

## Caribbean Community (CARICOM) Secretariat

**Back to Model Legislation on issues affecting women**

### **CARICOM MODEL LEGISLATION ON MAINTENANCE AND MAINTENANCE ORDERS**

#### **Explanatory Memorandum on Model Legislation on MAINTENANCE**

##### **Long Title**

This sets out the objects and scope of the legislation which seeks to confer obligations on family members such as spouses, parents, children and grandparents to maintain each other in certain circumstances.

**Short title** highlights the main objects of the legislation by referring to Maintenance.

**Clause 2** includes the following definitions:

"*child*" means a person whether born in or out of wedlock and includes a stepchild, adopted child and a child of the family.

"*Cohabit*" means to live together in a conjugal relationship whether within or outside marriage.

"*Dependant*" means a person to whom another person has an obligation to provide support.

"*Spouse*" means a husband or wife or a man or a woman who are not married but who are cohabiting or have cohabited.

**Clause 3** provides that spouses have an obligation to maintain each other to the extent that each is capable of so doing.

**Clause 4** provides that every parent has an obligation, where capable of so doing, to maintain an unmarried child who is a minor or is pursuing full time education or who is unable by reason of physical or mental infirmity to maintain himself or herself.

**Subsection (2)** states that **subsection (1)** does not apply to a child who is (sixteen) years old or over and who has withdrawn from parental control.

**Clause 5** confers an obligation on a child who is not a minor to maintain his or her parents or grandparents to the extent that the child is capable of so doing.

**Clause 6** empowers the court to order maintenance on the application of a dependant.

**Clause 7** permits a dependant or a parent of a dependant or a local authority or government agency to make an application for an order for maintenance.

**Clause 8: Subsection 1** provides that the court must be satisfied that the dependant is entitled to be maintained and the respondent has failed to maintain the dependant before making a maintenance order.

**Subsection 2** provides that a maintenance order for the support of a child shall recognise that each parent has an obligation to support his or her child and apportion the obligation according to the capacities of the parents to provide support.

**Subsection 4** provides that a maintenance order for the support of a spouse shall recognise the spouse's contribution to the relationship and the economic consequences of the relationship, provide for the equitable sharing of the economic burden of a child and make fair provision to assist the spouse to contribute to the spouse's own support.

**Subsection 5** outlines the circumstances the court shall consider in determining the amount and duration of support.

**Subsection 6** provides that conduct by either spouse should not be taken into consideration unless that conduct is unconscionable as to constitute an obvious and gross repudiation of the relationship.

**Clause 9** provides for the duration of maintenance orders which can be for life where a dependant is by reason of old age, infirmity or illness unable to maintain himself or herself and in the case of a child pursuing a course of training or education until a specified age past the age of eighteen years.

**Clause 10** makes provision for the attachment of income or pension payable to the respondent where the respondent has after being heard, failed to comply with a maintenance order. The order in this instance is an order of attachment directing that the maintenance sum be attached and payable to the dependant.

**Clause 11** states that a maintenance order and attachment order can be varied, suspended and revived or cancelled on the application of any of the parties to the proceedings, any person having the care and custody of a dependant child or any person to whom an order was directed.

**Clause 12** provides for the appointment and duties of collecting officers in enforcing maintenance orders made by the Court.

**Clause 13: Subsection 1** provides that where maintenance payments are fourteen clear days in arrears the collecting officer may apply to the magistrate for a warrant directing that the sum ordered as maintenance and the costs in relation to the warrant be recovered by distress and sale of goods and chattels of the respondent.

**Subsection 3** provides that if the respondent neglects or refuses to pay the maintenance sum and the costs of the warrant then subject to Clause 17 he or she may be imprisoned unless the sum and the costs are paid.

**Subsection 5** states that limitation periods for bringing actions do not apply to proceedings for enforcing payment of sums under an order made under the Act.

**Clause 13: Subsection 1** outlines the powers of the court in making interim and final orders requiring periodic payments, lump sum payments, property transfers, the designation of life insurance policies and pension plans etc, for what duration and to whom payments should be made.

**Clause 14:** Subsection 1 outlines the powers of the court in making interim and final orders requiring periodic payments, lump sum payments, property transfers, the designation of life insurance policies and pension plans etc., for what duration and to whom payments should be made.

**Subsection 2** provides that a maintenance order binds the estate of the respondent unless the order otherwise provides.

**Subsection 3** empowers the court to restrain the depletion of a person's property that would impair or defeat a claim under the Act.

**Clause 15** provides that every person who refuses, neglects or wilfully abandons a dependant whereby that dependant becomes destitute or dependant on charity or leaves the usual place of abode for the purpose of evading compliance with an order commits an offence and is liable to imprisonment. A magistrate may also make a maintenance order instead of or in addition to the term of imprisonment.

**Clause 16** makes provision for appeals from any decision ordering maintenance or attachment.

**Clause 17** provides that a person shall not be committed to prison unless the Court is satisfied that the default is due to wilful refusal or culpable neglect of that person.

