

Country Code:	BB 2002 Cum. Supp. To 1971 Rev. CAP. 216
Title:	MAINTENANCE ACT
Country:	BARBADOS
Reference:	28/1981
Date of entry into force:	March 15, 1984 (SI 49/1984)
Date of Amendment:	
Subject:	Children – Law – Barbados
Key words:	Child, meaning of; Magistrate's Court; Maintenance proceedings; Union other than Marriage.
Notes	Maintenance Rules 1984 (50/1984) attached.

**CHAPTER 216****MAINTENANCE****ARRANGEMENT OF SECTIONS***Citation***SECTION**

1. Short title.

*Interpretation*

2. Definitions.

**PART I***Maintenance of children*

3. Application of Act.
4. Right to maintenance.
5. General powers of court in maintenance proceedings.

**PART II***Institution of Maintenance Proceedings, etc.*

6. Application for maintenance.
7. Procedure where application made before birth.
8. Procedure where application made after birth.

**PART III***Powers of Magistrate on the hearing of maintenance applications and related matters*

9. Power to adjudge defendant father of child.
10. Order for maintenance.
11. Power to order sum to be calculated from birth.
12. Payments to clerk of court.
13. Defence to application.
14. Matters to be taken into consideration by court in making order.
15. Power to extend duration of orders.

## SECTION

16. General powers of court in respect of orders.
17. Cessation of orders.
18. Duty to inform person making payments.
19. Modification of maintenance orders.
20. Order for legal custody of child and interference with such a child.
21. Payments for children chargeable to the Welfare Department or Child Care Board.
22. Application by Chief Welfare Officer or Child Care Board in respect of chargeable children.
23. Duty of clerk of court to receive payments and enforce arrears.
24. Funeral expenses incurred during currency of order.
25. Power of magistrate to direct investigation into the means of the father and the mother.
26. Service of summons.
27. Register of names and addresses of fathers.
28. Maintenance proceedings to be heard separately from other business of the court.

## PART IV

*Miscellaneous*

29. Rules.
30. Deduction from salary or wages.

**CHAPTER 216****MAINTENANCE****1981-28**

*An Act to provide for the maintenance of certain children born out of wedlock and for related matters.*

**Commencement****S.I. 1984 No. 49**

[15th March, 1984]

*Citation***Short title**

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

*Interpretation***Definitions**

2. In this Act,

"child" does not include a child of a marriage or union other than a marriage;

"court" means a magistrate's court;

"former Act" means any Act that made provision for the maintenance of children before 15th March, 1984;

"maintenance" means the, provision of money, property and services, and includes the provision of money for or towards

- (a) the child's education and training to the extent of the child's ability and talents;
- (b) the reasonable expenses incidental to the birth of the child; and
- (c) the child's reasonable funeral expenses, where the child has died before the making of the order or dies while the order is in force;

**Cap. 214**

"maintenance order" means an order made under this Act for the payment of maintenance;

"union other than a marriage" or "union" has the meaning given for the purposes of the *Family Law Act*.

## PART I

*Maintenance of children***Application. of Act.**

3. This Act applies to all children, whether born before or after 15th March, 1984.

**Right to maintenance.**

4. Each parent is liable, according to his or her financial resources, to maintain his or her child who is unmarried and has not attained the age of 18 years.

**General powers of court in maintenance proceedings.**

5. In proceedings for the maintenance of a child, the court may make such orders as it thinks fit in accordance with this Act.

## PART II

*Institution of maintenance proceedings, etc.***Application for maintenance.**

6. Subject to this Act,

(a) a single woman

- (i) who is with child, or
- (ii) who has been delivered of a child,

may make an application to the magistrate of the district in which she resides for a summons, to be served on the man alleged by her to be the father of the child;

(b) an application may be made either before or after the birth of the child.

**Procedure where application made before birth.**

7. (1) Where an application is made before the birth of the child,

- (a) the application shall be substantiated on oath, and
- (b) the time at which a summons issued under section 6 requires the defendant to appear shall be after the day on which the birth of the child is expected.

(2) Where, at the time when a summons issued under section 6 requires the defendant to appear, the applicant has not been delivered of the child, or has been so recently delivered that she is

unable to appear, the magistrate shall adjourn the hearing until a time after the applicant has been delivered and is able to appear.

(3) Subsection (2) applies to the non-appearances of the applicant at the time fixed for the adjourned hearing as it applies to the time specified in the summons:

#### **Procedure where application made after birth**

8. (1) Where the applicant has been delivered of a child, the application may be made at any time before the child attains the age of 18 years or sooner marries. - ff-;;

(2) A single woman who has been delivered of a child may, upon proof that

- (a) before the birth of the child she was a party to a marriage which was disaffirmed on account of her, or the other party, being under the marriageable age at the date of the marriage; and
- (b) the other party had access to her within 12 months before the birth,

make, at any time before the child attains the age of 18 years, or sooner marries, an application against that other party.

### **PART III**

#### *Powers of Magistrate on the hearing of maintenance applications and related matters*

#### **Power to adjudge defendant father of child**

9. On the hearing of an application under this Act, the magistrate shall hear

- (a) the evidence of the applicant and such other evidence as may be adduced by her or on her behalf; and
- (b) any evidence tendered by or on behalf of the defendant;

and, if satisfied on the evidence that the case for the applicant has been proved, the magistrate shall adjudge the defendant to be the father of the child; but where the magistrate is not so satisfied, the magistrate shall dismiss the application.

