parents and Grandparents*

8.—(1) Subject to subsection (2), every parent has an obligation, to the extent that the parent is capable of doing so, to maintain the parent's unmarried child who—

Obligation
of parent to
support
child.

- (a) is a minor; or
- (b) is in need of such maintenance, by reason of physical or mental infirmity or disability.

(2) Every grandparent has an obligation, to the extent that the grandparent is capable of doing so, to maintain the grandparent's unmarried grandchild to whom the provisions of subsection (1)(a) or (b) apply, in the event of the failure of the grandchild's parents to do so owing to death, physical or mental infirmity or disability.

(3) For the purposes of this Act, a person is the parent of a child if—

- (a) the person's name is entered as a parent of the child in the general register of births pursuant to the Registration (Births and Deaths) Act, or in a register of births or parentage information kept under the law of any overseas jurisdiction;
- (b) the person is or was a party to a marriage (including a void marriage) or cohabitation and the child is a child of the marriage or cohabitation;
- (c) the person is a party to a marriage or cohabitation and accepts as one of the family a child of the other party to the marriage or cohabitation;
- (d) the person adopts the child;
- (e) the person has admitted paternity or a court has made a declaration of paternity under section 10 of the Status of Children Act against the person in respect of the child;

- (f) the person is the child's natural mother;
- (g) the person has at any time in any proceedings before a court, or in writing signed by the person, acknowledged that the person is a parent of the child, and a court has not made a finding of paternity of the child that is contrary to that acknowledgement; or
- (h) the person is in *loco parentis* to the child, including a person who has demonstrated a settled intention to treat a person as a child of the person's family, except under an arrangement where the child is placed for valuable consideration in a home by a person having lawful custody.

Maintenance
order re child.

9.—(1) A maintenance order for the support of a child—

- (a) shall apportion the obligation according to the capacities of the parents to provide support; and
- (b) may make an award for the payment of a sum of money for expenses in respect of the child's prenatal care and birth.

(2) In considering the circumstances of a dependant who is a child, the Court shall have regard to the following matters in addition to the circumstances specified in section 14(4)—

- (a) that each parent has an obligation to provide support for the child;
- (b) the child's aptitude for, and reasonable prospects of, obtaining an education; and
- (c) the child's need for a stable environment.

(3) The Court shall have regard to the matters set out in subsection (4) in considering whether any and what order should be made under this section for requiring any party to make any payment towards—

- (a) the payment of expenses in respect of the prenatal care and birth; or

(b) the maintenance or education,

of a child who has been accepted by that party as a child of the family.

(4) The matters referred to in subsection (3) are—

(a) the extent (if any) to which that party had, on or after such acceptance of the child, assumed responsibility for the child's maintenance; and

(b) the liability of any person, other than the persons who cohabited, to maintain the child.

PART V. Obligation of person who is not a minor

10.—(1) Every person who is not a minor has an obligation, to the extent that the person is capable of doing so, to maintain the person's parents and grandparents who are in need of such maintenance by reason of age, physical or mental infirmity or disability.

Obligation of person to support parent.

(2) In considering the circumstances of a dependant who is a parent or grandparent, the Court shall have regard to whether, by reason of age or infirmity, that dependant is unable to provide for himself or herself.

(3) The obligation of a person under subsection (1) in respect of that person's grandparent only arises in the event of the failure of the grandparent's children to do so owing to death, physical or mental infirmity or disability.

PART VI. Maintenance Orders

11. A Court may, on application by or on behalf of a dependant, order the respondent named in the application to maintain that dependant and in making such an order, the Court shall, where the order is a monetary order, determine the amount to be paid thereunder.

Order for maintenance.

Application
for order of
maintenance.

12.—(1) An application for an order for the maintenance of a dependant may be made to the Court by the dependant or, in the case of a dependant referred to in section 8(1)(a) or (b), a parent of the dependant or any other person who has the care and custody of the dependant.