**Subsection 3** states that no arrears shall accrue during the time that the person is in prison unless the Court otherwise directs but by subsection 3(b) the committal shall not operate to discharge the liability of the person to pay the sum in respect of which he was committed unless the magistrate remits the whole or part of the sum due.

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## THE MAINTENANCE ACT

### ARRANGEMENT OF SECTIONS

1. Short title.
2. Interpretation.
3. Obligation of spouses to maintain each other.
4. Obligation of parent to support child.
5. Obligation of child to support parent.
6. Order for maintenance.
7. Application for order for maintenance.
8. Power of the Court re application.
9. Duration of order.
10. Pension or income liable to attachment.
11. Variation, suspension or cancellation of orders.
12. Appointment of Collecting Officer.
13. Distress may issue if payment in arrear.
14. Powers of Court.
15. Penalties for neglect to maintain or for abandoning.
16. Appeal.
17. Committal for non-payment.

### Model Legislation on MAINTENANCE

AN ACT to confer obligations on spouses to maintain each other and to maintain their parents and children and on children to maintain their parents and also their grandparents in certain circumstances and for connected purposes.

*Short title*

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

*Interpretation*

2. In this Act -

"*child*" means a person whether born in or out of wedlock and includes -

- (a) a stepchild or a child adopted in a manner recognised by law; or
- (b) a person in relation to whom a parent has demonstrated a settled intention to treat as a child of the parent's family [except under an arrangement where a child is placed for valuable consideration in a foster home by a person having lawful custody];

"*cohabit*" means to live together in a conjugal relationship whether within or outside marriage;

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

"*minor*" means a person under the age of eighteen years;

"*maintenance order*" means an order made under this Act for the maintenance of a dependant;

"*parent*" means a person's mother or father or stepmother or stepfather and includes 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 foster home by a person having lawful custody];

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

"*spouse*" means -

- (a) a husband or wife; or
- (b) either of a man or a woman who are not married to each other and are cohabiting or have cohabited.

*Obligation of spouses to maintain each other*

3. Every spouse has an obligation to maintain the other spouse, [in accordance with need] to the extent that he or she is capable of doing so.

*Obligation of parent to support child*

4. (1) Every parent has an obligation, to the extent that the parent is capable of doing so, to maintain, [in accordance with need] the parent's unmarried child who -

- (a) is a minor; or
- (b) who is enrolled in a full-time programme of education; or
- (c) who is unable, by reason of physical or mental infirmity, to maintain himself or herself.

(2) Subsection (1) does not apply to a child who is [sixteen] years of age or over and has withdrawn from parental control.

*Obligation of child to support parent*

5. Every person who is not a minor, has an obligation, to the extent that the child is capable of doing so, to maintain, in accordance with need, the person's parents and grandparents [who have cared for or provided support for that person].

*Order for maintenance*

6. A court may, on application by or on behalf of a dependant, order a person to maintain that dependant and determine the amount to be paid under the order.

*Application for order for maintenance*

7. (1) An application for an order for the maintenance of a dependant may be made to the court by the dependant or a parent 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) application for such assistance has been made to the local authority or other government agency by or on behalf of the dependant,

application for an order for the maintenance of the dependant may be made to the court by the local authority or other government agency.

*Power of the Court re application*

8. (1) In hearing an application for an order under section 6, the court shall, 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, the court shall act in accordance with subsection (2).

(2) The court shall enquire into the means of the respondent 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 ordering the respondent to pay, either to the dependant or to some other person named by the court in the order, such periodical sum as the court thinks fit, having regard to the respondent's means.

(3) A maintenance order for the support of child shall -

- (a) recognise that each parent has an obligation to provide support for the child; and
- (b) apportion the obligation according to the capacities of the parents to provide support.

(4) A maintenance order for the support of a spouse shall -

- (a) recognise the spouse's contribution to the relationship and the economic consequences of the relationship for the spouse;
- (b) contain such provisions as will ensure that the economic burden of child support is shared equitably;
- (c) make fair provision to assist the spouse to become able to contribute to the spouse's own support.

(5) In determining the amount and duration of support in relation to need, the court shall consider all the circumstances of the parties including

- (a) the respondent's and dependant's current assets and means;
- (b) the assets and means that the dependant and respondent are likely to have in the future;
- (c) the dependant's capacity to contribute to his or her 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;
- (f) the dependant's needs, having regard to the accustomed standard of living while the parties resided together;
- (g) the measures available for the dependant to become able to provide for his or her own support and the length of time and cost involved to enable the dependant to take those measures;
- (h) any legal obligation of the respondent or the dependant to provide support for another person;
- (i) the desirability of the dependant or respondent staying at home to care for a child;
- (j) any contribution made by the dependant to the realisation of the respondent's career potential;
- (k) if the dependant is a child -

- (i) the child's aptitude for and reasonable prospects of obtaining an education; and
- (ii) the child's need for a stable environment;

(l) if the dependant is a spouse -

- (i) the length of time the dependant and the respondent cohabited;
- (ii) the effect of the responsibilities assumed during cohabitation on the spouse's earning capacity;
- (iii) whether the spouse has undertaken the care of a child of not less than eighteen years of age and is unable by reason of illness, disability or other cause to withdraw from parental care;
- (iv) the effect of the spouse's child care responsibilities on the spouse's earnings and career development; and

(m) any other legal right of the dependant to support other than out of public funds.