**Order for maintenance.**

10. (1) Where the magistrate adjudges the defendant to be the father of the child, the magistrate may proceed to make an order against the defendant for the payment to the applicant, or to any other person appointed to have the legal custody of the child under this Act, of

- (a) a sum of money for or towards
  - (i) the maintenance of the child,
  - (ii) the reasonable expenses incidental to the birth of the child; and
- (b) if the child has died before the making of the order, such sum of money as the magistrate considers reasonable for or towards the expenses incidental to the funeral of the child.

(2) In making an order against the defendant for the payment of any sums under this section, the magistrate shall take into account all or any of the matters set out in section 14.

**Power to order sum to be calculated from birth.**

11. Where an application is made before or within 3 months after the birth of the child, any sum ordered to be paid under section 10(a)(i), may, if the magistrate thinks fit, be calculated from the date of the birth.

**Payments to clerk of court**

12. On the making of a maintenance order under section 10, the court may provide in the order that payments under the order shall be made to the clerk of the court- or to the clerk of a magistrate's court in another district, unless otherwise, satisfied by any representation expressly made by the applicant that it is undesirable to do so.

**Defense to application. 1979-32.**

13. In any proceedings under this Act, it is a defence to the application if the defendant proves

- (a) that in accordance with the *Status of Children. Reform Act*,<sup>1</sup> another person has filed with the Registrar a declaration affirming that he is the father of the child; or

**Cap. 192A.**

- (b) that under the *Vital Statistics Registration Act*, another person has signed the register as father of the child.

**Matters to be taken into consideration by court in making order.**

14. (1) In determining

- (a) whether to make an order for maintenance; or
- (b) the period for which such an order should continue in force or the amount of any payment to be

made under such an order, the magistrate shall take into account only the matters set out in subsection (2).

(2) The matters to be taken into account for the purposes of his section are as follows:

- (a) the income, earning capacity, property and other financial resources of the child;
- (b) the financial needs of the child;
- (c) the manner in which the child is being, or in which it is reasonable to expect the child to be, educated or trained;
- (d) the age and state of health of each of the parties;
- (e) the income, property and financial resources of each of the parties, and the physical and mental capacity of each of them for appropriate gainful employment;
- (f) to the financial needs and obligations of each of the parties;
- (g) the responsibilities of either party to support any other person;
- (h) the eligibility of either party for a pension, allowance or benefit under any Act or rule or under any superannuation fund or scheme, or the rate of any such pension, allowance or benefit being paid to either party;
- (i) any fact or circumstance which, in the opinion of the magistrate, the justice of the case requires to be taken into account.

(3) Subject to section 15, a maintenance order shall not be made where the child has attained the age of 18 years.

**Power to extend duration of orders.**

15. The magistrate may

- (a) provide in awarder for the maintenance of a child who has not attained the age of 18 years that the order shall continue in force until a day that is later than, or for a period that extends beyond, the day on which the child will attain that age; or
- (b) make an order for the maintenance of a child who has attained the age of 18 years, being an order that is expressed to continue in force until a day, or for a period specified in the order,

if the magistrate is satisfied that the provision of the maintenance is necessary to enable the child to complete his education, including vocational training or apprenticeship, or because he is mentally or physically handicapped, and, in that case, the order continues in force until that day or the expiration of that period, as the case may be.

**General power of court in respect of orders**

16. In the exercise of the powers conferred by this Act, the magistrate may do any or all of the following:

- (a) order payment of a lump sum, whether in one amount or by instalments;
- (b) order payment of a weekly, monthly, yearly or other periodic sum;
- (c) order that payment of any sum ordered to be paid be wholly or partly secured in such manner as the magistrate directs;
- (d) order that any necessary deed or instrument be executed and that such documents of title be produced or such other things be done as are necessary to enable an order to be carried out effectively, or to provide security for the due performance of an order;
- (e) on or at any time after making an order for maintenance, order the person by whom maintenance is payable under the order, or the legal personal representative of that person, as the case may be, to give such security as the magistrate specifies for the payment of any sum that is to be paid under the order; and for the purpose may direct the Registrar to settle and approve a proper deed or instrument, to be executed by all the necessary parties;

- (f) appoint or remove trustees;
- (g) order that payment of maintenance in respect of a child be made to such person or public authority as the magistrate specifies;
- (h) make a permanent order, an order pending the disposal of proceedings, or an order for a fixed term, or for a life, or during joint lives, or until further order;
- (i) impose terms and conditions;
- (j) make an order by consent;
- (k) make any other like or dissimilar order as those mentioned in paragraphs (a) to (j) that the magistrate thinks it necessary to make to do justice.

**Cessation of orders.**

17. (1) Subject to subsection (2), a maintenance order ceases to have effect on

- (a) the death of the child;
- (b) the death of the father;
- (c) the adoption or marriage of the child; or
- (d) the child attaining the age of 18 years.

(2) Subsection (1)(b) does not apply in relation to any order that is expressed to continue in force throughout the life of the child or for a period that had not expired at the time of the death of the defendant, and, in that case, the order is binding on the legal personal representative of the deceased person.

**Duty to inform person making payments.**

18. (1) It is the duty of the person receiving payments pursuant to a maintenance order to inform, without delay, the person liable to make payments under the order of the date that any matter set out in paragraphs (a), (c) or (d) of section 17(1) has occurred.

(2) Any moneys paid in respect of a period after the date of the occurrence of any matter referred to in subsection (1) are recoverable as a debt.

