

CAYMAN ISLANDS



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**A BILL FOR A LAW TO REFORM THE LAW RELATING TO
MAINTENANCE; TO REPEAL AND REPLACE THE MAINTENANCE
LAW (1996 REVISION); AND FOR INCIDENTAL AND CONNECTED
PURPOSES**

THE MAINTENANCE BILL, 2018

MEMORANDUM OF OBJECTS AND REASONS

This Bill is a part of the family law reform project undertaken by the Law Reform Commission. The project also included the preparation of the Matrimonial Clauses Bill, 2018 and the Family Property (Rights of Spouses) Bill, 2018. This Bill seeks to modernise the regulation of maintenance provisions for spouses and adult dependants. The maintenance of children is regulated by the Children Law (2012 Revision) and, consequentially, there is no reference to the maintenance of children under this legislation.

The Maintenance Law (1996 Revision) was first enacted in 1964 and it has been found to contain a slew of outdated provisions. The Law, among other things, contains provisions which refer to illegitimacy and provides for maintenance of children up to the age of 14 only. Further, under the Law, while a woman is under no obligation to maintain her spouse, every man is liable and is required to maintain his wife, irrespective of whether she is able to maintain herself. It is proposed by this legislation to repeal such outdated legislation and to provide legislation which accords with internationally accepted practice, including the recognition of the equal right to maintenance for men and women.

PART 1 – PRELIMINARY

Clause 1 provides the short title.

Clause 2 contains interpretation provisions.

Clause 3 specifies the courts in which an application for maintenance can be made. A person can make an application for maintenance to the summary court where such application is not a part of any other proceedings. Where the application is part of other matrimonial proceedings in the Grand Court the application can be made to that court. Where the matrimonial proceedings relate to the division of property, the application for maintenance may be made to the court which is dealing with that application.

Thus, where an application for the division of property relates to property which is valued at or less than the maximum monetary jurisdiction of the summary court, both applications can be made in the summary court. The court can, in the alternative to making a property division order, make an application for maintenance only.

PART 2 - OBLIGATION OF SPOUSES

Clause 4 obligates each spouse, so far as the spouse is capable, to maintain the other spouse. The obligation is limited to the extent that the maintenance is necessary to meet the reasonable needs of the other spouse where the other spouse cannot practically meet the whole or any part of such needs.

Clause 5 provides that a maintenance order for the support of a spouse shall -

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

In making such order the court must consider the matters specified in clause 10 (2) as well as those in sub-clause (2) of this clause. Matters specified in sub-clause (2) include the following -

- (a) the length of time of the marriage;
- (b) the spouse's contribution to the relationship and the economic consequences of the relationship for the spouse;
- (c) the effect of the responsibilities assumed during the marriage on the spouse's earning capacity; and
- (d) the spouse's needs, having regard to the accustomed standard of living during the marriage.

PART 3 - OBLIGATION TO MAINTAIN PARENTS AND GRANDPARENTS IN CERTAIN CIRCUMSTANCES

Clause 6 provides that adults may be obligated in certain cases to maintain their parents and grandparents. When the court is considering an application in such cases the court is required to have regard to whether, by reason of age or infirmity, that dependant is unable to provide for himself or herself; and the circumstances specified in clause 10 (5)(a) to (g).

The obligation of a person under this clause in respect of that person's grandparent only arises in the event of the failure of the grandparent's children to carry out such obligation owing to death, physical or mental infirmity or disability.

PART 4- MAINTENANCE ORDERS

Clause 7 empowers the court to make maintenance orders upon application of a dependant.

Clause 8 provides that an application may be made by a dependant, by a person who has care of such dependant, or if the Government is maintaining that person, by the relevant Ministry or other person authorised by the Government, such as a social worker.

Clause 9 deals with the procedure relevant to a maintenance order.

Clause 10 sets out, among other things, the matters which the court must take into account when considering the making of a maintenance order. In addition to the matters in clause 5(2) and 6(2), where they are applicable, such matters include -

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

Clause 11 sets out other powers of the court in relation to the making of a maintenance order. For example, the court may order that an amount be paid periodically whether for an indefinite or limited period or until the happening of a specified event; that a lump sum be paid or held in trust or that some or all of the money payable under the order be paid to the Clerk of the Court or to another appropriate person or agency for the dependant's benefit.

Clause 12 deals with the duration of an order. An order may be made for the rest of the natural life of a dependant, if for example, such dependant is old and infirm. In the case of a spouse, subject to any agreement between the spouses to the contrary, an order may last until the re-marriage of a spouse.

Clause 13 provides for the variation, suspension or cancellation of maintenance orders.