(2) Where—

- (a) a local authority or other Government agency is providing assistance in respect of the maintenance of a dependant; or
- (b) an application for such assistance has been made to the local authority or other Government agency by or on behalf of the dependant,

an application for a maintenance order may be made to the Court by the local authority or other Government agency.

Manner of
proceeding in
Resident
Magistrate's
Court.

13.—(1) Proceedings in a Resident Magistrate's Court or a Family Court, as the case may be, for maintenance under this Act, shall be by way of summons.

(2) A Resident Magistrate or Judge of the Family Court, as the case may be, may hear and determine the matter in the absence of the respondent where the Resident Magistrate or Judge is satisfied by evidence upon affidavit, in the form set out in the Schedule, that a summons in respect of the proceedings was served on the respondent at least seven days before the date of the proceedings.

Schedule.

Power of the
Court re
application.

14.—(1) In hearing an application for an order under section 11, the Court shall act in accordance with subsection (2) if satisfied that—

- (a) the dependant is entitled under this Act to be maintained by the respondent named in the application; and
- (b) the respondent has failed to fulfil the obligation to maintain the dependant.

(2) The Court shall enquire into the matters referred to in subsection (4) and if the Court is satisfied that the respondent is able to maintain or to contribute to the maintenance of the dependant, the Court shall make a maintenance order that the respondent pay, either to the dependant or to some other appropriate person named by the Court in the order, such periodical sum as the Court thinks fit, having regard to the relevant circumstances specified in subsection (4), or such other order under section 15(1) as the Court considers appropriate.

(3) Where an application is made under section 12 (2) by or on behalf of a local authority or other Government agency, it shall be lawful for the Court to further order the respondent to pay to the local authority or other Government agency, such additional periodical sum as the Court thinks just, as reimbursement for assistance given:

Provided that the total amount payable under this subsection shall not exceed the aggregate amount of assistance given by such local authority or other Government agency to the dependant.

(4) In determining the amount and duration of support, the Court shall consider all the circumstances of the parties including the matters specified in sections 5(2), 9(2) or 10(2), as the case may require, and—

- (a) the respondent's and the dependant's assets and means;
- (b) the assets and means that the dependant and the respondent are likely to have in the future;
- (c) the dependant's capacity to contribute to the dependant's own support;
- (d) the capacity of the respondent to provide support;
- (e) the mental and physical health and age of the dependant and the respondent and the capacity of each of them for appropriate gainful employment;

- (f) the measures available for the dependant to become able to provide for the dependant's own support and the length of time and cost involved to enable the dependant to take those measures;
- (g) any legal obligation of the respondent or the dependant to provide support for another person;
- (h) the desirability of the dependant or respondent staying at home to care for a child;
- (i) any contribution made by the dependant to the realization of the respondent's career potential;
- (j) any other legal right of the dependant to support other than out of public funds;
- (k) the extent to which the payment of maintenance to the dependant would increase the dependant's earning capacity by enabling the dependant to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income;
- (l) the quality of the relationship between the dependant and the respondent;
- (m) any fact or circumstance which, in the opinion of the Court, the justice of the case requires to be taken into account.

15.—(1) In relation to an application for a maintenance order, the Court may make an interim or final order requiring—

- (a) that an amount be paid periodically whether for an indefinite or limited period, or until the happening of a specified event;
- (b) that a lump sum be paid or held in trust;
- (c) that property be transferred to or held in trust for or vested in the dependant, whether absolutely, for life or for a term of years;

Powers of
Court
regarding
maintenance
orders.

- (d) that some or all of the money payable under the order be paid to the Collecting Officer or to another appropriate person or agency for the dependant's benefit;
- (e) that payment be made in respect of any period before the date of the order;
- (f) payment to an agency referred to in section 12(2) of an amount in reimbursement for assistance referred to in that subsection, including assistance provided before the date of the order; and
- (g) the securing of payment under the maintenance order, by a charge on property, an order of attachment or otherwise.

(2) The provisions of section 17(2) and (3) shall apply, with any necessary modifications, to an order of attachment made under subsection (1)(g).