**Modification of maintenance orders**

19. (1) On the application of the father or his legal personal representative, or the person entitled to receive payments under a maintenance order, a magistrate's court may

- (a) discharge the order if there is any just cause for so doing;
- (b) suspend its operation wholly or in part, and either until further order, or until a fixed time, or the happening of some future event;
- (c) revive wholly or in part an order suspended under paragraph (b); or
- (d) subject to subsection (2), vary the order so as to increase or decrease any amount ordered to be paid or in any other manner.

(2) The magistrate shall not make an order increasing or decreasing an amount ordered to be paid under a previous order unless the magistrate is satisfied

- (a) that, since the order was made or last varied,
  - (i) the circumstances of the child have so changed;
  - (ii) the circumstances of the father have so changed; or
  - (iii) in the case of an order that is binding on a legal personal representative, the circumstances of the estate are such,
- as to justify its so doing;
- (b) that since that order was made, or last varied, the cost of living has changed to such an extent as to justify its so doing; or
- (c) that material facts were withheld from the court that made or varied the order, or material evidence previously given before the court was false.

(3) Nothing in subsection (2) prevents the magistrate from making an order varying an order made before 15th March, 1984, if the subsequent order is made for the purpose of giving effect to this Act.

(4) In satisfying itself for the purposes of subsection (2)(b), a magistrate's court shall have regard to any changes that have occurred in the Price Index published by the Department of Statistical Service.

(5) In considering the variation of an order, the court shall not have regard to a change in the cost of living unless at least 12 months have elapsed since the order was made or last varied, having regard to a change in the cost of living.

(6) An order decreasing the amount of a periodic sum payable under an order or discharging an order may be expressed to be retrospective to such date as the court thinks fit.

(7) For the purposes of this section, the court shall have regard to the provisions of sections 4 and 14.

(8) The discharge of an order does not affect the recovery of arrears due under the order at the time at which the discharge takes effect.

**Order for legal custody of child and interference with such a child.**

20. (1) Where a maintenance order has been made, the magistrate may, on the application of the mother in any case where the child is not in the custody of the mother, order the child to be delivered to the mother; and any order made under this subsection revokes any previous orders that may have been made under this section.

(2) Where the magistrate is satisfied, either at the time of making a maintenance order or at any time thereafter, that the mother is not a fit and proper person to have the custody of the child, the magistrate may, if in all the circumstances he considers it to be in the interest of the child, by order appoint the father, or some person other than the mother, to have the legal custody of the child, if such person is willing.

(3) Where the mother of a child, in respect of whom a maintenance order has been made, dies or becomes of unsound mind, or is in prison, or has left Barbados, the magistrate shall by order appoint the father, or some person who is willing, to have the legal custody of the child.

(4) The appointment of some person other than the mother to have the legal custody of a child under subsections (2) and (3) may be made upon the application of any of the following persons:

- (a) the mother or father, if alive and of sound mind;
- (b) the Chief Welfare Officer;
- (c) the Child Care Board;
- (d) a probation officer; or
- (e) a person appointed under this section to have the legal custody of the child,

and may be revoked at any time upon a like application, and some other person may be appointed.

(5) Where under any order made under this section some person other than the mother or father is appointed to have legal custody of the child, the magistrate may on the application of that person make an order that the child be delivered by any person to the applicant; and any order made under this subsection revokes any previous order that may have been made under subsection (1).

(6) If a child whose custody is in the mother or father, or whose legal custody has been committed to some person other than the mother or father under this section, is unlawfully taken out of such custody, the magistrate may, on the application of the mother or father or such other person, order that the child be restored to the custody of the mother or father or other person, as the case may be.

(7) Any person who fails to comply with an order made under subsection (1), (5) or (6) is liable on summary conviction to a fine not exceeding \$5 000.

**Payments for children chargeable to the Welfare Department or Child Care Board.**

21. (1) Where a child under 18 years of age, in respect of whom a maintenance order has been made under this Act or any former Act, becomes chargeable to the Chief Welfare Officer, or the Child Care Board, the Chief Welfare Officer or the Child Care Board, as the case may be, may make application to the court for

the payments due under the order to be made to the Chief Welfare Officer or Child Care Board, as the case may be.

(2) Where, on the hearing of any such application, the magistrate is satisfied that the child is chargeable to the Chief Welfare Officer or Child Care Board and is actually in receipt of relief therefrom, the magistrate shall make an order providing that there shall be paid to the Chief Welfare Officer or Child Care Board such payments under the maintenance order then due or becoming due as accrue during the period for which the child is chargeable to the Chief Welfare Officer or Child Care Board, as the case may be.

(3) Any payments ordered to be made under subsection (2) are recoverable in accordance with section 23 under rules made under section 29.

(4) An order made under subsection (2) may at any time be revoked by the magistrate if satisfied that the child is no longer chargeable to the Chief Welfare Officer or Child Care Board and is not in receipt of relief therefrom; but except where an application to revoke any such order is made by the Chief Welfare Officer or Child Care Board, no such order, notwithstanding any enactment to the contrary, may be revoked unless the Chief Welfare Officer or Child Care Board is given the opportunity to appear before the magistrate to show cause why that order should not be revoked.

**Application by Chief Welfare Officer or Child Care Board in respect of chargeable children**

22. (1) Where any child becomes chargeable to the Chief Welfare Officer or Child Care Board, then, subject to subsection (2), the Chief Welfare Officer or Child Care Board, as the case may be, may

- (a) if that officer or the Board thinks fit, having regard to all the circumstances of the case; and
- (b) before the child attains the age of 18 years,

make an application to a magistrate for a summons to be served on the man alleged to be the father of the child to 'show cause why a maintenance order should not be made against him to contribute towards the relief of the child.