Clause 14 provides for the registration in the court of maintenance orders made in England, Wales or Ireland against any person in the Islands. Where a court in the Islands makes a maintenance order and it is proved to the court that the person is resident in England, Wales or Ireland the court shall, upon application send a certified copy of the order to the Governor for onward transmission to the Secretary of State.

Clause 15 deals with the procedure relating to the making of an order in the Islands against a person who is resident in England, Wales or Ireland.

Clause 16 deals with the procedure relating to the registration of a provisional order made in England, Wales or Ireland against a person resident in the Islands.

Clause 17 provides that a court shall, upon application, make an order that payments under an order shall be made to the Clerk of the Court.

PART 5- ENFORCEMENT OF MAINTENANCE ORDERS

Clause 18 provides for the issue of a warrant of distress to issue in cases where the respondent has failed to make payments as ordered by the court. If it appears that no sufficient distress can be had, the magistrate may issue a warrant to bring the respondent before the court. 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 magistrate may make an order for the imposing, in respect of the person, of one or more of the sanctions available to be imposed under clause 19, being a sanction that the court considers to be the most appropriate in the circumstances.

Clause 19 sets out the sanctions which may be imposed by the court for failure to comply with a maintenance order. These include requiring the respondent to enter into a bond; the suspension of a respondent's driver licence; fining a respondent and imposing a term of imprisonment.

Clause 20 provides for sentences of imprisonment. Such imprisonment must not exceed twelve months and can be for a period ending when the person complies with the order. Imprisonment should be a last resort. Subclause (6) provides that a court, when sentencing a person to imprisonment may, if it considers it appropriate to do so, direct that that person ("the respondent) be released upon that respondent) entering into a bond after the person has served a specified part of the term of imprisonment. A bond may be made with or without a surety and will bond the respondent to be of good behavior for a specified period of up to two years.

The serving by a respondent of a period of imprisonment under a sentence imposed on the person for a failure to make a payment under a maintenance order does not affect the person's liability to make the payment.

Clause 21 provides that the court may order the continued payment of maintenance even though a person is incarcerated if the court is satisfied that the respondent has the means to pay.

Clause 22 sets out the conditions relating to the ordering of a bond as a sanction for non-payment of maintenance.

Clause 23 provides for the making of an order of attachment of a pension or income where a respondent has failed to comply with a maintenance order.

Clause 24 provides that the Clerk of the Court may notify the department of Government responsible for drivers' licences and vehicle registration to suspend the licence and car registration of a respondent, if any, where that person has been in arrears under a maintenance order for at least six months. The Clerk of the Court must first give notice to the respondent of the intention to take such action. The suspension of a licence and registration, if any, will last until the earliest of the following -

- (a) the date the department is advised by the Clerk of the Court that the maintenance order is no longer in arrears; or
- (b) the date the Clerk of the Court directs the department under clause 25 to disregard that notice.

Clause 25 provides that the Clerk of the Court may advise the department responsible for drivers' licences and registration to end the suspensions if the respondent satisfies the Clerk of the Court that -

- (a) the notice is based on a material error;
- (b) the lack of a driver's licence or a registered vehicle will significantly reduce the respondent's ability to pay under the maintenance order and the respondent has entered into an arrangement that is satisfactory to the Clerk of the Court to report the respondent's financial circumstances from time to time; or
- (c) the respondent has entered into a payment arrangement that is satisfactory to the Clerk of the Court.

Clause 26 provides that if, on an ex parte application by a dependant the court is satisfied that the respondent is likely to evade or hinder the enforcement of a maintenance order by disposing of or wasting any property, the court may make an order to restrain the respondent from disposing of or wasting the property.

Clause 27 deals with appeals.

PART 6- MAINTENANCE AGREEMENTS

Clause 28 provides for the regulation of maintenance agreements entered into by spouses for the purpose of facilitating the settlement of their support rights and obligations. Clause 28 provides that the spouses should obtain independent legal

advice before signing. The court is given the power to inquire into such agreements in certain circumstances.

Clause 29 provides that any maintenance agreement that is intended to defeat any creditor of either party to the agreement is void.

PART 7- GENERAL

Clause 30 provides that depositions taken in a court in England, Wales or Ireland for the purposes of this legislation may be received in evidence in proceedings before a court in the Islands.

Clause 31 empowers the Cabinet to make regulations relating to the remission of cases between courts and in relation to the enforcement of maintenance orders.

Clause 32 provides for the recognition in local courts of documents signed in courts in England, Wales or Ireland.

Clause 33 provides that provisions in the legislation which apply to England, Wales and Ireland also apply to Jamaica.