(6) The obligation to provide support for a spouse exists without regard to the conduct of either spouse, but the Court may, in determining the amount of support, have regard to a course of conduct that is so unconscionable as to constitute an obvious and gross repudiation of the relationship.

*Duration of order*

9. (1) A maintenance order shall, subject to provisions of this section and section 11, 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) An order may be renewed at any time by the Court.

(3) Where a dependant is unable to maintain himself or herself by reason of old age, or by reason of 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.

(4) 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 be in force for such period, not extending beyond the date on which the child attains the age of [twenty-five] years as may be specified in the order.

*Pension or income liable to attachment*

10. (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) directing that such amount periodically as is specified in the maintenance order or any part thereof, 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.

(2) 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.

*Variation, suspension or cancellation of orders*

11. 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 -

- (1) any of the parties to the proceedings in which such order was made;
- (2) any person having the actual care and custody of a child who is a dependant; or
- (3) 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.

*Appointment of Collecting Officer*

12. (1) The [Resident] Magistrate for each [Parish] shall appoint for the purposes of this Act, a [Clerk or Assistant Clerk of the courts] to be "Collecting Officer for the [Parish of "].

(2) Where a [Resident] Magistrate thinks it necessary, additional Collecting Officers may be appointed in a [Parish].

(3) Payments of any amount ordered by a court under this Act may be made to a Collecting Officer 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.

(4) It shall be the duty of the Collecting Officer to receive all payments directed to be made to the Collecting Officer under this Act and to 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.

(5) 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 officer is situated; or
- (b) in any other case, by sending to the [postmaster] [responsible officer] at the post office of the person named in the maintenance order, an original and a duplicate order specifying the amount to be paid.

(6) In a case to which subsection (5)(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] [responsible officer] who shall then pay out the amount.

(7) The [postmaster] [responsible officer] shall keep the duplicate order and return the original to the Collecting Officer.

(8) Where a maintenance order provides for payment to be made to a Collecting Officer, the applicant for the order shall thereupon give the applicant's nearest post office address to the Collecting Officer.

*Distress may issue if payment in arrear*

13. (1) Where any amount ordered by a maintenance order to be paid to a Collecting Officer is fourteen clear days in arrear, 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 distress and sale of the goods and chattels of the respondent.

(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 prison for any period not exceeding [three calendar months] [with or without hard labour] unless the sum and costs and the costs of commitment, be sooner paid.

(4) Where a respondent is committed to prison under subsection (3), the provisions of section 17(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.

*Powers of court*

14. (1) In 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 in trust for or vested in the dependant, whether absolutely, for life or for a term of years;
- (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 7(2) of an amount in reimbursement for assistance referred to in that subsection, including assistance provided before the date of the order;
- (g) payment of expenses in respect of a child's parental care and birth;
- (h) that a spouse who has a policy of life insurance designate the other spouse or a child as the beneficiary irrevocably;
- (i) that a spouse who has an interest in a pension plan or other benefit plan, designate the other spouse or a child as beneficiary under the plan and not change that designation; and
- (j) the securing of payment under the maintenance order, by a charge on property or otherwise.

(2) A maintenance order binds the estate of the respondent unless the order provides otherwise.

(3) The court may, on application, 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.

*Penalties for neglect to maintain or for abandoning*

15. (1) Every person who is under an obligation to maintain a dependant under this Act and who -

- (a) although able to do so, refuses or neglects to maintain the dependant or willfully abandons such dependant whereby the dependant becomes destitute or dependant upon public or private charity for support; or
- (b) having had a maintenance order made against that person, leaves the usual place of abode for the purpose of evading compliance with that order,

is guilty of an offence and liable on summary conviction before a [Resident] Magistrate to imprisonment in the case of a first offence, for a term not exceeding [thirty days] and for any subsequent offence for a term not exceeding [three months].

(2) Notwithstanding the provisions of subsection (1), a [Resident] Magistrate may make a maintenance order against a person referred to in that subsection instead of, or in addition to ordering that person to be imprisoned.

*Appeal*

16. (1) An appeal shall lie to the [Court of Appeal], in the manner provided by any law in force for the time being, from any decision of a court in respect of a maintenance order, an order of attachment, or any order made under section 14.

(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 just.

*Committal for non-payment*

17. (1) A person shall not be committed to prison 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 the 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 prison 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 prison; 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.

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Explanatory Memorandum on  
Model Legislation on  
**MAINTENANCE ORDERS**

**Long title** This sets out the objective of the legislation which is to provide for the enforcement of maintenance orders including those made in foreign countries.