(2) An application may not be made under subsection (1) in respect of any child

- (a) in relation to whom there is in force a maintenance order made under section 10; or
- (b) in relation to whom there is in force immediately before 15th March, 1984, an order made or having effect under, or for the purposes of, a former Act.

(3) On the hearing of an application under this section, the magistrate shall hear

- (a) the evidence of the mother of the child and such other evidence as may be adduced by or on behalf of the applicant; and
- (b) any evidence tendered by or on behalf of the defendant;

and, if satisfied on the evidence that the case for the applicant has been proved, the magistrate shall adjudge the defendant to be the father of the child; but where the magistrate is not so satisfied, the magistrate shall dismiss the application.

(4) Where the magistrate adjudges the defendant to be the father of the child, the magistrate may proceed to make an order against the defendant for the payment to the applicant of

- (a) a sum of money for or towards
  - (i) the relief of the child during such time as the child continues, or afterwards becomes chargeable to the Chief Welfare Officer or Child Care Board,
  - (ii) the reasonable expenses incidental to the birth of the child; and
- (b) if the child has died before the making of the order, such sum of money as the magistrate considers reasonable for or towards the expenses incidental to the funeral of the child and properly incurred by the Chief Welfare Officer, or Child Care Board, as the case may be.

(5) In making an order against the defendant for the payment of any sums under subsection (4), the magistrate shall take into account all or any of the matters set out in section 14.

(6) Where an application under subsection (1) is made within 3 months after the birth of the child, any sum ordered to be paid under subsection (4) (a) (i), may, if the magistrate thinks fit, be calculated from the date of birth, but no sum may be calculated from a date earlier than the date upon which the child became chargeable to the Chief Welfare Officer or Child Care Board.

(7) Any payment ordered to be made under subsection (4) is recoverable in accordance with section 23 or rules made under section 29, but no such payment may be recoverable under any such order except in respect of the period during which the child is actually in receipt of relief from the Chief Welfare Officer or Child Care Board.

(8) A maintenance order may not be made under subsection (4), and, if made, shall cease to have effect except for the recovery of arrears, if the mother of the child obtains a maintenance order under section 10 in respect of the child.

(9) Where the mother of a child in relation to whom a maintenance order has been made under this section, or an order has been made under a former Act, applies under section 6 for a maintenance order, the maintenance order made under this section or the order made under a former Act, as the case may be, shall be *prima facie* evidence that the man against whom the order was made is the father of the child.

(10) Nothing contained in this section shall be deemed to relieve the mother or father of a child of his or her liability to maintain the child.

**Duty of clerk of court to receive payments and enforce arrears.**

23. (1) Where it is provided in any order made or deemed to be made under this Act that payments shall be made to the clerk of a magistrate's court, it shall be the duty of the clerk

(a) to receive such payments as may be directed to be made under the order and to pay forthwith to the mother of the child to whom the order relates or to such other person as may be entitled to the payments of money required to be made under the order, the sum directed to be paid under the order, or such part thereof as the clerk receives, without making any deduction therefrom; and

(b) to take proceedings for the enforcement of a maintenance order in accordance with this section.

(2) Where any payment of money required to be made under a maintenance order has not been made, the clerk of the court for the district in which such order was made shall make an application to the magistrate of the district for the recovery of those payments.

(3) Where

(a) an application is made under subsection (2), the magistrate shall summon the father and enquire into the application, and if satisfied that the amount claimed is due and has not been paid or tendered, the magistrate shall make enquiry as to whether the failure of the father to pay the sum in respect of which he has made default was due either to his wilful refusal or to his culpable neglect;

(b) after making an enquiry under paragraph (a), the magistrate is satisfied that the failure of the father to pay the sum in respect of which he has made default was not due either to his wilful refusal or culpable neglect, the magistrate may extend the time for payment or may remit part of the sum due under the order.

(4) Where on an application made under subsection (2) an order is made remitting part of the sum due, the application may be renewed on the ground that the circumstances of the father have changed.

(5) Nothing contained in this section affects the right of any person or body entitled to the payments of money required to be made under a maintenance order made or deemed to be made under this Act to apply to a magistrate for the recovery of any such payments in accordance with the *Magistrates Jurisdiction and Procedure Act*, but subsections (3) and (4) shall apply to any such application.

#### **Funeral expenses incurred during currency of order.**

24. (1) Where the child in respect of whom a maintenance order has been made or deemed to have been made under this Act dies while the order is in force, the magistrate of the district in which the order was made may, on the application of the person or body entitled to the payment of money required to be made under the order, make an order for the payment by the father of a sum of money for or towards the reasonable expenses incidental to the funeral of the child and properly incurred by that person or body.

(2) Any sums of money required to be paid by an order made under this section are recoverable in the manner provided for in section 23 or under rules made under section 29.

**Power of magistrate to direct investigation into the means of the father and the mother.**

25. (1) Where in any proceedings under this Act it appears to the magistrate to be necessary or expedient for an investigation to be made into the means of the father or of the mother, then, subject to subsection (2), the magistrate may adjourn the hearing and direct the probation officer to make or cause to be made such an investigation, and report the result to the court in accordance with this section.

(2) In any proceedings under this Act, no direction to report to the court may be given to the probation officer under subsection (1) until the magistrate has decided all issues arising in the proceedings other than the issue as to the amount to be directed to be paid by a maintenance order.

(3) Where a probation officer is directed under this section to report to the court the result of an investigation, the magistrate may require the probation officer

- (a) to furnish to the court a statement in writing as to his or her investigation, which shall be read aloud in the presence of those parties to the proceedings as may be present at the hearing; or
- (b) to make an oral statement to the court as to his or her investigation.

