

## CHAPTER 216

### MAINTENANCE

#### ARRANGEMENT OF SECTIONS

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##### THE LAWS OF BARBADOS

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**CHAPTER 216****MAINTENANCE**

*An Act to provide for the maintenance of certain children born 1981-28.  
out of wedlock and for related matters.*

[15th March, 1984] Commence-  
ment.  
S.I. 1984  
No. 49.

*Citation*

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

Short title.

*Interpretation*

2. In this Act,

Definitions.

“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;

“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*.

Cap. 214.

**THE LAWS OF BARBADOS**

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## 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-appearance of the applicant at the time fixed for the adjourned hearing as it applies to the time specified in the summons.

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.

Procedure where application made after birth.

(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*

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

Power to adjudge defendant father of child.

(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  
main-  
tenance.

**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 cal-  
culated  
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.

Defence  
to applica-  
tion.

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

1979-32.

(a) that in accordance with the *Status of Children Reform Act*, 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.

**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,

Matters  
to be  
taken in-  
to con-  
sideration  
by court  
in making  
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 this 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) 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 an order 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  
powers 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.

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

- (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.

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. Duty to inform person making payments.

(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.

Modifica-  
tion 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.

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.

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

(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 Wel-  
fare Depart-  
ment 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.

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

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

(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 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.

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

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

(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.



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.

Funeral expenses incurred during currency of order.

(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.

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.

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

(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 ad-  
dresses 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.

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.

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

(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*.