Clause 34 empowers the Governor to extend this legislation to any country or territory in certain specified circumstances and in such cases the provisions which apply to England, Wales, Ireland and Jamaica shall apply in a similar way.

Clause 35 empowers the Rules Committee of the Grand Court, subject to clause 31, to make rules and prescribe forms for the purposes of this legislation.

Clause 36 provides for the repeal of the Maintenance Law (1996 Revision).

Clause 37 contains transitional provisions relating to matrimonial proceedings which started before the commencement of this legislation but are not concluded by such date. Such proceedings will continue under the former Law.

The Schedule contains the form of the affidavit of service required under clause 9.

THE MAINTENANCE BILL, 2018

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CAYMAN ISLANDS

A BILL FOR A LAW TO REFORM THE LAW RELATING TO MAINTENANCE; TO REPEAL AND REPLACE THE MAINTENANCE LAW (1996 REVISION); AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

PART 1 – PRELIMINARY

1. This Law may be cited as the Maintenance Law, 2018.

Short title

2. (1) In this Law -

Interpretation and application of this Law

“authorised person” means a guardian, guardian ad litem, social worker or other person authorised by the court to act on behalf of a dependant;

“court” means a magistrate, judge or court referred to in section 3;

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

“matrimonial cause” has the meaning assigned by section 2 of the Matrimonial Causes Law, 2018;

“matrimonial proceedings” has the meaning assigned by section 2 of the Matrimonial Causes Law, 2018;

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

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

“order of attachment” means an order made under section 23;

“regulations” means regulations made under this Law;

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

“spouse” means a person who is married to a person of the opposite sex and includes for the purposes of matrimonial proceedings, a former spouse.

(2) Subject to Part 6, this Law does not apply to the maintenance of minors.

Application for maintenance order-jurisdiction of court

3. (1) Subject to subsection (2), a person may apply to the summary court or, where matrimonial proceedings commenced in the Grand Court, in that court for a maintenance order in accordance with the provisions of this Law.

(2) In any case where an application is made for the division of property under the Family Property (Rights of Spouses) Law, 2018 the court considering the order may, instead of making such order or in addition to making the order, make a maintenance order in accordance with the provisions of this Law.

PART 2 – OBLIGATION OF SPOUSES

Obligation of spouses to maintain each other

4. Subject to this Law, a spouse has an obligation during marriage and after the termination of such marriage, so far as that spouse is capable, to maintain the other spouse to the extent that such maintenance is necessary to meet the reasonable needs of the other spouse, where the other spouse cannot practicably meet the whole or any part of those needs.

Maintenance order in relation to a spouse

5. (1) A maintenance order for the support of a spouse shall -
(a) contain such provisions as will ensure that the financial responsibility of child support is shared equitably; and
(b) make such provision as the court considers fair with a view to assisting the spouse to become able to contribute to that spouse's own support.

(2) In determining the amount and duration of support to be given to a spouse under a maintenance order, the court shall have regard to the following matters in addition to the matters specified in section 10(5) -

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

PART 3 - OBLIGATION TO MAINTAIN PARENTS AND GRANDPARENTS IN CERTAIN CIRCUMSTANCES

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

Obligation of person to support parent or grandparent

(2) In considering the circumstances of a dependant who is a parent or grandparent, the court shall have regard to -

- (a) whether, by reason of age or infirmity, that dependant is unable to provide for himself or herself; and
- (b) the circumstances specified in section 10(5)(a) to (g).

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

PART 4 - MAINTENANCE ORDERS

Order for maintenance 7. A court may, on application by or on behalf of a dependant, order the respondent named in the application to maintain that dependant and in making such an order, the court shall, where the order is a monetary order, determine the amount to be paid thereunder.

Application for order of maintenance 8. (1) An application for an order for the maintenance of a dependant may be made to the court by the dependant or by any other person who has legal guardianship of the dependant.

(2) Where-

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

an application for a maintenance order may be made to the court by the relevant Ministry or other person authorised by the Government to do so on behalf of the Government.

Manner of proceeding in court 9. (1) Proceedings in a summary court or the Grand Court for maintenance under this Law, shall be by way of summons.

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

Power of the court in relation to an application 10. (1) In hearing an application for an order under section 7, the court shall act in accordance with subsection (2) if satisfied that -

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

(2) The court shall enquire into the matters referred to in subsection (1) 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) a maintenance order that the respondent pay, either to the dependant or to some other appropriate person named by the court in the order, such periodic sum as the court thinks fit,

having regard to the relevant circumstances specified in subsection (5); or

- (b) such other order under section 11(1) as the court considers appropriate.