**The Short Title** highlights the main object of the Act by referring to Maintenance Orders Facilities for Enforcement.

**Clause 2** is the interpretation provision and includes the following definitions:

"*affiliation order*" means an order adjudging a person to be the father of a child, whether or not it also provides for the maintenance of the child.

"*appropriate authority*" means the person in the reciprocating state who performs the functions of the Minister under this Act;

"*Maintenance order*" means an order providing for payment of sums of money towards the maintenance of any person, an affiliation order which provides for payment by a person adjudged to be father and an order for reimbursement of sums paid by a public body to a payee.

"*payee*" means the person entitled to payments under a maintenance order.

"*provisional order*" means an order which has no effect until confirmed by a court or a court in a reciprocating state;

"*registering court*" means a court in which an order is registered under this Act.

**Clause 3** provides for the registration of maintenance orders made abroad where a certified copy of the order is received by the Minister.

**Subsections 2 and 3** outline the duties of the proper officer in registering an order from abroad whereby he must be satisfied that the payer is resident in the state in which the order is to be registered. If the payer is not resident the proper officer must return the certified copy of the order to the Minister for its remittance along with a statement to the reciprocating state.

**Clause 4** provides for confirmation of provisional orders made abroad where the Minister has received such orders and the depositions of witnesses and it appears that the payer is resident. The Minister shall send the documents to the proper officer in accordance with Clause 5 with a request that a summons be issued calling upon the person to show cause why the order should not be confirmed.

**Subsection 4** permits the person upon whom the summons was served to lead a defence but only such defence as he might have been able to raise at the original proceedings and a certificate from the court making the provisional order stating the grounds of opposition to the order shall be conclusive of evidence that those are the grounds of objections taken.

**Subsection 5** allows a Court to seek from the court that made the provisional order clarification of or further particulars relating to the information furnished about the grounds of objection referred to in subsection 4.

**Subsection 7** allows the Court to remit the case to the court which made the provisional order for the taking of further evidence and the court may adjourn the proceedings for that purpose.

**Subsection 8** provides for a right of appeal against a confirmation order.

**Clause 5** provides that an order is to be registered by a court of similar jurisdiction to the court which issued the provisional order.

**Clause 6** provides for a requirement that any orders which are in a foreign language are to be translated into English with such translation being subject to the approval of the Court.

**Clause 7** provides that from the date of registration or confirmation of an order that order shall have the same force and effect and be enforceable as if it had been made by the Court.

**Clause 8** states that the payer named in a maintenance order is to notify the Court of any change of address.

**Clause 9** provides for the conversion of foreign currency stated in a maintenance order into the currency of the registering state

**Clause 10** permits a Court to vary or revoke an order made abroad which has been confirmed or registered.

**Subsection 2** provides that an order varying such maintenance order shall be provisional unless the payer and payee are both resident or the application is made by the payee or the variation is sought on the ground that

there has been a change in the financial circumstances of the payer since the date on which the order was confirmed and the court which made the order has no power to confirm a provisional variation order.

**Subsection 3** provides that an order revoking a maintenance order shall be provisional unless the payer and the payee are both resident.

**Clause 11** provides that where a payer ceases to reside in the registering state the documents pertaining to the maintenance order are to be transmitted to the appropriate authority in the reciprocating state in which the order was made or the reciprocating state in which the payer resides.

**Clause 12** allows a Court to make a maintenance order against a person where that person is residing in a reciprocating state. The order so made is provisional only and has no effect unless and until confirmed in the reciprocating state.

**Subsections 3 and 4** provide for the taking of evidence in the form of depositions or by way of recording and transcription and for the onward transmission of the evidence through the appropriate authority to a court in the reciprocating state.

**Subsection 6** gives the applicant a right of appeal against a refusal of a provisional order.

**Clause 14** empowers the Court to vary and revoke an original maintenance order which has been sent to a reciprocating state for registration or confirmation.

**Subsection 2** states that where a variation consists of an increase in payments the order for variation shall be provisional unless both parties are at the hearing or the applicant appears and there is proof that the other person was served.

**Subsection 3** provides for the onward transmission of the varied order through the appropriate authority to the court in the reciprocating state in which the original order was registered or confirmed.

**Clause 15** provides for the variation and revocation of a maintenance order by a court in a reciprocating state and for the confirmation of that provisional variation order by the original Court.

**Clause 16** provides for the effective date of variation or revocation but by subsection 2 the revocation of an order is without prejudice to the recovery of any arrears due under the maintenance order up to the date of revocation.

**Clause 18** provides for the admissibility of documentary evidence.

**Clause 19** gives an applicant a right of appeal where a Court refuses to confirm a provisional order made by a court in a reciprocating state.

**Subsection 2** gives a payer or payee a right of appeal against an order varying or revoking an order made by court in a reciprocating state or against an order refusing to vary or revoke an order made in a reciprocating state.

**Clause 20** provides for the designation of reciprocating states by the Minister.

**Clause 21** permits the Minister to make regulations for giving effect to the provisions of the Act.

**Clause 22** gives proper officers powers to access information for the purpose of enforcing the provisions of the Act and to pass that information onto a person performing similar functions in the reciprocating state.

