

2014-10-02

Explanatory Memorandum after page 16

OBJECTS AND REASONS

This Bill would amend the *Maintenance Act, Cap. 216* to make provision for any parent or guardian who has primary guardianship and custody of a child to make an application for the maintenance of that child from the parent of the child who does not have primary guardianship and custody of the child, and to provide for related matters.

Arrangement of Sections

1. Short title
2. Amendment of section 2 of Cap. 216
3. Amendment of section 6 of Cap. 216
4. Amendment of section 7 of Cap. 216
5. Amendment of section 8 of Cap. 216
6. Amendment of section 9 of Cap. 216
7. Amendment of section 10 of Cap. 216
8. Amendment of section 11 of Cap. 216
9. Amendment of section 12 of Cap. 216
10. Amendment of section 13 of Cap. 216
11. Amendment of section 17 of Cap. 216
12. Amendment of section 19 of Cap. 216
13. Amendment of section 20 of Cap. 216
14. Amendment of section 22 of Cap. 216
15. Amendment of Section 24 of Cap. 216

- 16.** Amendment of section 26 of Cap. 216
- 17.** Amendment of section 27 of Cap. 216

BARBADOS

A Bill entitled

An Act to amend the *Maintenance Act*.

ENACTED by the Parliament of Barbados as follows:

Short title

- 1.** This Act may be cited as the *Maintenance (Amendment) Act, 2014*.

Amendment of section 2 of Cap. 216

2. Section 2 of the Maintenance Act, Cap. 216, in this Act referred to as the principal Act, is amended by

(a) deleting the definition of the word “child” and substituting the following:

“ “child” does not include a child of a marriage or union other than marriage, or an adopted child;” and

(b) inserting the following definitions in alphabetical order:

“ “applicant” means a person entitled to apply for maintenance under the Act;

“birth” includes stillbirth;

“DNA” means deoxyribonucleic acid which is a substance occurring in the cells of the body of a person which contain the genetic code of that person, which is hereditary and passes to the offspring of that person;

“DNA test” means the process of testing a sample of the DNA of a person to determine the paternity of a child for whom an application for maintenance has been made under this Act;

“father” means the biological father of a child;

“mother” means the biological mother of a child;

“parent” means either the biological mother or father of a child.”.

Amendment of section 6 of Cap. 216

3. The principal Act is amended by deleting section 6 and substituting the following:

“Application for maintenance

6.(1) Subject to this Act, an applicant, being

- (a) either the father or mother of a child with guardianship and custody of that child; or
- (b) the person granted custody of a child under section 20 or otherwise,

may make an application for the maintenance of that child, to the magistrate of the district in which that parent or person resides, for a summons to be served on the other parent of the child or the parent of the child, as the case may be, for proceedings in respect of the application for the maintenance of that child.

(2) On hearing an application under this Act for the maintenance of a child, the magistrate may proceed to make an order for the maintenance of the child against the defendant, and the defendant shall pay

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

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

(4) On hearing an application under this Act for the maintenance of a child the magistrate shall enquire into the details for the guardianship

and custody of the child, as well as the arrangements for access and visitation by the parent who does not have guardianship and custody of the child; and the magistrate may, where he considers it necessary in the best interest of the child, in addition to the order for maintenance, make an order for that parent to have access and visitation of the child.”.

Amendment of section 7 of Cap. 216

4. *The principal Act is amended by deleting section 7 and substituting the following:*

“ Period for application

7. Subject to section 15, an applicant may make an application for maintenance at anytime after the birth of the child or before the child attains the age of 18 years, or sooner marries.”.

Amendment of section 8 of Cap. 216

5. *The principal Act is amended by deleting section 8 and substituting the following:*

“Exception in respect of a void marriage

8. A person 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 an application against that other party for the maintenance of the child at anytime after the birth of the child or before the child attains the age of 18 years, or sooner marries.”.

Amendment of section 9 of Cap. 216

6. *The principal Act is amended by deleting section 9 and substituting the following:*

“Determination of paternity

9.(1) On hearing an application where the defendant is alleged to be the father of the child, the magistrate shall enquire of the defendant whether he admits to being the father of the child.

(2) Where pursuant to an enquiry under subsection (1) the defendant denies that he is the father of the child, the magistrate may, where he considers that the circumstances so require it, order that a DNA test be performed to ascertain whether the defendant is the father of the child.