(4) Immediately after the statement of the probation officer has been read aloud or made, as the case may be, pursuant to subsection (3), the magistrate shall ask the father and the mother, if present at the proceedings, whether he or she objects to anything contained in the statement, and where objection is made, the magistrate shall require the probation officer to give evidence on oath as to his or her investigation.

(5) Any statement made by a probation officer in a statement furnished or made by him or her under subsection (3) or in evidence which he or she is required to give under subsection (4) may be received by the court as evidence, notwithstanding anything to the contrary in any enactment or rule of law relating to the admissibility of evidence.

**Service of summons.**

26. (1) A summons under this Act may be served

- (a) by delivering it to the person to whom it is directed; or
- (b) by leaving it for that person at his last known or usual place of residence before the day specified in the summons as the day to appear before the court.

(2) For the purpose of subsection (1), when the name and address of a father on whom a maintenance order has been made is registered in accordance with section 27, that registered address is deemed to be the last known or usual place of residence of the father.

**Register of names and addresses of fathers.**

27. (1) On the making of a maintenance order, or on the completion of the hearing of an application for the enforcement or variation of such order, the magistrate shall, if the father is present, and subject to subsection (3), direct the father to give his name and address to the clerk of the court, who shall thereupon record the name and address in a register to be kept by him for that purpose.

(2) Where the father is not present when a maintenance order is made, or the hearing of an application for the enforcement or variation of any such order is completed, the magistrate shall

- (a) make such enquiries as he considers necessary for ascertaining the address of the father; and
- (b) on ascertaining that address, direct the clerk of the court to record the name and address of the father in the manner provided for in subsection (1).

(3) No direction under subsection (2) may be required if the name and address of the father have been previously entered in the register unless the father notifies the magistrate of a change of his name or address.

(4) Where at any time after his name and address have been entered in the register, the father changes his name or address, he shall give notice of that fact to the clerk of the court, who shall delete from the register the name or address appearing therein and substitute the new name or address.

(5) A father who fails to give his name or address to the clerk of the court when directed by the magistrate so to do, or who, without reasonable excuse, fails to give notice of any change of his name or address to the clerk of the court is liable on summary conviction to a fine not exceeding \$500.

**Maintenance proceedings to be heard separately from other business of the court.**

28. (1) The business of magistrates' courts shall, so far as is consistent with the due despatch of business, be arranged in such manner as may be necessary for separating the hearing and determination of applications under this Act from other business.

(2) Subject to any rules to the contrary, relatives or friends of either party and welfare or probation officers may be present in court unless, in a particular case, the court otherwise orders.

(3) During the taking in any application under this Act of any evidence which, in the opinion of a magistrate's court is of an intimate or indecent character, the court may, if it thinks it necessary in the interest of the administration of justice or of public decency, direct that all persons, not being members or officers of the court or parties to the case, their attorneys-at-law or other persons directly concerned in the case, be excluded from the court during the taking of that evidence.

(4) The powers conferred on a magistrate's court by this section are in addition and without prejudice to any other powers of the court to hear proceedings in camera.

(5) Nothing contained in this section affects the exercise by a magistrate of the power that witnesses shall be excluded from the court until they are called for examination.

#### PART IV

##### *Miscellaneous*

###### **Rules.**

29. The Judicial Advisory Council may make rules generally for carrying out or giving effect to the purposes of this Act, and may, in addition to methods prescribed by this Act for the enforcement of maintenance orders, make rules in respect of

- (a) the attachment of earnings for the purpose of ensuring payments under a maintenance order;
- (b) the persons or public authorities that may apply to the court for an order for the attachment of earnings of the person by whom payment is required to be made;
- (c) the enforcement of arrears of maintenance;
- (d) the practice and procedure to be followed for the purpose of attachment of earnings under this Act.

###### **Deduction from salary or wages Cap 351.**

30. (1) Subject to the *Protection of Wages Act*, an employer may,

- (a) with the consent in writing of a worker, make deductions from any salary or wages payable to the employee for the payment of maintenance in respect of an order made under this Act; or
- (b) on the written request of a worker, agree to make deductions for the purpose described in paragraph (a).

(2) In this section, "worker" has the meaning given to that expression by section 2 of the *Protection of Wages Act*

**The Maintenance Act, 1981 (Act 1981-28)**

**THE MAINTENANCE RULES, 1984**

*Arrangement of Rules*

*Rule*

1. Short title
2. Definitions
3. Forms
4. Application for maintenance
5. Summons for hearing of application for maintenance
6. Method of making periodical payments
7. Enforcement of arrears
8. Attachment orders
9. Service of attachment order
10. Effect of attachment order
11. Notice of change of employment
12. Variation etc. of maintenance order
13. Variation etc. of an attachment order
14. Application for custody
15. Application for delivery of child

**FIRST SCHEDULE**

**SECOND SCHEDULE**

## STATUTORY INSTRUMENT

### The Maintenance Act, 1981 (Act 1981-28)

### THE MAINTENANCE RULES, 1984

The Judicial Advisory Council in exercise of the powers conferred on it by section 29 of the *Maintenance Act, 1981* makes the following rules:

#### Short title

1. These rules may be cited as the *Maintenance Rules, 1984*.

#### Definitions

2. In these rules

"attachment order" means an attachment of earnings order made under these rules;

"defendant" means a man who is alleged to be the father of a child or in respect of whom an application is made to the court for maintenance;

"earnings" in relation to a defendant, means any sums payable to him

- (a) by way of wages or salary, including any fees, bonds, commission, overtime pay, any payments in lieu of leave or other emolument payable in addition to wages or salary;
- (b) by way of pension, including
  - (i) an annuity in respect of past services, whether or not the services were rendered to the person paying the annuity, and
  - (ii) periodical payments in respect of or by way of compensation for the loss, abolition, or relinquishment, or any diminution in the emoluments of any office or employment;

"employer" in relation to a defendant, means a person by whom, as principal and not as a servant or agent, earnings are payable or likely to become payable to that defendant.