**Subsection 2** states that the information so obtained shall not be disclosed except where necessary for the enforcement of the order.

**Clause 23** empowers the Court to order access to information where the proper officer has been refused information requested and the information is needed for the enforcement of the maintenance order.

**Subsection 2** provides that this information be sealed in the Court file and shall not be disclosed except as permitted by the order or where necessary for the enforcement of the order.

The Schedule sets out the provisions applicable to maintenance orders registered or confirmed pursuant to section 7 of this Act.

A proper officer shall take steps to enforce the order as may be prescribed.

A certificate of arrears sent to the proper officer shall be evidence of the facts stated therein.

Sums payable shall be payable in accordance with the order as from the date on which the order was made.

A Court may confirm an order from such date as the Court may direct and the order so confirmed shall be treated as if it had never been a provisional order.

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## THE MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) ACT

### ARRANGEMENT OF SECTIONS

1. Short title.
2. Interpretation.

**Application in [ ] of orders made abroad**

3. Registration of maintenance orders made abroad.
4. Confirmation of provisional orders made abroad.
5. Court for registration or confirmation of orders made abroad.
6. Foreign language.
7. Enforcement of orders registered or confirmed.
8. Payer to notify court of change of address.
9. Conversion to [ ] currency.
10. Variation or revocation of maintenance orders made abroad and registered or confirmed in [ ].
11. Transmission of documents where payer ceases to reside in [ ].

**APPLICATION ABROAD OF ORDERS MADE IN [ ]**

12. Transmission of maintenance orders made in [ ].
  13. Provisional order by court in [ ] against person resident abroad.
  14. Variation and revocation of maintenance orders made by court in [ ].
  15. Variation and revocation of maintenance order made in [ ] by court abroad.
  16. Revocation of provisional order made by court in [ ] before confirmation.
  17. Effective date of variation or revocation.
  18. Admissibility of documentary evidence.
  19. Appeals.
  20. Designation of reciprocating countries.
  21. Regulations.
  22. Access to information.
  23. Court may order access to information.
- SCHEDULE.

**Model Legislation on  
ENFORCEMENT OF MAINTENANCE ORDERS**

**AN ACT** to provide for the enforcement of maintenance orders (including those made in certain foreign countries and for connected matters.

*Short title*

1. This Act may be cited as the Maintenance Orders (Facilities for Enforcement) Act.

*Interpretation*

2. In this Act -

"*affiliation order*" means an order (however described) adjudging, finding or declaring a person to be the father of a child, whether or not it also provides for the maintenance of the child;

"*appropriate authority*" in relation to a reciprocating state, means the person who in that state performs the functions which in [ ] are performed by the Minister under this Act;

"*certificate of arrears*" in relation to a maintenance order, means a certificate certifying that the sum specified in the certificate is, to the best information or belief of the officer giving the certificate, the amount of the arrears due under the order at the date of the certificate or, as the case may be, that to his best information or belief there are no arrears due thereunder at that date;

"*certified copy*" in relation to an order of a court, means a copy of the order certified by the proper officer of the court to be a true copy;

"*court*" includes any tribunal or person having power to make, confirm, enforce, vary or revoke a maintenance order;

"*maintenance order*" (whether provisional or final) means an order (however described) of any of the following descriptions and in the case of an order which is not limited to the following descriptions, the part of the order which is so limited, that is to say -

(a) an order (including an affiliation order or order consequent upon an affiliation order) which provides for the periodical payment of sums of money towards the maintenance of any person, being a person whom the person liable to make payments under the order is, according to the law applied in the place where the order was made, liable to maintain;

(b) an affiliation order or order consequent upon an affiliation order, being an order which provides for the payment by a person adjudged, found or declared to be a child's father, of expenses incidental to the child's birth, or where the child has died, of his funeral expenses; and

(c) an order within the provisions of paragraph (a) or (b) made against a payer on the application of a public body which claims reimbursement of sums of money payable under the order with respect to the payee if reimbursement can be obtained by the public body under the law to which it is subject,

and, in the case of a maintenance order which has been varied, means that order as varied;

"payee" in relation to a maintenance order, means the person entitled to payments for which the order provides;

"payer" in relation to a maintenance order, means the person liable to make payments under the order;

"proper officer of the court" means in the case of the Supreme Court, the Registrar of the Supreme Court and in the case of a court of summary jurisdiction, the clerk of the court;

"provisional order" means an order which has no effect until confirmed by a court in [ ] or, as the case may be, a court in a reciprocating state;

"reciprocating state" means a state declared to be a reciprocating state under Section 20;

"registering court" means a court in which an order is registered under this Act.

### **APPLICATION IN [ ] OF ORDERS MADE ABROAD**

#### *Registration of maintenance orders made abroad*

3.(1) Where -

- (a) a maintenance order has been made against a person by a court in a reciprocating state; and
- (b) a certified copy of the order has been received by the Minister,

the Minister shall send to the proper officer of the court in [ ] the certified copy of the order for registration in the prescribed manner.