(3) Subject to subsection (5), where an application is made under section 8(2) on behalf of the Government, the court may further order the respondent to pay to the Government such additional periodic sum as the court thinks just, as reimbursement for the assistance given prior to the court order.

(4) The total amount payable under subsection (3) shall not exceed the aggregate amount of assistance given by the Government to the dependant.

(5) In determining the amount and duration of support, the court shall consider all the circumstances of the parties including the matters specified in sections 5(2) or 6(2), as the case may require and -

- (a) the respondent's and the dependant's assets and means;
- (b) the assets and means that the dependant and the respondent are likely to have in the future;
- (c) the dependant's capacity to contribute to the dependant's own support;
- (d) the capacity of the respondent to provide support;
- (e) the mental and physical health and age of the dependant and the respondent and the capacity of each of them for appropriate gainful employment;
- (f) the measures available for the dependant to become able to provide for the dependant's own support and the length of time and cost involved to enable the dependant to take those measures;
- (g) any legal obligation of the respondent or the dependant to provide support for another person;
- (h) the desirability of the dependant or respondent staying at home to care for a child;
- (i) any contribution made by the dependant to the realisation of the respondent's career potential;
- (j) any other legal right of the dependant to support other than out of public funds;
- (k) the extent to which the payment of maintenance to the dependant would increase the dependant's earning capacity by enabling the dependant to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income;
- (l) the quality of the relationship between the dependant and the respondent; and

(m) any fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account.

Powers of court regarding maintenance orders

11. (1) In relation to an application for a maintenance order, the court may make an interim or final order requiring -

- (a) that an amount be paid periodically whether for an indefinite or limited period, or until the happening of a specified event;
- (b) that a lump sum be paid or held in trust;
- (c) that property be transferred to or held in trust for or vested in the dependant, whether absolutely, for life or for a term of years;
- (d) that some or all of the money payable under the order be paid to the Clerk of the Court 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 8(2) of an amount in reimbursement for assistance referred to in that subsection, including assistance provided before the date of the order; and
- (g) the securing of payment under the maintenance order, by a charge on property, an order of attachment or otherwise.

(2) The provisions of section 23(2) and (3) shall apply, with any necessary modifications, to an order of attachment made under subsection (1)(g).

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

(4) In an application for a maintenance order or for variation thereof, the court may order the employer of a party to the application, or the party in the case where the party is self-employed, to make a written return to the court showing the party's emoluments during the preceding twelve months.

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

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

Duration of order

12. (1) Subject to the provisions of this section and section 13, a maintenance order shall remain in force for such period as may be specified in the order.

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

(3) Subject to any agreement by spouses to the contrary, an order in respect of the maintenance of a spouse ceases to have effect upon the re-marriage of the spouse in whose favour the order is made.

(4) It is the duty of the person for whose benefit the order was made to inform without delay the person liable to make payments under the order of the date that a re-marriage took place as referred to in subsection (3).

(5) Any moneys paid in respect of a period after the date of a re-marriage may be recovered in a court having jurisdiction under this Law.

(6) Nothing in this section affects the recovery of arrears due under an order at the time when the order ceased to have effect.

13. At any time after a maintenance order or an order of attachment has been made under this Law, a court may upon the application of –

Variation, suspension or cancellation of orders

- (a) any of the parties to the proceedings in which such order was made; or
- (b) 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.

14. (1) Where a maintenance order has, whether before or after the passing of this Law, been made against any person by any court in England, Wales or Ireland, and a certified copy of the order has been transmitted to the Governor he shall send a copy of the order to the Clerk of the Court for registration.

Registration of English and Irish orders and enforcement

(2) Where the Clerk of the Court receives the order the Clerk shall register it in the prescribed manner and from the date of such registration, the order shall be of the same force and effect, and subject to this Law, all proceedings may be taken on such order as if it had been an order originally obtained in the court in which it is so registered, and that court shall have power to enforce the order accordingly.

(3) The court in which such order is to be registered shall, if the court by which the order was made was a court of superior jurisdiction, be the Grand

Court, and, if the court was not a court of superior jurisdiction, be a summary court.

(4) Where a court in the Islands has made a maintenance order against any person, and it is proved to that court that the person against whom the order was made is resident in England, Wales or Ireland, the court shall send to the Governor, for transmission to the Secretary of State, a certified copy of the order.

Procedure where application is made for a maintenance order against a resident of England, Wales or Ireland

15. (1) Where an application is made to a summary court for a maintenance order against any person, and it is proved that that person is resident in England, Wales or Ireland, the court may, in the absence of that person, if after hearing the evidence it is satisfied of the justice of the application, 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, but in such a case the order shall be provisional only, and shall have no effect unless and until confirmed by a competent court in England, Wales or Ireland.