#### Forms

#### First Schedule

3. The forms prescribed in the *First Schedule* must be used for the purposes to which they relate under these rules.

## STATUTORY INSTRUMENT

### **Application for maintenance**

4. (1) An application for maintenance under section 6 or 8 of the Act must be in Form No. 1, as set out in the *First Schedule*.

(2) An application for maintenance under section 21(1) or 22 of the Act must be in Form No. 2, as set out in the *First Schedule*.

### **Summons for hearing of application for maintenance**

5. A summons for the hearing of an application for maintenance must be in Form No. 3, as set out in the *First Schedule*.

### **Method of making periodical payments**

6. (1) A court ordering payments to be made through the clerk of the court, under section 12 of the Act, shall notify the defendant of the times during which and the place at which payments are to be made.

(2) The clerk of the court, on receipt of the payments directed to be made under a maintenance order shall immediately make such payments to the mother of the child to which the order relates, such other person appointed to have legal custody of the child, or such other person or public authority as the magistrate specifies.

### **Enforcement of arrears**

7. (1) Where any sums are ordered by the court to be paid and

- (a) in the case of a weekly sum, is in arrears for two weeks;
- (b) in the case of a monthly sum, is in arrears for one month; or
- (c) in the case of a yearly sum, six weeks have elapsed since the sum was due,

the clerk of the court may make an application to the court for the enforcement of any such arrears.

(2) An application for the purposes of section 23(2) of the Act must be in Form No. 4, as set out in the *First Schedule*.

### **First Schedule**

(3) A summons to be issued by a magistrate for the purposes of section 23(3) of the Act must be in Form No. 5, as set out in the *First Schedule*.

## STATUTORY INSTRUMENT

### Attachment orders Cap. 351

8. (1) Subject to the *Protection of Wages Act*, the court may, at the time of the making of a maintenance order or at any subsequent time, make an attachment order in respect of the earnings of a defendant.

(2) An attachment order may be made against any person who is proved to the satisfaction of the court to be an employer of the defendant against whom a maintenance order is made.

(3) The following persons and public authorities may apply to the court for an attachment order:

- (a) a person in whose favour a maintenance order is made;
- (b) the person who is required to make payments under a maintenance order;
- (c) the Chief Welfare Officer;
- (d) the Child Care Board;
- (e) the Attorney General; and
- (f) any other person or public authority with a sufficient interest in the matter.

### First Schedule

(4) An application for an attachment order must be in Form No. 6, as set out in the *First Schedule*.

(5) On hearing of an application for an attachment order, the court may make an attachment order in Form No. 7, as set out in the *First Schedule*.

### Service of attachment order

9. Upon making an attachment order, the court shall cause a copy thereof to be served on the defendant and his employer either personally or by post.

### Effect of attachment order

10. (1) An attachment order shall be directed to the employer of the defendant and shall operate as instructions to him

- (a) to make periodical deductions from the earnings of the defendant in the amounts specified in the order; and
- (b) at such times as may be specified in the order, to pay the amounts so deducted to the clerk of the court, as specified in the order.

## STATUTORY INSTRUMENT

(2) Subject to paragraph (3), an employer shall comply with an attachment order served on him.

(3) Where an employer is served with an attachment order and the defendant, to whom the order relates, is no longer in his employment, the employer shall within seven days from the date of service or the date on which the defendant ceases to be employed by him, as the case may be, give notice of the fact to the court.

### Second Schedule

(4) The *Second Schedule* has effect with respect to the priority to be accorded as between two or more attachment orders directed to an employer in respect of the same defendant.

(5) Where an employer in compliance with an attachment order makes deductions from the defendant's earnings

- (a) he may, in addition, deduct such sum as may be specified by rules of court towards his clerical or administrative expenses; and
- (b) he shall give to the defendant a written statement of the total amount of any such deductions.

### Notice of change of employment

11. While an attachment order is in force

- (a) a defendant shall notify the court in writing of every occasion on which he leaves employment, or becomes employed or re-employed not later, in each case, than seven days from the date when any such event occurs;
- (b) a defendant shall on any occasion on which he becomes employed or re-employed include in his notification under paragraph (a) particulars of his earnings or anticipated earnings from the relevant employment; and
- (c) any person who becomes the employer of a defendant and receives knowledge that an order is in force in respect of that defendant, shall within seven days of receiving such knowledge, notify the court in writing of that fact and include in his notification a statement of the defendant's earnings.

### Variation etc. of maintenance order

12. (1) A maintenance order may at any time be varied, discharged suspended or revived by the court on the application, pursuant to section 19 of the Act, of any person with a sufficient interest on good cause being shown to the satisfaction of the court, why the order should be varied, discharged, suspended or revived.

(2) Every variation, discharge, suspension or revival under paragraph (1) takes effect from the date ordered by the court.

## STATUTORY INSTRUMENT

### First Schedule

- (3) An application for the purposes of paragraph (1) must be in Form No. 8, as set out in the *First Schedule*.
- (4) A summons for the purposes of paragraph (1) must be in Form No. 9, as set out in the *First Schedule*.