(2) The proper officer of the court shall, on receipt of the certified copy of the order, take such steps as he considers necessary to ascertain whether the payer named in the order is resident in [ ] and -

- (a) if he is satisfied that the payer is not so resident, return the certified copy of the order to the Minister together with a statement containing such information as he possesses as to the whereabouts of the payer; and
- (b) in any other case, register the order in the prescribed manner.

(3) The Minister shall upon receipt of the certified copy returned to him under Sub-Section (2)(a), forthwith remit the certified copy and statement aforesaid to the appropriate authority in the reciprocating state.

#### *Confirmation of provisional orders made abroad*

(4) (1) Where -

- (a) a maintenance order has been made by a orders made in a reciprocating state and such order is provisional only;
- (b) the Minister has received a certified copy of the order, together with the depositions of witnesses; and
- (c) it appears to the Minister that the payer is resident in [ ],

the Minister shall send the documents referred to in paragraph (b) to the proper officer of the appropriate court in accordance with section 3, with a request that a summons be issued calling upon the person to show cause why that order should not be confirmed.

(2) Upon receipt of the documents and request referred to in subsection (1), the court shall issue the summons and cause it to be served upon such person.

(3) A summons so issued may be served in [ ] in the same manner as if the order has been originally issued or subsequently endorsed by a court of summary jurisdiction in [ ].

(4) At any hearing for confirmation of the order -

- (a) it shall be open to the person on whom the summons was served to raise only such defence as he might have raised at the original proceedings had he been a party thereto; and
- (b) a certificate from the court which made the provisional order stating the grounds on which the making of the order might have been opposed if the person against whom the order was made had been a party to the proceedings, shall be conclusive evidence that those grounds are grounds on which objection may be taken.

(5) A court in which confirmation of an order is being sought may, notwithstanding anything in paragraph (b) of subsection (4), seek from the court that made the provisional order clarification of, or further particulars relating to, information furnished in a certificate referred to in that paragraph.

(6) If at the hearing the person served with the summons does not appear, or on appearing, fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order either without modification or with such modification as may seem just to the court.

(7) If the person against whom the summons was issued appears at the hearing and satisfies that court that for the purpose of any defence it is necessary to remit the case to the court which made the provisional order for the taking of any further evidence, the court may so remit the case and adjourn the proceedings for that purpose.

(8) Where an order has been confirmed pursuant to this section, the person bound thereby shall have the same right of appeal, if any, against the confirmation of the order as that person would have had against the making of the order had the order been made by the court which confirmed it.

(9) The court may refuse to confirm the order if the court is satisfied that the order ought not to be confirmed.

(10) Where the court so refuses, the proper officer of the court shall return the certified copy of the order and the documents which accompanied it to the Minister who shall thereupon remit the copy and documents to the appropriate authority in the reciprocating state.

*Court for registration or confirmation of orders made abroad*

5. The court by which an order is to be registered or confirmed, as the case may be, pursuant to this Act shall -

- (a) be the Supreme Court if the order was made by a court of superior jurisdiction; or
- (b) in any other case, be a court of summary jurisdiction.

*Foreign language*

6. Where a maintenance order which is sought to be registered or confirmed, as the case may be, under this Act is in a language other than the English language, the maintenance order or a certified copy thereof shall have attached thereto, for consideration and approval by the court, a translation in the English language and, upon such approval being given, the approved translation shall, for the purposes of this Act, be deemed to be the sole and proper version of the order.

*Enforcement of orders registered or confirmed*

7. (1) An order registered or confirmed, as the case may be, by a court in [ ] shall, from the date of such registration or confirmation, have the same force and effect and be enforceable as if it had been originally made by that court and if that court had had jurisdiction to make it.

*Schedule*

(2) The provisions of the Schedule shall have effect in respect of maintenance orders registered or confirmed under this Act.

*Payer to notify court of change of address*

8. (1) A payer named in a maintenance order registered or confirmed in [ ] shall give notice to the proper officer of the court of any change of address.

(2) A payer who contravenes subsection (1) shall be guilty of an offence against this section and liable on summary conviction in a [Resident] Magistrate's Court to a fine not exceeding [ ] dollars.

*Conversion to [ ] currency*

9. (1) Where sums payable under a maintenance order made in a reciprocating state are expressed in a currency other than the currency of [ ], such order shall not be registered or confirmed until those sums are converted to the currency of [ ].

(2) For the purposes of this section -

- (a) the proper officer of the court in which registration or confirmation of the order is sought shall -
  - (i) determine the equivalent of such sums as aforesaid in the currency of [ ] on the basis of the prevailing rate of exchange at the date on which the order was registered or confirmed as ascertained [from any bank licensed under the [Banking Act]];
  - (ii) certify on the order the sums so determined expressed in the currency of [ ];
- (b) the order, upon registration or confirmation, as the case may be, shall be deemed to be an order for payment of the sum so certified.