(2) The evidence of any witness who is examined on an application under subsection (1) shall be put in writing and such deposition shall be read over to and signed by him.

(3) Where such an order is made the court shall send to the Governor, for transmission to the Secretary of State-

- (a) the depositions so taken and a certified copy of the order;
- (b) a statement of the grounds on which the making of the order might have been opposed if the person against whom the order was made had been duly served with a summons and had appeared at the hearing; and
- (c) such other information as the court possesses for facilitating the identification of that person, and ascertaining his whereabouts.

(4) Where any such provisional order has come before a court in England, Wales or Ireland for confirmation, and the order has by that court been remitted to the summary court which made the order for the purpose of taking further evidence, that court or any other summary court shall, after giving the prescribed notice, proceed to take the evidence in a similar manner and subject to the same conditions as the evidence in support of the original application.

(5) If, upon the hearing of evidence under subsection (4), it appears to the court that the order ought not to have been made, the court may rescind the order, but in any other case the depositions shall be sent to the Secretary of State and dealt with in the same manner as the original depositions.

(6) Subject to subsection (7), the confirmation of an order made under this section shall not affect any power of a summary court to vary or rescind that order.

(7) On the making of a varying or rescinding order the court shall send a certified copy thereof to the Governor, for transmission to the Secretary of State, and in case of an order varying the original order the order shall not have any effect unless and until confirmed in the same manner as the original order.

(8) The applicant shall have the same right of appeal, if any, against a refusal to make a provisional order as the applicant 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.

16. (1) Where a maintenance order has been made by a court in England, Wales or Ireland and the order is provisional only and has no effect unless and until confirmed by a summary court in the Islands and -

Procedure where a provisional maintenance order has been made by a court in England, Wales or Ireland, etc.

- (a) a certified copy of the order, together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed has been transmitted to the Governor; and
- (b) it appears to the Governor that the person against whom the order was made is resident in the Islands,

the Governor may send the documents to the Clerk of the Court with a requisition that a summons be issued calling upon the person to show cause why that order should not be confirmed, and upon receipt of such documents and requisition, the court shall issue the summons and cause it to be served upon such person.

(2) A summons issued under subsection (1) may be served in the Islands in the same manner as if it had been originally issued or subsequently endorsed by a summary court in the Islands.

(3) At the hearing it shall be open to the person on whom the summons was served to raise any defence which the person might have raised in the original proceedings had the person been a party thereto, but no other defence; and the 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.

(4) 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 to the court after hearing the evidence may consider just.

(5) If the person against whom the summons was issued appears at the hearing and satisfies the 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 the purpose.

(6) Where a provisional order has been confirmed under this section, it may be varied or rescinded in the same manner as if it had originally been made by the confirming court, and where on application for rescission or variation the court is satisfied that it is necessary to remit the case to the court which made the order for the purpose of taking any further evidence the court may so remit the case and adjourn the proceedings for the purpose.

(7) Where an order has been so confirmed, the person bound by the order shall have the same right of appeal, if any, against the confirmation of the order as he would have had against the making of the order had the order been an order made by the court confirming the order.

Payments under Law

17. (1) Where a summary court or the Grand Court makes a maintenance order it shall, upon the application of a person entitled to be maintained by any other person under this Law, either at the time of making the order or subsequently, on an ex parte application for variation of the order, provide in the order that all payments under the order be made to the Clerk of the Court and payments under such order shall thereafter be made to the Clerk of the Court.

(2) Payments of any amount ordered by a court under this Law may be made to the Clerk of the Court in person or by letter sent by registered post addressed to the Clerk of the Court and posted in time to be delivered to the Clerk of the Court on the day appointed for payment.

(3) It shall be the duty of the Clerk of the Court to -

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

- (4) Payment shall be made by the Clerk of the Court at the court.

PART 5 - ENFORCEMENT OF MAINTENANCE ORDERS

18. (1) Where any amount ordered by a maintenance order to be paid to the Clerk of the Court is fourteen days in arrears, a magistrate may, on the application of the Clerk of the Court, 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 from the respondent. Distress may issue if payment in arrears

(2) If upon the return of the warrant issued under subsection (1) it appears that no sufficient distress can be had, the 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 magistrate may make an order for the imposing, in respect of the person, of one or more of the sanctions available to be imposed under section 19, being a sanction or sanctions that the court considers to be the most appropriate in the circumstances.