### Variation of the attachment order

13. (1) Where an order is issued under section 19 of the Act for the variation, discharge, suspension or revival of a maintenance order, a person or public authority to whom rule 8(3) applies may make application to the court for an attachment order made in respect of a maintenance order to be similarly varied, discharged, suspended or revived.

### First Schedule

(2) An application for the purposes of paragraph (1) must, with the necessary modifications be in Form No. 8, as set out in the *First Schedule*,

(3) For the purposes of hearing an application under paragraph (1) the court may, with the necessary modifications, issue a summons in Form No. 9, as set out in the *First Schedule*.

### Application for custody

#### First Schedule

14. (1) An application under section 20(1) of the Act for the custody of a child by its mother where that child is not in her custody must be made in Form No. 10, as set out in the *First Schedule*,

#### First Schedule

(2) An application under section 20(2) or (3) of the Act for the custody of a child by its father, or other person must, with the necessary modifications, be in Form No. 11, as set out in the *First Schedule*.

(3) For the purpose of hearing an application under section 20(1) of the Act, the court may issue a summons in Form No. 12, as set out in the *First Schedule*.

### Application for delivery of child

15. (1) An application under section 20(5) or (6) of the Act, by a mother, father or other person appointed to have legal custody of a child, for the delivery of that child must be in Form No. 13, as set out in the *First Schedule*.

(2) For the purpose of hearing an application under section 20(5) or (6) of the Act the court may issue a summons in Form No. 14, as set out in the *First Schedule*.

**STATUTORY INSTRUMENT**

**FIRST SCHEDULE**

**The Maintenance Act, 1981 (Act 1981-28)**

FORM NO. 1

*(Rule 4(1))*

**APPLICATION FOR MAINTENANCE**

APPLICANT'S ADDRESS FOR SERVICE .....

I, .....

of .....

being.....

hereby make application for a summons to be served on .....

of .....

whom I allege to be the father of my child which is expected to be born on .....

or ..... which was born on .....

at .....

for the purpose of obtaining maintenance in respect of the said child.

And pursuant to this application, I,.....

of the above-mentioned address hereby make oath and say as follows:

1.....1 am the applicant  
herein and a child .....

2. The allegation as to the paternity of my child is true.

3. All the other matters stated in the application are true.

Sworn by the )

applicant at )

this ..... day of )

..... 19.....)

Before me )

Clerk of the )

Magistrate's )

Court for )

District )

this .....day of )

.....19.....)

**STATUTORY INSTRUMENT**

**The Maintenance Act, 1981 (Act 1981-28)**

**FORM NO. 2**

*(Rule 4(2))*

**APPLICATION FOR MAINTENANCE BY CHIEF WELFARE OFFICER OR CHILD CARE BOARD**

I, .....  
of .....  
being .....  
hereby make application for maintenance of a child named .....  
born on ..... to .....  
and which has become chargeable to .....

Dated this ..... day of ..... 19.....

.....  
*Applicant.*

**STATUTORY INSTRUMENT**

**The Maintenance Act, 1981 (Act 1981-28)**

**FORM NO. 3**

*(Rule 5)*

**SUMMONS FOR THE HEARING OF AN APPLICATION FOR MAINTENANCE**

TO: .....  
of .....

You are hereby summoned to appear before the Magistrate's Court for District .....  
at ..... on the ..... day of ..... 19..... at ..... o'clock in  
connection with the hearing of an application for maintenance to which you are alleged to be the father of a child born to  
(or to be born to)

.....  
of .....

Dated this ..... day of ..... 19.....

*Clerk of the Magistrate's Court  
for District .*

**STATUTORY INSTRUMENT**

**The Maintenance Act, 1981 (Act 1981-28)**

**FORM NO. 4**

*(Rule 7 (2),*

**APPLICATION FOR ENFORCEMENT OF ARREARS**

I, .....  
Clerk of the Magistrate's Court for District ..... hereby make

application for the enforcement of arrears of maintenance, as stated in the • Schedule hereto, in respect of a maintenance order issue by ..... Court  
dated .....

**SCHEDULE**

*[Details of arrears of maintenance]*

Dated this ..... day of ..... 19.....

*Clerk of the Magistrate's Court  
for District.*

**STATUTORY INSTRUMENT**

**The Maintenance Act, 1981 (Act 1981-28)**

**FORM NO. 6**

*(Rule 8(4))*

**APPLICATION FOR ATTACHMENT ORDER**

APPLICANT'S ADDRESS FOR SERVICE .....

of .....

hereby make application for an attachment order in respect of the earnings of

.....  
against whom a maintenance order was issued by the Magistrate's Court for District .....

Dated this ..... day of ....., 19.....

.....  
*Applicant*

**STATUTORY INSTRUMENT**

**The Maintenance Act, 1981 (Act 1981-28)**

**FORM NO. 7**

*(Rule 8(5))*

**ATTACHMENT ORDER**

On consideration of the application for an attachment order IT IS HEREBY ORDERED that you,.....  
..... the employer of .....  
against whom a maintenance order was made by the Magistrate's Court for District .....,  
shall deduct the sum of ..... from the .....  
earning of the said .....  
and which shall be paid over to the Clerk of the Magistrate's Court for District ..... during  
working hours and within ..... days of the making of any such deductions.

.....  
*Magistrate for District*

**STATUTORY INSTRUMENT**

**The Maintenance Act, 1981 (Act 1981-28)**

**FORM NO. 7**

**(Rule 12(3))**

**APPLICATION FOR VARIATION, DISCHARGE, SUSPENSION,  
REVIVAL OF A MAINTENANCE ORDER**

I, .....  
of .....  
being .....

hereby make application for the variation, discharge, suspension, revival of a maintenance order issued by the Magistrate's Court for District ..... for the following reasons:

.....  
.....  
.....  
.....  
.....