(3) The Court may, on application by or on behalf of a person for whose benefit a maintenance order has been made, make an interim or final order restraining the depletion of a person's property that would impair or defeat a claim under this Act.

(4) In an application for a maintenance order or for variation thereof, the Court may order the employer of a party to the application to make a written return to the Court showing the party's emoluments during the preceding twelve months.

(5) A return purporting to be signed by the employer may be received in evidence as *prima facie* proof of its contents.

(6) A respondent against whom an order is made under this section shall notify the Court in writing of any change in the respondent's employment, within seven days after becoming aware of the change.

Duration of
order.

16.—(1) Subject to the provisions of this section and section 18, a maintenance order shall remain in force—

- (a) in the case of a child, until the child attains the age of eighteen years; and
- (b) in the case of any other person, for such period as may be specified in the order.

(2) Where a dependant is unable to maintain himself or herself by reason of old age or an illness or infirmity which is likely to be permanent, a maintenance order may be made to be in force for the rest of the natural life of that dependant.

(3) Where the Court is satisfied that—

- (a) a child in respect of whom a maintenance order has been made is or will be engaged in a course of education or training after attaining the age of eighteen years; and
- (b) for the purposes of such education or training it is expedient for payments under the order to continue after the child has attained that age,

the Court may direct that the order remain in force for such period as may be specified in the order, being a period not extending beyond the date on which the child attains the age of twenty-three years.

Pension or
income liable
to attachment.

17.—(1) Where a maintenance order has been made against a respondent in respect of whom there is any pension or income payable and capable of being attached, the Court may—

- (a) after giving the respondent an opportunity to be heard; and
- (b) if satisfied that the respondent has failed to comply with the order without reasonable cause,

make an order (to be called an order of attachment) in accordance with subsection (2).

(2) An order of attachment shall direct that such sum periodically as is specified in the maintenance order, or any part of such sum, be attached and paid either to the person to whom a periodical sum has been directed to be paid in the maintenance order or to some other person named in the order of attachment.

(3) An order of attachment made under subsection (1) shall be an authority to a person by whom any pension or income affected by such order is payable, to make the payment and the receipt of the person to whom payment is ordered shall be a good discharge to the person by whom the pension or income is payable.

18. At any time after a maintenance order or an order of attachment has been made under this Act, a Court may upon the application of—

Variation,
suspension
or cancella-
tion of
orders.

- (a) any of the parties to the proceedings in which such order was made;
- (b) any person having the actual care and custody of a child who is a dependant; or
- (c) any person to whom any payment was directed in such order to be made,

vary the order in such manner as the Court thinks fit, suspend the order, revive a suspended order or cancel the order if circumstances so warrant.

19.—(1) Where a Resident Magistrate’s Court or Family Court makes a maintenance order it shall, upon the application of—

Payments
under Act.

- (a) a person entitled to be maintained by any other person under this Act; or
- (b) any person having the actual care and custody of any child so entitled,

either at the time of making the order or subsequently on an *ex parte* application for variation of the order, provide in the order that all payments thereunder be made to the Collecting Officer and payments under such order shall thereafter be made to the Collecting Officer.

(2) Payments of any amount ordered by a court under this Act may be made to the Collecting Officer for the parish in which the order is made, or to such other Collecting Officer as the Resident Magistrate or Judge of the Family Court may direct, in person or by letter sent by registered post properly addressed to the Collecting Officer and posted in time to be delivered to the Collecting Officer on the day appointed for payment.

(3) It shall be the duty of the Collecting Officer to—

- (a) receive all payments directed to be made to the Collecting Officer under this Act; and
- (b) make to the person named in the maintenance order fortnightly payments of the sum directed to be paid under the maintenance order or such part of the payment as is received by the Collecting Officer, without making any deduction therefrom.

(4) Payment shall be made by the Collecting Officer—

- (a) directly to the person named in the maintenance order at the office of the Collecting Officer if the person so named is resident in the town in which the office is situated; or
- (b) in any other case, by sending to the postmaster at the post office of the person named in the maintenance order, an original and a duplicate order specifying the amount to be paid.