(3) Notwithstanding subsection (2), as the circumstances may require, the defendant may be ordered by the magistrate to make payments for the maintenance of the child until the results of the DNA test are known, and where it is determined that the defendant is not the father of the child the magistrate shall order that the applicant repay the defendant the sums paid for the maintenance of the child.

(4) Where the defendant has DNA evidence proving that he is not the father of the child, he may make an application to the magistrate for this DNA evidence to be considered by the court, and the magistrate shall consider this evidence as well as the other matters before him.

(5) Where a DNA test proves that a person is the father of a child that person shall be liable to maintain that child in accordance with section 4, and where it is proven that the defendant is not the father of the child the magistrate shall make an order that the defendant is not the father of the child and not liable to maintain the child in accordance with section 4.

(6) Where a father is deceased and the paternity of a child is in issue, in respect of a challenge to provision made for the maintenance of that child, the magistrate may on application by an applicant, order a DNA test to confirm the paternity of the child.”.

Amendment of section 10 of Cap. 216

7. *Section 10(1) of the principal Act is amended by deleting the word “Where” and substituting therefor the words, “Subject to section 9, where”.*

Amendment of section 11 of Cap. 216

8. *The principal Act is amended by deleting section 11 and substituting the following:*

“Power to order sum to be calculated from birth

11. Where an application is made within 3 months of the birth of a child any sum ordered by the magistrate to be paid for the maintenance of that child, may if the magistrate thinks fit

- (a) be calculated from the date of the birth of the child; and
- (b) include the reasonable expenses incidental to the birth of the child.”.

Amendment of section 12 of Cap. 216

9. *Section 12 of the principal Act is amended by deleting the words “under section 10” wherever they appear.*

Amendment of section 13 of Cap. 216

10. *The principal Act is amended by deleting section 13 and substituting the following:*

“Defence to an application

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

(a) that in accordance with the *Status of Children Reform Act*, Cap. 220, another person has filed with the Registrar a declaration affirming that he is the father of the child; or

(b) that under the *Vital Statistics Registration Act*, Cap. 192A, another person has signed the register as father of the child

unless it has been proven by a DNA test or otherwise that that other person is in fact not the father of the child.”.

Amendment of section 17 of Cap. 216

11. *Section 17(1) of the principal Act is amended by*

(a) *deleting paragraph (b) and substituting the following:*

“(b) the death of the father or mother, as the case may be;”;

(b) *deleting paragraph (d) and substituting the following:*

“(d) the child attaining the age of 18 years of age, unless section 15 applies.”.

Amendment of section 19 of Cap. 216

12. Section 19 of the principal Act is amended

- (a) *in subsection (1) by deleting the words “or his legal personal representative” and substituting the words, “, mother or the legal representative of either parent,”; and*
- (b) *in subsection 2 by inserting the words “or mother, as the case may be,” after the word “father” in paragraph (a)(ii).*

Amendment of section 20 of Cap. 216

13. Section 20 of the principal Act is amended by deleting subsection (7) and substituting the following:

“(7) Where a magistrate places a child in the custody of a person other than the mother or father of the child, the magistrate shall make an order for the maintenance of the child requiring that

- (a) both parents contribute a sum of money for the maintenance of the child; or
 - (b) either the father or the mother, as the case may be, contribute a sum of money towards the maintenance of the child.
- (8) Any person who fails to comply with an order made under subsections (1), (2), (3), (5), (6) or (7) is liable on summary conviction to a fine not exceeding \$10,000.”.

Amendment of section 22 of Cap. 216

14. The principal Act is amended by deleting section 22 and substituting the following:

**“Application by Chief Welfare Officer or Child Care Board
in respect of a child who is the charge of the Child Care Board**

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

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

make an application to a magistrate for a summons to be served on the parent or guardian of the child to show cause why a maintenance order should not be made for a contribution towards the maintenance 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 6 or 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) 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, where he is satisfied on the evidence that the case for the applicant has been proved, the magistrate shall adjudge the defendant liable to maintain the child in accordance with section 4; but where the

magistrate is not so satisfied, the magistrate shall dismiss the application.

(4) Where the magistrate adjudges the defendant liable to maintain the child in accordance with section 4, 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 a charge of 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 of 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 a charge of 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 shall not be made under subsection (4), and if made, shall cease to have effect except for the recovery of arrears, if the parent or the person who is guardian of the child, as the case may be, obtains a maintenance order under section 6 or section 10 in respect of the child.