AND in support of the application I hereby declare that the matters stated herein are true to the best of my knowledge and belief.

Dated this ..... day of ..... 19.....

.....  
*Applicant*

Signed before me this ..... day of ..... 19.....

.....  
*Justice of the Peace/Clerk of the  
Magistrate's Court for District*

**STATUTORY INSTRUMENT**

**The Maintenance Act, 1981 (Act 1981-28)**

FORM NO. 10

*(Rule 14(1))*

**APPLICATION BY MOTHER FOR CUSTODY OF CHILD**

APPLICANT'S ADDRESS FOR SERVICE .....

I, .....

of .....

being .....

hereby make application for the custody of a child that was born to me on

..... day of ....., 19.....

and which is not presently in my custody.

Dated this ..... day of ....., 19.....

.....

*Applicant*

STATUTORY INSTRUMENT

**The Maintenance Act, 1981 (Act 1981-28)**

FORM NO. 11

*(Rule 14(2))*

**APPLICATION FOR CUSTODY OF CHILD**

Applicant's address for service: .....

I, .....

of .....

being .....

hereby make application for the custody of a child born to

..... on the

..... day of ....., 19.....

and in respect of which I affirm paternity.

This application is based on the fact that \*

I consider the mother of the said child is not a fit and proper person to have custody of the child

The mother of the said child is now dead of unsound mind in prison has left Barbados

Dated this ..... day of ....., 19.....

.....  
*Applicant.*

**\*Delete any of the statements appearing below which is not relevant to your application.**

**STATUTORY INSTRUMENT**

**The Maintenance Act, 1981 (Act 1981-28)**

**FORM NO. 11**

*(Rule 14(3))*

**SUMMONS FOR THE HEARING OF AN APPLICATION FOR CUSTODY**

To: .....

of .....

You are hereby summoned to appear before the Magistrate's Court for District .....

at ..... on the ..... day of ....., 19.....

at .....o'clock in connection with the hearing of an application for the custody of a child  
named .....

born to ..... on .....

Dated this ..... day of ....., 19.....

Clerk of the Magistrate's Court

for District

**STATUTORY INSTRUMENT**

**The Maintenance Act, 1981 (Act 1981-28)**

FORM NO. 13

*(Rule 15(1))*

**APPLICATION FOR DELIVERY OF CHILD**

Applicant's address for service .....  
of .....  
being .....  
hereby make application for an order for delivery of a child named .....  
born on .....  
by virtue of the fact that this court made an order dated .....  
.....  
granting legal custody of the said child and the said child was unlawfully taken out of my custody.

Dated this ..... day of ....., 19.....

.....  
*Applicant.*

**STATUTORY INSTRUMENT**

**The Maintenance Act, 1981 (Act 1981-28)**

FORM NO. 13

*(Rule 15(2))*

**SUMMONS FOR THE HEARING OF AN APPLICATION FOR DELIVERY OF CHILD**

To: .....  
of .....

You are hereby summoned to appear before the Magistrate's Court for District .....

at ..... on the ..... day of ....., 19.....

at ..... o'clock in connection with the hearing of an application for an order for delivery of a child named .....

.....  
born on ..... to .....

Dated, this ..... day of ..... 19.....

.....  
*Clerk of the Magistrate's Court for District*

## STATUTORY INSTRUMENT

### SECOND SCHEDULE

#### PRIORITY AS BETWEEN ATTACHMENT ORDERS

*(Rule 10(4))*

1. Where the employer is required to comply with 2 or more attachment orders in respect of the same defendant all of which are made to secure payment under the same type of order, then on any pay-day the employer shall,

- (a) deal with the orders according to the respective date on which they were made, disregarding any later order until an earlier order has been dealt with;
- (b) deal with any later order as if the earnings to which it relates were the residue of the defendant's earnings after the making of any deduction to comply with an earlier order.

2. Where the employer is required to comply with 2 or more attachment orders and one or more, but not all, are made to secure payments under different types of orders then on any pay-day the employer shall,

- (a) deal first with any order made to secure *maintenance* payments and payments adjudged to be paid by a conviction or treated as so adjudged; and
- (b) deal thereafter with any order which is made to secure the payment of a judgment debt as if the earnings to which it relates were the residue of the defendant's earnings after the making of any deduction to comply with an order having priority under sub paragraph (a); and
- (c) if there are 2 or more orders of the same type to which sub-paragraph (a) or (b) relates, apply the provisions of paragraph 1 in respect of the priority of those orders.

3. In paragraph 1 "pay-day" means an occasion on which earnings to which an attachment order relates becomes payable.

Made by the Judicial Advisory Council this 8th day of March, 1984:

.....  
Chief Justice (Act 3)

.....  
Puisne Judge

.....  
Puisne Judge (Dg).

.....  
Puisne Judge

.....  
Chief Justice (Act 3)

.....  
Puisne Judge

.....  
Puisne Judge (Dg).

.....  
Puisne Judge

.....  
for executive and judicial departments of the Government  
and for the Commonwealth of Australia  
*EO Dunn*

.....  
**Solicitor General** *EO Dunn*

.....  
.....  
*W. B. J.*

.....  
**Chief Parliamentary Counsel** *W. B. J.*

.....  
*C. Clarke* *W. B. J.*

.....  
*P. J. H. Williams*

.....  
**Attorneys at Law**  
**Members of the Judicial Advisory Council**

.....  
*J. A. Robertson*  
**Registrar (Secretary)**