(5) In a case to which subsection (4)(b) applies, the person named in the maintenance order shall attend at the post office and sign the receipt on the original and duplicate orders in the presence of the postmaster or responsible officer who shall then pay out the amount.

(6) The postmaster shall keep the duplicate order and return the original to the Collecting Officer.

(7) Where a maintenance order provides for payment to be made to a Collecting Officer, the applicant for the order shall thereupon notify the Collecting Officer of the post office nearest to the applicant.

20.—(1) Where any amount ordered by a maintenance order to be paid to the Collecting Officer is fourteen clear days in arrears, a Resident Magistrate may, on the application of the Collecting Officer, issue a warrant directing the sum due under the order or since any commitment for disobedience as hereinafter provided and the costs in relation to the warrant, to be recovered by the respondent.

Distress
may issue if
payment in
arrears.

(2) If upon the return of the warrant issued under subsection (1) it appears that no sufficient distress can be had, the Resident Magistrate may issue a warrant to bring the respondent before the Court.

(3) If the respondent neglects or refuses without reasonable cause to pay the sum due under the maintenance order and the costs in relation to the warrant, the Resident Magistrate may commit the respondent to an adult correctional institution for any period not exceeding three months unless the sum and costs and the costs of commitment, be sooner paid.

(4) Where a respondent is committed to an adult correctional institution under subsection (3), the provisions of section 21(3) shall apply.

(5) Notwithstanding anything to the contrary in any enactment limiting the time within which summary proceedings are to be taken, such limitation shall not apply to proceedings for enforcing the payment of sums under an order made under this Act.

Committal for non-payment.

21.—(1) A person shall not be committed to an adult correctional institution for default in payment under a maintenance order unless the Court is satisfied that the default is due to the wilful refusal or culpable neglect of that person.

(2) For the purposes of subsection (1), if the person liable to make payment is not before the Court, the Court may, if it thinks necessary or desirable, issue a warrant to bring that person before the Court.

(3) Where a person is committed to an adult correctional institution for default then—

- (a) unless the Court otherwise directs, no arrears shall accrue under the maintenance order during the time that the person is in the correctional institution; and
- (b) the committal shall not operate to discharge the liability of the person to pay the sum in respect of which he is so committed, but at any subsequent hearing relating to the enforcement, revocation, revival, variation or discharge of the order, the Court may, if in its opinion the circumstances so warrant, remit the whole or any part of the sum due under the order.

Court may order payment during respondent's incarceration for any offence.

22.—(1) If a respondent is incarcerated for any offence (other than by committal under section 21) and the Court is satisfied that the respondent has means by which payments under a maintenance order may be made, the Court may—

- (a) order that, during the period of incarceration, such payments shall be made from the respondent's income; and
- (b) make an order of attachment in respect thereof.

(2) The provisions of section 17(2) and (3) shall apply, with any necessary modifications, to an order of attachment made under this section.

23.—(1) An appeal shall lie to the Court of Appeal, from any decision of a Court in respect of a maintenance order, an order of attachment, or any order made under section 19. Appeal.

(2) The Court of Appeal may, upon hearing an appeal—

- (a) confirm, reverse or modify the decision of the Court;
- (b) remit the matter to the Court for rehearing generally or with the opinion of the Court of Appeal thereon; or
- (c) make such order as the Court of Appeal thinks fit, including an order as to costs to be paid by either party as the Court may think just.

(3) The Court of Appeal may, in making an order under subsection (2)(c), exercise any power which the Court below might have exercised and such order shall have the same effect and may be enforced in the same manner as if it had been made by the Court below.

PART VII. *Maintenance Agreements*

24.—(1) Subject to section 25 spouses or two persons in contemplation of their marriage to each other or of cohabiting may, for the purpose of facilitating the settlement of their support rights and obligations, make such maintenance agreement as they think fit. Agreements in respect of maintenance.