(4) For the purposes of subsection (3) the term “reasonable cause” includes the following circumstances -

- (a) the respondent contravened the order because, or substantially because, the respondent did not, at the time of the contravention, understand the obligations imposed by the order; or
- (b) the court is satisfied that the respondent ought to be excused in respect of the contravention.

(5) The power given to the court under subsection (3) in respect of a contravention of a maintenance order applies even if the order has been complied with before the matter of the contravention comes before the court.

19. (1) The sanctions that are available to be imposed by the court are - Sanctions other than distress

- (a) to require the respondent to enter into a bond in accordance with section 22;
- (b) to direct the suspension of a respondent’s driver’s licence and car registration;
- (c) to fine the person four thousand dollars;
- (d) to make an order of attachment of income or pensions; or
- (e) subject to subsection (2), to impose a sentence of imprisonment on the person in accordance with section 20.

(2) An order under subsection (1) may be expressed to take effect immediately, or at the end of a specified period or on the occurrence of a specified event.

(3) Where a court makes an order under subsection (1), the court may make such other orders as the court considers necessary to ensure compliance with the order that was contravened.

(4) 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 Law.

Sentences of
imprisonment

20. (1) A sentence of imprisonment imposed on a respondent pursuant to section 19 shall be expressed to be -

- (a) for a specified period of twelve months or less; or
- (b) for a period ending when the person -
 - (i) complies with the order concerned; or
 - (ii) has been imprisoned pursuant to the sentence for twelve months or such lesser period as is specified by the court,

whichever happens first.

(2) A court shall not sentence a person to imprisonment pursuant to section 19 unless the court is satisfied that, in all the circumstances of the case, it would not be appropriate for the court to deal with the contravention pursuant to any of the other subsections of section 19.

(3) If a court sentences a person to imprisonment pursuant to this subsection (1) the court shall -

- (a) state the reasons why it is satisfied as mentioned in subsection (2); and
- (b) cause those reasons to be entered in the records of the court.

(4) The failure of a court to comply with subsection (3) does not invalidate a sentence.

(5) A court that sentences a person to imprisonment may -

- (a) suspend the sentence upon the terms and conditions determined by the court; and
- (b) terminate a suspension made under paragraph (a).

(6) A court, when sentencing a person to imprisonment may, if it considers it appropriate to do so, direct that that that be released upon the person entering into a bond described in subsection (7) after the person has served a specified part of the term of imprisonment.

(7) A bond for the purposes of subsection (6) is a bond, with or without surety or security, that the respondent will be of good behaviour for a specified period of up to two years.

(8) Without limiting the circumstances in which a court may discharge or vary an order under this Law a court that has sentenced a respondent to imprisonment for a period expressed as provided by section (1)(b) may order the release of the person if it is satisfied that the person will, if he is released, comply with the order concerned.

(9) The serving by a respondent of a period of imprisonment for a failure to make a payment under a maintenance order does not affect the person's liability to make the payment.

(10) 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 the person 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.

21. (1) If a respondent is incarcerated for any offence other than by imprisonment under section 20 and the court is satisfied that the respondent has means by which payments under a maintenance order may be made, the court may -

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

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

(2) The provisions of section 23(2) and (3) shall apply, with any necessary modifications, to an order of attachment made under this section.

- Bonds
22. (1) This section provides for bonds that a court may require a person to enter into under section 20.
- (2) A bond shall be for a specified period of up to two years.
- (3) A bond may be -
- (a) with or without surety; and
 - (b) with or without security.
- (4) The conditions that may be imposed on a person by a bond include a condition requiring the person to be of good behaviour.
- (5) If a court proposes to require a person to enter into a bond, it shall, before making the requirement, explain to the person, in language likely to be readily understood by the person -
- (a) the purpose and effect of the proposed requirement; and
 - (b) the consequences that may follow if the person fails -
 - (i) to enter into the bond; or
 - (ii) having entered into the bond - to act in accordance with the bond.
- Pension or income liable to attachment
23. (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 of attachment in accordance with subsection (2).
- (2) An order of attachment shall direct that such sum periodically as is specified in the maintenance order, or any part of such sum, be attached and paid either to the person to whom a periodical sum has been directed to be paid in the maintenance order or to some other person named in the order of attachment.
- (3) An order of attachment made under subsection (1) shall be an authority to a person by whom any pension or income affected by such order is payable, to make the payment and the receipt of the person to whom payment is ordered shall be a good discharge to the person by whom the pension or income is payable.
- Suspension of respondent's licence and vehicle registration
24. (1) If a respondent is in default under a maintenance order for a consecutive period of six months or more or for a combined period of six months in any one year, the Clerk of the Court may do either or both of the following -

- (a) forward, to the department of Government responsible for the licensing of drivers and vehicle registration a notice stating that the respondent is in default and that action under this section shall be taken in relation to the respondent's driver's licence; or
- (b) forward to the department of Government responsible for the licensing of drivers and vehicle registration a notice stating that the respondent is in default and that action under this section is to be taken in relation to a driver's licence and corresponding vehicle registration for any motor vehicle or trailer owned by the respondent.