*Variation or revocation of maintenance orders made abroad and registered or confirmed in [ ]*

10. (1) Subject to the provisions of this section, a court in which a maintenance order made abroad was confirmed or registered may vary or revoke such order as if it had made the order and had jurisdiction to make it.

(2) An order under this section varying a or confirmed maintenance order shall be provisional unless -

- (a) the payer and the payee are both resident in [ ]; or
- (b) the variation consists of a reduction in the rate of payments to be the application is made by the payee; or
- (c) made under the order on the ground that there has been a change in the financial circumstances of the payer since the date on which the order was made or

confirmed, as the case may be, and the court which made the order has no power under the law in the state in which the order was made to confirm a provisional variation order.

(3) An order under this section revoking a maintenance order shall be provisional unless the payer and the payee are both resident in [     ].

(4) Where an application is made for the revocation of a maintenance order the court shall, unless the payer and the payee are both resident in [     ], apply the law of the state in which the order was made.

(5) Where a court makes a provisional order under this section varying or revoking, as the case may be, a maintenance order, the proper officer of the court shall send to the court in the reciprocating state -

(a) a certified copy of the provisional order; and

(b) a duly authenticated document setting out or summarising the evidence given in the proceedings.

(6) Where an order made by the court pursuant to this section is not provisional, the proper officer of the court shall send to the Minister a certified copy of the order and the Minister shall thereupon remit the copy aforesaid to the appropriate authority in the reciprocating state.

*Transmission of documents where payer ceases to reside in [     ]*

11. (1) Where the proper officer of the court has reason to believe that the payer under an order registered or confirmed by an court in [     ] has ceased to reside in [     ], he shall send to the Minister, for transmission to the appropriate authority in the reciprocating state in which the order was made, or, as the case may be, the appropriate authority in the reciprocating state in which the payer is resident, the following -

(a) a copy of the registered or confirmed order;

(b) a certificate of arrears signed by him;

(c) a statement containing information as to the whereabouts of the payer;

(d) any other document which may be relevant to the order.

(2) Where the documents referred to in subsection (1) are sent to a state other than the state in which the order was made, the Minister shall inform the appropriate authority in the last mentioned state that the documents have been so sent.

#### **APPLICATION ABROAD OF ORDERS MADE IN [     ]**

*Transmission of maintenance orders made in [     ]*

12. Where -

(a) a court in [     ] has made a maintenance order against a person; and

(b) it is proved to the court that such person is resident in a reciprocating state,

the court shall, upon the request of the payee, send a certified copy of the order to the Minister for transmission through the appropriate authority to the appropriate court in that state for registration and enforcement.

*Provisional order by court in [     ] against person residing abroad*

13. (1) Where -

(a) an application is made to a court in [     ] for a maintenance order against any person; and residing abroad.

(b) it is proved to the court that that person is residing in a reciprocating state,

the court may, in the absence of that person, make any such order as it might have made if a summons had been duly served on that person and he had failed to appear at the hearing.

(2) Any order so made shall be provisional only and shall have no effect unless and until confirmed by a competent court in the reciprocating state.

(3) The evidence of any witness who is examined on any such application shall either -

(a) be in the form of a deposition put in writing, read over and signed by the witness; or

(b) be recorded (whether in shorthand or other mechanism) and transcribed and thereafter certified as correct by the proper officer of the court.

(4) Where an order is made under subsection (1), the proper officer of the court shall send to the Minister for transmission through the appropriate authority to a court in the reciprocating state -

(a) a certified copy of the order;

(b) the depositions of witnesses or, if the evidence is recorded as referred to in subsection (3)(b), a certified copy of the transcript;

(c) the certificate from the court which made the provisional order stating the groups on which the making of the order might have been opposed if the person against whom the order is made had been duly served with a summons and had appeared at the hearing; and

(d) such information in the possession of the court as would facilitate locating and identifying that person.

(5) The confirmation of an order made under this section shall not affect any power of a court in [ ] to vary or rescind the order pursuant to section 14.

(6) The applicant shall have the same right of appeal, if any, against a refusal to make a provisional order as the application would have had against a refusal to make the order had a summons been duly served on the person against whom the order is sought to be made.

*Variation and revocation of maintenance orders made by court in [ ]*

14. (1) Where a maintenance order (hereinafter referred to as "the original order") has been made by a court in [ ] and a certified copy thereof has been sent to a reciprocating state for registration or confirmation, as the case may be, a court of competent jurisdiction in [ ] may make an order varying or revoking the original order.

(2) Where a variation under subsection (1) consists of an increase in the payments under the original order, the order for variation shall be provisional unless -

(a) both parties appear at the hearing; or

(b) the applicant appears at the hearing and the court is satisfied that the other party has been duly served with the appropriate process.

(3) Where an original order made by the court in [ ] is varied or revoked by a later order pursuant to subsection (1), the proper officer of the court shall send to the Minister for transmission through the appropriate authority to the court in the reciprocating state in which the original order was registered or confirmed -

(a) where the later order is a provisional order, the relevant documents for purposes of confirmation; or

(b) in any other case, a certified copy of the latter order for purposes of registration.