(2) For the purposes of this Part, a maintenance agreement means an agreement that—

- (a) makes provision in respect of the support rights and obligations of the parties with respect to each other or any child that either party has an obligation to maintain under section 8; and
- (b) includes provisions in respect of—

- (i) financial matters;
- (ii) the right to direct the education and moral training of their children; or
- (iii) any other matter in the settlement of the support obligations of the parties, including an agreement that varies an earlier maintenance agreement.

(3) Each party to a maintenance agreement shall obtain independent legal advice before signing the agreement and the legal adviser shall certify that the implications of the agreement have been explained to the person obtaining the advice.

(4) Every maintenance agreement shall be in writing signed by both parties whose signatures shall—

- (a) if signed in Jamaica, be witnessed by a Justice of the Peace or an Attorney-at-Law;
- (b) if signed in a country or State other than Jamaica, be witnessed by—
 - (i) a person having authority by the law of such country or State to administer an oath in that country or State; or
 - (ii) a Jamaican or British High Commissioner or Ambassador, as the case may be, or a Jamaican or British or British Envoy, Minister, Charge d’Affaires, Secretary of Embassy or Legation or any Jamaican or British Consul-General or Consul or Vice-Consul or Acting Consul or Consul Agent exercising his functions in that country or State.

(5) Subject to subsection (7), a maintenance agreement shall be unenforceable in any case where—

- (a) there is non-compliance with subsection (3) or (4); or

(b) the Court is satisfied that it would be unjust to give effect to the agreement.

(6) An agreement made pursuant to subsection (1) by a minor and every instrument executed by such minor for the purpose of giving effect to any such agreement shall be valid and effective as if the minor were of full age.

(7) Notwithstanding subsection (5)(a), the Court shall have jurisdiction to enquire into any agreement made under subsection (1) and may, in any proceedings under this Act or on an application made for the purpose, declare that the agreement shall have effect in whole or in part or for any particular purpose if it is satisfied that the non-compliance mentioned in that subsection has not materially prejudiced the interests of a party to the agreement.

(8) In deciding under subsection (5)(b) whether it would be unjust to give effect to an agreement, the Court shall have regard to—

- (a) the provisions of the agreement;
- (b) the time that has elapsed since the agreement was made;
- (c) whether, in light of the circumstances existing at the time the agreement was made, the agreement is unfair or unreasonable;
- (d) whether any changes in circumstances since the agreement was made (whether or not such changes were contemplated by the parties) render the agreement unfair or unreasonable;
- (e) any other matter which it considers relevant to any proceedings.

(9) Nothing in this section shall limit or affect the capacity of spouses to agree to acquire or hold any property jointly or in common (whether or not with any other person) and whether legally or beneficially.

(10) A maintenance agreement ceases to be in force upon the death of a party to the agreement, unless the agreement otherwise provides.

(11) Where in relation to a maintenance agreement the Court is satisfied that the arrangements in respect of a child that either party has an obligation to maintain under section 8 are—

- (a) not proper; or
- (b) no longer adequate in the circumstances,

the Court may make such order under Part VI as it thinks necessary to secure the proper support of the child.

(12) It is hereby declared that a maintenance agreement made by persons who cohabit shall not be void as against public policy.

(13) In subsection (6) “minor” means a person who is sixteen years of age and over but below the age of eighteen years.

Agreement to
defeat
creditors.

25. Any maintenance agreement that is intended to defeat any creditor of either party to the agreement shall be void.

PART VIII. *General*

Minister's
power to make
rules.

26. The Minister may make rules and prescribe forms for carrying into effect the provisions of this Act.

SCHEDULE

(Section 13)

Affidavit of Service

I, _____ make oath and say that I did,
 on the _____ day of _____ 20____, duly
 serve the defendant, C.D., with a summons (or order) a true copy whereof is
 herewith annexed, marked A, by delivering the same personally to the
 defendant (or by leaving the same with _____ at the place of abode of the
 defendant).

Sworn at _____ in the parish of _____
 this _____ day of _____ 20____, before me

Justice of the Peace
 for the parish of _____

Endorse the copy summons (or order) thus—

This paper marked A is the paper referred to in the annexed affidavit.