

Child Maintenance

Arrears

If a defendant fails to comply with a court order and has accumulated arrears, the matter can be taken back to court. The court only honours arrears for a 6 month period. Any monies owing beyond that can only be paid by consent of the defendant.

Section 140 of the Magistrate Code of Procedure refers to the enforcement of an order made by

Penal Sentences

the Magistrate.

A penal sentence is when the Magistrate attaches a clause to an existing order in which the defendant can be confined to prison if he breaches the court order.

A Penal sentence is attached to court orders when a defendant repeatedly fails to comply with the stipulations of an existing court order. When a penal sentence is attached, any father who fails to pay maintenance thus falling into arrears, may be committed to prison for a specified period.

If a father pays the amount owed while he is incarcerated he will be automatically released, if not when he is released he is still responsible for all monies owed before being incarcerated and whatever has accumulated since.

Visitation

The Magistrate has powers to make orders for support, education and burial of illegitimate children but does not have powers to order visitation. In the Magistrate's court, *visitation orders* can only be made by consent. Notwithstanding, either party may solicit an attorney and file an application for visitation to the High Court.

We'll meet the same time next Saturday!



Ok!

Custody

Custody matters are determined by the High Court.

Brochure compiled by:

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**Government of
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Department of
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Child Maintenance



Services for Child Maintenance

What is Child Maintenance?

Child Maintenance is money paid by one parent to the other for the purpose of providing financial support to a child or children.



A Social Worker

How does a Social Worker assist?

serves as a mediator in helping individuals come to an amicable agreement regarding maintenance of their child/children. Maintenance can be established through a mutual agreement or by a court order.

A mutual agreement is established at the department, where both parties sign the relevant document in the presence of a Social Worker. The information is then recorded in the child maintenance books and the agreement placed on file.

If parties fail to come to an agreement but still wish to pursue the matter, the matter can be filed at the court by the client or by the on behalf of the client.

After the agreement is established, the Social Worker continues to work with the family with whatever issues that may arise concerning payments or otherwise.



How is the amount derived?

The amount of maintenance awarded is based on the means of the father as well as the needs of the child/children involved. The court, as well as the department, takes into account all other financial obligations of the father. *There is no set figure by the department or the court.*

The department offers two options in terms of how payment can be received. Payments can be collected

How are payments made?

at the department or deposited in a savings account set up for the sole purpose of maintenance.

Provisions can be made for maintenance to be deducted from the father's salary, depending on his place of employment.

Court Orders - How are they established?

Authorization is provided through legislation located in Part 5 of the Magistrate's Code of Procedures. Section 134 (f) for married couples, Section 138 for single couples and Section 139 for maintenance and education of a illegitimate child.



Court Orders-How are they established

The magistrate makes a ruling on maintenance based on information presented to him/her. The *Magistrate Code of Procedures* serves as a guide in making the rulings.

In respect to married couples the Magistrate's Code of Procedures, Part 5 Section 134 states that the couple should no longer cohabit (live) with each other and legal custody of the children under the age of 18 should be granted to the applicant. The Defendant shall pay to the applicant a reasonable sum ordered by the Magistrate for the maintenance of each of the children of the marriage until such child attains the age of 18yrs.

The Magistrate's Code of Procedures Part 5 section 138 states that a single woman who is having a baby should either before birth or within 12 months from the birth of the child inform the alleged father of the pregnancy. If there is proof that the alleged father supported and knew that the child was his within the 12 month period the woman can make an application for the man to be summons to the Magistrate court. The Magistrate shall, upon application being made, issue the summons to the person alleged to be the father of the child and he should appear in court to show cause why he should not be compelled to maintain the child.

Section 139 states that on the appearance of the person so summoned or on the proof that the summons was duly served, the Magistrate shall then hear the evidence of both parties. If the magistrate agrees with the evidence the man is made to pay Child Maintenance, half educational, medical and day care expense. The Magistrate can also make adjustments to the order if necessary.