*Variation and revocation of maintenance order made in [ ] by court abroad*

15. Where -

(1) a court in a reciprocating state by a provisional order varies or revokes, as the case may be, a maintenance order made by a court in [ ]; and

(b) the court in [ ] has received a certified copy of the provisional order made by the court in the reciprocating state and a duly authenticated document setting out or summarising the evidence given in the proceedings in which the provisional order was made,

the court in [ ] may confirm the provisional order with or without modification.

*Revocation of provisional order made by court in [ ] before confirmation*

16. (1) Where, before the confirmation of a maintenance order made by a court in [ ] (hereinafter referred to as "the original court") against a person residing in a reciprocating state, the original court -

(a) receives a duly authenticated document setting out or summarising the evidence taken in the reciprocating state for the purpose of proceedings relating to the confirmation of the order; or

(b) in compliance with a request made by the court in the reciprocating state, takes additional evidence for the purpose of such proceedings, the original court shall consider that evidence and if it appears to a court that the order ought not to have been made, it shall give to the person in whose favour the order was made an opportunity to consider and refute that evidence or to adduce further evidence.

(2) The original court may revoke or vary the order after considering all the evidence and any representations made by the person in whose favour the order was made.

*Effective date of variation or revocation*

17. (1) Where a court in [ ] or a court in a reciprocating state makes an order (whether or not such order is a provisional order that has been confirmed) varying a maintenance order such maintenance order shall effect as varied.

(2) Where a maintenance order is revoked by an order made by a court in [ ] or by a court in a reciprocating state, such maintenance order shall be deemed to have ceased to have effect as from the date on which the revocation order was made but without prejudice to the recovery of any arrears due under the maintenance order up to that date.

*Admissibility of documentary evidence*

18. In any proceedings before a court in [ ] under this Act, the following documents duly certified, shall be admissible as evidence of the facts stated therein -

(a) a document which sets out or summarises evidence given in a court in a reciprocating state

(b) a document which sets out or summarises evidence taken in a reciprocating state for the purpose of proceedings in a court in [ ] under this Act;

(c) a document which was received in evidence in a court in a reciprocating state or a copy of a document so received.

#### *Appeals*

19. (1) Where a court in [ ] refuses to confirm a provisional order made by a court in a reciprocating state the applicant shall have a right of appeal against such refusal.

(2) A payer or a payee, as the case may be, shall have the right of appeal against -

(a) an order made by a court in [ ] varying or revoking a maintenance order made by a court in the reciprocating state;

(b) a refusal by a court in [ ] to vary or revoke a maintenance order made by a court in a reciprocating state.

#### *Designation of reciprocating countries*

20. Where the Minister is satisfied that reciprocal provisions have been or will be made by any state for the enforcement in that state of maintenance orders made in [ ], the Minister may, by order, declare that state to be a reciprocating state for the purposes of this Act.

#### *Regulations*

21. The Minister may make regulations for giving effect to the provisions of this Act, and, without prejudice to the generality of the foregoing, may make regulations -

(a) prescribing the forms to be used for carrying into effect the provision of this Act;

(b) generally for facilitating communication between courts in [ ] and courts in reciprocating states.

#### *Access to information*

22. (1) The proper officer of the court may, for the purpose of enforcing a maintenance order -

(a) obtain from any person information that is shown on a record in the person's possession or control and indicates the place of employment, address or location of the person against whom the order is being enforced; and

(b) provide the information so obtained to a person performing similar functions in a reciprocating state.

(2) Information obtained under subsection (1)(a) shall not be disclosed except to the extent necessary for the enforcement of the order.

#### *Court may order access to information*

23. (1) If on an application, it appears to a court that -

(a) the proper officer of the court has been refused information requested by him under section 22 (1);

(b) the information is needed for the enforcement of a maintenance order, the court may order any person to provide the court or the proper officer of the court with any information that is shown on a record in the person's possession or control and indicates the place of employment address or location of the person against whom the order is being enforced.

(2) Information obtained under an order made under subsection (1) shall be sealed in the court file and shall not be disclosed except as permitted by the order or to the extent necessary for the enforcement of the maintenance order.

### **SCHEDULE (Section 7)**

#### **Provisions applicable to maintenance orders registered or confirmed under this Act**

1. The proper office of the court by which an order is enforceable by virtue of this Act shall take such steps for enforcing the order as may be prescribed.

2. In any proceedings for or with respect to the enforcement of such order a certificate of arrears sent to the proper officer of the court shall be evidence of the facts stated therein.

3. Subject to paragraph 4, sums of money payable under such order shall be payable in accordance with the order as from the date on which the order was made.

4. A court confirming an order under section 4 may direct that the sums of money payable under it shall be deemed to have been payable in accordance with the order as from such date, being a date not earlier than the date on which the order was made, as it may specify, and subject to such direction an order so confirmed shall be treated as if it has been made in the form in which it was confirmed and as if it had never been a provisional order.