(9) Where the parent of a child in relation to whom a maintenance order has been made, 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.”.

Amendment of Section 24 of Cap. 216

15. *The principal Act is amended by deleting section 24 and substituting the following:*

“Maintenance orders and funeral expenses

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 parent or person entitled to the payment of money required to be paid under the order, make an order for the payment of a sum of money for or towards the reasonable

expenses incidental to the funeral of the child, by the parent obligated to maintain the child under the existing order.

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

Amendment of section 26 of Cap. 216

16. *Section 26(2) of the principal Act is amended by inserting the words “or mother, as the case may be” after the word “father” wherever it appears.*

Amendment of section 27 of Cap. 216

17. *Section 27 of the principal Act is amended by inserting the words “or mother, as the case may be” after the word “father” wherever it appears.*

Read three times and passed the House of Assembly this
day of _____, 2014.

Speaker

Read three times and passed the Senate this _____ day of
, 2014.

President

MAINTENANCE (AMENDMENT) ACT, 2014

EXPLANATORY MEMORANDUM

The Maintenance Act came into effect on the 15th of March 1984 to provide a scheme for single mothers to obtain maintenance for children born out of wedlock. The Act provides a comprehensive scheme for mothers to seek maintenance by applying to magistrates' court for an order against the biological fathers of their children. Since the passage of this Act some thirty years ago, the composition of the single parent family is now varied and as such the person needing to seek maintenance for the child can now also be the father or another person with guardianship of the child. The law must, in the best interest of the child, provide for these changing realities.

- Clause 1:** This clause gives the short title of the amending Act. It may be cited as the *Maintenance (Amendment) Act, 2014*.
- Clause 2:** This clause amends the interpretation section of the Maintenance Act, Cap. 216, hereafter referred to as the Act, to define the terms “applicant”, “birth”, “DNA”, “DNA test”, “father”, “mother” and “parent” to widen the Act’s scope of application.
- Clause 3:** This clause amends section 6 of the Act to expand the categories of people who can apply for maintenance to include the father of the child and a person granted custody of the child. This section also lists matters that the Magistrate must take into account, and ensures that the Magistrate investigates the living circumstances of the child and where relevant the Magistrate is empowered to make orders for access and visitation for the child.
- Clause 4:** This clause amends section 7 of the Act to provide a time frame for an application for maintenance; an application for

maintenance can be made anytime after the birth of the child and before the child attains 18 years, unless section 15 of the Act applies.

- Clause 5:** This Clause amends section 8 of the Act to ensure that people who are single as a result of a void marriage may also make an application for maintenance under the Maintenance Act.
- Clause 6:** This Clause amends section 9 of the Act to provide for DNA tests to be ordered by the court to establish paternity; this section also provides for paternity tests not ordered by the court to be submitted to the court as evidence.
- Clause 7:** This clause amends section 10 to make the provisions of that section, subject to the section 9.
- Clause 8:** This clause amends section 11 of the Act to permit the Court to make an order for the maintenance of the child to calculated from the date of the birth of the child and to include reasonable amounts for the costs of the delivery of the child, where the applicant applies for maintenance within 3 months of the birth of the child.
- Clause 9:** This clause amends section 12 to delete the words “under section 10” so that the application of the section is no longer tied to section 10 but now applies to entire Act.
- Clause 10:** This clause amends section 13 to exclude the application of this defence to situations where DNA evidence shows that the person on the record is not the father of the child.
- Clause 11:** This clause amends section 17 of the Act to expand the circumstances in which a maintenance order ceases to operate.

- Clause 12:** This clause amends section 19 of the Act to ensure that it will apply to either parent or the guardian of the child, as the case may be, so that any party can apply for a modification of a maintenance order.
- Clause 13:** This clause amends section 20 of the Act to ensure that both parents are equally liable to maintain the child in accordance with section 4, in circumstances where the child is not in the custody of either parent.
- Clause 14:** This amends section 22 of the Act to provide for the Child Care Board to seek maintenance from either parent of a child.
- Clause 15:** This clause amends section 24 of the Act to ensure that either parent is liable for funeral expenses in the event of the death of the child.
- Clause 16:** This clause amends section 26 of the Act to ensure that section 26 will now apply to either parent of a child.
- Clause 17:** This clause amends section 27 of the Act to ensure that section 27 applies to either parent of the child.