(2) At least thirty days before forwarding a notice to the department under subsection (1)(a) the Clerk of the Court shall give the respondent notice that action under this section will be taken in relation to the respondent's driver's licence.

(3) At least sixty days before forwarding a notice to the department under subsection (1)(b), the Clerk of the Court shall give the respondent notice, which shall be in the manner prescribed by regulations, that action under this section will be taken in relation to the registration of any motor vehicle or trailer owned by the respondent.

(4) On receipt of a notice under subsection (1)(a), the department for the applicable period under subsection (6), shall not issue or renew a driver's licence of the respondent or, if the respondent's licence is in effect, shall suspend the drivers licence of the respondent.

(5) On receipt of a notice under subsection (1)(b), the department, for the applicable period under subsection (6), shall not register any motor vehicle or trailer owned by the debtor or if any registration is in effect, shall suspend such registration.

(6) Subsections (4) and (5) apply in relation to a respondent from the date the department receives the applicable notice under subsection (1) until the earliest of the following -

- (a) the date the department is advised by the Clerk of the Court that the maintenance order is no longer in arrears; or
- (b) the date the Clerk of the Court directs the department under section 25 to disregard that notice.

(7) The Clerk of the Court may, as a condition for acting under subsection (6)(a) require the respondent to pay into the court a deposit in a prescribed amount as security for future payments under the maintenance order in addition to paying the arrears.

(8) The Clerk of the Court may hold a deposit received under subsection (7) until the respondent has not been in arrears under the maintenance order for at least nine consecutive months since the deposit was given, in which case the deposit may be applied to future maintenance payments, or returned to the respondent, as the Clerk of the Court considers appropriate.

(9) If the respondent gives a deposit under subsection (8) and subsequently falls into arrears for more than ten consecutive days under the maintenance order filed with the court, the Clerk of the Court may -

- (a) prepare and forward to the department a further notice under subsection (1) without further notice to the respondent under subsection (2) or (3), as applicable; and
- (b) apply the deposit to the payment of arrears under the maintenance order.

(10) Action by the department under subsection (4) or (5) or the giving of a deposit under subsection (8) is not a bar to the bringing of other proceedings under this Part to enforce payment under the maintenance order.

(11) Where the department is notified under this section it shall, as soon as it has been notified, advise in writing, where applicable, any lien holder specified in the registration documents and the police department of the action to be taken.

Withdrawing the Clerk
of the Court's notice

25. (1) The Clerk of the Court shall direct the department of Government responsible for the licensing of drivers and vehicle registration to disregard a notice given under section 24 if the respondent satisfies the Clerk of the Court that -

- (a) the notice is based on a material error;
- (b) the lack of a driver's licence or a registered vehicle will significantly reduce the respondent's ability to pay under the maintenance order and the respondent has entered into an arrangement that is satisfactory to the Clerk of the Court to report the respondent's financial circumstances from time to time; or
- (c) the respondent has entered into a payment arrangement that is satisfactory to the Clerk of the Court.

(2) If the Clerk of the Court refuses to act under subsection (1), the respondent may appeal the decision to the summary court and the summary court shall determine whether the refusal was unreasonable and, if the refusal is found to be unreasonable, may order the Clerk of the Court to act under subsection (1).

Restraining order

26. If, on an ex parte application by a dependant the court is satisfied that the respondent is likely to evade or hinder the enforcement of a maintenance order by

disposing of or wasting any property, the court may make an order to restrain the respondent from disposing of or wasting the property.

- 27. (1) Appeals shall lie from any order under this Law of - Appeal
 - (a) the summary court to the Grand Court in accordance with the Summary Jurisdiction Law (2015 Revision); and (2015 Revision)
 - (b) the Grand Court to the Court of Appeal in accordance with the Grand Court Law (2015 Revision).
- (2) The Grand Court or Court of Appeal, as the case may be, 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 Grand Court or Court of Appeal thereon; or
 - (c) make such order as the Grand Court or the Court of Appeal thinks fit, including an order as to costs to be paid by either party as the court may think just.
- (3) The Grand Court or the Court of Appeal may, in making an order under subsection (2)(c), exercise any power which the court below might have exercised and such order shall have the same effect and may be enforced in the same manner as if it had been made by the court below.

PART 6 – MAINTENANCE AGREEMENTS

- 28. (1) Subject to section 29, spouses or two persons in contemplation of their marriage to each other may, for the purpose of facilitating the settlement of their support rights and obligations, make such maintenance agreement as they think fit. Agreements in respect of maintenance
- (2) For the purposes of this Part, a maintenance agreement means an agreement that -
 - (a) makes provision in respect of the support rights and obligations of the parties with respect to each other or any child that either party has an obligation to maintain under any other Law; and
 - (b) includes provisions in respect of -
 - (i) financial matters;
 - (ii) the right to direct the education and moral training of their children; or
 - (iii) any other matter in the settlement of the support obligations of the parties, including an agreement that varies an earlier maintenance agreement.

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

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

- (a) if signed in the Islands, be witnessed by a justice of the peace, notary public or by an attorney-at-law;
- (b) if signed in a country or State other than the Islands, be witnessed by -
 - (i) a notary public or other person having authority by the law of such country or State to administer an oath in that country or State; or
 - (ii) a British Consul-General or Consul or Vice-Consul or Acting Consul or Consul Agent exercising his functions in that country or State.

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

- (a) there is non-compliance with subsection (3) or (4); or
- (b) the court is satisfied that it would be unjust to give effect to the agreement.

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

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

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

- (a) the provisions of the agreement;
- (b) the time that has elapsed since the agreement was made;
- (c) whether, in light of the circumstances existing at the time the agreement was made, the agreement is unfair or unreasonable;

- (d) whether any changes in circumstances since the agreement was made (whether or not such changes were contemplated by the parties) render the agreement unfair or unreasonable; and
- (e) any other matter which it considers relevant to any proceedings.

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

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

(11) Where in relation to a maintenance agreement the court is satisfied that the arrangements in respect of a child that either party has an obligation to maintain under section 6 are -

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

the court may make such order under the Children Law (2012 Revision) as it thinks necessary to secure the proper support of the child.

(2012 Revision)

(12) A maintenance agreement may be registered with the court as prescribed by regulations made under this Law.

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

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

Agreement to defeat creditors

PART 7 - GENERAL

30. Depositions taken in a court in England, Wales or Ireland for the purposes of this Law may be received in evidence in proceedings before a summary court under this Law.

Depositions which may be received in evidence

31. The Cabinet may make regulations -

Governor may make regulations

- (a) as to the manner in which a case can be remitted by a court authorised to confirm a provisional order to the court which made the provisional order, and generally for facilitating communications between such courts; and
- (b) in relation to the enforcement of maintenance orders under Part 6.

Signing of documents	32. Any document purporting to be signed by a judge or officer of a court in England, Wales or Ireland, shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it, and the officer of a court by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of the court to sign the document.
Provisions applicable to Jamaica	33. Sections 14 to 16 and 30, 31(a) and 32 have effect in respect of Jamaica as though the references to England, Wales or Ireland therein were references to Jamaica, and the references to the Secretary of State were references to the person holding equivalent authority in Jamaica.
Power of Governor to extend Law to other countries or territories	34. (1) The Governor, if satisfied that, were the benefits conferred by this Law to be applied to, or to a particular class of, maintenance orders made by the courts of any country or territory outside the Islands, similar benefits would in that country or territory be applied to, or to that class of, maintenance orders made by the courts of the Islands, may, by order, extend this Law to that country or territory, and this Law shall thereupon apply in respect of the country or territory as though - <ul style="list-style-type: none">(a) references in it to England, Wales or Ireland were references to that country or territory; and(b) references in it to the Secretary of State were references to the Head of State or Governor of the country or territory. <p>(2) An order made under subsection (1) may extend sections 14 to 16 and 30, 31(a), 32 and 33 to another country or territory either as regards maintenance orders generally, or as regards a specified class of maintenance orders.</p>
Power to make rules	35. Subject to section 31, the Rules Committee of the Grand Court may make rules and prescribe forms for carrying into effect the provisions of this Law.
Repeal (1996 Revision) [Transitional provisions]	36. The Maintenance Law (1996 Revision) is repealed. 37. Any maintenance proceedings commenced under the Maintenance Law (1996 Revision) but not concluded before the date of the commencement of this Law shall be continued and completed after such date as if this Law was not in force.

SCHEDULE

(Section 9)

Affidavit of Service

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

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

Justice of the Peace

Endorse the copy summons (or order) thus-

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

Passed by the Legislative Assembly this _____ day of _____, 2018.

Speaker

Clerk of the Legislative Assembly